

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning  
Board of Zoning Adjustment

PUBLIC MEETING & PUBLIC HEARING  
OF THE BOARD OF ZONING ADJUSTMENT

9:49 through 10:53 a.m.  
Tuesday, October 4, 2011

441 4th Street, N.W.  
Jerrily R. Kress Memorial Room  
Second Floor Hearing Room, Suite 220-South  
Washington, D.C. 20001

OLENDER REPORTING, INC.  
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Board of Zoning Adjustment  
District of Columbia  
CASE NO. Transcript  
EXHIBIT NO.null

Board Members:

MERIDITH MOLDENHAUER, Chairperson  
NICOLE SORG, Vice-Chairperson  
LLOYD JORDAN, Mayoral Appointee

Also Present:

CLIFFORD W. MOY, Secretary to the Board  
SHERRY GLAZER, ESQ.,  
Office of Attorney General

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## 1 P R O C E E D I N G S

2 CHAIRPERSON MOLDENHAUER: This meeting  
3 will please come to order. Good morning, ladies  
4 and gentlemen. We are located today in the  
5 Jerrily R. Kress Memorial Hearing Room at 441 4th  
6 Street, N.W. This is October 4th, 2011, Public  
7 Hearing of the Board of Zoning Adjustment for the  
8 District of Columbia.

9 My name is Meridith Moldenhauer,  
10 Chairperson. Joining me today to my left is  
11 Vice-Chairperson Nicole Sorg, Mayoral Appointee;  
12 and to my right, Lloyd Jordan, Mayoral Appointee.

13 Copies of today's hearing agenda are  
14 available to you and are located to my left in  
15 the wall bin near the door.

16 We do not take any public testimony  
17 during our hearing -- during our meetings, unless  
18 the Board asks someone to come forward.

19 Please be advised this proceeding is  
20 being recorded by a court reporter and is also  
21 being webcast live. Accordingly, I must ask you  
22 to refrain from any disturbing noise or actions

1 in the hearing room. Please turn off all cell  
2 phones and beepers at this time.

3

4 Mr. Secretary, do we have any preliminary  
5 matters?

6 MR. MOY: Good morning, Madam  
7 Chairperson. We do, but Staff would suggest that  
8 the Board address those matters on a case-by-case  
9 basis when I call the case.

10 CHAIRPERSON MOLDENHAUER: Thank you.  
11 We will call our first case.

12 MR. MOY: Well, the first set of cases  
13 for Board action is the expedited --

14 Oh, good morning, Madam Chairperson and  
15 members of the Board.

16 CHAIRPERSON MOLDENHAUER: Good morning.

17 MR. MOY: The first matter before the  
18 Board is the Expedited Review Calendar, and on  
19 the calendar this morning, there are four cases  
20 on the calendar, and I am going to call each of  
21 the cases separately for the Board's convenience.

22 Application No. 18276

1           MR. MOY: That first case is Application  
2 No. 18276. This is of Alexandra Nowakowski,  
3 pursuant to 11 DCMR 3104.1 for a special  
4 exception to allow a two-story addition to an  
5 existing one-family, semi-detached dwelling under  
6 Section 223, not meeting the lot area and lot  
7 width requirements, Section 401, and the side  
8 yard, Section 405, requirements in the R-1-B  
9 District at premises 5133 Sherrier Place, N.W.,  
10 property located in Square 1418, Lot 11.

11           CHAIRPERSON MOLDENHAUER: Thank you very  
12 much, Mr. Moy.

13           I think that this case is very  
14 straightforward. We have 223. OP is  
15 recommending approval. There are three different  
16 existing conditions and only one new condition  
17 that needs a special exception.

18           The existing conditions are a minor -- or  
19 a decrease in the lot area as required, a reduced  
20 lot width, then the requirement in the Zone, and  
21 a decreased side yard in the requirement -- based  
22 on the Zone requirement, but those are all, as I

1 said, existing conditions. The only change is  
2 actually a court width, which is smaller than the  
3 minimum required at 3 feet to 1 inch.

4 The Applicant has submitted a letter from  
5 the ANC approving the application. We do also  
6 have multiple letters from the neighboring  
7 property owners, which is our Exhibit No. 10, in  
8 support of the application as well. I think that  
9 the Office of Planning recommends approval, and I  
10 would recommend that we approve this application  
11 as well.

12 Is there any additional deliberation on  
13 this expedited case?

14 VICE-CHAIRPERSON SORG: No, Madam Chair.  
15 I would support a motion.

16 CHAIRPERSON MOLDENHAUER: Wonderful.  
17 Then I will submit a motion to approve  
18 Application No. 18276 for a special exception to  
19 allow a two-story addition to an existing  
20 one-family, semi-detached dwelling under Section  
21 223, not meeting the lot area, lot width  
22 requirements under 401, and the side yard under

1 405 requirements in an R-1-B District at premises  
2 -- and also not meeting the -- sorry -- the court  
3 width requirements under 406, at premises 5133  
4 Sherrier Place, N.W.

5 The motion has been made. Is there a  
6 second?

7 VICE-CHAIRPERSON SORG: Second.

8 CHAIRPERSON MOLDENHAUER: The motion has  
9 been made and seconded. All those in favor, say  
10 "aye."

11 [Chorus of ayes.]

12 CHAIRPERSON MOLDENHAUER: Aye.

13 MR. MOY: The staff would record the vote  
14 as 3 to 0 to 2. This is on the motion of  
15 Chairperson Moldenhauer to approve the  
16 application per the relief requested. Second the  
17 motion, Ms. Sorg. Also in support of the motion,  
18 Mr. Jordan. Two Board members not participating  
19 with us this morning.

20 So, again, the vote is 3 to 0 to 2. The  
21 motion carries.

22 CHAIRPERSON MOLDENHAUER: Thank you, Mr.

1 Moy.

2 I guess we also have to request that we  
3 waive our requirements and ask for a Summary  
4 Order be issued, please.

5 MR. MOY: Thank you, Madam Chair.

6 CHAIRPERSON MOLDENHAUER: Thank you.

7 Application No. 18278

8 MR. MOY: The next case on the calendar  
9 is Application No. 18278 of Arnold Young,  
10 pursuant to 11 DCMR 3104.1. This is for a  
11 special exception to allow a two-story addition  
12 to an existing flat, a two-family dwelling, under  
13 Section 223, not meeting the lot occupancy  
14 requirements, Section 403, and the open court,  
15 Section 406, requirements in the R-4 District at  
16 premises 1706 10th Street, N.W., Square 335, Lot  
17 40.

18 There is a filing in the records. The  
19 filing is in the record, includes, of course, the  
20 request from the Applicant. There is a timely  
21 affidavit and an OP report in support, identified  
22 as Exhibit 28.

1           That completes status briefing, Madam  
2 Chair.

3           CHAIRPERSON MOLDENHAUER: Thank you very  
4 much, Mr. Moy.

5           I will just start us off with going over  
6 this case quickly. I think that this is a case  
7 where it's a 223 again, where they are looking at  
8 increasing the lot occupancy from 60 percent to  
9 68 percent, and we have an Office of Planning  
10 report in support of this application. We have  
11 letters of -- actually, this is a situation where  
12 we actually don't specifically have letters of  
13 support, but we actually have e-mails of support,  
14 which I am not as thrilled about in regards to an  
15 expedited case. I don't know if we have e-mails  
16 that are back and forth between some of the  
17 property owners that may not be actually the  
18 adjoining property owners.

19           We did get a supplemental report from OP  
20 indicating that the Applicant owns both of the  
21 properties that would be most impacted by this  
22 proposed addition, so he owns both neighboring



1           We don't know from OP's record whether or  
2 not the ANC is in support of this application.  
3 They just simply note on their office --  
4 sometimes OP will indicate that they are in  
5 support, but we just don't have a resolution. OP  
6 indicates that they don't actually have anything  
7 in their case file at this point in time.

8           So, in regards to whether or not the  
9 Applicant satisfies the conditions, I do agree  
10 with OP. I think this Applicant does satisfy the  
11 different conditions in regards to having the  
12 relief approved. My question is, Is this case  
13 potentially right for an expedited review, since  
14 it's missing the ANC report?

15           And I will just open that up to the Board  
16 for questions or comments.

17           VICE-CHAIRPERSON SORG: Thank you, Madam  
18 Chair.

19           I mean, I agree with you in general that  
20 what we like to see in the expedited cases are  
21 really, you know, all the i's dotted and t's  
22 crossed with regard to the completeness of the

1 application and the different forms.

2           On the other hand, certainly, it is not  
3 without frequency that we don't receive ANC  
4 reports, and I think in this case, the relief  
5 that's being requested is small. That's probably  
6 the reason why it's on the Expedited Calendar. I  
7 think you can see that there's a good -- there's  
8 a voluminous outreach to neighbors and support  
9 from neighbors, and we've also got another agency  
10 report and recommendation from HPO here.

11           So I think that I can -- I would be in  
12 favor of keeping this on the Expedited Calendar  
13 for today.

14           MR. JORDAN: And so would I. I think  
15 that just because this is a matter as has been  
16 explained, I think this is one where we can do  
17 without -- and that there has been  
18 representation, at least there was presentation  
19 to the ANC, so I'm comfortable with that.

20           CHAIRPERSON MOLDENHAUER: Then is there a  
21 motion?

22           VICE-CHAIRPERSON SORG: Thank you, Madam

1 Chair. I'll submit a motion to approve  
2 Application No. 18278, expedited request,  
3 pursuant to 11 DCMR 3118 for special exception  
4 under 228 for existing -- for additions to an  
5 existing two-story dwelling at 1706 10th Street,  
6 not meeting lot width in area requirements under  
7 Section 401.1, Section 403.2, for lot occupancy  
8 as well as Section 406.1 to -- for minimum open  
9 court width.

10 CHAIRPERSON MOLDENHAUER: A motion has  
11 been made. Is there a second?

12 MR. JORDAN: Second.

13 CHAIRPERSON MOLDENHAUER: Motion has been  
14 made and seconded. All those in favor, say  
15 "aye."

16 [Chorus of ayes.]

17 MR. MOY: The Staff would record the vote  
18 as 3 to 0 to 2. This is on the motion of Vice  
19 Chairperson Sorg's. Second the motion, Mr.  
20 Jordan. Also in support of the motion, Ms.  
21 Moldenhauer. Two Board members not present, not  
22 voting. So, again, the vote is 3 to 0 to 2. The

1 motion carries to approve the special exception  
2 relief under Section 223.

3 CHAIRPERSON MOLDENHAUER: Thank you very  
4 much, Moy.

5 Seeing that there is no opposition in  
6 this case, we would like to waive our  
7 requirements and ask for a Summary Order be  
8 issued.

9 MR. MOY: Yes. Thank you, Madam Chair.

10 Application No. 18280

11 MR. MOY: The next case on the calendar  
12 is Application No. 18280 of Eric Sosnitsky,  
13 pursuant to 11 DCMR 3104.1 for a special  
14 exception to allow a rear addition to an existing  
15 one-family row dwelling under Section 223, not  
16 meeting the lot occupancy requirements, Section  
17 403, and the court requirements, Section 406, in  
18 the R-4 District at premises 630 A Street, N.E.,  
19 property located in Square 867, Lot 123.

20 In this application, Madam Chair, there  
21 is a preliminary matter for the Board to address,  
22 which is identified in your Exhibit 24 and 25,

1 with regard to the timeliness of the posting of  
2 the notice and the affidavit.

3           The ANC report is identified as Exhibit  
4 21. The Office of Planning report in your case  
5 folder is identified as Exhibit 22.

6           That completes the staff's briefing,  
7 Madam Chair.

8           CHAIRPERSON MOLDENHAUER: Thank you very  
9 much, Mr. Moy.

10           As indicated, this is a case for an  
11 expedited review under 223 for a rear addition,  
12 and this is a property where OP is recommending  
13 approval. However, as indicated, we have a  
14 preliminary matter such as the late posting of  
15 this application to the public. That's something  
16 that we at times would potentially waive if there  
17 is a full hearing on this matter.

18           My concern here is that while, yes, we do  
19 have documentation from the ANC in support of  
20 this case, we don't have anything from the  
21 neighbors, and I do have some concerns about the  
22 windows on the western facade looking onto the

1 neighboring properties and seeing that I have  
2 general concerns in that regard, potentially  
3 indicating my desire to kick out this case from  
4 an expedited review, and the fact that they would  
5 be needing a waiver from the 14-day requirement  
6 in order to post the property, seeing that they  
7 just submitted the affidavit on September 30th,  
8 which obviously is exceptionally late.

9           That being said, I recommend that we  
10 remove this case in the Expedited Review Calendar  
11 and set this for a hearing.

12           MR. JORDAN: Madam Chair, I would agree  
13 with that.

14           And I didn't see any real explanation for  
15 not posting, and I'm concerned about -- well, I  
16 see the request, but still, I think we need to --  
17 at the minimum need to do the posting.

18           CHAIRPERSON MOLDENHAUER: Yes, I agree.

19           Seeing that there's no other comments,  
20 then what we'll do is we will remove this case  
21 from the Expedited Review Calendar and see if we  
22 can't place it on the hearing date that would be

1 within at least 14 days from the posting.

2           So, Mr. Moy, let's see here. We don't  
3 have any hearings next Tuesday, which obviously  
4 wouldn't be good potentially.

5           MR. MOY: The filing, I believe, was  
6 posted last Friday, September the 29th.

7           CHAIRPERSON MOLDENHAUER: Could we put it  
8 in the afternoon on the 25th? I know we have an  
9 appeal that morning -- or that afternoon, but I  
10 think we could probably still handle two.

11           MR. MOY: Yes. For the Staff's  
12 clarification, Madam Chair, so this is a  
13 rescheduling for a public hearing or on an  
14 Expedited Calendar?

15           CHAIRPERSON MOLDENHAUER: For a public  
16 hearing.

17           MR. MOY: For a public? Okay, that's  
18 good.

19           So we're looking at, what, the afternoon  
20 of October 25th?

21           CHAIRPERSON MOLDENHAUER: That's what I  
22 think would be the soon-as-possible date that I

1 see, based on the calendar.

2 MR. MOY: Okay. We have an appeal that  
3 afternoon, so would Board desire to see this case  
4 first at one o'clock?

5 CHAIRPERSON MOLDENHAUER: We would put  
6 that for the first. Yes, exactly. That way, the  
7 Applicant doesn't have to wait through a  
8 potentially long appeal case, not that they're  
9 all long, but they typically are.

10 MR. MOY: Okay, very good. So this is  
11 for a public hearing, October 25th, at one  
12 o'clock p.m.

13 CHAIRPERSON MOLDENHAUER: Yes, thank you.

14 Application No. 18282

15 MR. MOY: The next and last item before  
16 the Board on the Expedited Calendar is  
17 Application No. 18282. This is of John J.  
18 Ricotta and Gloria D. Ricotta, pursuant to 11  
19 DCMR 3104.1 for a special exception to allow an  
20 addition to an existing one-family row dwelling  
21 under Section 223, not meeting the lot occupancy  
22 requirements under Section 403 in the R-5-B

1 District at premises 2018 Hillyer Place, N.W.,  
2 Square 93, Lot 97.

3 The filing of the posting of the  
4 affidavit is identified in your case folder as  
5 under Exhibit 25. The Board is also in receipt  
6 of an Office of Planning report filed under  
7 Exhibit 26.

8 And that completes the status briefing,  
9 Madam Chair.

10 CHAIRPERSON MOLDENHAUER: Thank you very  
11 much, Mr. Moy.

12 We've all reviewed this application, and  
13 I think that this case is definitely something  
14 that is ripe for an expedited review approval.  
15 The application has OP's approval. We have  
16 letters from all three of the neighbors, which  
17 are attached to the initial submission, which is  
18 now marked as our Exhibit No. 12, which are  
19 letters indicating that they have no objection,  
20 which are signed, and then identifying their home  
21 address for all of the three neighboring  
22 properties.

1           We have, as I said, OP's recommendation.  
2       We also have an ANC letter of support indicating  
3       that ANC-2B voted unanimously to support the  
4       application 8 to 0 on August 11, 2011.

5           That being said, I have no issues with  
6       this application. I think that we should move  
7       forward for a motion, unless there's any  
8       additional deliberation on this case.

9           [No audible response.]

10          CHAIRPERSON MOLDENHAUER: Seeing none,  
11       then I will support a motion, a motion to approve  
12       Application 18282 under 11 DCMR 3104.1 for a  
13       special exception to allow an addition to an  
14       existing one-family row dwelling under Section  
15       223, not meeting the lot occupancy under 403  
16       requirements in an R-5-B District at premises  
17       2018 Hillyer Place, N.W.

18          The motion has been made. Is there a  
19       second?

20          VICE-CHAIRPERSON SORG: Second.

21          CHAIRPERSON MOLDENHAUER: The motion has  
22       been made and seconded. All those in favor, say

1 "aye."

2 [Chorus of ayes.]

3 MR. MOY: Madam Chair, before I call the  
4 vote, we do have an absentee ballot vote from  
5 another Board member, Jeff Hinkle, and his  
6 absentee ballot vote is to approve the  
7 application, and so that would give a resulting  
8 vote of 4 to 0 to 1.

9 This is on the motion of Chairperson  
10 Moldenhauer to approve the special exception  
11 relief, 223. Second the motion, Ms. Sorg. Also  
12 in support of the motion, Mr. Jordan and, of  
13 course, Mr. Hinkle. No other members  
14 participating. So, again, the final vote is 4 to  
15 0 to 1. The motion carries to approve the  
16 application.

17 CHAIRPERSON MOLDENHAUER: Thank you very  
18 much, Mr. Moy, for also including Mr. Hinkle in  
19 that via his absentee ballot, and seeing that we  
20 have no opposition and all members in favor, we'd  
21 like to ask that our rules be waived and have a  
22 Summary Order be issued.

1 MR. MOY: Thank you, Madam Chair.

2 Application Nos. 17913 and 17913-A

3 MR. MOY: The next item before the Board  
4 is a motion for a minor modification of approved  
5 plans to Order No. 17913 and 17913-A of Gonzaga  
6 College High School, pursuant to Section 3129 of  
7 the Zoning Regulation. The original application  
8 was approved on April 28, 2009, and in that  
9 application, the approval was for 11 DCMR 3104.1  
10 and 3103.2 for a special exception to construct  
11 new facilities for academic and athletic fields  
12 -- rather athletic uses, to construct a  
13 below-grade parking garage, and to make other  
14 related modifications to the campus under Section  
15 206, and for a variance from the court  
16 requirements under Section 406, in the R-5,  
17 C-2-A, and C-3-C Districts. This is at premises  
18 19 I Street, N.W., Square 622, Lots 90 and 840.

19 On August 22nd of this year, the  
20 Applicant filed the request for the minor  
21 modification. This filing is identified in your  
22 case folder under Exhibit 41, and the only other

1 thing that Staff would add is that there is an  
2 Office of Planning report identified as Exhibit  
3 43, and the Board is acting on the merits of the  
4 request for the minor modification pursuant to  
5 Section 3129 of the Zoning Regulation.

6 That concludes the status briefing, Madam  
7 Chair.

8 CHAIRPERSON MOLDENHAUER: Thank you very  
9 much, Mr. Moy.

10 And before we get started on this case,  
11 I'd just like to indicate that I did not  
12 initially participate in this case, but I have  
13 reviewed the record.

14 And in addition to that, I'd like to  
15 disclose for the record that my brother did  
16 attend Gonzaga, my mother is currently on the  
17 board; however, I don't believe that that would  
18 impact my ability to be impartial in this case.  
19 I'll wait to see if there's any objections from  
20 other Board members in that regard.

21 [No audible response.]

22 CHAIRPERSON MOLDENHAUER: Seeing none,

1 then we will proceed on with this case.

2 I have reviewed the Office of Planning  
3 report and the submittal by the Applicant, along  
4 with all of their exhibits, indicating that this  
5 is a request to provide a minor modification.  
6 They are restructuring the internal framework of  
7 the AAC-West Building and changing the height by  
8 3 inches and also changing the roof structure in  
9 regards to also modifying the mechanical  
10 equipment, removing those from the ground to the  
11 top of the roof, along with increasing the width  
12 of a closed court from 14 feet, 5 inches, to 15  
13 feet.

14 Seeing that while this does identify the  
15 four different areas that are being modified in  
16 the plans, as OP indicates and as the Applicant  
17 indicates in their brief, it is not in any way  
18 changing any new zoning relief that is required  
19 by this proposal. And that's on page 2 of the  
20 Office of Planning report.

21 That being said, OP also goes through and  
22 identifies some of the potential benefits,

1 obviously, of having the mechanical and raise of  
2 the roof, rather than having them on the ground  
3 level.

4           That being said, I see no concern here,  
5 seeing that there are no -- these are minor  
6 modifications in my view, and in addition to  
7 that, there's no submissions from any additional  
8 neighbors indicating any concerns with this  
9 application.

10           The Applicant did take the additional  
11 effort and go meet with ANC-6C on September 15th,  
12 and they submitted a resolution to us on  
13 September 19th, which is our Exhibit 42,  
14 indicating that at a regularly scheduled meeting  
15 with a quorum present, they reviewed this  
16 application and that they voted unanimously to  
17 support the application, 7 to 0 to 0.

18           That being said, the ANC's letter would  
19 receive great weight, and I will open this up to  
20 any additional deliberation from Board members.

21           VICE-CHAIRPERSON SORG: Thank you, Madam  
22 Chair.

1           I, too, have no reservations in  
2 supporting this application, and I would just  
3 additionally note that OP in their report  
4 indicates that most of the modification would be  
5 imperceptible from outside of the campus, and the  
6 increase in height of the Arts and Academic  
7 Center is minimally visible from outside the  
8 site.

9           Thank you.

10           CHAIRPERSON MOLDENHAUER: Is there any  
11 final deliberation on this case?

12           [No audible response.]

13           CHAIRPERSON MOLDENHAUER: Seeing none,  
14 then I would submit a motion to approve  
15 Application 17913 and 17913-A at 19 I Street,  
16 N.W., for a minor modification to a special  
17 exception to construct a new facility for  
18 academic and athletic uses, to construct a  
19 below-grade parking garage to allow to make other  
20 related modifications to the Gonzaga campus,  
21 under Section 206, and for a variance from the  
22 court requirement under Section 406 in R-4, C-2,

1 and C-3-C District.

2           This minor modification, I would  
3 recommend approval, but since this is obviously  
4 not a request for extension, this would be  
5 approved pursuant to the prior date on the  
6 application.

7           A motion has been made. Is there a  
8 second?

9           VICE-CHAIRPERSON SORG: Second.

10           CHAIRPERSON MOLDENHAUER: A motion has  
11 been made and seconded. All those in favor, say  
12 "aye."

13           [Chorus of ayes.]

14           MR. MOY: Before I read back the final  
15 vote, Madam Chair, we do have an absentee ballot  
16 vote from Jeff Hinkle, Board member, and his  
17 absentee vote is to approve this application,  
18 which would give a resulting vote of 4 to 0 to 1.

19           This is on the motion of Chairperson  
20 Moldenhauer to approve the application for a  
21 minor modification under Section 3129. Second  
22 the motion, Ms. Sorg. In support of the motion,

1 Mr. Jordan and, of course, Mr. Hinkle. No other  
2 Board members participating. So, again, the  
3 final vote is 4 to 0 to 1. The motion carries.

4 CHAIRPERSON MOLDENHAUER: Thank you very  
5 much, Mr. Moy. That will be a minor Summary  
6 Order as well.

7 MR. MOY: Thank you, Madam Chair.

8 [Pause.]

9 Application Nos. 17540 and 17541

10 MR. MOY: I'm sorry. Thank you.

11 The next case before the Board for action  
12 is the motion -- motions, plural, for minor  
13 modification of approved plans and to extend the  
14 validity of the Order Nos. 17540 and 17541 if the  
15 Capitol Hill Day School, pursuant to Sections  
16 3129 and 3130 of the Zoning Regulations.

17 For the sake of the record, I am going to  
18 read the original applications that were approved  
19 on February 6th, 2007.

20 For Application No. 17540, this was for  
21 11 DCMR 3103.2 for a variance from the lot  
22 occupancy requirements of 404, a variance from

1 the rear yard requirements of 403, and a variance  
2 from the floor area ratio requirements of 1203.3  
3 of the Capitol Interest Overlay District, and  
4 pursuant to 11 DCMR 3104.1 for a special  
5 exception pursuant to 1202.1, to allow the  
6 construction of an addition to a private school  
7 and pursuant to 206, to reconfigure the layout of  
8 an existing parking lot at premises 210 South  
9 Carolina Avenue, S.E., in the CAP/R-4 District,  
10 Square 765, Lot 803.

11 Application No. 17541 was pursuant to 11  
12 DCMR 3104.1, for a special exception pursuant to  
13 206 and 1202.1, to allow the continued operation  
14 of a private school for 30 students in the  
15 prekindergarten through eighth grade and five  
16 faculty and staff members in the basement through  
17 the second floor at premises 214 South Carolina  
18 Avenue, S.E., in the CAP/R-4 District, Square  
19 765, Lot 802.

20 As to the status of these motions, Madam  
21 Chair, as you recall, on July 12th, 2011, the  
22 Board rescheduled its decision of the request for

1 the minor modification. This would be to allow  
2 time for an amended application to include a  
3 request for a time extension.

4 That was filed. That filing was made to  
5 the Board on September 1st, 2011, which is  
6 identified as Exhibits -- this was two,  
7 Application 17540 and 17541, Exhibits 128 and  
8 Exhibit -- [indiscernible].

9 The Board reset its decision to October  
10 4th to allow the 30-day response period per the  
11 Zoning Regulations.

12 So what we have before the Board then is  
13 stacked on the merits of the request to extend  
14 the validity of the order, Nos. 17540 and 17541,  
15 pursuant to Section 3130, specifically Subsection  
16 3130.6, sub (a) through sub (c), and also on the  
17 merits of the request for the minor modifications  
18 pursuant to Sections 3129.

19 So, with that, that completes the status  
20 briefing, Madam Chair.

21 CHAIRPERSON MOLDENHAUER: Thank you very  
22 much, Mr. Moy.

1           And I think that I do see that,  
2 obviously, the Applicant has now revised the  
3 application asking for this extension; however,  
4 since the rules changed under -- since the text  
5 of Section 3130.6 was modified, which is now a  
6 while back, to include language that there needs  
7 to be substantial evidence, we've always been now  
8 requiring that we won't accept a letter simply  
9 from counsel, but rather that we have to have  
10 either something from a bank or something from  
11 the Applicant signed and notarized by the  
12 Applicant or the principal of the Applicant  
13 identifying and attesting to the facts, which  
14 would then satisfy Subsection (c)(1), (2), or  
15 (3).

16           Here, the Applicant indicates that  
17 obviously there is a decrease in the enrollment,  
18 which would most likely satisfy that condition.  
19 However, we do need to see that, and as we have  
20 standards that are consistent throughout all the  
21 cases and all the Applicants, I think an actual  
22 letter from the Applicant themselves, which has

1 been notarized, identifying that as well, so I  
2 would actually recommend that we postpone this  
3 case and allow the Applicant to supplement the  
4 record in order to review this.

5 Are there any additional comments from  
6 Board members on that issue?

7 [No audible response.]

8 CHAIRPERSON MOLDENHAUER: Seeing none,  
9 then let's reschedule this and allow the  
10 Applicant to supplement the record to our  
11 November decision date, which is, I believe,  
12 November 1st?

13 MR. MOY: It would be November 8, Madam  
14 Chair.

15 CHAIRPERSON MOLDENHAUER: November 8th?  
16 Okay, yes.

17 MR. MOY: For that particular month of  
18 November, yeah.

19 CHAIRPERSON MOLDENHAUER: I see, thank  
20 you. I stand corrected. So we will reschedule  
21 this for November 8th.

22 [Pause.]

1           MR. MOY: Is there any deadline on that  
2 filing, or is that going to be open-ended, Madam  
3 Chair?

4           CHAIRPERSON MOLDENHAUER: I think that's  
5 open-ended.

6           MR. MOY: Okay, very good.

7           CHAIRPERSON MOLDENHAUER: Thank you.

8                           Application No. 18243

9           MR. MOY: The next application then  
10 before the Board for action is Application No.  
11 18243.

12                   This is of Vanessa Manchester, pursuant  
13 to 11 DCMR 3104.1 and 3103.2. This is for a  
14 special exception to construct a free-standing  
15 garage addition serving an existing one-family  
16 row dwelling under Section 223, not meeting the  
17 lot occupancy, Section 403, requirements, and a  
18 variance from the accessory structure height and  
19 -- and story limitations under Subsection 2500.4  
20 in the R-4 District at premises 1231 F Street,  
21 N.W. [sic], Square 1007, Lot 113.

22                   On the 13th of September, the Board

1 completed public testimony, closed the record,  
2 and scheduled its decision on October 4th. The  
3 Board did request additional information from the  
4 Applicant to supplement the record. That filing  
5 has been made with revised plans, dated September  
6 26th, 2011, identified in your case folders under  
7 Exhibit 31.

8 With that, then the board is to act on  
9 the merits of the special exception relief, and  
10 that completes the status briefing, Madam Chair.

11 CHAIRPERSON MOLDENHAUER: Thank you very  
12 much, Mr. Moy.

13 I was very pleased to see the  
14 supplemental submission from the Applicant here  
15 in which they revised the plans, reducing the  
16 height of the proposed garage in regards to the  
17 stair tower and then also removed the rooftop  
18 deck. Based on those modifications, I have no  
19 issues of the application, and I think that they  
20 satisfy the standards for a 223 special exception  
21 relief to increase the lot occupancy to 66  
22 percent.

1           And I think that the Office of Planning  
2 is in support of this application. They do have  
3 a condition, a condition that the area below the  
4 garage is to be used for storage purposes only.

5           I would agree with that. I think that  
6 the Applicant on direct testimony or direct  
7 questions from the Board confirmed that it was  
8 going to be storage only in the lower level of  
9 that basement structure.

10           In addition to that, we have the ANC-6A  
11 supporting the application and receiving great  
12 weight on this case. In addition to that, we  
13 have the Capitol Hill Restoration Society also  
14 supporting the application, but they did vote to  
15 oppose the pop-up for the roof access, and so I  
16 think that that has been addressed by the  
17 revisions to the plan. And we have neighboring  
18 support as well.

19           That being said, I would be willing to  
20 support this application, with the condition that  
21 OP recommends.

22           I'll open it up for any additional Board

1 discussion.

2 MR. JORDAN: Madam Chair, I could support  
3 it, especially since to make the modifications as  
4 what is our concern from our last meeting.

5 CHAIRPERSON MOLDENHAUER: Any additional  
6 -- any additional deliberation on this?

7 [No audible response.]

8 CHAIRPERSON MOLDENHAUER: Seeing none,  
9 then I'll submit a motion, a motion to approve  
10 Application 18243 under 11 DCMR 3104.1 and 3103.2  
11 for a special exception to construct a  
12 free-standing garage addition serving an existing  
13 one-family row dwelling under 223, not meeting  
14 the lot occupancy under 403 requirements, and a  
15 variance of the accessory structure height and  
16 story limitation under Section 2500.4,  
17 conditioned upon the area below the garage to be  
18 used for storage purposes only.

19 A motion has been made. Is there a  
20 second?

21 VICE-CHAIRPERSON SORG: Second.

22 CHAIRPERSON MOLDENHAUER: A motion has

1 been made and seconded. All those in favor, say  
2 "aye."

3 [Chorus of ayes.]

4 MR. MOY: Before staff calls the final  
5 vote, Madam Chair, we do have -- and you received  
6 two absentee ballot votes from two, two members,  
7 one from Jeff Hinkle, the other from Zoning  
8 Commissioner who is also the Chairman, Chairman  
9 Hood. And in both cases, the absentee ballots is  
10 -- are votes to approve the application, subject  
11 to the condition as cited by the -- in the  
12 Chair's motion.

13 So that would give a final vote of 5 to 0  
14 to 0. This is on the motion of Chairperson  
15 Moldenhauer to approve the application per  
16 special exception variance relief with one  
17 condition. Second the motion, Ms. Sorg. Also in  
18 support of the motion, Mr. Jordan, and then, of  
19 course, Mr. Hood and Mr. Hinkle So, again, the  
20 vote is 5 to 0 to 0, and the motion carries.

21 CHAIRPERSON MOLDENHAUER: Thank you very  
22 much, Mr. Moy, and we would like to waive our

1 requirements and ask that a Summary Order be  
2 issued.

3 MR. MOY: Thank you, Madam Chair.

4 CHAIRPERSON MOLDENHAUER: Thank you.

5 Application No. 18245

6 MR. MOY: The next application before the  
7 Board is Application No. 18245. This is of Todd  
8 and Barbora Master, pursuant to 11 DCMR 3103.2,  
9 for a variance from the lot occupancy  
10 requirements under Section 403, a variance from  
11 the rear yard requirements under Section 404, and  
12 a variance from the nonconforming structure  
13 requirements under Section 2001.3. This would  
14 allow the expansion of a rear deck serving a  
15 one-family row dwelling in the R-4 District at  
16 premises 930 Quincy Street, N.W., property  
17 located in Square 2901, Lot 95.

18 On September 13th, 2011, the Board  
19 completed public testimony, closed the record,  
20 and scheduled its decision on October 4th, 2011.

21 The Board allowed the Applicant to file any  
22 additional information to clarify the Applicant's

1 position to the application. There are no  
2 filings, additional filings in the record. So,  
3 with that, the Board is to act on the merits of  
4 the variance, of the two variance relief -- or  
5 rather three.

6 That completes the status briefing, Madam  
7 Chair.

8 CHAIRPERSON MOLDENHAUER: Thank you very  
9 much, Mr. Moy.

10 MR. MOY: Stand by for a second.

11 [Pause.]

12 MR. MOY: Apparently, Madam Chair, the  
13 Applicant who is in the audience believes that  
14 there was a filing, but we're checking the  
15 official record.

16 [Pause.]

17 MR. MOY: While there's a pause in the  
18 record, Madam Chair, I just wanted to announce  
19 from the staff that apparently the Applicant  
20 believes that there was a filing, but there is no  
21 record of that filing in our official record.

22 Staff is making copies for the Board, and

1 then the Board can address whether to accept the  
2 filing for the record.

3 CHAIRPERSON MOLDENHAUER: Thank you. We  
4 will just wait for a few minutes.

5 MR. JORDAN: Can you tell us what the  
6 filing was? Do we know? I mean what it was  
7 supposed to be. What was it?

8 MR. MOY: I haven't seen it myself, until  
9 the xeroxing is made, but my understanding from  
10 September 13th, the Board allowed the Applicant  
11 to file any additional materials to clarify the  
12 variance relief.

13 [Pause.]

14 CHAIRPERSON MOLDENHAUER: I understand  
15 that there is a problem with the copy machines at  
16 the moment, so why don't we hold this case off.  
17 Why don't we move to the next case, and then  
18 we'll come back to this case once you've had a  
19 chance to at least pull that document, and we'll  
20 have to then have a preliminary issue as to  
21 whether we'll accept the document or how we'll  
22 evaluate it. But at this point, why don't we

1 move on to the next case for decision.

2 Application No. 18244

3 MR. MOY: Excellent idea, Madam Chair.

4 That would be Application No. 18244 of  
5 CAS Riegler Real Estate Development, pursuant to  
6 11 DCMR 3103.2, for a variance. This is from the  
7 lot occupancy requirements under Section 772, a  
8 variance from the rear yard requirements under  
9 Section 774, and a variance from the closed court  
10 requirements under Subsection 773 -- 776.3 for  
11 the construction of a rear addition to a row  
12 dwelling to facilitate its conversion into a  
13 multi-family residential building in the C-2-C  
14 District at premises 1109 M Street, N.W., Suite  
15 34, Lot 3.

16 On September 13th, 2011, the Board  
17 completed public testimony, closed the record,  
18 and scheduled its decision on October the 4th.  
19 The Board allowed the record to be open for any  
20 filings pertaining to discussions between the  
21 Applicant and the neighboring properties --  
22 property owners.

1           The Applicant made its filing on  
2     September 26th, 2011, identifying in your case  
3     folders as Exhibit 34. There are no other  
4     filings in the record. The Board is to act on  
5     the merits of the variance relief, the three  
6     variance relief, and that completes the status  
7     briefing, Madam Chair.

8           CHAIRPERSON MOLDENHAUER: Thank you very  
9     much, Mr. Moy.

10           And, yes, we did receive some additional  
11    -- the additional letter from the Applicant's  
12    counsel on this case referencing some -- by  
13    providing some additional information regarding  
14    Rachel Azaroff in regards to her opposition and  
15    their position.

16           That being said, I'll just review what we  
17    have before us for this case. We have a variance  
18    request for rear yard requirement and a variance  
19    for an open court requirement.

20           Office of Planning is recommending  
21    approval, and based on the fact that the property  
22    does exhibit exceptional circumstances which

1 would lead to and result in a practical  
2 difficulty based on the location of the core use  
3 of the rear structure, would result in an  
4 unusually long dead-end corridor. In regards to  
5 the BUILDING Code, the existing layout of the  
6 property, the length of the lot -- and if I'm  
7 looking at Exhibit A-1 -- sorry -- A-0-1.1, which  
8 is Exhibit A under Exhibit 25, and you can see  
9 that the lot is exceptionally long in comparison  
10 to some of the other properties that are fronting  
11 on 12th Street and those that are fronting on  
12 11th Street.

13           That being said, the question here I  
14 think in my mind, reviewing this case, is whether  
15 there is a substantial detriment to the public  
16 good in regard potentially to the neighboring  
17 property and the way in which this addition would  
18 affect the neighboring properties.

19           We do have a letter of support, for  
20 unanimous support from the ANC-2F indicating that  
21 there is a quorum present. They voted to support  
22 the application, which is our Exhibit 24.

1           That being said, what I do want to do is  
2 I want to open this up to some additional  
3 deliberation from Board members on the question  
4 of -- whether this property qualifies for  
5 exceptional circumstances or whether it has  
6 exceptional conditions and whether they have any  
7 additional issues or concerns with this  
8 application.

9           MR. JORDAN: Madam Chair, I am having  
10 some difficulties with the detriment to public  
11 good.

12           In the way this lays out, we had  
13 testimony from other -- one person from the  
14 building next door, which will be impacted by  
15 this, and I know that there has been some  
16 statement about just one person came, so  
17 therefore it doesn't mean anybody else is  
18 impacted. But everybody doesn't necessarily step  
19 up like this person did, and I think if you take  
20 a look at it and you see where the building is  
21 going to fall, I believe it gives me some concern  
22 about the -- it's this impact on the adjoining

1 building, and so that's why I have some  
2 reservations about it.

3 VICE-CHAIRPERSON SORG: Thank you, Madam  
4 Chair and Mr. Jordan.

5 I come down on the opposite side. I  
6 think that, you know, the Applicant is putting to  
7 use what is a currently vacant building. They  
8 are increasing residential offerings in a  
9 neighborhood that is residential in nature and,  
10 you know, has been changing for several years,  
11 and this is a desirable place to do this kind of  
12 project. And also, I think that they are doing  
13 it without creating outsized building density.

14 I also think that, generally speaking,  
15 the forums for community comment have been  
16 engaged with. They have gone to the ANC. There  
17 are several apartment -- higher density apartment  
18 houses as well as sort of medium density flat  
19 buildings that the Applicant has indicated that  
20 they -- condominium and apartment buildings that  
21 the Applicant has indicated that they have  
22 engaged with and discussed with.

1           And personally, actually I do think that  
2 it is meaningful that among this fairly dense  
3 localized area, we only had one individual, not a  
4 party, but an individual who had some concerns.

5           And I think, you know, to me, also, it's  
6 clear from the Applicant's post-hearing  
7 submissions that, you know, they have spoken.  
8 They said somewhere from more than a couple of  
9 hours with this individual, and I think it seems  
10 like they're, you know, committed to addressing  
11 these types of concerns.

12           But I think in addition that the relief  
13 that's being requested here is not, you know, of  
14 a maximal degree. I think the rear yard is --  
15 they're asking for 3 feet of relief, and the  
16 closed court, they're asking for 4 feet of  
17 relief. So they're providing those things, I  
18 think, more than a lot of proposed projects  
19 would.

20           I mean, obviously, we're judging this on  
21 an individual basis, and, you know, going from 80  
22 to 90 percent lot occupancy, I think is sort of

1 the heaviest area of relief, but I think that the  
2 plans are sensible for this site.

3           And, of course, it's unfortunate when,  
4 you know, a few members of the -- some members of  
5 the community are negatively affected by  
6 projects, and I think we always do our best to  
7 try to encourage Applicants to work as best they  
8 can with each member of the community that has  
9 questions or concerns, but I think that,  
10 certainly, not every person can be pleased in  
11 every project. And I don't think that the  
12 opposition here rises to the level of a detriment  
13 to public good, so I would be in support of the  
14 application.

15           CHAIRPERSON MOLDENHAUER: Thank you.

16           Is there any follow-up comments? Mr.  
17 Jordan?

18           MR. JORDAN: No. I'm not entertaining a  
19 debate on it. It's just that -- I put my  
20 concerns on the record, and that further, this is  
21 an individual basis and not generally what --  
22 well, I will respond to some of that, but I'm

1 just concerned about it's impact.

2 CHAIRPERSON MOLDENHAUER: I did have a  
3 lot of questions for the Applicant during the  
4 hearing about the same concerns Mr. Jordan is  
5 raising, and I asked about the ability  
6 potentially to relocate the court on the, I  
7 believe it is, western side of the building  
8 rather than on the eastern side of the building  
9 near the property that is more dense on that side  
10 of the buildings, provides more light.

11 I was satisfied, however, with the  
12 architect's explanation of the limitations on the  
13 existing floor plan, the need to have a corridor,  
14 and the fact that they did consider that, but  
15 that it would not be advisable to put that court  
16 on the other side.

17 In addition to that, I do see the  
18 submission from the Applicant in regards to the  
19 conversation that he had. They do have ANC  
20 support, which we do give great weight, and so,  
21 in that regard, while I don't find that this is  
22 an exceptionally strong case, I do seem to weigh

1 on the side of support for the variance being  
2 submitted, based mostly on a confluence of  
3 factors and the fact that I don't believe that it  
4 rises to the level of a substantial detriment to  
5 the public good or the Zone Plan.

6 That being said, I'll see if there is a  
7 motion.

8 VICE-CHAIRPERSON SORG: Thank you, Madam  
9 Chair. I will submit a motion to approve  
10 Application 18244 of CAS Riegler Real Estate  
11 Development, pursuant to 11 DCMR 3103.2, for a  
12 variance from lot occupancy requirements under  
13 Section 772, variance from the rear yard  
14 requirements under Section 774, and a variance  
15 from the open court requirements under Subsection  
16 776.3, for construction of a rear addition to a  
17 row dwelling for conversion to multi-family  
18 residential use in the C-2-C District at 1109 M  
19 Street, N.W.

20 CHAIRPERSON MOLDENHAUER: A motion has  
21 been --

22 MS. GLAZER: Pardon me. I hate to

1 interrupt, but I'm not --

2 CHAIRPERSON MOLDENHAUER: You are not on  
3 the mic. You are not on the mic.

4 MS. GLAZER: I'm not sure if it's closed,  
5 if you said "closed" or "open court," but I think  
6 it was the reverse. There was an amendment.

7 VICE-CHAIRPERSON SORG: I didn't -- I  
8 said 776.3, which would be closed court.

9 MS. GLAZER: Then I misunderstood. I  
10 thought you said "open."

11 VICE-CHAIRPERSON SORG: Oh.

12 So there you have it, motion.

13 CHAIRPERSON MOLDENHAUER: Motion has been  
14 made, and I will second the motion.

15 A motion has been made and seconded. All  
16 those in favor, say "aye."

17 [Chorus of ayes.]

18 CHAIRPERSON MOLDENHAUER: All those  
19 opposed?

20 MR. JORDAN: Nay.

21 MR. MOY: Before calling the vote, Madam  
22 Chair, we do have two absentee ballot votes, two

1 participating members on this application,  
2 Chairman Hood from the Zoning Commission and Mr.  
3 Hinkle. In both cases, the two votes are in --  
4 to approve the application.

5           So that would give a final resulting vote  
6 of 4 to 1 to 0. This is on the motion of  
7 Chairperson Sorg to approve the application for  
8 the relief as she cited. Second the motion, Ms.  
9 Moldenhauer. In support of the approval of  
10 motion, Mr. Hood, Mr. Hinkle. In opposition to  
11 the application, Mr. Jordan. So, again, the  
12 final vote is 4 to 1 to 0. The motion carries in  
13 support or to approve.

14           CHAIRPERSON MOLDENHAUER: Thank you very  
15 much.

16           I'm not sure if -- can we still request a  
17 Summary Order considering that we did have an  
18 opposing vote from a Board member? I'm just  
19 asking that from OAG.

20           MS. GLAZER: Yes.

21           CHAIRPERSON MOLDENHAUER: Since there's  
22 no opposition, opposing parties.

1 MS. GLAZER: There's no adverse party.

2 CHAIRPERSON MOLDENHAUER: Adverse  
3 parties, okay.

4 So then, based on that, we would like it  
5 waive our requirements and ask that a Summary  
6 Order be issued.

7 MR. MOY: Very good. Thank you, Madam  
8 Chair.

9 Application No. 18245 (continued)

10 MR. MOY: So I believe there is still a  
11 matter of Application No. 18254 of Todd and  
12 Barbora Master for the Board to address -- or  
13 readdress.

14 [Pause.]

15 CHAIRPERSON MOLDENHAUER: Mr. Moy, if you  
16 want to call this case?

17 MR. MOY: Okay. I've already called it,  
18 but I'll call it again.

19 CHAIRPERSON MOLDENHAUER: We'll formally  
20 reconvene the hearing of Case 18245.

21 You don't actually need to call it.

22 MR. MOY: Okay, that's fine. I'll do

1 whatever is at the pleasure of the Board.

2 CHAIRPERSON MOLDENHAUER: Sorry.

3 I am just going to indicate on the record  
4 that we did just receive a submission. I don't  
5 know, obviously, what happened in regards to  
6 potentially the delay, whether it was something  
7 from our office or whether it was something where  
8 the Applicant didn't get it to us on time, but  
9 there are -- information in here in regards to  
10 changes of the plans. And there's multiple pages  
11 that we -- the Board needs to review.

12 Seeing that, I don't think the Board can  
13 actually make a decision on this case right now  
14 without actually having more time to review this.

15 What we'll do is we'll set this for  
16 decision on October --

17 [Pause.]

18 CHAIRPERSON MOLDENHAUER: Yes. I think  
19 what we're going to do is we're going to postpone  
20 this for a decision on November 8th. That's our  
21 decision date for November?

22 MR. MOY: That's correct.

1                   CHAIRPERSON MOLDENHAUER: So I believe  
2 we'll accept this submission into the record, and  
3 we'll take a look at that in more detail over the  
4 pending period of time prior to making a decision  
5 on November 8th.

6                   Thank you very much.

7                   MR. MOY: Very good. Very good.

8                   CHAIRPERSON MOLDENHAUER: And I believe  
9 those are all of our cases for the day; is that  
10 correct?

11                  MR. MOY: That's correct, Madam Chair.

12                  CHAIRPERSON MOLDENHAUER: Thank you very  
13 much. We will adjourn until next Tuesday --  
14 actually, no. Next Tuesday is a holiday. So  
15 we'll adjourn until the 18th.

16                  [Whereupon, at 10:53 a.m., the Public  
17 Meeting was adjourned.]

18

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22