

**GOVERNMENT
OF
THE DISTRICT OF COLUMBIA**

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 11, 2013

+ + + + +

The Regular Public Hearing
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 10:06 a.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson

JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

JOHN NYARKU, Zoning Specialist

STEPHEN RICE, Zoning Specialist

STEPHEN VARGA, Zoning Specialist

PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON

BRANDICE ELLIOTT

**DISTRICT DEPARTMENT OF TRANSPORTATION STAFF
PRESENT:**

LEWIS BOOKER

**The transcript constitutes the
minutes from the Public Hearing held on June
11, 2013.**

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

10:06 a.m.

CHAIRPERSON JORDAN: Let me ask first is anyone here on 18549 in opposition to 18549? Is there anyone here in opposition of 18565? Opposition to 18565? Anyone here in opposition on 18567? Opposition to 18567? Anyone here in opposition to 18569?

All right. Seeing that there is no opposition here and that the Board has had sufficient time and ability to review the filings and based upon what's already been filed in these particular matters, I would move that the Board grant the relief in the cases of 18549, 18565, 18567 and 18659. And that would be my motion.

ZC CHAIR HOOD: Mr. Chairman, I would second it with the caveat of 18567. I just want to disclose that some 15 years ago I served on that Board and have not had contact with H Street as far as any development in this city probably 16 years ago

1 so I just wanted to put that for disclosure
2 that it has no impact on this case in front of
3 us.

4 CHAIRPERSON JORDAN: Okay.

5 ZC CHAIR HOOD: And I second that
6 motion.

7 CHAIRPERSON JORDAN: And we would
8 accept that there is no conflict for you.

9 The motion made and seconded that
10 the Board approved the application of 18549,
11 18565, 18567 and 18569, based upon the record
12 filed that they meet the conditions required
13 to grant the relief as requested by the
14 Applicant.

15 Motion made and seconded. Any
16 unreadiness? Hearing none, all those in favor
17 signify by saying aye.

18 (AYES)

19 CHAIRPERSON JORDAN: Those opposed
20 nay.

21 The motion carries.

22 Mr. Moy?

1 MR. MOY: Staff would record the
2 vote as three to zero, this on the motion of
3 Chairman Jordan to approve application numbers
4 18549, 18565, 18567 and 18569.

5 Seconding the motion is Mr. Hood.
6 Also in support Mr. Hinkle. We have a Board
7 Member not present and a Board seat vacant.
8 The motion carries on a vote of three to zero,
9 Mr. Chairman.

10 CHAIRPERSON JORDAN: Very good.

11 MR. MOY: And we can have Summary
12 Orders.

13 CHAIRPERSON JORDAN: Thank you,
14 sir. Mr. Moy, would you call
15 18560?

16 MR. MOY: The case we're hearing
17 is Application Number 18560. This is the
18 application of 3545 13th Street, LLC, pursuant
19 to 11 DCMR 3103.2. This is a request for a
20 variance from lot area requirements as
21 publicly noticed and that completes the status
22 briefing, Mr. Chairman.

1 CHAIRPERSON JORDAN: Okay. In
2 this case there's a request for a
3 postponement.

4 Please identify yourself.

5 MS. MOLDENHAUER: Good morning,
6 Board Members and Chairman Jordan. My name is
7 Meridith Moldenhauer. I'm here on behalf of
8 the Applicant. We have submitted a request
9 for a postponement.

10 CHAIRPERSON JORDAN: Okay. We
11 also have a request for party status from is
12 it Richard Klugman? Are you here, Mr.
13 Klugman? Yes, would you please come forward.

14 We have a request for party status
15 and what I'm not going to do is rule on the
16 party status at this time because it appears
17 that the case might be postponed. The other
18 thing, it gives you an opportunity to take a
19 look at your party status request and I'm
20 going to give you the opportunity to take a
21 look at your party status request in light of
22 what might subsequently be filed by the

1 Applicant once they go back to the community
2 and possibly rework their plans and see how
3 that fits. So, we reserve ruling on the party
4 status in light of that.

5 Based upon the request of the
6 Applicant and the reasons and basis therefore,
7 anytime that you're going to work with the
8 neighborhood is always good with me.

9 Unless the Board has any
10 objection, then we would continue this to --
11 how much time do you think you need?

12 MS. MOLDENHAUER: We're going to
13 be appearing at the July ANC meeting, so if we
14 could maybe squeeze in before the August
15 recess that would be fantastic.

16 CHAIRPERSON JORDAN: Recess?

17 MS. MOLDENHAUER: Well --

18 CHAIRPERSON JORDAN: We may not
19 have one.

20 MS. MOLDENHAUER: Maybe July 23rd
21 or 30th, but I'm not sure if Mr. Moy --

22 CHAIRPERSON JORDAN: It's bugging

1 me because I think we may have stacked up that
2 23rd a couple of weeks ago. We've got to get
3 a schedule.

4 MR. MOY: Mr. Chairman, as you can
5 imagine, July 23rd and July 30th there is a
6 heavy docket. Of the two, I think July 23rd
7 is better of the two, otherwise, we're looking
8 to September

9 I'm sorry? The 23rd we have -- we
10 have eight.

11 MS. MOLDENHAUER: Can we look at
12 the 16th then maybe and I can work with the
13 ANC?

14 MR. MOY: July 16th? July 16th
15 would be better.

16 CHAIRPERSON JORDAN: Would be
17 better, what does that mean?

18 MR. MOY: Well, we have a couple
19 of appeal cases that day but --

20 CHAIRPERSON JORDAN: Okay.

21 MR. MOY: That's good.

22 So, July 16th submissions, let's

1 say seven days prior which would make it July
2 9th. Is that doable?

3 MS. MOLDENHAUER: Could we have it
4 after the ANC meeting that's the 10th?

5 MR. MOY: The 10th.

6 MS. MOLDENHAUER: So, can we do it
7 the 11th or the 12th. I know that's a little
8 short of a time frame, but that would be --

9 MR. MOY: Okay. Let's do it for
10 the 12th. The staff will work with you.

11 MS. MOLDENHAUER: And we'll
12 provide it electronically as well.

13 MR. MOY: perfect.

14 MS. MOLDENHAUER: Thank you.

15 CHAIRPERSON JORDAN: Yes, please
16 make sure that Mr. Klugman gets the filing and
17 make sure we have some conversation with them
18 to see if we can take care of any needs.

19 MS. MOLDENHAUER: We'll provide
20 him courtesy copies and have dialogue. Thank
21 you.

22 CHAIRPERSON JORDAN: Okay. Then

1 we will move this matter continuing to July
2 16th was it? July 16th.

3 Thank you all.

4 The 10th?

5 MR. MOY: The next application
6 before the Board is Application Number 18566.
7 This is the application of Christopher D.
8 French and Anya Landau French. There are
9 multiple relief being requested, all
10 variances. Let me leave it at that, Mr.
11 Chairman.

12 CHAIRPERSON JORDAN: Okay. Would
13 you please identify yourselves?

14 MR. FRENCH: I'm Chris French.
15 I'm the Applicant.

16 MR. GARBER: I'm David Garber.
17 I'm the ANC Commissioner for single-member
18 district 6D07, which is the SMD representing
19 his property.

20 MR. LORENZO: Mr. Aaron Lorenzo.
21 I'm an adjoining neighbor at 927 6th Street,
22 Southeast.

1 CHAIRPERSON JORDAN: Okay. Let me
2 ask is it Garber?

3 MR. GARBER: Garber.

4 CHAIRPERSON JORDAN: Garber. Mr.
5 Garber, did the ANC meet on this?

6 MR. GARBER: Yes, the ANC met last
7 night. This issue had come up in front of us
8 last month and then this month we decided to
9 not act on it last month and wait to hear a
10 little bit more community feedback and the
11 plan to be refined a little bit. But we did
12 hear it last night and I can read our official
13 --

14 CHAIRPERSON JORDAN: But you
15 actually took some action?

16 MR. GARBER: We did take action.

17 CHAIRPERSON JORDAN: We'll get to
18 that at your point. But I just had nothing in
19 our file, in our records.

20 MR. GARBER: Okay. That we sent
21 to Mr. Moy last night and I know that he
22 received it.

1 CHAIRPERSON JORDAN: Oh, okay.

2 So, it's a late filing?

3 MR. GARBER: Yes, well, we heard
4 it last night at probably 10:00.

5 CHAIRPERSON JORDAN: Yes, we got
6 it this morning. Okay. Then I will take that
7 for good cause shown to accept this into our
8 record as being late.

9 MR. GARBER: Thank you.

10 CHAIRPERSON JORDAN: We know
11 sometimes that the ANC, how the meetings kind
12 of flow in the process.

13 I need to quite understand, Mr.
14 French, what relief you're seeking because you
15 had something one time and you came back and
16 you changed it. And I'm kind of all over the
17 place because I think now that you're just
18 asking for FAR relief, is that it? And keep
19 the button turned on. Unless you're saying
20 something about me or one fo the Board members
21 and you want to cut it off.

22 So, you are banning the request

1 for relief for 403 and 404, lot occupancy and
2 rear yard, correct?

3 MR. FRENCH: That's correct. I
4 need to qualify that they are currently
5 noncompliant. So, we're asking for an
6 exception to allow --

7 CHAIRPERSON JORDAN: 2001.3.

8 MR. FRENCH: Under 2001.3, yes.

9 CHAIRPERSON JORDAN: For
10 additional expansion of a nonconforming use,
11 is that what you're --

12 MR. FRENCH: Correct. But we're
13 not making the nonconforming conditions
14 anymore nonconforming than they are already.

15 CHAIRPERSON JORDAN: Now, you
16 understand the Office of Planning has
17 indicated they thought you needed other relief
18 but you think this is all you need? I mean,
19 you disagree with them?

20 MR. FRENCH: Well, I do. Their
21 closing paragraph sort of gave a little bit of
22 leeway --

1 CHAIRPERSON JORDAN: Okay.

2 MR. FRENCH: -- on that.

3 CHAIRPERSON JORDAN: All right.

4 It's not the Board to tell you what relief you
5 need. It's for you to tell us what relief you
6 want us to try to grant for you and whether or
7 not you can go forward with your plans is
8 certainly on you. And so we appreciate your
9 diligence in this matter and how you've looked
10 at this.

11 MR. FRENCH: I guess I need to be
12 sure I understand your question.

13 You were saying that the planning
14 -- Office of Planning disagreed with us on
15 what type of relief I should be asking for?

16 CHAIRPERSON JORDAN: Yes, I know
17 you've had conversations, I believe, and
18 you've made some changes in light of that so -
19 -

20 MR. FRENCH: Right.

21 CHAIRPERSON JORDAN: -- I'm
22 assuming that what you've asked for is what

1 you need.

2 MR. FRENCH: My understanding is
3 that because the existing noncompliances are
4 covered under 2001.3 and we're not asking for
5 any additional increase in relief on those
6 that 2001.3 should cover that request.

7 CHAIRPERSON JORDAN: Okay. Let's
8 talk for a minute about your application.

9 I think we are pretty much aware
10 of what you have in it and I think you have
11 some problems.

12 MR. FRENCH: Okay.

13 CHAIRPERSON JORDAN: And so I
14 rather for you to kind of focus your -- you
15 can present your evidence in any way you want
16 to present it and talk about whatever you want
17 to talk about but have some concerns of why
18 you consider your property is unique or has an
19 exceptional situation or circumstance why you
20 should be granted the relief that you request.

21 We know it's already in the
22 application so if you already have something

1 that's different than the application, that is
2 probably what I would argue because what you
3 submitted so far to me has not got me there.

4 Excuse me one second.

5 We want to be sure on the record.
6 You're asking -- your asking for relief from
7 Section 402, correct? The FAR. And are you
8 also asking for relief from 2001.3 for the
9 nonconforming?

10 MR. FRENCH: Correct.

11 CHAIRPERSON JORDAN: Okay. I
12 thought we had that right.

13 Let me ask any of the Board
14 Members is there any other drill down that we
15 would like the Applicant to espouse on?

16 MEMBER HINKLE: No, I think that's
17 key what you asked. The exceptional condition
18 of the property and if you could just describe
19 a little bit further what you did include in
20 your supplementary submission as well as, you
21 know, other thoughts, that would be helpful.

22 MR. FRENCH: Sure, I'd be happy

1 to.

2 First off, I want to make sure
3 that you guys -- you all have received the
4 addendum. We saw the late addendum.

5 CHAIRPERSON JORDAN: Addendum.
6 You mean the one where you're subsequently
7 filing on the date of -- on June 6th?

8 MR. FRENCH: This is June 6th,
9 yes.

10 CHAIRPERSON JORDAN: Did we grant
11 leave for this? Okay. I guess we already
12 read it so we'll go ahead and take it as being
13 out of time for the submission.

14 Yes. Trust me. We read this.

15 MR. FRENCH: Okay.

16 CHAIRPERSON JORDAN: I go back to
17 help you out, you need to get us to where we
18 need to be. This doesn't help you?

19 MR. FRENCH: Okay.

20 CHAIRPERSON JORDAN: Might have
21 worked in reverse.

22 MR. FRENCH: Pardon?

1 CHAIRPERSON JORDAN: Nothing, go
2 ahead.

3 MR. FRENCH: The condition -- and
4 so the overall context. There's sort of two
5 things that we see as causing an unusual
6 burden on this and one of them is that since
7 the neighborhood was originally zoned R-5-B,
8 the neighborhood around has completely
9 changed. So, R-5-B is no longer the norm.
10 It's become an anomaly. And I did in the
11 addendum that you guy -- that you have
12 reviewed and don't feel is adequate that there
13 is the map that demonstrates how much of
14 remaining R-5-B there is in the entire --

15 CHAIRPERSON JORDAN: It's almost -
16 -

17 MR. FRENCH: -- near Southeast.

18 CHAIRPERSON JORDAN: Everything
19 around it, there's been the PUD that took a
20 substantial amount of the neighborhood.

21 MR. FRENCH: And other evolution
22 over time. And specifically on our block

1 there are 10 houses that have, I would say,
2 the same uniqueness. Our lot is the same as
3 the other nine on our block that have this
4 condition. But they are exceedingly small
5 lots, under 700 square feet and the R-5-B zone
6 is a little bit of a donut hole in that if you
7 are R-4 which is typical for rowhouses,
8 attached dwellings, there is no FAR
9 restriction. If you are R-5-C, which is the
10 next level up from us, there's a FAR
11 restriction of three. So, there's FAR
12 restriction of 1.8 which happens to apply to
13 this little donut hole and has been superseded
14 by the PUD all around us. I don't believe was
15 ever intended to be for this type of -- this
16 type of dwelling. The R-5-B is rally geared
17 towards, if you look at our neighboring SMDs
18 in Southwest D.C., larger multi-family
19 properties, the FAR is sort of an additional
20 line of defense to keep these -- these
21 buildings from becoming too large for every
22 other neighborhood. In every other rowhouse

1 district, R-3s and R-4s, the -- the lot
2 occupancy, rear-yard setback and building
3 height are deemed to be sufficient
4 restrictions on construction. So, it's only
5 in this little R-5-B donut hole that we have
6 this additional FAR burden that I don't
7 believe applies to these 10 houses on our
8 block. I mean, literally, technically it
9 applies but in terms of context of the
10 neighborhood and in terms of context of the
11 city, it's a -- it's an unusual burden on this
12 type and scale of property.

13 That's really the primary and I
14 understand that it's not your mandate, I
15 guess, is maybe the term to rule on whether a
16 zone is correct or incorrect. What we've been
17 -- what we are trying to do is present the
18 context that creates the burden on this
19 property but is unique, I believe, in the
20 city. And that's really our primary argument.

21 CHAIRPERSON JORDAN: Anybody have
22 any questions of the Applicant?

1 Is there any additional evidence
2 or witnesses you want to put forth to us?

3 MR. FRENCH: And actually I would
4 like to make one other point.

5 The -- the Office of Planning and
6 they've been extremely helpful by the way, Ms.
7 Elliott in particular has been really
8 proactive in trying to guide us through this.

9 My understanding from the Office
10 of Planning is that if we were to not seek the
11 FAR restriction that they would grant the
12 remainder of the -- or they would recommend
13 approval of the remainder of the exceptions
14 under the 2001.3. The existing
15 nonconformance. We could pull the third
16 floor. We just couldn't build quite as much.
17 We'd be limited to that 230 square feet
18 instead of the 450 or so that we're
19 requesting. And so based on that, my
20 understanding is that it's not whether we can
21 build the third floor or not that they're
22 recommending that we should be allowed to

1 build a third floor if we don't request that
2 FAR variance or exception. And, I guess, my
3 only point to that is that from a -- from a
4 zoning and community impact perspective,
5 there's really almost zero difference whether
6 it's a 250 square foot third floor or 450
7 square foot third floor. It would still have
8 the same impact on the community and still
9 will house the same number of people. It's
10 not going to really negatively impact or
11 negatively change the community or the zone of
12 affect anybody's life or tax RMDs and those
13 things.

14 CHAIRPERSON JORDAN: Is it Mr.
15 Lorenzo -- is Mr. Lorenzo you're witness or
16 are you here just to talk in support?

17 MR. LORENZO: I came to speak in
18 support and also just to --

19 CHAIRPERSON JORDAN: Well, we'll
20 get to that point.

21 I'm going to also ask, Mr. French,
22 you're aware that Ms. -- one of your neighbors

1 --

2 MR. FRENCH: Ms. Quamie?

3 CHAIRPERSON JORDAN: Yes, there it
4 is. Ms. Quamie has written a letter to the
5 Board in opposition and raised some issues.
6 What's your reply to that?

7 MR. FRENCH: I have not seen a
8 copy of that letter. She actually wrote us a
9 letter in support initially and that was in
10 our original filing. So, I'm not aware of the
11 letter in opposition. And she --

12 MR. GARBER: My understanding is
13 that her concerns are more construction-
14 related than actual zoning related.

15 MR. FRENCH: Yes, and actually she
16 attended the ANC meeting in support yesterday.

17 CHAIRPERSON JORDAN: Did she?

18 MR. FRENCH: Yes.

19 CHAIRPERSON JORDAN: So, she might
20 have went back -- okay. Again, she sent us a
21 letter in opposition.

22 MR. FRENCH: Okay.

1 CHAIRPERSON JORDAN: All right.

2 Any other questions from the Board
3 of this Applicant?

4 Is there anything else that the
5 Applicant wanted to present before we go to
6 Ms. Elliott and the Office of Planning?

7 MR. FRENCH: No.

8 CHAIRPERSON JORDAN: The ANC will
9 have an opportunity.

10 MR. FRENCH: Okay. No, that's it
11 for me, thank you.

12 CHAIRPERSON JORDAN: Then we'll
13 turn to the Office of Planning.

14 MS. ELLIOTT: Good morning, Mr.
15 Chairman and Members of the Board.

16 Unfortunately, the Office of
17 Planning is not able to recommend support of
18 this application. The predominate reason is
19 because we are unable to find a unique
20 condition with this lot.

21 The property is located among 10
22 other -- I'm sorry, nine other properties that

1 are developed similarly with similar size
2 lots. They are surrounded by the PUD which is
3 actually held to different building
4 requirements that were established under the
5 PUD itself. So, since we were unable to find
6 any unique condition that would justify the
7 increased FAR, we're not able to support it.

8 I would like to mention that, you
9 know, the Applicant did try to work with us
10 and they did reduce the size of the addition
11 and we do appreciate that.

12 As to the argument of the R-5-B
13 district, I don't want to touch on that too
14 heavily because we don't typically consider
15 zoning district a unique condition. That is
16 a policy decision that would generally come
17 from a different body.

18 And as to the final paragraph in
19 the staff report we did indicate that should
20 the Board feel that the FAR can be justified,
21 then we would be supportive of the remainder
22 of the variances that have been requested just

1 because they would not actually be increasing
2 the degree of the nonconformity on the lot.

3 So, with that, I'd be happy to
4 answer any questions you may have.

5 CHAIRPERSON JORDAN: The Applicant
6 relates that without the increase in FAR that
7 he still could do the third floor. Is that
8 your opinion also?

9 MS. ELLIOTT: If he did the third
10 floor he would still require variances. As
11 proposed, that third floor is still
12 maintaining the 12-foot -- I'm sorry, I
13 believe it's about 12 foot rear setback. So,
14 for that reason we believe that the variance
15 for a rear yard is required. In addition,
16 because the two-foot court would be maintained
17 and the wall of the third floor wouldn't
18 actually be moved over to create a six-foot
19 court. We believe that that -- that relief
20 would also be required.

21 So, I believe, that additional
22 relief would still be required, but we would

1 be supportive of that just because it wouldn't
2 be increasing the nonconformity on the
3 property.

4 As to the size of the addition, I
5 believe he could do about a 230 square foot
6 addition and still be within the 1.8 FAR.

7 CHAIRPERSON JORDAN: All right.
8 Okay.

9 Does the Board have any questions
10 of Ms. Elliott?

11 ZC CHAIR HOOD: I'm just curious.
12 Ms. Elliott, are there any other ways that
13 this Applicant could petition the Office of
14 Planning to maybe relook at the zoning in this
15 area? I do agree with your analysis that it
16 doesn't go to a full zone district and I'm
17 still trying to find the uniqueness. I'm just
18 waiting to hear the discussion. But I'm still
19 searching for it. So, I'm just wondering. Is
20 there other ways that may have been
21 recommended that the Applicant possibly could
22 -- I'm not saying it would fly but possibly

1 could petition the Office of Planning to maybe
2 try to achieve some of what he's trying to
3 achieve another way?

4 MS. ELLIOTT: We could certainly
5 have that discussion with the Applicant
6 following the hearing. If this is something
7 we move forward with, I would have to, you
8 know, we would have to have that discussion
9 about process and procedure and, you know, to
10 a degree getting other neighbors on board with
11 that as well.

12 ZC CHAIR HOOD: So, I think you're
13 in sync with exactly what I'm thinking. Okay.
14 Thank you.

15 CHAIRPERSON JORDAN: Okay. Does
16 the Applicant have any -- you do?

17 MEMBER HINKLE: Yes, if I can ask,
18 Ms. Elliott just a little bit more.

19 I'm still struggling with why you
20 don't think there is, you know, at least an
21 exceptional situation here in terms of how the
22 PUD, and it's one PUD that's, I don't know, 10

1 blocks wide that basically surrounds these 10
2 lots. And I certainly understand that there's
3 certain conditions that are the PUD and
4 certain other public goods that went along
5 with that in that approval, but for me there
6 really is an exceptional situation. Maybe not
7 among the 10 lots that we're talking about
8 specifically, but that PUD has actually
9 created an interesting situation I would say
10 on the street where you have, you know,
11 certainly a large multi-family building
12 directly across the street that's
13 significantly higher than the two-story
14 rowhouses. And you have, in fact, immediately
15 behind this rowhouse a four-story rowhouse.

16 You have, I think, my count -- one
17 second here. Actually, from my count, 36
18 other lots besides these 10 on this one block
19 that all are significantly developed. So, I'm
20 just trying to understand why you wouldn't
21 consider those factors within our analysis in
22 terms of how these 10 lots don't have any

1 exceptional situation in terms of their size.

2 MS. ELLIOTT: The PUD does create
3 a situation where these 10 row homes are
4 surrounding by significantly taller buildings
5 and I don't believe that the addition would
6 necessarily be out of character with what's
7 going on in that square, possibly within the
8 10 row homes, but that's a different
9 discussion. But the variance is actually
10 qualified on based on what's unique of that
11 property and not the square in general or the
12 development around it. So, that's why we
13 weren't able to find the unique condition with
14 this lot. Generally, it's something, you
15 know, a lot size or lot shape or topography or
16 something of that nature. So, that's why we
17 weren't able to find the FAR of variance for
18 this approval.

19 MEMBER HINKLE: You're saying it
20 arises out of the property.

21 MS. ELLIOTT: Exactly.

22 CHAIRPERSON JORDAN: Does the

1 Board have any other questions of the Office
2 of Planning? Does the Applicant have any
3 questions of Ms. Elliott, Office of Planning?

4 MR. FRENCH: I do not, thank you.

5 MEMBER HINKLE: No questions.

6 CHAIRPERSON JORDAN: DDOT? Does
7 DDOT -- do we have a report from the
8 Department of Transportation?

9 I don't see anything in my notes
10 indicating that I have read a DDOT report.
11 Oh, yes, there it is. We do have a letter of
12 no objection from the Department of
13 Transportation. Then let's have the
14 report from ANC-6D.

15 MR. GARBER: Yes. Again, my name
16 is David Garber. I'm the Commissioner for
17 6D07.

18 Last night at its regularly
19 scheduled properly noticed meeting on June
20 10th, 2013, with a quorum present, Advisory
21 Neighborhood Commission 6D voted four to two
22 to one in support of the Applicant's above-

1 referenced request.

2 You all have also received the
3 form 129, the ANC Report. ANC-6D took this
4 action after reviewing the Applicant's
5 documentation and believes the project's
6 impact on light, air and privacy will be
7 negligible.

8 Just further to the official
9 letter, Mr. French has gone out of his way
10 over the past few months to work with the
11 community on this proposed addition. He's
12 meeting with all the surrounding neighbors,
13 noticed all of his surrounding neighbors even
14 outside the boundary that's required. The
15 Capitol Corridor community which is the PUD
16 that you all have been referencing, they are
17 all four-story town homes that surround these
18 properties. He presented to the entire
19 Capitol Quarter community at their annual
20 meeting and while they didn't have all their
21 members present and so weren't able to vote on
22 the project, a number of individual homeowners

1 have come out in support of the project. A
2 number were at our meeting last night in
3 support.

4 This is not a historic district
5 and so speaking about the character of the
6 houses themselves isn't something that we were
7 speaking to as an ANC. And we believe kind of
8 as Mr. French was saying, that this is a donut
9 hole in the current community. These are two-
10 story properties that are surrounded by four-
11 and five-story properties and it's very
12 obvious when you're standing on the block that
13 that's the case.

14 I think Mr. French's proposed
15 addition sets a very positive precedent for
16 the type of addition that could happen on this
17 block or in the rest of the R-5 zoned
18 properties in the neighborhood which there are
19 only a very small few.

20 But, so again we voted in support
21 of this project. We hope it moves forward.

22 I know that they are active

1 members of the community.

2 CHAIRPERSON JORDAN: Now, this
3 vote wasn't like overwhelming. You had what
4 six people, seven people voting. It was four,
5 two and one person took a walk -- abstained.
6 So, there was some issues there. And within
7 the ANC, correct?

8 MR. GARBER: Yes, so our ANC is
9 interesting because we are split between
10 Southeast and Southwest D.C.

11 CHAIRPERSON JORDAN: That's my
12 ANC.

13 MR. GARBER: Okay. And so I
14 represent most of this obvious portion of the
15 ANC. My colleague, Ed Kaminski, represents a
16 small portion of Southeast and a portion of
17 Southwest. And then everybody else represents
18 Southwest.

19 And so there were members of the
20 commission that voted against the project. I
21 would say mostly because they were around
22 during the PUD process for the

1 Capper/Carrollsborg, Capitol Quarter portion
2 of the redevelopment and had kind of imagined
3 these properties being some sort of historic
4 district that they're not actually. And --
5 but, yes, there are also commissioners from
6 Southwest that argue that similar projects
7 have been done on H Street, Southwest, not in
8 a different zone but were sensitive extra-
9 story additions had been made that actually
10 added to the community which I think this
11 would also do.

12 But, yes, I mean you're right. It
13 was not a unanimous vote. I wish we could
14 have gotten that but all of the commissioners
15 from Southeast did vote in support of this.

16 CHAIRPERSON JORDAN: Does the
17 Board have any questions of Mr. Garber?

18 Does the Applicant have any
19 questions of Mr. Garber?

20 MR. FRENCH: Mr. Garber, did we,
21 other than the letter that I haven't seen
22 before, did we receive any opposition from any

1 members of the community in your ANC or
2 Southeast.

3 MR. GARBER: We heard some
4 concerns at our meeting last months but we
5 decided not to act on it but all those
6 concerns have since been addressed and I know
7 that you've met personally with all the people
8 who had any concerns. Any concerns that I've
9 heard personally on this project were from one
10 of the immediately adjacent neighbors who are
11 concerned about construction impact. Things
12 like making sure that there is proper clean up
13 at the site during construction and making
14 sure that any structural issues were worked
15 out before construction actually begins.

16 CHAIRPERSON JORDAN: Any
17 additional questions?

18 MR. FRENCH: No, thank you.

19 CHAIRPERSON JORDAN: Then let's
20 turn to find out if there is anyone who wishes
21 to speak in support of the application.

22 Mr. Lorenzo, correct?

1 MR. LORENZO: Yes.

2 CHAIRPERSON JORDAN: You have
3 three minutes, please.

4 MR. LORENZO: Okay. Thank you,
5 Mr. Chairman.

6 CHAIRPERSON JORDAN: You don't
7 have to use all three but you can --

8 MR. LORENZO: I don't think so.
9 I'm just going to read a brief statement.

10 So, again, my name is Aaron
11 Lorenzo. I live at 927 5th Street, Southeast.
12 That's the adjoining property to the north of
13 the Applicant's property.

14 I simply want the record to
15 reflect what I put in the letter. Physical
16 concerns I have about the proposal, namely,
17 potential structural pressures are a common
18 wall and possibilities that could arise from
19 construction work that happens on my roof or
20 elsewhere on my property.

21 I've discussed these issues with
22 my neighbor and he's working with me to

1 satisfy those concerns if the project does go
2 forward.

3 CHAIRPERSON JORDAN: Okay. Any
4 questions from the Board? Any questions from
5 the Board? No.

6 Is there anyone else here wishing
7 to speak in support of the application?

8 Yes. Do you want to come forward
9 please. And make sure your mic is on and --
10 push it please, yes.

11 MS. FRAZIER: Hi, good morning,
12 Commissioners. My name is Debra Frazier.

13 I'm a representor of the renters
14 at the Capitol Quarters community which we
15 affectionately still call Arthur
16 Capper/Carrollsborg and we were involved in
17 the initial PUD and continue to be involved in
18 that.

19 My members of the senior building
20 and the 128 family-rental units that are on
21 that property are in support of Mr. French's
22 application. We were pleased that that small

1 block of houses were able to be maintained in
2 view of the homes surrounding the PUD and how
3 different that made the community. Those
4 houses make for a uniqueness and kind of
5 retain some of the character that we had in
6 the neighborhood.

7 Don't know about regs and zoning
8 and uniqueness and all of that. But what's
9 important to the community and I got to urge
10 you guys to look at what's unique about --
11 well, to look at people versus property. We
12 have a standing serious division in that
13 community between homeowners and renters. And
14 there are very few homeowners who are
15 interparliamentary given. There's some
16 homeowners that are interested in having a
17 community as we are as renters that we all
18 should be able to live healthily together
19 without divisions in public use of property
20 and things like that.

21 Mr. Garber states that the
22 Applicant presented his information to the

1 community, did not. He presented it to the
2 homeowners. Mr. French, his family and a few
3 others, Mr. Lorenzo on that block are
4 aesthetically and emotionally in support of
5 the entire community. That is our -- our
6 emotional support for that in addition to
7 what, Mr. Hinkle, you mentioned the senior
8 building across the street is also higher than
9 what they're proposing. There properties
10 around this that are higher and we don't see
11 how it poses an aesthetic. We think it would
12 be unique. We think it would be special. We
13 think it would make this property very
14 interesting and add some character that we're
15 losing from our community.

16 So, we're in support of that
17 because of the family connection, because of
18 the need to create esthetics in the community
19 and this family can move them across D.C. to
20 move to our neighborhood and help cement the
21 issues of community and family and home
22 ownership and add some uniqueness to their --

1 the issue of whether it's varied or whether
2 it's cute or whether it's unique. It's kind
3 of I think on the human level should be
4 superseded towards the end of great community
5 relations and community cohesiveness.

6 I probably have a thousand other
7 things to say, but that's --

8 CHAIRPERSON JORDAN: But your time
9 is up and I appreciate you taking the time in
10 coming down. So, you're testifying in support
11 of this application --

12 MS. FRAZIER: Yes.

13 CHAIRPERSON JORDAN: -- that we
14 should grant it? Okay. Thank you.

15 Is there any questions from
16 anybody on the Board? Does the Applicant have
17 any questions of the witness.

18 MR. FRENCH: I do not, thank you.

19 CHAIRPERSON JORDAN: Thank you so
20 much. Appreciate it.

21 Is there anyone else wishing to
22 speak in support of this application?

1 Is there anyone here wishing to
2 speak in opposition to the application?

3 Anyone in opposition?

4 Then we will turn back to the
5 Applicant for any rebuttal and closing,
6 please.

7 MR. FRENCH: I understand -- I
8 understand the challenge of demonstrating the
9 uniqueness of a lot that's among 10 that are
10 effectively identical and I understand that
11 the Office of Planning's, you know, rule
12 requirements are that they judge the new
13 property based on the lot itself.

14 I believe that the -- the
15 uniqueness that I'm requesting applies to all
16 10 and that's a tricky balance to try to
17 strike. But I would-- I would argue that out
18 of the context of 8,500 households in our ANC
19 there are only 18 that would fall under the
20 criteria that we're talking about here. There
21 are only 18 single-family rowhouse lots in a -
22 - in a R-5-B zone that are under, I believe,

1 850 square feet. And ours is under 700.

2 And so, you know, out of 8,500
3 households I would consider that to be unique.
4 And I really -- I hope for our consideration.
5 I appreciate all the thoughtful comments from
6 everybody and, you know, I'm basically
7 throwing myself onto your mercy here because
8 I understand that the uniqueness argument is
9 challenging.

10 CHAIRPERSON JORDAN: Appreciate
11 it. And I'm telling you, this thing has kind
12 of got me, even as we sit here, I'm in a
13 rocking chair of some of our considerations
14 here.

15 So, let's close the record based
16 upon what we have so far. And let's turn to
17 the Board for any deliberation.

18 Mr. Hood?

19 ZC CHAIR HOOD: Mr. Chairman,
20 again, I think Mr. French made the case which
21 I would like to see this actually go and I
22 hate just to pick on one homeowner but he made

1 the case for all the homes to a certain point
2 once we look at the other regulations.

3 Also, the regulations are not
4 necessarily the Office of Planning's. They
5 are regulated by the Zoning Commission. The
6 Zoning Commission are the ones that write the
7 regulations and they just basically adhere and
8 make sure that other applications follow the
9 regs which were already written.

10 So, being a representative of the
11 Zoning Commission I think there are other ways
12 or another way we may be able to look at this
13 as you all call it a donut hole in which
14 obviously the Commission created with these
15 PUDs. So, I think there's another way besides
16 -- because, again, what I have here before me,
17 Mr. French, doesn't pass muster for me but I
18 understand the humanistic part of it. I
19 understand the reality of it, but we need to
20 make sure we stay within the code.

21 Now, do we need to revisit the
22 code? Should the neighbors maybe petition the

1 Office of Planning to bring something to the
2 Zoning Commission? That may be the way to go.

3 So, I'll just leave that out there
4 and I'll leave you that choice. I hate to put
5 some extra work on you, but maybe that may be
6 the way that we need to resolve this issue.
7 Okay. My two cents worth.

8 CHAIRPERSON JORDAN: Okay. Any
9 other?

10 Well, let me say this. I
11 understand all of that and I really have a
12 concern about you meeting the variance test.
13 I understand their issue as Commissioner Hood
14 has stated. But I'm also concerned here that
15 I don't see support from your neighbors. I
16 don't see any letters in this file from
17 support from your neighbors. Did I miss them
18 --

19 MR. FRENCH: There are at least
20 10.

21 CHAIRPERSON JORDAN: You have
22 some. Yes, you do have those --

1 MR. FRENCH: Yes.

2 CHAIRPERSON JORDAN: -- next door
3 neighbors.

4 I'm going to suggest that the
5 Board continue this for a decision. The
6 hearing will be closed to give you the
7 opportunity to meet with Office of Planning so
8 you can think in light of another way,
9 possibly in light of Chairman Hood's
10 recommendation about how to possibly go after
11 this and if that cannot -- cannot come up with
12 an alternative in getting that moved, then
13 we'll come back here for a decision. Because
14 I don't think that this is something that the
15 Board is going to approve.

16 MR. FRENCH: You did see all the
17 letters of support, right?

18 CHAIRPERSON JORDAN: Yes, I went
19 back to my notes.

20 And right now the Board is made
21 up, you really need a unanimous vote of this
22 Board to do it and I don't think you have it.

1 So, I'm going to continue this for
2 a decision and allow you time to meet with the
3 Office of Planning to talk about other
4 vehicles. I don't know if you even considered
5 what the Zoning Commission can do for you in
6 regards to this and your other 10 neighbors.
7 So, that might be the route to go because I'm
8 having concerns about you getting over the
9 hump of where you need to be.

10 MR. FRENCH: Okay. Absolutely, I
11 would appreciate the opportunity to not get a
12 no and to continue the conversation.

13 My concern is that we have a two-
14 bedroom house and a two-month old baby that's
15 going to out grow the bedroom very quickly
16 that we're sharing with her. And so my
17 concern about the Zoning Commission route is
18 just time, you know, is that I feel that we
19 may go that route and find two or three or
20 four years later --

21 CHAIRPERSON JORDAN: They don't do
22 anything all day. They have plenty of time.

1 ZC CHAIR HOOD: I don't know when
2 the last time you visited the Zoning
3 Commission is very thorough, very efficient
4 and very fast.

5 MR. FRENCH: Okay. Fantastic.

6 CHAIRPERSON JORDAN: How many
7 square feet is your house itself?

8 MR. FRENCH: It's 970 square feet.

9 CHAIRPERSON JORDAN: Okay. But
10 with that, let's move this for a decision.
11 Let's get some air to it, Mr. Moy.

12 MR. MOY: Mr. Chairman, based on
13 what I'm hearing, which is time, I suppose.

14 CHAIRPERSON JORDAN: This Zoning
15 Commission is fast and efficient. Honestly,
16 they're moving.

17 MR. FRENCH: Great.

18 MR. MOY: For the record, Mr.
19 Chairman, we have scheduled decision meetings
20 for June 25th and July 9th.

21 CHAIRPERSON JORDAN: Okay.

22 MR. MOY: Any of those will do

1 depending on how much time the Applicant is
2 going to be needing. Maybe July 9th is a
3 little later.

4 CHAIRPERSON JORDAN: No, no, no,
5 no. Move it out.

6 MR. MOY: June 25th?

7 CHAIRPERSON JORDAN: No, we're
8 going to move it to the September date?

9 MR. MOY: Oh, September.

10 CHAIRPERSON JORDAN: Let me say
11 this to you. If you work with the Office of
12 Planning and if somebody from the Zoning
13 Commission might make it be taken by the
14 Zoning Commission and placed on a Consent
15 Calendar if all the I's are dotted and T's are
16 crossed. Isn't that right, Mr. Hood?

17 ZC CHAIR HOOD: I don't know -- I
18 don't know but I do think for me, if I stay on
19 this case, the case is not made for me here.
20 It possibly can be made at that point -- at
21 that juncture and then you increase everybody.
22 So, I don't want to say --

1 CHAIRPERSON JORDAN: Right.

2 ZC CHAIR HOOD: -- of that. But I
3 think, work with the Office of Planning.
4 Petition the Office of Planning to petition
5 the Zoning Commission. I think that may work.
6 I think. I'm not sure about all the other
7 particulars.

8 CHAIRPERSON JORDAN: Yes. Okay.
9 So, the date then?

10 MR. MOY: The date, Mr. Chairman,
11 we're looking at September the 10th.

12 CHAIRPERSON JORDAN: Okay.

13 ZC CHAIR HOOD: Mr. Chairman, let
14 me just ask. So, we won't wait until
15 September 10th. Is there any way that the
16 Board could ask for a status or maybe I'll ask
17 for one from the Commission. I'm trying to
18 figure out how to do this because citizens
19 want the government to be predictable as you
20 know. I don't want to preach that but --

21 CHAIRPERSON JORDAN: Exactly.

22 ZC CHAIR HOOD: -- and we don't

1 want to put you through a whole lot. If we
 2 can do something to help the neighborhood get
 3 the way -- because it was created as you all
 4 call it donut hole. I've never heard it put
 5 that way. I have to remember that.

6 The donut hole has been created,
 7 then I think it needs to be corrected. But
 8 the question is, how do we correct it. And
 9 what I see here today is not, I don't think,
 10 the way to correct it.

11 CHAIRPERSON JORDAN: Yes. And so
 12 I put it on September 25th so then within that
 13 period of time of that September date that the
 14 Zoning Commission may actually take it.
 15 That's why I didn't want to put anything
 16 faster because it gives them time to work with
 17 planning, work with the neighbors and then you
 18 guys -- then the Zoning Commission can pull it
 19 and --

20 ZC CHAIR HOOD: Can you work with
 21 Ms. Schellin and see what happens with OP?
 22 Can we follow that whole thing through and see

1 what we can do, if there's anything we can do.
2 I don't want to raise any false hopes.

3 MR. MOY: I can follow that up,
4 Mr. Chairman, and maybe as for some -- some
5 target, maybe September 10th could be a soft
6 date that can be changed. Or do you want to
7 leave it undefined?

8 ZC CHAIR HOOD: I think we should
9 know something in 30 days. Am I right, Office
10 of Planning, Ms. Elliott?

11 MS. ELLIOTT: Sure, we can meet
12 fairly soon --

13 ZC CHAIR HOOD: Okay.

14 MS. ELLIOTT: -- and discuss
15 strategy and, you know, we should be able to
16 get back to you --

17 ZC CHAIR HOOD: Okay.

18 MS. ELLIOTT: -- relatively
19 quickly.

20 ZC CHAIR HOOD: And I'll be
21 listening out to see what's going on also.

22 CHAIRPERSON JORDAN: Okay. So,

1 that's what we'll do moving it to September
2 10th and I certainly recommend that you get in
3 touch with Ms. Elliott and the Office of
4 Planning as soon as you can.

5 MR. FRENCH: Okay. Thank you.

6 CHAIRPERSON JORDAN: And that
7 concludes this particular hearing.

8 (Whereupon, off the record from
9 10:56 a.m. to 11:05 a.m.)

10 CHAIRPERSON JORDAN: We're ready
11 to go. Okay. Call our next case and let's
12 go.

13 MR. MOY: All right. Thank you,
14 Mr. Chairman.

15 That would be Application Number
16 18562 of 1538 New Jersey Avenue, LLC.

17 This application, Mr. Chairman, is
18 a request for a variance from the lot area
19 requirements to allow the conversion of a
20 church into a seven-unit apartment house under
21 subsection 401.3.

22 CHAIRPERSON JORDAN: Oh, 562,

1 okay.

2 Where are we, 562?

3 Did we get an ANC letter on this?

4 Did it ever come across?

5 MS. MOLDENHAUER: Yes, there's an
6 ANC letter. The ANC letter is on the Board's
7 Exhibit 27 and it's also part of our
8 supplemental submission. Our pre-hearing
9 submission.

10 CHAIRPERSON JORDAN: Mr. Moy, do
11 we have that? Well, there is -- which ANC is
12 the right ANC?

13 MS. MOLDENHAUER: ANC-6E.

14 CHAIRPERSON JORDAN: Okay. It's
15 not 2C?

16 MS. MOLDENHAUER: Hold on.

17 CHAIRPERSON JORDAN: Because I
18 have a reference here from 2C, there's
19 nothing. And then I have something there's 6.

20 MS. MOLDENHAUER: Our pre-hearing
21 statement includes the ANC --

22 CHAIRPERSON JORDAN: Okay. I have

1 ANC 6E.

2 MS. MOLDENHAUER: 6E, which is a
3 unanimous consent. It was Exhibit D on our
4 pre-hearing statement.

5 CHAIRPERSON JORDAN: What ward is
6 this because it's my understanding this is in
7 2. Is that wrong? It's not Ward 2?

8 MS. MOLDENHAUER: No, there's a
9 switch. There's a boundary switch about in
10 January and it's now 6.

11 CHAIRPERSON JORDAN: Okay. It's
12 now 6.

13 MS. MOLDENHAUER: Correct.

14 CHAIRPERSON JORDAN: Okay.

15 MS. MOLDENHAUER: I think it
16 switched right around January this past year.

17 CHAIRPERSON JORDAN: Okay. Would
18 you introduce yourselves, please.

19 MS. MOLDENHAUER: Good morning.
20 My name is Meridith Moldenhauer from Griffin,
21 Murphy, Moldenhauer & Wiggins. I'm here on
22 behalf of the Applicant. With me today I have

1 Ryan Samuel, the developer on behalf of 1538
2 New Jersey Avenue and his architect for the
3 project, Hugo Roell.

4 CHAIRPERSON JORDAN: I think we
5 understand the project and what you're trying
6 to do. I also understand your argument. I
7 understand the aspect of your request for
8 relief and support thereof and the financial
9 argument that you're making. But I think that
10 the Board has concerns about really how in
11 light of all that that there's no alternative
12 use for this property other than that in which
13 you've run the financial on. So, you kind of
14 got a lift.

15 So, whatever you want to do to.

16 MS. MOLDENHAUER: Let me just back
17 up a moment and make sure I address some of
18 the questions from OP.

19 CHAIRPERSON JORDAN: Yes.

20 MS. MOLDENHAUER: I wanted to do a
21 brief overview. This is an application which
22 is a transition or a transformation of an

1 existing dilapidated retributed church to a
2 beautiful classic rowhouse. In order to do
3 that, the Applicant is asking for just one
4 area of relief which is the lot area
5 requirement.

6 There was some questions raised in
7 the Office of Planning report regarding
8 whether this qualifies under a conversion. I
9 just want to state for the record that I've
10 had discussion with Matt LeGrant and that he
11 has confirmed so long as four feet of the
12 structure remains in existence, that it's
13 considered or to be treated as a conversion
14 due to the fact as the regulations provide
15 four feet of a building height is deemed a
16 structure.

17 The Applicant is planning as
18 stated in our pre-hearing statement to
19 substantially raise the existing condition,
20 leaving in place the party laws and four feet
21 of the rear property and as much as possible
22 of the front facade as is structurally safe

1 will be maintained.

2 Based on that, we're moving
3 forward obviously with the application under
4 our conversion of 401 and then that makes some
5 of the comments and concerns of the Office of
6 Planning regarding the lot occupancy and
7 parking moot under the conversion section of
8 the regulations.

9 CHAIRPERSON JORDAN: You would
10 still need lot area is that what you're
11 saying?

12 MS. MOLDENHAUER: No, we would not
13 because the regulations indicate that it's the
14 greater of the existing lot area at the time
15 of conversion so it would be the existing lot
16 occupancy. And then the lot area relief is
17 what we're asking for which is the issue of
18 900 square feet per unit. And the Applicant
19 is proposing to provide 578 --

20 CHAIRPERSON JORDAN: That's it.

21 MS. MOLDENHAUER: Oh, sorry, I
22 thought you were asking for lot occupancy.

1 CHAIRPERSON JORDAN: No, I said
2 the area.

3 MS. MOLDENHAUER: I'm sorry. We
4 are still asking for lot area, correct. The
5 Chair is correct, I'm sorry.

6 This Applicant has explained and
7 will explain some more today before the Board
8 how anything less than seven apartment units
9 would yield a loss or non-viable return.

10 Just to focus the Board on a
11 couple of cases, this case I believe follows
12 the Court of Appeals precedent in the Downtown
13 Cluster case. That case --

14 CHAIRPERSON JORDAN: What's the
15 cite?

16 MS. MOLDENHAUER: The cite of the
17 case. Hold on a moment, I've got copies.

18 It's 675, A 2nd, 848. 675, A 2nd,
19 848.

20 CHAIRPERSON JORDAN: Thank you.

21 MS. MOLDENHAUER: The Downtown
22 Cluster case, the court confirmed the Board

1 was justified in granting a variance based on
2 undue hardship because the Applicant indicated
3 it was unable to obtain a reasonable return.
4 In that case, the Board actually heard
5 testimony from a different individual that
6 testified that a reasonable expected return
7 was nine percent.

8 The Board then found in that case
9 and the Court of Appeals affirmed it, that an
10 alternative matter of right scenario not
11 outside of the scope in which the Applicant
12 was already pursuing. This is the old
13 Garfield Building that the Downtown Cluster
14 case is about. They didn't ask the Applicant
15 to go look at residential, look at something
16 else. They were simply providing scenarios
17 between office and retail which is what was
18 within the purview of what the original a
19 applicant was pursuing or was within their
20 business strategy and they confirmed in that
21 case that an alternative matter of right
22 scenario for just office at a six percent

1 return was not deemed to be a reasonable
2 return.

3 There's other case law from a more
4 recent case. That case was back in 1996.
5 There's more recent case law from 1444
6 Fairmont which is the 2011 case which the
7 Board granted a variance for a four-unit to a
8 six-unit -- a two-unit project to a six-unit
9 project and that case actually shows that the
10 applicant submitted statements that they had
11 purchased the property. Two million dollars
12 invested in the project, that they were going
13 to get a return of \$2.5 million. Doing the
14 math that showed a 15 percent return on that
15 project that the board found was then
16 considered to be a reasonable return to
17 satisfy the variance standard and to satisfy
18 the aspect of practical difficulty.

19 Here, based on our analysis that
20 we provided the Board we're not providing
21 generalities. We're providing specific
22 numbers and back up for those figures. We're

1 asking for just shy of a nine percent return
2 and 9.5 corporate return showing that anything
3 under seven units would not be reasonable.
4 And I think also would not be reasonable in
5 light of the precedent in other cases that I
6 just referenced.

7 That being said, DDOT has
8 submitted a report indicating that seven
9 apartment units would not have an adverse
10 impact on the neighborhood. That's in the
11 record for the Board's Exhibit 30. And as we
12 just referenced, we have unanimous support
13 from the ANC in support of the case along with
14 additional letters of support.

15 That being a small overview, I can
16 turn to --

17 CHAIRPERSON JORDAN: We've looked
18 at financial ups and downs. If you're going
19 to do a presentation on the financial numbers
20 that we can read and look at unless you have
21 some different take off on it, you can do it
22 but I'm just saying we've kind of looked at

1 the numbers, unless someone else needs to look
2 at the numbers again. Look at the numbers and
3 do some calculations on the old numbers. So,
4 I just wanted to offer that to you. But you
5 certainly can put on your financial person if
6 you want, if that's what you were going to do.

7 MS. MOLDENHAUER: Well, I was
8 going to provide a little more information
9 about the --

10 Yes, that would be fine.

11 MS. MOLDENHAUER: Okay. And then
12 if you feel as though --

13 CHAIRPERSON JORDAN: Nothing that
14 we've already read, I mean, because we've
15 already read it. But some additional
16 information would be certainly --

17 MS. MOLDENHAUER: Some additional
18 information. So, I'm going to turn now to Mr.
19 Ryan and he'll provide a little bit of
20 background about his interaction with the
21 project and about your specific focus on what
22 you do in the city as far as development.

1 MR. SAMUEL: Thank you very much
2 for having me here.

3 So, I'm a local developer, born
4 and raised in D.C. I only do work in D.C.
5 I'm very excited about this project. I love
6 this neighborhood. So, in looking at this
7 property we went -- first thing that I always
8 do is go and talk to neighbors, especially the
9 next door neighbors. Tony Watkins lives right
10 next door and he -- we sat down. We talked
11 about different scenarios for the property and
12 he is very excited about returning this
13 property to a residential use. And,
14 specifically, he's excited about us bringing
15 in seven one-bedroom apartments next to him.

16 I've spoken several times with the
17 neighbor on the other side. The neighbor on
18 the other side and that is currently a six-
19 unit property. I spent a good amount of time
20 with Mr. Kevin Chappel who is the ANC
21 commissioner for the single-member district
22 and he is also very excited that we're going

1 to come in and really turn a dilapidated
2 property into a beautiful property that's
3 really in keeping with the neighborhood.

4 And just to clarify the financials
5 and what my business is. What I do is I buy,
6 renovate or redevelop two to fifteen unit
7 properties in D.C. I then hold them as
8 rentals because I like to be a part of the
9 community, get involved in the community. And
10 I like to be a part of the community for a
11 very long time.

12 MS. MOLDENHAUER: Now, we'll just
13 a little additional testimony in regards to
14 the existing structure of the property.

15 MR. ROELL: Hello, my name is Hugo
16 Roell. I'm the architect working with Ryan on
17 the renovation of this building.

18 I have worked in D.C. as an
19 architect since 1987 and started my own firm
20 in 1999 in Roell Architects.

21 I am currently working with Ryan
22 on other apartment buildings and I'm happy to

1 be working with him in the design of this
2 building. It is my hope that the building
3 will become a handsome addition to the street
4 in the Shaw neighborhood.

5 I will now describe the existing
6 conditions. We visited it twice to look over
7 the structure and I would just like to go over
8 it.

9 CHAIRPERSON JORDAN: Let me ask
10 you because we don't --

11 MR. ROELL: Okay.

12 CHAIRPERSON JORDAN: -- but there
13 are some questions I want to ask. I think Ms.
14 Moldenhauer has really helped convert us to
15 where I think we might need to be. Then we
16 can go to Office of Planning because I think
17 that's where your bump is.

18 What was the illegal construction
19 that you referenced in your --

20 MR. SAMUEL: So, the neighbors had
21 significant issues on a variety of fronts with
22 the property. There were, if you go into

1 PIBS, there were a couple of different
2 instances where they did work on the property
3 previous to us purchasing it that they did not
4 have permitted.

5 CHAIRPERSON JORDAN: And what's
6 the effect of that, I mean, what kind of --

7 MR. SAMUEL: Well, as Hugo will
8 testify to, the whole property is in a very
9 bad situation but for me personally when I go
10 to make housing for tenants, I want to make
11 absolutely certain I work very close with
12 Hugo, our structural engineer, to make sure
13 the property is safe.

14 When I see that there's been
15 illegal construction done, I don't know what
16 they did wrong. When I open the walls, I
17 don't know if there's going to be an
18 electrical problem. I've already seen a lot
19 of plumbing problems that the plumbing stacks
20 were not properly configured so that you have
21 sewage draining --

22 CHAIRPERSON JORDAN: You own it

1 now, right?

2 MR. SAMUEL: Yes.

3 CHAIRPERSON JORDAN: And you've
4 got construction estimates so have you opened
5 the walls?

6 MR. SAMUEL: We have not, no. We
7 have not -- we have not opened the walls
8 because on Hugo's recommendation, the whole
9 property is --

10 CHAIRPERSON JORDAN: That's right
11 because you're going to bring it down except
12 for four feet.

13 MR. SAMUEL: Yes. I mean, Hugo
14 will go through, I mean, the joists are
15 sagging.

16 CHAIRPERSON JORDAN: The other
17 question. So, how long has this building been
18 vacant?

19 MR. SAMUEL: We purchased it about
20 seven months ago. It was being used as a
21 church.

22 CHAIRPERSON JORDAN: It was

1 actually in use?

2 MR. SAMUEL: It was most
3 definitely in use. However, the neighbor told
4 me that they didn't have a working bathroom so
5 they would actually cause some neighborhood
6 disturbances.

7 CHAIRPERSON JORDAN: Okay.

8 MR. SAMUEL: So, in terms of, you
9 know, any density concerns, it was a mess.

10 CHAIRPERSON JORDAN: And what
11 about parking? Tell us about the parking
12 credits and how you grab the parking credits
13 and how it's applied and where they're
14 acquired.

15 MS. MOLDENHAUER: I have also
16 emailed and had communications with -- not
17 with Ramos as well, but there is currently an
18 CFO currently on the property for the church
19 and identifies the occupancy requirement as
20 part of our initial application. And that
21 actually provided for five parking credits.
22 Since the property is not being 100 percent

1 raised, those would be able to be converted.
2 Now, that being said, we are providing two
3 parking spaces and there
4 s only two parking spaces required. So, I
5 feel that even though there is an existing
6 parking credit on the property, the client is
7 actually providing for all the required spaces
8 that are here.

9 CHAIRPERSON JORDAN: Okay.

10 MS. MOLDENHAUER: So, there's a
11 great reduction in actually the parking
12 necessity on the property and there is -- as
13 you can see actually from this picture, a
14 little dark and with the lights on, but the
15 right-hand picture here is a picture of the
16 rear of the property which you can see a fence
17 and you can't see it actually right now. But
18 there's a fence --

19 CHAIRPERSON JORDAN: Okay.

20 MS. MOLDENHAUER: -- and there's a
21 tree that obstructing any current parking from
22 being provided and that will be obviously

1 removed with two spaces provided.

2 CHAIRPERSON JORDAN: This is very
3 helpful with me.

4 Does the Board have any other
5 questions or anything you need to hear from
6 Ms. Moldenhauer? Anything? I think we are --
7 if there is something you think you need to
8 present because I need to turn to Planning to
9 have Planning -- as you know the opposition
10 and I want to find out why Planning is in
11 opposition.

12 MS. MOLDENHAUER: I may have some
13 additional comments after Planning and submit
14 additional submissions if necessary and I'll
15 get to that if necessary.

16 CHAIRPERSON JORDAN: Turning to
17 Mr. Jackson and Office of Planning. We read
18 your report so help us why you're opposed.
19 Tell us something that we don't see in your
20 report.

21 MR. JACKSON: Well, the case for
22 this application variance relief is in the

1 report. That's the case.

2 CHAIRPERSON JORDAN: Okay. So, my
3 question is, in your report which when anytime
4 it comes to R-4 and I guess when we're talking
5 about any apartment in R-4, there's push back
6 by the Office of Planning as policy, is that
7 correct?

8 MR. JACKSON: The requirement
9 under the regulation is 900 feet per unit --
10 square feet per unit and that's what we apply.

11 CHAIRPERSON JORDAN: Okay. But
12 isn't the variance process something that this
13 Board is required to provide in light of what
14 the regulation is because all of our
15 regulations are set in stone, correct?

16 MR. JACKSON: Certainly.

17 CHAIRPERSON JORDAN: They're set
18 in stone and if the party can come in and show
19 bases why this property should not be used
20 within that regulation and this body then has
21 the ability to make a variance from the
22 regulation, right?

1 MR. JACKSON: Based on the
2 understanding that there's a practical
3 difficulty, yes.

4 CHAIRPERSON JORDAN: So, when the
5 Office of Planning does their examination of
6 properties such as this or anything in R-4 are
7 you really doing an evaluation based upon the
8 variance standard or are you just excluding
9 the variance standard and sticking by what the
10 regulation is verbatim?

11 MR. JACKSON: The variance
12 standard is the regulation and the regulation
13 creates a practical difficulty. In this case,
14 the Applicant is removing their practical
15 difficulty by demolishing the building.

16 The lot is normal. The lot has no
17 unique characteristic that makes it difficult
18 to build. So, the only --

19 CHAIRPERSON JORDAN: The building
20 itself?

21 MR. JACKSON: Okay.

22 CHAIRPERSON JORDAN: The building

1 as is, there's no practical difficulty you're
2 saying?

3 MR. JACKSON: No, no, no. There
4 is a practical difficulty. The practical
5 difficulty is based on the property.

6 CHAIRPERSON JORDAN: Okay. As is,
7 not what they're talking about doing, but as
8 is?

9 MR. JACKSON: Yes, and as the
10 Applicant indicated in the application, the
11 building presents a practical difficulty. Not
12 the fact that it's --

13 CHAIRPERSON JORDAN: You're saying
14 it does present a practical difficulty?

15 MR. JACKSON: Yes.

16 CHAIRPERSON JORDAN: Okay.

17 MR. JACKSON: However, they're
18 demolishing the building. They're eliminating
19 the practical difficulty.

20 CHAIRPERSON JORDAN: Yes.

21 MR. JACKSON: They're left with a
22 lot that's really standard, therefore, they

1 don't meet the standard for granted relief.

2 CHAIRPERSON JORDAN: Is that the
3 way we evaluate these things?

4 MR. JACKSON: We're based on
5 whether they establish a practical difficulty
6 and that's the standard that should be used.

7 CHAIRPERSON JORDAN: I'm trying to
8 understand. Yes. So, the building is the
9 practical difficulty.

10 MR. JACKSON: Yes.

11 CHAIRPERSON JORDAN: But because
12 they're going to remediate the building in
13 such a way to eliminate the practical
14 difficulty, then they don't have a practical
15 difficulty?

16 MR. JACKSON: If they eliminate
17 the building that creates the practical
18 difficulty, there is no practical difficulty
19 on the property. They're free to develop it
20 anyway form they say.

21 CHAIRPERSON JORDAN: So, they
22 would meet the test in the condition of the

1 building as it is prior to them doing
2 anything? They would meet the test based upon
3 the condition of the building as we sit here
4 today?

5 MR. JACKSON: As the building
6 exists there today if they wanted to renovate
7 the building and use it for a two-unit
8 building, then they would meet the test and
9 would not have to go for zoning.

10 CHAIRPERSON JORDAN: That's not
11 what I asked.

12 ZC CHAIR HOOD: Let me ask. Is it
13 two units?. They would meet it if they had
14 two units? Okay. That was before.

15 CHAIRPERSON JORDAN: Understanding
16 it has two units but if the two units have --
17 if it cannot be done because of the financial
18 aspect of doing the building as two units,
19 you're disagreeing. You're saying it can be
20 done for two units and not have a financial
21 impact?

22 MR. JACKSON: I'm saying it's on

1 the Applicant's approval that it cannot be --

2 CHAIRPERSON JORDAN: No, I'm
3 asking the Office of Planning's evaluation and
4 analysis. Has the Office of Planning done an
5 analysis that this property can be done as a
6 two-unit building or less to fit within the
7 regulation --

8 MR. JACKSON: We have not done
9 anything on a financial analysis, no. We have
10 asked the Applicant to do a more detailed
11 financial analysis.

12 CHAIRPERSON JORDAN: So, you've
13 looked at the Applicant's financial details?

14 MR. JACKSON: Right.

15 CHAIRPERSON JORDAN: And what
16 problem do you have with that? Are you saying
17 it's incorrect or correct?

18 MR. JACKSON: One of the things we
19 had asked them do was -- it seemed as if there
20 was kind of an apples and oranges scenario.
21 If it's more than three units, it's new
22 construction. If it's two units or one unit

1 it's renovating the old construction. It
2 seems like it would make more sense at least
3 from the perspective of a building that's
4 substandard, that you do all your estimates
5 based on new construction.

6 If you were to build a new one-
7 unit building, two-unit building, three or
8 seven what would the cost be? That would be
9 a more effective comparison for the use
10 they're proposing which is rental.

11 CHAIRPERSON JORDAN: You're saying
12 the financials are not consistent as to what
13 it's going to be?

14 MR. JACKSON: Right. Well, based
15 on the Applicant's submittal, it's clear this
16 building is unsuitable for residential
17 construction because of the unknowns. They
18 aren't even touching it yet because they know
19 they're going to turn it down. If the whole
20 plan is to tear the building down, okay, then
21 all the scenarios should be based on tearing
22 the building down. That's number one.

1 Number two, all these scenarios
2 are based on renting the property. However,
3 there are other options for the use of the
4 property which the Applicant has not pursued
5 in the residential district.

6 CHAIRPERSON JORDAN: Such as?

7 MR. JACKSON: Construction for
8 sale. Now, the only reason I bring that up
9 was the Board has had cases come before it
10 where an applicant has come forward saying
11 that they wanted to renovate the property for
12 apartments. And in return saying, well, we
13 couldn't make it work that way. We're going
14 to do sale. I think the basis of the
15 regulation is that you have a range of uses
16 that are allowed under certain zone districts.
17 In that range of uses, you have options of how
18 you can see it. The applicant would prefer to
19 make rental properties obviously. However,
20 for the Board's evaluation, they should have
21 examined every option available under the
22 regulations before they say they don't have --

1 they can't do it. And at this point, based on
2 previous experience with these renovation
3 projects, I would say this is not a renovation
4 project. Well, on the basis of the zoning
5 regulations, this is a conversion because
6 they're converting some sort of residents.
7 Okay. So, granted that and granted they're
8 providing additional parking. However, in the
9 scheme of things, we should look at the
10 property as a whole and what the zoning
11 regulations will allow as a whole and ask
12 whether the Applicant has looked at every
13 option under the allowable regulations to
14 achieve their end.

15 At this point, I don't think
16 they've done that. So, to our minds, the
17 analysis is based on whether there's an
18 exceptional or extraordinary practical
19 situation on this property without the
20 building being there, that's not been
21 established.

22 CHAIRPERSON JORDAN: I understand.

1 MR. JACKSON: Okay.

2 CHAIRPERSON JORDAN: That was
3 helpful.

4 We need to be sure to come back
5 when we get our rebuttal point because we
6 really need to know about the other possible
7 uses within the zoning regulation and why they
8 won't work. Okay.

9 Anybody else any questions of --
10 and I appreciate the response and thank you.

11 Any other questions for Office of
12 --

13 ZC CHAIR HOOD: I have a question
14 but I think I'm going to wait. I want to hear
15 some more from the Applicant. I'm sure
16 they're going to have some rebuttal. So, I
17 may want to go back to the Office of Planning
18 once I hear some more, if that's okay.

19 CHAIRPERSON JORDAN: Okay. Is
20 there any questions of the Office of Planning?

21 Ms. Moldenhauer, any questions of
22 the Office of Planning?

1 MS. MOLDENHAUER: Yes, I have a
2 few.

3 Mr. Jackson, one of the things you
4 pointed out on page two of your submission is
5 that the KIPP DC Academy is on the square and
6 I just want to point out. It actually takes
7 up over half of the entire square that the
8 property is located, is that correct?

9 MR. JACKSON: I can't say that for
10 sure.

11 MS. MOLDENHAUER: What would your
12 estimate be?

13 MR. JACKSON: I wouldn't want to
14 estimate how much of the square is actually
15 occupied by that school.

16 MS. MOLDENHAUER: Well, this is
17 the parking lot for the school and then this
18 is the entire section here.

19 MR. JACKSON: Yes.

20 MS. MOLDENHAUER: So, I won't
21 testify. To me it was roughly about half of
22 the square. Do you consider that in regards

1 to the fact that the square already by nature
2 of this large school and all the Dundee Fields
3 to the south is already considered to be a low
4 density area? In other words, the number of
5 residential units that can be developed on
6 this square and did you consider that into
7 your analysis?

8 MR. JACKSON: No, that wasn't
9 pertinent.

10 CHAIRPERSON JORDAN: I'm sorry,
11 say that last part again.

12 MS. MOLDENHAUER: I asked Mr.
13 Jackson if he considered the fact in my
14 calculations over 50 percent of the square is
15 taken up by the school and the parking lot.
16 And also there's a large field to the south of
17 the property, if he considered the fact that
18 the square is by nature a low density square,
19 if he considered that as part of his analysis?

20 MR. JACKSON: And my response was
21 that wasn't pertinent to my analysis.

22 CHAIRPERSON JORDAN: Okay. Thank

1 you.

2 MS. MOLDENHAUER: And this is just
3 an elevation that was part of our exhibit
4 which is going to be the new building. This
5 is the proposed new building in the center.
6 This is a six-unit apartment building. Did
7 you confirm. I didn't see any part of your
8 package that the property to the right of it
9 is a six-unit apartment building?

10 MR. JACKSON: I was aware there's
11 an apartment building along that frontage,
12 yes.

13 MS. MOLDENHAUER: Okay. And are
14 you aware that the proposed project is
15 conforming as to height and as to rear yard
16 and as to parking?

17 MR. JACKSON: Based on the
18 additional information that you kindly
19 provided with your submission, I'm aware that
20 it meets the height requirement. And that
21 you're providing two parking spaces on site.

22 MS. MOLDENHAUER: And so we've

1 discussed the fact that in your report you
2 indicate that a two and three unit analysis-
3 financial analysis we provided was based on
4 rehabbing the structure, but based on what you
5 said, you confirm or you agree that rehabbing
6 this structure is not an option for any buyer
7 of the property that wants to use it for
8 residential purpose.

9 MR. JACKSON: No, we're not --
10 we're not making that claim, but we're
11 accepting the Applicant's supposition that
12 seemed to indicate based on the report that
13 whatever scenario they would follow would
14 require demolition of the building. There
15 wouldn't be any action taken that would
16 involve renovation of the building.

17 CHAIRPERSON JORDAN: Mr. Jackson,
18 did you go out to the property?

19 MR. JACKSON: Yes.

20 CHAIRPERSON JORDAN: Okay.

21 MR. JACKSON: Now, I visited -- I
22 looked at the front and the back. I did not

1 contact the Applicant by going inside.

2 CHAIRPERSON JORDAN: Okay.

3 MR. JACKSON: Just external.

4 MS. MOLDENHAUER: I don't need the
5 lights off anymore.

6 CHAIRPERSON JORDAN: You're
7 finished with the --

8 MS. MOLDENHAUER: For now, yes,
9 unless the architect needs to provide a
10 response.

11 And then my last question was, Mr.
12 Jackson, you made a comment that any applicant
13 has to consider both rental and condos
14 whenever presenting a case for a variance. Do
15 you think that that creates a really
16 challenging policy issue where potentially
17 Office of Planning or maybe even this Board
18 would get into a situation where they'd end up
19 having to recommend or push an applicant to go
20 towards condo sales versus rental because a
21 condo sale may potentially -- I'm not saying
22 it is here, may be more profitable than a

1 rental and isn't that a negative policy to try
2 to push an applicant to consider other aspects
3 when an applicant's business is to provide
4 rentals and it's to provide a necessity for
5 the city that is needed?

6 MR. JACKSON: Our approach is a
7 little bit different. And I think it all goes
8 to again establishing practical difficulty
9 under a certain set of circumstances. Now the
10 existing property has issues related to it.
11 The Applicant is deciding what to do.
12 Assumingly, when they acquired the property
13 they had in mind certain activities they
14 wanted to conduct on the site. And at that
15 point made a determination that the property
16 would be either suitable or not suitable and
17 made a purchase accordingly. But when they
18 buy the property they have be -- it has to be
19 zoned in such a matter that they can proceed
20 with the proposal. Now, if it turns out they
21 cannot proceed with that proposal, then it
22 makes sense to either sell the property or

1 apply for relief to pursue some course of
2 action.

3 That course of action is based on
4 a range of options that are available in the
5 zoning regulations. And the property -- the
6 Board should have an opportunity to evaluate
7 their submission or their request based on
8 their analysis of the entire range of what the
9 options that are available and the zoning
10 regulations before they seek relief.

11 Now, if it turns out that the most
12 suitable -- one of the most suitable options
13 that is allowable is somewhat different than
14 what they want to pursue that's another
15 decision point. Do they want to change their
16 original objective and do something different
17 or sell the property. Again, our course is
18 all taking into account after the decision is
19 made on the property. But I would say for the
20 Board's sake, people in the Office of Planning
21 they should do the due-diligence to look at
22 all the possible options for the property and

1 in this case and in previous cases that have
2 come before the Board the applicants had dealt
3 with renovation of properties for sale,
4 renovation of properties for rental,
5 renovation of properties to create condos.
6 And although those may or may not be viable
7 options for the this property, I think the
8 Board deserve to have -- for the applicant to
9 been diligent enough to eliminate all of those
10 options before they ask for the relief.

11 MS. MOLDENHAUER: Well, maybe then
12 let me jump in maybe just some supplemental
13 statements that they actually have two and
14 three unit new construction options financial
15 provider so we'll give these to Mr. Moy to
16 pass out to everybody and you can pull it up
17 on the large screen as well. I think this
18 might be easier to see.

19 CHAIRPERSON JORDAN: I see in what
20 Mr. Jackson is saying if I'm understanding
21 correctly which made some sense to me is that
22 we have what you have submitted. It's on, I

1 guess I'm too far away. I didn't want to go
2 that close to the microphone. That the --
3 what are the viable uses are there allowed
4 within the zoning regulations that can happen
5 with this property -- that potentially could
6 happen with this property and why it cannot be
7 so, is that what you're saying?

8 MR. JACKSON: Yes.

9 MS. MOLDENHAUER: And we can
10 address that. Okay.

11 So, I'm going to turn -- everyone
12 has a copy. It's also on the board as well,
13 that's easier for people to look at. And I'll
14 allow Mr. Ryan to walk through. This is
15 actually doing two units and three units of
16 all new construction based on the question
17 from OP, not doing a comparison for what we
18 have but rather showing new construction on
19 both a two unit and a three unit project.

20 CHAIRPERSON JORDAN: Okay.

21 MR. SAMUEL: So, as you can see
22 from the returns, they are similar to doing

1 fewer units and the other scenario which is
2 it's economically not feasible for me to
3 pursue that path.

4 We also did look at doing a
5 single-family house and selling that property.
6 Do you have those? And Eric will give you
7 copies of those.

8 The highest sale prices in the
9 neighborhood were two for 749, one for 759.9.

10 CHAIRPERSON JORDAN: If we can,
11 this you actually passed out first. This is
12 rental or is this for sale?

13 MS. MOLDENHAUER: That's rental.

14 CHAIRPERSON JORDAN: Okay.

15 MS. MOLDENHAUER: But you can use
16 the total project cost now at 822,946. That
17 fifth line down. We're showing it on the
18 board right here.

19 CHAIRPERSON JORDAN: Okay.

20 MS. MOLDENHAUER: And then you can
21 use that now as a potential comparison to for
22 sale.

1 CHAIRPERSON JORDAN: And find out
2 what the sale price would be for that type --
3 what's the size of those units?

4 MR. SAMUEL: They would be
5 approximately above ground it's going to be
6 about 2,100 square feet, right?

7 CHAIRPERSON JORDAN: 2,100 square
8 feet.

9 MR. SAMUEL: And it would be two
10 units. It would be sold actually as a two
11 unit for sale.

12 CHAIRPERSON JORDAN: Right.

13 ZC CHAIR HOOD: Do we have a four
14 unit analysis?

15 MS. MOLDENHAUER: The four unit
16 analysis was in the original --

17 ZC CHAIR HOOD: In the original --

18 MS. MOLDENHAUER: Yes. It was in
19 the original. We did a -- sorry, we did a
20 three and a five and the architect can talk
21 about stacking so we did not do a four. We
22 did a three and a five and it was still -- the

1 five unit was a .13 percent return.

2 CHAIRPERSON JORDAN: As a single
3 family house you can sell it for how much?

4 MR. SAMUEL: I think, I mean, the
5 absolutely comp here is 970,000 because that's
6 on Fifth Street and this is on New Jersey
7 Avenue which is a much busier street. I think
8 it's less desirable than this Fifth Street
9 property. So, I think I'd be looking at
10 somewhere around \$760,000.

11 MS. MOLDENHAUER: I think you're
12 looking at a range here. And, obviously, if
13 you look at the New Jersey properties there's
14 actually one, two, three, four New Jersey
15 properties.

16 CHAIRPERSON JORDAN: You know what
17 I would really like to see and I don't think
18 we really can do it like this. My thought is
19 that I would like to have the document in such
20 a way that we can look across it and
21 understand that what you're saying, followed
22 up by what we really could get in sales for

1 that to offset what the Office of Planning is
2 saying and the other possible uses.

3 I know we have evaluated and taken
4 a look at those financials that you submitted
5 based upon the scenario of the rentals across
6 the board. And I guess those units -- were
7 all those units at three kind of written 22
8 square feet? In the financial scenario that
9 you submitted, what was the size on the first
10 two? They are 2,100 units in those two units.
11 They are 2,100 correct?

12 MR. SAMUEL: The total square feet
13 of the property?

14 CHAIRPERSON JORDAN: If you did
15 two units.

16 MR. SAMUEL: If we just do two
17 units with new construction we would do not
18 cellar. So, it would still be about 2,100
19 square feet, correct.

20 CHAIRPERSON JORDAN: Regardless if
21 it's for sale or for rental, there are two
22 units that are 2,100 square feet, that's what

1 I understand.

2 MR. SAMUEL: That's correct.

3 CHAIRPERSON JORDAN: I think we
4 also-- Mr. Hood, do you want to say something
5 about the unit size?

6 ZC CHAIR HOOD: I'm still trying
7 to figure out how we go. I know how we get
8 there because we're trying to get seven units.
9 But I can't get to the relief of going from
10 900 -- going from 900 square feet which is the
11 regulations down to what is it 300 or so --

12 MS. MOLDENHAUER: No, 568.

13 ZC CHAIR HOOD: 568?

14 MS. MOLDENHAUER: Yes.

15 ZC CHAIR HOOD: Okay.

16 MS. MOLDENHAUER: There's a recent
17 case where the Board was evaluating this and
18 I know obviously the Zoning Commission members
19 disagree on times, but that Robert Miller, one
20 of the new Zoning Commissioners was even
21 indicating that this 900 square foot per unit
22 is something that, you know, he felt was

1 unnecessary and there was another case that
2 was approved, you know, based on a conversion
3 at a lower number of square feet and he was
4 indicating that that was something that most
5 likely should be, you know, looked at in the
6 ZRR. And I think that if you're talking about
7 900 or talking about, you know, almost 600 per
8 square foot per unit, it's not -- it's not a
9 question of, you know, overall size. It's a
10 question of, you know, what allows somebody to
11 turn a, you know, old church that is horrible
12 in the neighborhood into a beautiful, you
13 know, rowhouse that complimentary to the
14 neighborhood, that all of the community is
15 behind and is supportive of. You're actually
16 reducing the density for parking or the
17 necessity for parking from a prior five unit
18 credit with no parking to now actually
19 providing two parking spaces where two parking
20 spaces are required. And I think that it's
21 this Board's unique position to be able to
22 balance all of these things and evaluate, you

1 know, whether or not and I think we have shown
2 financially that the seven unit conversion
3 rental scenarios and we can provide it for
4 other scenarios as well, if necessary, but
5 that as I was saying before in the Downtown
6 Cluster case, that case was a case where it
7 was an old Garfinkle's building and they were
8 looking at whether they could do office or if
9 they could do retail. The Board and when the
10 Court of Appeals went back and reviewed it,
11 they did not say oh, well, they should have
12 considered residential or they should have
13 considered maybe office and another type of
14 mixed use. They put that additional burden on
15 the applicant. They evaluated it based on
16 what the applicant was presenting and based on
17 what was a viable alternative.

18 CHAIRPERSON JORDAN: But, you
19 know, they all review those cases based on the
20 way they came.

21 ZC CHAIR HOOD: So, I go back to
22 my original and I appreciate Rob's analysis.

1 That's why there's five of us because we all
2 have different opinions. And I actually
3 differ from Rob. And I know he watches this
4 so he's probably watching now so I said that.
5 And I'll make sure I tell him on Thursday.

6 But I'm still trying to wrap my
7 hands around going from 900 square feet you
8 set down. Maybe it's wrong what I'm reading
9 here, 322 it says. Says 500 and --

10 MS. MOLDENHAUER: It goes down to
11 578. 578. Now, I believe that's part of our
12 initial self-certified application.

13 ZC CHAIR HOOD: Okay.

14 MS. MOLDENHAUER: Yes, it's 578
15 per unit is on our self-certified application
16 form.

17 ZC CHAIR HOOD: Well, Mr. Jackson,
18 where do we get -- maybe I'm confused. Where
19 do we get 322 from?

20 CHAIRPERSON JORDAN: The size of
21 the units. You have in your report somewhere
22 and maybe that the units were 322 square feet.

1 Is that --

2 MR. JACKSON: Well, the 900 square
3 feet and the -- well, I'll just do the math.

4 CHAIRPERSON JORDAN: I got you.
5 You're absolutely right. That's true.

6 MR. JACKSON: That's true.

7 CHAIRPERSON JORDAN: Okay.

8 MR. JACKSON: Well, it's if you
9 put 900 to 2,200 square feet.

10 CHAIRPERSON JORDAN: You're
11 absolutely right .

12 MR. JACKSON: It's 300. 322.

13 ZC CHAIR HOOD: You have the same
14 number now, Ms. Moldenhauer?

15 MS. MOLDENHAUER: I'm not
16 following. You're saying that -- what's the
17 number?

18 MR. JACKSON: Okay. It's -- all
19 right. 900 into 2,250 is 218.

20 MS. MOLDENHAUER: Are you talking
21 about the deviation of the actual lot size per
22 units that we're requesting? Maybe that's

1 where we're -- I think that may be where we're
2 differing. I'm saying that what we're
3 proposing is instead of 900 is 568. Maybe
4 what you're doing is the deviation from that?
5 That's maybe where I'm kind of confused here.

6 MR. JACKSON: I'm dividing --
7 okay. Okay. If we divide 300 -- 7 into
8 2,255. 2,255 you get 322.

9 MS. MOLDENHAUER: Right. Maybe I
10 was doing the --

11 MR. JACKSON: For five units --
12 you put seven units on a lot that's 2,255
13 square feet, it's 300 square feet per unit.

14 MS. MOLDENHAUER: I was doing the
15 deviation. I knew there was some mix up here.

16 MR. JACKSON: So, you're actually
17 reducing the amount of lot area requirement by
18 600 square feet. So, it is 322.

19 ZC CHAIR HOOD: Which would take
20 us to the 322?

21 MR. JACKSON: Right.

22 CHAIRPERSON JORDAN: Let me ask

1 you. What is the CFO on this? Is it a
2 church?

3 MS. MOLDENHAUER: Yes.

4 CHAIRPERSON JORDAN: Is that a
5 change of use?

6 MS. MOLDENHAUER: Is it a change
7 of use? Church is permitted in R-4.

8 CHAIRPERSON JORDAN: So, it's a
9 permitted use in R-4. Okay. And it's the R-
10 4--

11 MR. SAMUEL: But the neighbors are
12 very excited for it to go back to residential.

13 CHAIRPERSON JORDAN: Okay.
14 Because it was a use variance, this is an area
15 variance. Okay.

16 MS. MOLDENHAUER: It's only a
17 church for the first floor and obviously we
18 can do the math but --

19 CHAIRPERSON JORDAN: I got you. I
20 think -- okay.

21 Did I break your train of thought,
22 I'm sorry, because I'm just --

1 ZC CHAIR HOOD: I've got it, what
2 I was asking for of Mr. Jackson and there may
3 be a difference of what we were looking at but
4 what I got is exactly what Mr. Jackson has in
5 his report.

6 CHAIRPERSON JORDAN: All right.
7 Any other questions of the Office of Planning?
8 Do you have more questions?

9 MS. MOLDENHAUER: No other
10 questions for the Office of Planning.

11 CHAIRPERSON JORDAN: Department of
12 Transportation?

13 We have a report from the
14 Department of Transportation that no objection
15 and there is someone here, I believe, from
16 ANC-6E. ANC-6E, anybody? No? I guess not.
17 ANC-6E.

18 We do have a letter in support
19 from ANC-6E in support of this application.

20 Is there anyone here wishing to
21 speak in support of this application?

22 Anyone in support?

1 Anyone wishing to speak in
2 opposition?

3 Yes? Come forward please and take
4 a microphone and introduce yourself and prior
5 to that did you -- come forward please.

6 Now, let me ask you. You were
7 here this morning and took an oath. I
8 remember seeing you but did you get the
9 witness cards? We need you to give witness
10 cards to -- you can do it after you -- oh, we
11 welcome it.

12 Make sure your microphone -- is
13 your microphone on, Ms. Moldenhauer? Yes.

14 Now, please state your name for
15 the record.

16 MS. CARTER: Okay. Rosa Carter.

17 CHAIRPERSON JORDAN: And you
18 reside?

19 MS. CARTER: AT 430 Q Street,
20 Northwest, which is around the corner from the
21 property that's being heard here today.

22 CHAIRPERSON JORDAN: Okay. All

1 right. Please proceed. You have three
2 minutes.

3 MS. CARTER: Okay. Thank you.

4 The use of the property, I don't
5 see how they can get seven units out of it
6 because it's too small. The alley which is
7 used, they come in off of New Jersey Avenue
8 for the trash pick up. They're saying that
9 they will have two parking spaces. That area
10 is too small for two parking spaces. I know
11 they would have to go up high to get the seven
12 units. And from what my visualization, they
13 would also have to extend the property out to
14 the alleyway which would not allow for the two
15 parking spaces that they're saying that they
16 would have.

17 This is going to create additional
18 parking problems in the area. The congestion
19 that we have as she said because my property
20 face the back of the school which is now they
21 turned into a Charter School which is KIPP.
22 And it's just going to be more congestion.

1 There's nothing else there in the area and I
2 just can't see how they can get seven units
3 out of that little small property.

4 And the size -- everybody in the
5 neighborhood did not receive a notice about
6 this hearing. I'm just one of the lucky ones
7 that did receive it and I did make copies and
8 try to give some of the other neighbors in the
9 neighborhood a copy but no one showed up but
10 me.

11 CHAIRPERSON JORDAN: All right.
12 Well, thank you for coming down.

13 Those people who live in a 200
14 foot radius of the property receive notice.
15 So, maybe some of the people you're talking
16 about were outside of that radius. I don't
17 know.

18 Now, your property in relation to
19 this building is where?

20 MS. CARTER: Okay. The corner --
21 okay. I'm around the corner. At the corner
22 there's New Jersey and Q. And I'm about four

1 houses down on Q from New Jersey.

2 CHAIRPERSON JORDAN: So, you're
3 about four houses down on --

4 MS. CARTER: On Q.

5 CHAIRPERSON JORDAN: Let me
6 finish. Four houses down on New Jersey. They
7 you turn the corner, you're four houses down
8 on Q? Would that be right?

9 MS. CARTER: One, two, three -- I
10 would say three houses.

11 CHAIRPERSON JORDAN: Three houses
12 but I'm saying --

13 MS. CARTER: New Jersey.

14 CHAIRPERSON JORDAN: So, if you
15 came out the rear of this building and kind of
16 went on an angle catty corner but all the way
17 over to Q Street, that's where your property
18 is?

19 MS. CARTER: Yes.

20 CHAIRPERSON JORDAN: Got you.
21 Okay.

22 Does any Board Member have any

1 questions? Actually, you were testifying in
2 opposition, bottom line, because you weren't
3 here necessarily in support from what you're
4 saying. You have problems with what's going
5 on?

6 MS. CARTER: Yes. But I'm not in
7 support or opposition. I just wanted to get
8 an understanding.

9 CHAIRPERSON JORDAN: Okay.

10 Anyone from the Board have any
11 questions?

12 Does the Applicant have questions?

13 MS. MOLDENHAUER: No, but maybe we
14 could just explain the project to her a little
15 bit better if that's -- just a quick second?

16 CHAIRPERSON JORDAN: A quick
17 second.

18 MS. MOLDENHAUER: Just to explain
19 that this would actually be the new project
20 the way it would look. It would not actually
21 go all the way to the rear. We're actually
22 not building anywhere beyond the current

1 dimensions of the existing building. They're
2 just smaller units, for seven units. And then
3 parking would be legally provided in the rear
4 of the property.

5 MS. CARTER: Okay.

6 CHAIRPERSON JORDAN: Okay.

7 MS. CARTER: But still my problem,
8 I don't see how you're going to be able to get
9 seven units in that little small space.

10 MR. SAMUEL: I'm happy to -- I'm
11 sorry. I've been walking around the
12 neighborhood. I walked around the
13 neighborhood maybe half a dozen times. I'm so
14 sorry that I didn't come across you and we
15 didn't have a chance to speak and that I
16 missed you at the ANC meeting. Because I have
17 spoken to a good number of neighbors and we
18 had a great meeting at the ANC.

19 I don't know if you know Tony who
20 lives next door there for, you know, because
21 he kind of helped introduce me around the
22 neighborhood. But, you know, I'm happy to

1 take you through the plans right after this
2 meeting and show you, you know, how the units
3 are configured. I think the people have done
4 a great job and we are very excited to be a
5 part of the community, you know. I'd love for
6 you to speak with other people in other
7 communities where we've done projects. I
8 think they'll have nothing but great things to
9 say about the level of respect and involvement
10 with the community. We're not like another
11 developer that come in, redevelops them and
12 sells condos and leaves.

13 I'm born and raised in D.C. I
14 live in D.C. and I'm raising my kids in D.C.
15 And, you know, I'll give you my cell phone
16 number. If you have any questions, any
17 concerns ever, you can always call me directly
18 and, you know, I'll be there every time. We
19 plan to be a part of your community.

20 CHAIRPERSON JORDAN: Okay. I
21 appreciate that and we appreciate you, Ms.
22 Carter, coming forward.

1 Are you in that red brick house
2 kind of red house over on Q Street, kind of
3 mid-block? Is that where your house is?

4 MS. CARTER: Mid-block, it extends
5 out.

6 CHAIRPERSON JORDAN: Right. Okay.

7 MS. CARTER: Yes.

8 CHAIRPERSON JORDAN: Well, we
9 appreciate you giving comment and coming down.
10 We do appreciate that.

11 Is there anyone else here wishing
12 to testify in support and/or opposition?

13 Then we'll return back to the
14 Applicant for rebuttal and closing, please.

15 MS. MOLDENHAUER: I guess I'll ask
16 the Board a question. Would you like me to
17 provide closing and rebuttal at this point or
18 are you going to actually ask us for some
19 additional submissions?

20 CHAIRPERSON JORDAN: I think we
21 may need to ask for some additional
22 submissions because I think there are some

1 people on the Board that are still concerned
2 about some things. And right now I don't know
3 if we have unanimous support or unanimous
4 opposition.

5 MS. MOLDENHAUER: So, then instead
6 of taking up the Board's time, why don't I
7 simply just provide a written supplemental
8 with whatever documentation you'd like along
9 with some closing remarks in that as well?

10 CHAIRPERSON JORDAN: Certainly.

11 Why don't we do that.

12 Particularly, although this is not a use
13 variance and this is an area variance, if you
14 can kind of address some of the concerns of
15 the Office of Planning, particularly, how you
16 can deal with doing away with any other use
17 that the Office of Planning has mentioned here
18 that they thought might be reasonable. If you
19 can give a spread on the sale versus the
20 rental units that would be a good supplement.

21 MS. MOLDENHAUER: I will provide
22 it. But just for the record, I do have to

1 state that this is not a use variance. It's
2 an area variance.

3 CHAIRPERSON JORDAN: That's right.
4 That's what I said. I know it's an area
5 variance, but if you want me to go to vote we
6 can do that.

7 MS. MOLDENHAUER: I do not want
8 that. I have already indicated that I will
9 ask what is provided for the record.

10 CHAIRPERSON JORDAN: And I think
11 if you can show a scenario -- well, we already
12 know that your argument is that the financial
13 aspect of this requires seven units. However,
14 I think some on this Board have a concern
15 about the size of the units. Okay. I don't
16 know how it can be addressed but --

17 MS. MOLDENHAUER: Can -- I just
18 have one statement from the Applicant, in
19 other words, we have had discussions with --

20 CHAIRPERSON JORDAN: Go ahead and
21 write it down and submit it and do your
22 supplement.

1 MS. MOLDENHAUER: Okay. I wasn't
2 sure if you actually wanted to hear testimony.
3 I can't testify --

4 ZC CHAIR HOOD: Mr. Chairman, I
5 want them to help me get there better. I'm
6 not at 322. I wasn't even at 576. I them to
7 help me better to reduce the units -- the size
8 of the units. And I understand the analysis,
9 but our regulations says 900 square feet. How
10 do we go from 900 square feet to 322 square
11 feet. And I don't just need a blanket answer.
12 I understand how we get there. I understand.
13 I just can't -- right now I'm at the proving
14 stage.

15 MS. MOLDENHAUER: We'll supplement
16 that in the submission.

17 ZC CHAIR HOOD: Understand, right
18 now where are I'm not at the approval stage.

19 MR. JACKSON: Mr. Chairman?

20 CHAIRPERSON JORDAN: Yes.

21 MR. JACKSON: Just a point of
22 clarification. I just want to make sure you

1 understand. The Office of Planning's analysis
2 was the 900 square foot of land area for each
3 unit. It's not exactly the size of the units.
4 The size of the units is somewhat different.
5 The interior dimensions of the unit is I think
6 what Ms. Moldenhauer was talking about whereas
7 I was talking about the size, the land area of
8 lot. The lot area per unit. The lot area per
9 unit is 900 square feet. This proposal would
10 reduce the lot area per unit to around 300
11 square feet but the size of the individual
12 units inside the building is a separate issue.
13 So, I think you can derive that from the plans
14 that were submitted. So, maybe some
15 clarification of that in the report would also
16 be helpful.

17 CHAIRPERSON JORDAN: Well, we
18 could go to a vote and then have to come back
19 and do it again.

20 MS. MOLDENHAUER: We're going to
21 supplement the record with the request of any
22 of the Board Members of any other information

1 that is necessary. What will be the time
2 frame then for filing?

3 CHAIRPERSON JORDAN: When could
4 this be put this on for a decision and make
5 sure that, you know, we got a full Board?

6 MR. MOY: Mr. Chairman, we have as
7 early as June the 25th for a decision-making.

8 CHAIRPERSON JORDAN: Is that a
9 date we have our full Board?

10 MR. MOY: Oh, I see what you mean.
11 Well, we -- if the Chairman is expecting one
12 of the Board Members to read the record, then
13 she can be present for a decision being on
14 July the 9th.

15 CHAIRPERSON JORDAN: Okay. Let's
16 shoot for that. And so then the documents to
17 be in by the 2nd. Provided that the Chairman
18 doesn't remove this case from us then let's
19 have the documents July 2nd. And here to make
20 a decision on July 9th. Okay?

21 MR. MOY: Thank you very much.

22 CHAIRPERSON JORDAN: We really

1 appreciate it and thank you both for a great
2 presentation. You brought me around to
3 understand where you're going and I understand
4 where you are. And as I said, I was just kind
5 of in a rocking chair here. But I still think
6 we need this information before we go forward.
7 Thanks a lot.

8 MR. MOY: The next application
9 before the Board is Application Number 18550.
10 This is an application of Valor 1350 Maryland,
11 LLC. This is an application that was
12 postponed from May the 7th, 2013. And this
13 application is in for requested relief for a
14 variance from parking setback requirements as
15 well as special exception relief.

16 CHAIRPERSON JORDAN: Could you
17 please introduce yourself?

18 MS. PRINCE: Allison Prince with
19 Goulston & Storrs.

20 Would you like to hear from the
21 whole panel or --

22 CHAIRPERSON JORDAN: Yes, we need

1 to know who is sitting here at the desk,
2 please. Thank you. At the table?

3 MR. LANSING: Will Lansing, the
4 Applicant.

5 MR. PICHON: Sean Pichon, PGN
6 Architects.

7 MR. GOODE: Jack Goode. A. Morton
8 Thomas & Associates.

9 CHAIRPERSON JORDAN: Okay. Yes?

10 MEMBER HINKLE: Yes, thank you,
11 Chair. I just need to note that I was not
12 here at the previous hearing for this case,
13 but I have read the record and will be
14 participating.

15 CHAIRPERSON JORDAN: Okay. You
16 were here. You were here. You weren't? I
17 don't know. Let me ask Mr. Moy. Okay.

18 We didn't ever get to testimony
19 because this is the one where we kind of mid-
20 stride the other relief for relief kind of
21 came forward and we thought that there should
22 be some notices and some other things

1 regarding the roof, if I remember correctly
2 which is sometimes a difficult thing.

3 MS. PRINCE: Exactly.

4 ZC CHAIR HOOD: And, Mr. Chairman,
5 since you have not gone to the merits, I have
6 reviewed the file.

7 CHAIRPERSON JORDAN: Yes, then
8 you're on board.

9 And we had a party in opposition.
10 Are they here or are they gone?

11 MS. PRINCE: We no longer have a
12 party in opposition.

13 CHAIRPERSON JORDAN: Well, we have
14 nothing to indicate that, do we, Mr. Moy?

15 MR. MOY: Not to my knowledge.

16 CHAIRPERSON JORDAN: But based
17 upon your representation and subsequently we
18 need to get a document from that person. But
19 based upon your representation, let's proceed
20 that we don't have a party. You've worked
21 with them and they are out of this thing?

22 MS. PRINCE: Correct.

1 CHAIRPERSON JORDAN: You made an
2 offer they couldn't refuse. No. Anyway.

3 MS. PRINCE: This is one of those
4 instances where a delay has made all the
5 difference.

6 CHAIRPERSON JORDAN: And that's
7 important. That's very important and a lot of
8 times we see that. Kind of considering that
9 it should be a requirement at some point that
10 when there's a party of opposition there
11 should be some attempts to resolve. Just find
12 that people have not had any conversation
13 whatsoever with people in opposition. And
14 once they have conversation -- I think we had
15 a case here about what a month ago. We had
16 almost the whole neighborhood. And no one
17 ever had a conversation with each other and
18 then once they got here, two words were said.
19 They said, oh, I didn't know that. I didn't
20 know that and they would let them meet and
21 they came back and all of it was gone. So,
22 we're really looking at possibly requiring

1 some type of attempt to resolve notification.
2 Come to the Board, you know, that people at
3 least had a conversation or at last tried to.
4 You may not. But we're glad to hear that.

5 So, tell me. We've gone through -
6 - let me find out what the Board needs to
7 hear. One, I saw nothing in your submission
8 that dealt with the basis of why you should be
9 granted relief from -- get a special exception
10 for 411-11. I saw the subsequent filing but
11 I didn't see the requirements of the statute
12 being addressed for that aspect of special
13 exception.

14 I think I understand your argument
15 about the uniqueness of the -- I mean, I
16 really understand the uniqueness of the
17 property.

18 Did ANC-6A meet on this?

19 MS. PRINCE: David Holmes is here
20 today.

21 CHAIRPERSON JORDAN: Okay. So, do
22 we have a letter from the ANC because I didn't

1 -- Mr. Moy, do we have a letter from --

2 MR. MOY: They have not --

3 CHAIRPERSON JORDAN: Haven't
4 submitted one. Okay.

5 MS. PRINCE: The ANC has not had
6 an official meeting since our last hearing.
7 However, we've been in a lot of conversation
8 with the ANC as well as the affected neighbors
9 which resulted in the agreement on the
10 conditions that I submitted into the record to
11 Mr. Moy just a minute ago.

12 CHAIRPERSON JORDAN: Oh, where is
13 that?

14 MS. PRINCE: The conditions
15 represent a blend of DDOT's requested
16 conditions and the conditions that were agreed
17 upon with the neighbors who were concerned.

18 CHAIRPERSON JORDAN: What
19 neighbors are we talking about? Do we have
20 letters from the neighbors?

21 MS. PRINCE: No, we have a signed
22 agreement with --

1 CHAIRPERSON JORDAN: Signed.

2 MS. PRINCE: The conditions aren't
3 signed. If you would like the agreement I can
4 give you the signed agreement for the record.
5 You don't have to take my word for it. Mr.
6 Holmes is here. I believe that the former
7 party in opposition thought there was no need
8 to attend today's hearing because we did, in
9 fact, have a signed agreement as of last
10 night. It was worked out over the weekend.

11 The delay, as I said, turned out
12 to be extremely beneficial. There had been
13 conversation with the neighbors before, but
14 there was a breakthrough. And we have to
15 really --

16 CHAIRPERSON JORDAN: You guys
17 didn't want that --

18 MS. PRINCE: We got a
19 breakthrough.

20 CHAIRPERSON JORDAN: You guys
21 didn't want to take -- you wanted to go full
22 steam ahead. See? See?

1 MS. PRINCE: We thought there was
2 no hope of a breakthrough and with the help
3 of DDOT and Will Lansing who was down in the
4 trenches meeting with the neighbors, we had a
5 breakthrough kind of then that involved our
6 agreement to resurface a portion of the alley
7 system and some other commitments as well.

8 CHAIRPERSON JORDAN: Okay. So,
9 this part about the alley not being allowed
10 for businesses to use and to get things
11 through the narrow alley has been taken care
12 of?

13 MS. PRINCE: Yes. Yes. We have
14 addressed the community's concerns about the
15 alley by making a meaningful commitment in
16 working with DDOT as well.

17 CHAIRPERSON JORDAN: Okay. Just
18 give me a second.

19 MS. PRINCE: Sure.

20 CHAIRPERSON JORDAN: What are we
21 doing with the residential parking permits?
22 Anything?

1 MS. PRINCE: No.

2 CHAIRPERSON JORDAN: So, you're
3 still going to be eligible for residential
4 parking permits.

5 MS. PRINCE: Residents will still
6 be eligible. That was discussed with the
7 neighbors and ultimately our agreement does
8 not put a restriction on the ability to secure
9 residential parking permits. However, we're
10 adding back four parking spaces through the
11 closure of one of the curb cuts and we have a
12 commitment to work with DDOT to try to get a
13 vehicle-sharing service to take one of those
14 spots. And I think that was regarded as a
15 good compromise.

16 CHAIRPERSON JORDAN: So, your
17 total parking will have -- what's your total
18 parking being provided?

19 MS. PRINCE: Twenty four.

20 CHAIRPERSON JORDAN: Twenty four.
21 Okay. And 43 were required.

22 MS. PRINCE: I'm sorry. I'm

1 sorry. I don't know what I was thinking, 43.

2 CHAIRPERSON JORDAN: You have 43?

3 MS. PRINCE: Yes. We have -- yes,
4 one for every two units.

5 CHAIRPERSON JORDAN: Okay. Okay.

6 Quickly begin to tell me why the
7 special exception for the roof lies?

8 MS. PRINCE: I'll have sean
9 Pichon, the architect address the special
10 exception standard for the roof structure.

11 MR. PICHON: Thank you.

12 The special exception for the roof
13 structure go to the roof plan. Currently, our
14 -- we have rooftop access so the one exception
15 that we're looking for the exception away from
16 the even heights, all the penthouses being of
17 the same height or the one penthouse structure
18 being the same height. That's due to the fact
19 that our elevator overrun has to run an
20 additional up to 18 feet, but the stair towers
21 are not required to go that high from a
22 practical standpoint. We could build it up

1 that high but that would -- that would be
2 against sort of the intent of the zoning
3 regulations because then we would be going --
4 increasing the impact on the neighborhood even
5 further.

6 So, the request is there to limit
7 the stair towers at a lower threshold than
8 what is required of the elevator tower. The
9 elevator tower has to go up that high for the
10 overrun to provide access to the roof.

11 And the setbacks are -- we're
12 meeting all the required setbacks from the
13 edge except for the one at the elevator tower
14 where it goes up higher and we are
15 approximately 15 feet in terms of height and
16 at one portion of where our building jogs
17 back, one portion of the elevator tower is
18 within 12.6 of the rooftop edge. So, we are
19 asking for relief from the requirement of that
20 setback. However, that setback is from the
21 lot line is approximately over 80 feet from
22 the lot line. So, we're well interior -- from

1 the elevator tower to the lot line back here
2 is approximately 80 feet. So, we are well
3 away from any neighboring structure where the
4 impact is to our interior lot and not to any
5 other surrounding neighbors.

6 CHAIRPERSON JORDAN: Does the
7 Board have any other questions?

8 All right. I think we're good.

9 Let me go to the Office of
10 Planning. Planning want to weigh in on
11 anything that I know you were in support of
12 the application prior. Any questions about
13 the roof relief request?

14 MR. JACKSON: Just one
15 clarification.

16 I understand that the reason --
17 would you point to the northern most tower,
18 that the reason that the northern most tower
19 does not require setback relief is because
20 it's open courts as opposed to the building
21 edge.

22 MR. PICHON: The courts, these are

1 not open courts, these are covered courts.
2 So, the building edge is actually out at this
3 distance so we're well beyond. Our tower is
4 eight foot tall.

5 MR. JACKSON: Okay.

6 MR. PICHON: And our setbacks are
7 well over the eight-foot requirement.

8 CHAIRPERSON JORDAN: I understand
9 that you've checked with the Zoning
10 Administrator and they have dealt with this in
11 the past?

12 MR. PICHON: Correct.

13 MR. JACKSON: Okay. All right.
14 That was my only question.

15 So, basically to go through the
16 Office of Planning report, Arthur Jackson
17 he's the Office of Planning. We looked at
18 initially the special exception relief from
19 1320.4 for new development on a lot larger
20 than 6,000 square feet. In our report we go
21 through these standards and conclude the
22 application meets those standards. Then the

1 variance relief from 20 foot setback, reviewed
2 those standards under the 2116.16 and find
3 that this application does have the uniqueness
4 such that it meets the standards for approval
5 there.

6 The Office of Planning agrees the
7 issue about the additional relief that might
8 be necessary from a 411.11 and Applicant has
9 proceeded with that and based on the
10 information provided, we think that they ably
11 meet the standards for approval of that
12 special exception relief.

13 And the Applicant has made changes
14 to the heights of the structure such that what
15 they indicated in terms of not making the
16 stair tower the same height as the elevator
17 tower is practical in this instance, such that
18 this is an instance where buildings of
19 different heights -- I'm sorry, roof structure
20 different height make sense, particularly in
21 regards the original impact on the street
22 level.

1 With that, the Office of Planning
2 supports the relief as requested by the
3 Applicant. But we would note that it may be
4 reasonable to put the details of relief in the
5 order as produced from this case.

6 That concludes the Office of
7 Planning's report.

8 CHAIRPERSON JORDAN: All right.
9 Thank you.

10 Board, any questions of the Office
11 of Planning?

12 The Applicant, any questions for
13 the Office of Planning?

14 MS. PRINCE: No questions.

15 CHAIRPERSON JORDAN: Then the
16 report from the Department of Transportation.

17 MR. BOOKER: Lewis Booker with the
18 Department of Transportation. And we support
19 the conditions that were submitted this
20 morning or this afternoon as part of the
21 application. And we just want to applaud the
22 Applicant and the project team for working

1 with the community and with reaching out with
2 our agency and other agencies to come to reach
3 a consensus on this project.

4 I think all of our concerns have
5 been addressed and conditions. And we will
6 continue to work with the Applicant through
7 the public space permitting process that
8 actually began before the BZA.

9 CHAIRPERSON JORDAN: Does the
10 Board have any questions of the Department of
11 Transportation representative?

12 The Applicant?

13 MS. PRINCE: No questions.

14 CHAIRPERSON JORDAN: Then if we
15 can hear from the ANC. It's ANC-6A, correct?

16 Come forward, please. Thank you.

17 Okay. Speak in support and then -
18 - tell me what happened at the ANC meeting
19 also with the report.

20 MR. HOLMES: My name is David
21 Holmes. I'm Chair of ANC-6A.

22 I've been involved in these

1 negotiations since the very beginning. The
2 ANC hasn't had a chance to act on the final
3 agreement because it happened -- in the last
4 couple days. The Commissioner for this
5 district, Andrew Hysell, and myself are in
6 support of the negotiation reached with the
7 neighbors. This involved community meetings,
8 both small and large. The larger one involved
9 the transportation planner for Ward 6 and the
10 council member's deputy chief of staff as it
11 holds the two commissioners.

12 We have reached agreement. I
13 think it's fair. We hoped maybe to get some
14 more out of the city that is not included in
15 this agreement, but we've done the best I
16 think we can do.

17 CHAIRPERSON JORDAN: Okay. Thank
18 you. You say you met with the
19 community. Give me a range of people who --

20 MR. HOLMES: There were about 70
21 people. We met at the Atlas Theater.

22 CHAIRPERSON JORDAN: Okay. Thank

1 you. All right. Board have
2 any questions? The Applicant, any
3 questions?

4 MS. PRINCE: No questions.

5 CHAIRPERSON JORDAN: Anyone else
6 in the audience wishing to speak in support?

7 Anyone wishing to speak in
8 opposition?

9 Thank you. Then we would move
10 back to the Applicant for a closing.

11 MS. PRINCE: Thank you for your
12 time this afternoon. We believe we've had an
13 excellent outcome here in balancing the
14 interests of the community, the needs of the
15 project.

16 With respect to the roof structure
17 special exception, I think we clearly meet the
18 standard, lack of impact on neighbors and
19 harmony with the neighborhood. Really a huge
20 setback between the roof structure and the
21 closest affected property.

22 The conditions as I mentioned

1 earlier integrate the agreement that we
2 reached with the Atlas District Neighborhood
3 Association which was a very large association
4 that included the party that appeared last
5 time and is not here today.

6 So, those conditions incorporate -
7 - are incorporated in the document that I
8 submitted to the Board and I integrated with
9 that the DDOT conditions so you have a clear
10 workable set of conditions.

11 We also just to be very careful,
12 we submitted a plat and some specs that show
13 the exact alley area that we intend to
14 resurface so there's no confusion over that
15 and to demonstrate to you that we are very
16 sincere in our desire to make that work
17 happen.

18 So, we believe if you believe the
19 record is complete and we'd really appreciate
20 your action on this application as soon as
21 possible.

22 Thank you.

1 CHAIRPERSON JORDAN: Then we will
 2 close the record based upon the evidence
 3 adduced in this case to date. And since we no
 4 longer have any party in opposition, I would
 5 end that we've now had cooperation among the
 6 Applicant and the neighborhood, that I would
 7 move that we grant the request -- the amended
 8 request that would include the previous
 9 relief, the variance and special exception
 10 relief and the new special exception relief
 11 from the roofing. And that we include the
 12 conditions that were presented to the Board
 13 and identified as BZA Case Number 18555,
 14 Proposed Conditions of Approval, that these be
 15 incorporated within the order.

16 That's my motion.

17 MEMBER HINKLE: Second.

18 CHAIRPERSON JORDAN: Motion made
 19 in unison. You can give it to Mr. Hood.

20 ZC CHAIR HOOD: You can give it to
 21 Mr. Hinkle. I withdraw my second and you give
 22 the second. I'll just vote in favor.

1 CHAIRPERSON JORDAN: All those in
2 favor signify by saying aye.

3 (AYES)

4 CHAIRPERSON JORDAN: Those opposed
5 nay,

6 The motion carries.

7 Mr. Moy.

8 MR. MOY: Staff would record the
9 vote as three to zero, this on the motion of
10 Chairman Jordan. Seconded, I believe, on the
11 courtesy of Mr. Hood, Mr. Hinkle. Also in
12 support of the motion Mr. Hood. And we have,
13 of course, a Board Member not present and a
14 seat vacant. And this is approval for the
15 relief that's been cited along with the
16 submitted conditions A through G.

17 CHAIRPERSON JORDAN: Okay. And I
18 guess we can have a Summary Order then in this
19 matter.

20 MR. MOY: Very good. Thank you,
21 sir.

22 CHAIRPERSON JORDAN: Good. Then

1 that concludes this particular hearing so
2 we'll close.

3 Does the Board have anymore
4 business?

5 ZC CHAIR HOOD: Yes, I just wanted
6 to commend you on the way you handled those
7 cases earlier. I really like the way that
8 went and I think this shows how the BZA and
9 the Office of Zoning is trying to move things
10 forward. And I just wanted to put that on the
11 record. I appreciate that.

12 CHAIRPERSON JORDAN: We kind of
13 copy the Zoning Commission but we really
14 appreciate that. Thank you, Mr. Hood, because
15 some people fight back on changes.

16 Thanks a lot. Appreciate it.

17 That's all.

18 We have one other piece of
19 business for the Board on another --

20 As Chairperson of the Board of
21 Zoning Adjustment of the District of Columbia
22 in accordance with section 407 of the District

1 of Columbia Administrative Procedure Act, I
2 move that the Board of Zoning Adjustment hold
3 a closed meeting on June 18th from 9:30 to
4 12:30 p.m. for the purpose of conducting an
5 internal training pursuant to D.C. Code 2-
6 57B12.

7 Is there a second?

8 MEMBER HINKLE: Second.

9 CHAIRPERSON JORDAN: Motion made
10 and seconded.

11 Mr. Secretary, poll the Board
12 please.

13 MR. MOY: When I call the name if
14 the Board Member would respond with a yes or
15 no.

16 Chairman Hood of the Zoning
17 Commission?

18 ZC CHAIR HOOD: Yes.

19 MR. MOY: Chairman Jordan?

20 CHAIRPERSON JORDAN: Yes.

21 MR. MOY: Mr. Hinkle?

22 MEMBER HINKLE: Yes.

1 MR. MOY: And we have a Board
2 Member not present and a seat vacant. The
3 motion carries, Mr. Chairman.

4 CHAIRPERSON JORDAN: As it appears
5 that the motion passed, I hereby give notice
6 that the Board of Zoning Adjustment would hold
7 a closed meeting here in this hearing room to
8 conduct internal training on June 18th, 9:30
9 to 12:30 p.m. Notice will also be posted in
10 the Office of Zoning, attorney greeting room,
11 place on the Office of Zoning's electronic
12 calendar and on its website, published in the
13 D.C. Register in a timely manner.

14 We're adjourned. Thank you.

15 (Whereupon, the above matter was
16 concluded at 12:24 p.m.)
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In the matter of: Public Hearing

Before: DC BZA

Date: 06-11-13

Place: Washington, DC

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