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P-R-O-C-E-E-D-I-N-G-S

9:36 a.m.

CHAIRPERSON MILLER: Good morning,  
ladies and gentlemen.

To start with, on August 1st the  
Board of Zoning Adjustment of the District of  
Columbia. My name is Ruthanne Miller, I'm the  
Chair.

To my left is Mary Oates Walker  
and Shane Dettman, Board Members. And next to  
Dettman is Mr. Clifford Moy with the Office of  
Zoning.

We have one case on the agenda for  
our special public hearing at 9:30. starting  
now. We will have another public hearing  
later. But because, I believe, there is just  
one person, the applicant for this public  
hearing, I don't want to go through all of the  
reading of the rules. I'm just going to read  
a few things that might be necessary at this  
point.

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1 are available to you and are located to my  
2 left in the wall bin near the door.

3 Please, be advised that this  
4 proceeding is being recorded by a Court  
5 Reporter and is also webcast live. We must  
6 ask you to refrain from any disruptive noises  
7 or actions in the hearing room.

8 When presenting information to the  
9 Board, please, turn on and speak into the  
10 microphone, first, stating your name and home  
11 address. When you are finished speaking,  
12 please turn your microphone off so that your  
13 microphone is no longer picking up sound or  
14 background noise.

15 At this point I would request, Ms.  
16 Bailey that you call case number 17578 of  
17 Hartford Street. And then I think we just  
18 have Mr. Mitchell. And perhaps Mr. Mitchell  
19 can be sworn in for anything he might need to  
20 say on that case.

21 MS. BAILEY: Madam Chair, Mr.  
22 Mitchell, is that what I hear you say?

1 CHAIRPERSON MILLER: Yes. In the  
2 event that he may say something on the record.

3 MS. BAILEY: Sure.

4 CHAIRPERSON MILLER: This is a  
5 very mini hearing. And so I think he is the  
6 only one here on that case.

7 MS. BAILEY: Thank you.

8 Mr. Mitchell, would you stand.

9 (Witness sworn.)

10 CHAIRPERSON MILLER: Let me make  
11 another announcement of what is happening this  
12 morning. Because I see there are some people  
13 here on the Wallace case who are at the table.  
14 And, actually, you know when we scheduled  
15 today's hearing the Wallace case, that was the  
16 first thing we scheduled. And then a few other  
17 items came up that we need to dispose of  
18 before the recess. So, we probably won't be  
19 getting to your case until about 10:00. You  
20 don't need to be at the table all this time,  
21 though, unless you're comfortable.

22 So we're in the Hartford case.

1           Mr. Mitchell, I want to tell you  
2           that your last pleading was very helpful, very  
3           on point. And we don't need you to say  
4           anymore, unless you have more to say. I mean  
5           you submitted a few pleadings in this case and  
6           each one was more enlightening. And so we  
7           think that we have everything we need. But we  
8           did say that we were going to have this in  
9           hearing form in case there was anything else  
10          to add, for instance with respect to the  
11          variance test. And I think you very fully and  
12          to the point addressed it in your pleadings.  
13          But I want to give you a chance. If there's  
14          anything else you want to say, that's fine.  
15          Otherwise we're ready to deliberate on your  
16          motion for modification.

17                 MR. MITCHELL: I follow the old  
18                 dictum that if you said yes, I stop talking.

19                 CHAIRPERSON MILLER: Okay. Why  
20                 don't we then move into deliberation on this  
21                 case. And I think I'm going to suggest we  
22                 deliberate under motion. And the motion would

1 be to approve the request for modification of  
2 approved plans and waiver of the six month  
3 time requirement to application 17578 of  
4 Hartford Street, LLC pursuant to section 3129  
5 of the zoning regulations.

6 Is there a second?

7 BOARD MEMBER DETTMAN: Second,  
8 Madam Chair.

9 CHAIRPERSON MILLER: First of all  
10 I want to say that we did address I think  
11 earlier the waiver issue with the six month  
12 period, and the Board did grant that. So I'm  
13 going to move into the merits of this case.

14 The applicant in this case is  
15 asking us to modify approved plans. The plans  
16 changed somewhat because there was a new site  
17 plan that I think was developed in response to  
18 a change in construction plans. And that's  
19 how it got to us and ZA had determined that  
20 FAR relief was required, and that wasn't  
21 evident in the Board's original decision.

22 I had an opportunity, Mr.

1 Mitchell, to closely examine the transcript of  
2 the deliberation and the order in this case.  
3 I mean, all the Board Members did even in the  
4 interim when you first brought this to our  
5 attention. And what I found is that there's  
6 a little bit of a disconnect between the  
7 deliberation and the order even.

8 I know that this case went through  
9 various changes. For instances, it was  
10 originally for 18 row dwellings and it  
11 decreased to 16. And, in fact, the summary  
12 order still reflects the 18. And the summary  
13 order also doesn't reflect a deliberation on  
14 variance relief that was noted in the  
15 deliberation, 2117.8d to permit access to the  
16 required parking spaces. And I don't know  
17 whether that came up when you went for permit  
18 or not, but that could because it's not  
19 reflected in the order.

20 So what the order did was in the  
21 end approve the application. And I think that  
22 one of the forms of relief that was at issue

1 in the application was FAR, but it isn't  
2 reflected specifically that it was granted.  
3 And I think that the Board intended to grant  
4 it because it granted the application. But  
5 that's not clear. And so I think to make it  
6 clear this Board looked at the variance test  
7 for the FAR to see whether it should be  
8 granted again.

9 So I think that you made a very  
10 strong case in your application in  
11 articulating for us. That the uniqueness the  
12 and the exceptional circumstances here is the  
13 topography. And that you're fitting in  
14 affordable modular houses on this topography,  
15 and that not all the lots are exactly the  
16 same. And that became more increasingly so  
17 with respect to change in the site plan. And,  
18 therefore, it was a practical difficulty to  
19 have the required FAR for each lot.

20 And what you said, and I just want  
21 to read it because I think you say it very  
22 well is "A strict application of the FAR

1 regulations would require the reduction in the  
2 size of at least eight of the floor plans and  
3 footprint of the houses on those lots  
4 requiring FAR relief. As an Affordable  
5 Housing Initiative this project's construction  
6 costs are predicated on a single overall  
7 factory build modular floor plan and  
8 footprint. The introduction of a different  
9 size floor plan also introduces construction  
10 inefficiencies that would not result in  
11 reduced costs. Also the reduced sized homes  
12 would not be in keeping with the project  
13 objective of offering family housing of a  
14 sufficient size at this site location."

15 So I think you addressed the  
16 practical difficulty test very well. There's  
17 no substantial detriment to the public or the  
18 zone plan that's evident in the record at all.  
19 The deviations are minor. And, in fact, this  
20 area is being rezoned and I believe under the  
21 new rezoning, no FAR relief would be required.  
22 But your permit will be, I guess, considered

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1 with respect to the Board's order. Not the  
2 new zoning.

3 And so I think the considerations  
4 are the same now in evaluating the FAR relief  
5 as they were or would have been then, it's  
6 that the degree is a little bit different.

7 So, I therefore think that this  
8 application should be granted.

9 Any further deliberation? Okay.

10 We have a motion that's been  
11 seconded. All those in favor say aye.

12 ALL: Aye.

13 CHAIRPERSON MILLER: All those  
14 opposed? All those abstaining?

15 And would you call the vote,  
16 please?

17 MS. BAILEY: Madam Chair, to the  
18 best of my knowledge, Mr. Etherly is not  
19 voting on this application. The vote is  
20 therefore recorded as three, zero, two to  
21 grant the application.

22 Mrs. Miller made the motion, Mr.

1 Dettman seconded, Mrs. Walker supporting the  
2 motion and Board Member Loud did not hear this  
3 case.

4 CHAIRPERSON MILLER: Thank you.  
5 And, actually, I forgot to note that Office of  
6 Planning was in support of this application.  
7 And there was indication about the ANC also  
8 being in support. And there's no party in  
9 opposition, so this should be summary order.

10 MS. BAILEY: Thank you, Madam  
11 Chair.

12 CHAIRPERSON MILLER: Thank you.  
13 Thank you, Mr. Mitchell.

14 MR. MITCHELL: Thank you. May I  
15 just ask how is this communicated to the  
16 Zoning Administrator?

17 CHAIRPERSON MILLER: We're going  
18 to issue a summary order, which means that you  
19 should have that by next week, at the latest,  
20 I believe. And you can bring that order to the  
21 Zoning Administrator.

22 MR. MITCHELL: Okay. So he

1 doesn't get one from you? I need to bring the  
2 one you're going to give me to him?

3 CHAIRPERSON MILLER: I believe so.  
4 I believe so. But he's also here, so he's  
5 heard this case.

6 MR. MITCHELL: Oh. Thank you very  
7 much.

8 CHAIRPERSON MILLER: Okay. Thank  
9 you.

10 I'm going to adjourn that public  
11 hearing and we'll start again later when we  
12 get to Wallace.

13 (Whereupon, at 9:49 the Public  
14 Hearing was adjourned.)

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