

**GOVERNMENT
OF
THE DISTRICT OF COLUMBIA**

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

FRIDAY

JUNE 28, 2013

+ + + + +

The Regular Public Meeting
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 9:30 a.m., S. Kathryn Allen, Vice-
Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

S. KATHRYN ALLEN, Vice-Chairperson

JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL TURNBULL, Commissioner

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

TRACEY W. ROSE, Sr. Zoning Specialist

JOHN NYARKU, Zoning Specialist

STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN

**The transcript constitutes the
minutes from the Public Meeting held on June
28, 2013.**

A G E N D A

Case No. 18576, Fort Lincoln

Banneker Townhouses..... 5

Case No. 18557, 1527 9th LLC..... 6

Case No. 18453, 1728 14th LLC..... 22

Case No. 18578, Application of

District Properties.com, Inc..... 30

Case No. 18572, Shiau Feng Chen..... 38

Case No. 18573, Kathleen Sullivan..... 45

Case No. 18575, Donatelli

Development..... 81

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

10:00 a.m.

VICE CHAIR ALLEN: Again this hearing will now please come to order. Again good morning, ladies and gentlemen. We are located in the Jerrily Kress Memorial Hearing Room at 441 4th Street, N.W. This is Friday, June 28th, 2013 public hearing of the Board of Zoning Adjustment of the District of Columbia.

This hearing was originally scheduled for Tuesday, June 25th, 2013, but was postponed to today with notice to parties and the public through posting in the Office of Zoning, and on the website.

My name is S. Kathryn Allen. I'm Vice Chairperson. Joining me today is Jeffrey Hinkle, our Board Member, and representing the Zoning Commission is Mr. Peter May. Also, Mr. Michael Turnbull will join us for a number of the cases later today.

I did want to mention that I am sitting in for our Chairman, Mr. Lloyd Jordan,

1 who is still out on a family emergency, and we
2 certainly wish him the best. Ms. Rose, would
3 you please, just you need to only read the
4 application number and relief requested, not
5 the documents filed.

6 MS. ROSE: Yes.

7 VICE CHAIR ALLEN: Yes.

8 Case No. 18576

9 MS. ROSE: Thank you. Good
10 morning Madam Chair, members of the Board.
11 Madam Chair, there's a preliminary matter with
12 regard to Application 18576 of Fort Lincoln
13 Banneker Townhouses, LLC, pursuant to 11 DCMR
14 3104.1 and 3103.2 for a special exception to
15 construct more than one building on a record
16 lot, under Section 2516, and a variance from
17 the flat yard requirements under Subsection
18 2516.5, to allow the construction of 42
19 townhouses in the R5D and C2B Districts along
20 Fort Lincoln Drive, N.E., and Banneker Drive,
21 N.E., Square 4325, Lots 29, 31, 813 and 814.

22 VICE CHAIR ALLEN: Thank you.

1 There is a business relationship between
2 myself and this applicant. Because of that,
3 I am planning to recuse myself on the
4 decision, and that requires, or that would not
5 allow for a quorum to hear this case. So we
6 are going to move it for hearing when, Ms.
7 Rose?

8 MS. ROSE: July the 9th.

9 VICE CHAIR ALLEN: Okay, July the
10 9th. Thank you. Okay. We're going to take
11 the cases, I think, a little bit out of order,
12 to accommodate our Board members here. So if
13 you can please call 18557.

14 Case No. 18557

15 MS. ROSE: Yes. The first case to
16 be heard today is Application 18557. This
17 case was continued from the public hearing of
18 June 4th, 2013, to allow the applicant an
19 opportunity to file additional documents.
20 Documents were due by June 18th, 2013 and the
21 hearing was scheduled for June 25th, 2013.

22 I will read the original

1 application. This is the application of 1527
2 9th LLC, pursuant to 11 DCMR Section 3104.1,
3 for a special exception to allow an existing
4 non-conforming use, beauty salon, to be
5 replaced with another non-conforming use, art
6 gallery and studio, under Section 2003.

7 Pursuant to 3102.3, a variance
8 from the use provisions to permit the
9 extension of a non-conforming use, accessory
10 art gallery and studio office, to the second
11 floor of the building under Subsection 2002.3
12 in the R4 District of premises 1527 9th
13 Street, N.W., Square 397, Lot 812.

14 The applicant filed a request to
15 waive the late filing requirement to have the
16 Board accept the applicant's amendment to the
17 relief, which was filed on -- what was the
18 date that that was filed, that amendment?

19 (Pause.)

20 MS. ROSE: After the deadline. So
21 we need to waive the rules to accept it.

22 VICE CHAIR ALLEN: Okay, thank

1 you. Do I have any objections to allow the
2 amendment to the application, to delete the
3 use variance? So by consensus, we will do
4 that.

5 We have a request for special
6 exception -- I'm sorry. Would the parties
7 like to introduce themselves and state their
8 name and association for the record?

9 MS. BRAY: Thank you, Madam Vice
10 Chair. I'm Kinley Bray with the law firm of
11 Arent Fox, representing the applicant, 1527
12 9th.

13 MS. O'NEILL: I'm Maggie O'Neill,
14 and I will be a tenant hopefully at 1529
15 (sic).

16 MR. WEIXLER: Warren Weixler, co-
17 owner of SWATCHROOM.

18 MR. DATTA: Guggan Datta. I'm the
19 owner of the premises.

20 MR. PADRO: Alexander M. Padro,
21 Commissioner ANC 6E01.

22 VICE CHAIR ALLEN: Great. Welcome

1 back, everyone. As you know, we have now
2 before us a request for special exception from
3 a non-conforming use to another. We
4 appreciate the applicant's review of and
5 taking our comments from the last time that we
6 saw you, to make some changes, and would be
7 happy to hear from the applicant or counsel.

8 However, as you know, we have
9 pretty much reviewed this case, and feel
10 fairly confident that we understand the
11 points. But feel free to make a statement if
12 you must. Thank you.

13 MS. BRAY: Thank you, Madam Chair.
14 We will be brief. Just to bring you up to
15 speed and for the record, after the last
16 hearing, we compiled --

17 At the Board's direction, we
18 compiled detailed information about
19 construction costs related to getting the
20 building up and running for any permitted use,
21 given the extensive damage to this building at
22 the time of purchase by the applicant.

1 We worked to strengthen the use
2 variance case. We met with the Office of
3 Planning as recommended by the Board, and I
4 thank the OP staff for their time and guidance
5 on this matter.

6 But based on that meeting and some
7 of the other information we collected, we
8 determined there was just really not
9 sufficient facts to support the use variance
10 case, and as such, we went back to the drawing
11 board, looked at putting a residential use on
12 the second floor.

13 Because this is a space to be used
14 for up and coming local artists and has
15 specifically been designed to serve the
16 surrounding neighborhood, we thought that
17 providing a true residential use on the second
18 floor as an artist housing and studio would be
19 not only compatible with the neighborhood, but
20 also compatible with the first floor use of
21 the gallery.

22 So the applicant redesigned, as

1 shown in our supplemental filing on June 18th,
2 the second floor space, moved the studio use
3 upstairs to connect it with the residential
4 use, and created a single residential space on
5 the entire second floor that can be accessed
6 either through the interior stair or the
7 exterior stair in the rear.

8 The Office of Planning has
9 indicated their support. We appreciate that,
10 but had asked for us to elaborate on two
11 specific issues, and so I'd like to do that
12 for the record now.

13 One was how trash would be
14 handled. Trash is anticipated to be handled
15 much like any other residential use along this
16 corridor, with City pickup. No more trash
17 than a typical residential use would need is
18 anticipated at this time.

19 So cans would be stored on the
20 property in the rear and brought to the alley
21 for regular collection, as with all the other
22 properties on the property.

1 Secondly, they asked for more
2 information on a neighborhood facility, and
3 how specifically this use meets those
4 criteria, indicating that they were generally
5 supportive of that, but they thought more
6 information could be in the record on that
7 point.

8 To that end, I'd like for Warren
9 Weixler to walk you through an exhibit, which
10 shows the detailed, a detailed explanation of
11 how SWATCHROOM would become a neighborhood
12 facility, and I have copies of that. It's a
13 one-page document for the Board.

14 VICE CHAIR ALLEN: Okay. I would
15 encourage you to be brief.

16 MR. WEIXLER: Again, I'm Warren
17 Weixler. I'll let the gentleman hand those
18 out to you, but this list, we don't need to
19 read through it word for word. But it's in
20 relation to Section 2003.5, the four points
21 brought up in the zoning rules, in relation to
22 a neighborhood facility, and there's bullet

1 points listed there that address all four
2 points.

3 In particular, it's a neighborhood
4 facility for people who live and work close
5 by. I think that's pretty self-explanatory,
6 given the urban situation and that it's in a
7 residential neighborhood. It will not be used
8 by any group or member, or all community
9 members.

10 I think the real issue for that is
11 that there's no membership. There's no closed
12 community. It's an open door policy. Every
13 event would be open to the public, given
14 capacity constraints for the occupancy permit.

15 Then accessible by walking.
16 Again, the urban situation. It's close, it's
17 in between two Metro stops. It's fairly
18 residential to the north and east of us. So
19 we believe that for the reasons in front of
20 you, it's a neighborhood facility.

21 VICE CHAIR ALLEN: Thank you.

22 MR. WEIXLER: Sure.

1 MS. BRAY: And finally, Madam Vice
2 Chair, I'd just like to add for the record
3 that while we acknowledge that the zoning
4 regulations do not in and of themselves
5 contain a definition of a neighborhood
6 facility, we looked at this through the lens
7 of prior cases decided by this Board, both for
8 other uses but also specifically for art
9 gallery use, in Case No. 18034.

10 In that case, the facility was
11 designed to provide space for local artists to
12 display their work, would be open for
13 community events, and that is precisely the
14 goal here as enumerated in the application.

15 One of the things that's very
16 interesting about this corridor is that there
17 is a critical mass of artists living and
18 working in the neighborhood, partly as a
19 result of the high rent and high cost of
20 operating these kinds of uses in the art
21 district along 14th and along U Street.

22 So we believe that this complies

1 with not only the Comprehensive Plan
2 recommendations for artists live/work space
3 and the concentration of arts along the main
4 street of 9th Street, but also with the
5 specific criteria the Board has looked at in
6 these cases before.

7 So with that, I'll conclude, and
8 we're open for any questions from the Board.
9 Thank you very much.

10 VICE CHAIR ALLEN: Great. Does
11 anyone have questions of the applicant? No.
12 Thank you. Can we have a report from Office
13 of Planning?

14 MR. COCHRAN: I'd be happy to,
15 Madam Chair. For the record, Steve Cochran,
16 Office of Planning. First off, we'd like to
17 compliment the applicant. They have been very
18 cooperative, and it's led to a very celebrious
19 outcome.

20 What they're proposing now, we
21 couldn't have imagined anything better,
22 especially for getting live/work space for

1 artists in this district. We've had a chance
2 to review the additional information provided
3 by the applicant before this hearing, and we
4 think that they've responded to all of our
5 concerns, and they are in neighborhood
6 condition.

7 There's just one thing I wanted to
8 clarify. The applicant agreed that the first
9 floor gallery and studio would be used by no
10 more than five people between 9:00 p.m. and
11 8:00 a.m., which is on the first page of the
12 OP report.

13 But I forgot to include the rest
14 of the condition which the applicant has
15 agreed to, which is on page three of the OP
16 report. That is, shall be from 8:00 a.m. to
17 9:00 p.m. with no more than five, with the
18 exception of two evenings per month, when the
19 occupancy restrictions shall not begin until
20 10:30 p.m..

21 This would allow the applicant to
22 have art gallery openings and other kinds of

1 seminars in the evening, and that was
2 suggested by OP. The applicant has agreed to
3 that.

4 So I just wanted to be sure you
5 didn't think of it as restrictive as page one
6 had indicated. In fact, it's page three.

7 VICE CHAIR ALLEN: Okay.

8 MR. COCHRAN: That concludes our
9 report.

10 VICE CHAIR ALLEN: Thank you very
11 much. Any questions by the applicant or the
12 ANC for OP?

13 MS. BRAY: No, Madam Vice Chair.

14 VICE CHAIR ALLEN: Great. Mr.
15 Cochran, can you provide those, because I
16 don't see those conditions. I don't see --

17 MR. COCHRAN: Excuse me, ma'am.
18 If you look at the three line paragraph at the
19 bottom of page three, you'll see that the
20 first half of that is the condition mentioned
21 on the first page, and then you just need to
22 add what's after the comma. I would be happy

1 to read it into the record.

2 VICE CHAIR ALLEN: That would be
3 fine.

4 MR. COCHRAN: Okay. Subject to
5 the following conditions, to which the
6 applicant has already agreed.

7 "The first floor gallery and
8 studio shall be used by no more than five
9 people between 9:00 p.m. and 8:00 a.m., with
10 the exception of two evenings per month, when
11 the occupancy restrictions shall not begin
12 until 10:30 p.m."

13 VICE CHAIR ALLEN: Excellent,
14 thank you. Do we have any reports or
15 recommendations from any of the other
16 agencies?

17 (No response.)

18 MR. PADRO: Might have just one
19 moment to --

20 VICE CHAIR ALLEN: Hold on please.
21 Hold on please. I do see that we had no
22 objections from DDOT, okay, and then if there

1 is a report or comments from ANC, we'd be
2 happy to hear that at this point. Thank you.

3 MR. PADRO: Thank you, ma'am.

4 Again, Alexander M. Padro. I had served as
5 commissioner for the single-member district,
6 where this located is sited for the past 13
7 years, ANC 6E01, as testified by.

8 The correspondence in the record
9 in support of the original application, we did
10 not have an opportunity to review the
11 revisions as a result of the time scheduling
12 and when our meetings are held, on the first
13 Wednesday of the month.

14 However, I am confident that if we
15 had the opportunity to do so, that we would
16 have again supported the application, since we
17 supported the more aggressive use, if you
18 will, or more aggressive exception.

19 And I just wanted to let you know
20 that as both the executive director of the
21 commercial revitalization organization in the
22 neighborhood, Shaw Main Streets, as well as in

1 my capacity as the ANC commissioner, I am
2 fully supportive of your approving this
3 application this morning.

4 VICE CHAIR ALLEN: Thank you very
5 much. Any questions for the ANC by the
6 applicant?

7 MS. BRAY: No ma'am.

8 VICE CHAIR ALLEN: Okay. Are
9 there any parties or persons in support of
10 this application that would like to testify?
11 Any parties in support of the application?

12 (No response.)

13 VICE CHAIR ALLEN: Are there any
14 parties in opposition to this application who
15 would like to testify? Any parties in
16 opposition?

17 (No response.)

18 VICE CHAIR ALLEN: Do we have any
19 rebuttal or closing statement by the
20 applicant?

21 MS. BRAY: No, Madam Vice Chair.
22 Thank you very much for your time this

1 morning.

2 VICE CHAIR ALLEN: Fine. I think
3 that, as we said, we are, I'm certainly
4 pleased with the work that the applicant did
5 since our last hearing, and it will certainly
6 be my thought and I will actually move to
7 grant the request for special exception from
8 one non-conforming use to another, pursuant to
9 Section 2003. Do I have a second?

10 COMMISSIONER TURNBULL: Second. I
11 assume, is that subject to the conditions
12 listed by the Office of Planning?

13 VICE CHAIR ALLEN: I'm sorry,
14 thank you very much. Thank you very much.
15 Subject to the conditions, as read into the
16 record, by Office of Planning from Mr.
17 Cochran. Second again?

18 COMMISSIONER TURNBULL: And I'll
19 second it again.

20 VICE CHAIR ALLEN: Thank you. Any
21 comments, questions? Okay. It's been moved
22 and seconded to grant this request as stated.

1 All those in favor?

2 (Chorus of ayes.)

3 VICE CHAIR ALLEN: Any opposed?

4 (No response.)

5 VICE CHAIR ALLEN: Ms. Rose,

6 please.

7 MS. ROSE: Staff will report the
8 vote as 3 to 0 to 2, with Ms. Allen making
9 the motion, Mr. May seconding; also, Mr.
10 Hinkle to approve the application; Mr. Jordan,
11 not present, not voting and one board seat
12 vacant, and that is with conditions as stated
13 in the record.

14 MS. BRAY: Madam Chair, could we
15 request a summary order in this case?

16 VICE CHAIR ALLEN: As far as I
17 know, I think so, yes. Yes, summary order.
18 Thank you. Thank you, Mr. May. Can you call
19 the next case please? Thank you.

20 Case No. 18453

21 MS. ROSE: Yes. The next case is
22 a minor modification of plans in the

1 Application 18453, of 1728 14th Street LLC,
2 pursuant to 11 DCMR Subsections 3103.2 and
3 3104.1, for a variance from the parking
4 requirements under Subsection 2101.1, a
5 variance from the loading requirements under
6 Subsection 2201.1, and the special exception
7 under Subsection 411.11, from the roof
8 structure requirement under Subsection 411.5,
9 to allow the construction of a mixed use
10 retail/service/office building in the Arts C3A
11 District of premises 1728 14th Street, N.W.,
12 Square 207, Lot 120.

13 VICE CHAIR ALLEN: Thank you. I
14 just for the record, would you please strike
15 "minor modification." We had decided before
16 that this is a modification to the plans.

17 MS. ROSE: Yes.

18 VICE CHAIR ALLEN: Thank you. Can
19 we have the applicant or the folks at the
20 table please identify yourselves.

21 MR. COLLINS: My name is
22 Christopher Collins, counsel to the applicant

1 in this case.

2 VICE CHAIR ALLEN: Thank you.

3 MS. MILANOVICH: Good morning. My
4 name's Jamie Milanovich with Welden
5 Associates, the transportation consultant for
6 the project.

7 MR. BONSTRA: Good morning, I'm
8 Bill Bonstra, Bonstra Haresign Architects, the
9 architect for the project.

10 VICE CHAIR ALLEN: Okay. Welcome,
11 everyone. So this hearing is to address this
12 modification to the seller, from an L to a
13 rectangular shape, I think, and basically to
14 correct a calculation to a previously-approved
15 order dated December 6th, 2012 by this body.

16 Do you, does the applicant have
17 anything that they'd like to add to this? We
18 have reviewed the records. We're very
19 familiar. I think we agreed this is just a
20 modification of the order. So I would
21 encourage you to keep that in mind.

22 MR. COLLINS: Well Madam Chair, we

1 would be happy to simply rest on the record
2 that we have submitted to you. I'd like to
3 point out that both the City's experts, the
4 Office of Planning, Department of
5 Transportation, as well as the applicant's
6 expert, have all agreed that these
7 modifications do not affect the rationale for
8 the variance relief that we requested
9 previously. So with that, we'd be happy to
10 answer any questions you may have.

11 VICE CHAIR ALLEN: Thank you. Any
12 questions from my colleagues? No. Thank you.
13 Do I have a report from Office of Planning?

14 MR. MORDFIN: The Office of
15 Planning recommends that the Board grant the
16 modification, because the increase in square
17 footage of the building would not have an
18 effect on the demand for parking, and because
19 of the use of the cellar would remain for
20 storage and mechanical uses only.

21 Whether the increase is due to an
22 error in the original application or because

1 of the reconfiguration of the stairwell to
2 minimize impacts on the adjacent building to
3 the south. Therefore, OP recommends that the
4 Board approve the modification application.
5 Thank you.

6 VICE CHAIR ALLEN: Thank you. Any
7 questions by the applicant of Office of
8 Planning?

9 MR. COLLINS: No.

10 VICE CHAIR ALLEN: Okay. Any
11 other agencies wishing to testify?

12 (No response.)

13 VICE CHAIR ALLEN: No. We do have
14 a report from DDOT with no objection. ANC, is
15 there a report or anyone from the ANC 2F who
16 would like to testify?

17 (No response.)

18 VICE CHAIR ALLEN: We do have a
19 letter in support, recommending approval. Any
20 parties or persons in support of this
21 application who'd like to speak? Any parties
22 in support?

1 (No response.)

2 VICE CHAIR ALLEN: Any parties or
3 persons in opposition? Any parties in
4 opposition to this application?

5 (No response.)

6 VICE CHAIR ALLEN: Any closing
7 statement, rebuttal by the applicant?

8 MR. COLLINS: Thank you for your
9 time. We respectfully request approval at
10 your earliest convenience.

11 VICE CHAIR ALLEN: Okay, thank
12 you.

13 MS. ROSE: Madam Chair, staff was
14 wondering if the plans, Exhibit 46, represent
15 the full set of plans or just partial, when we
16 cite the plans for your order?

17 MR. COLLINS: Just a second. I'll
18 check what Exhibit 46 is. Exhibit 46 is our
19 request for modification, and that just
20 included the plans for the cellar, as well as
21 the revised calculations, not for the entire
22 building.

1 MS. ROSE: Okay. So to cite the
2 complete set, we would cite those, as well as
3 the earlier ones that you have in the record?

4 MR. COLLINS: That's correct.

5 VICE CHAIR ALLEN: Thank you. So
6 thanks for your statement and for your
7 brevity. My belief is that this modification,
8 while not exactly minor, would not have a
9 significant impact, or would not or does not
10 significantly impact the Board's original
11 analysis of this.

12 Thus, I would move to approve the
13 requested modifications. Second.

14 COMMISSIONER TURNBULL: Second.

15 VICE CHAIR ALLEN: Thank you. Any
16 comments, questions? All those in favor? I'm
17 sorry, go ahead.

18 COMMISSIONER TURNBULL: Sorry
19 Madam Chair. I would agree with the
20 applicant's counsel, that I think it's very
21 minor, and I think the impact is minimal, and
22 I see no reason that we can't go ahead with

1 this.

2 VICE CHAIR ALLEN: Okay.

3 MEMBER HINKLE: Well, I certainly
4 understand the comments that were just made,
5 but I do want to recognize that parking is
6 quite difficult in this neighborhood. So I'm
7 happy that we got some opportunity for the
8 other agencies to review this, and I
9 appreciate their input as well as the input of
10 the agencies.

11 VICE CHAIR ALLEN: Excellent,
12 thank you. All those in favor of the motion?
13 (Chorus of ayes.)

14 VICE CHAIR ALLEN: Any opposed?
15 (No response.)

16 VICE CHAIR ALLEN: Ms. Rose.

17 MS. ROSE: Staff will report the
18 vote as 3 to 0 to 2, with Ms. Allen making the
19 motion, Mr. Turnbull seconding and Mr. Hinkle
20 in agreement. Mr. Jordan, not present, not
21 voting, and one seat vacant on the Board.

22 VICE CHAIR ALLEN: Thank you.

1 MS. ROSE: For summary order,
2 Madam Chair?

3 VICE CHAIR ALLEN: Summary order,
4 please. Can you call the next case please?
5 Case No. 18578

6 MS. ROSE: Yes. The next
7 application is 18578 of District
8 Properties.com, Inc., pursuant to 11 DCMR
9 3103.2, for variances from the lot width and
10 lot area requirements under Section 401, and
11 a variance from the side yard requirements
12 under Section 405, to construct a one family
13 detached dwelling in the R2 District at
14 premises 1019 49th Place, N.E., Square 5175,
15 Lot 4.

16 VICE CHAIR ALLEN: Okay. Can the
17 applicant please state your name for the
18 record?

19 MR. SIKDER: Good morning, Vice
20 Chair and Board members. My name is Mohamed
21 Sikder, and I'm the owner of this property.

22 VICE CHAIR ALLEN: Welcome, Mr.

1 Sikder.

2 MR. SIKDER: Thank you.

3 VICE CHAIR ALLEN: My reading of
4 this is that we have a proposal to build a
5 detached three story single house on a vacant
6 lot, requesting variances from lot width, lot
7 area, requirements under Section 401 and side
8 yard requirements under Section 405.

9 Does the applicant have any
10 specific statement? We have reviewed your
11 record, and I believe find it fairly complete.
12 Do you have anything that you'd like to add or
13 any statement that you'd like to make at this
14 time?

15 MR. SIKDER: No, I don't, unless
16 if you ask me to brief the report.

17 VICE CHAIR ALLEN: Okay. Do we
18 have any questions from the Board?

19 (No response.)

20 VICE CHAIR ALLEN: No. Okay. Do
21 we have a report from the Office of Planning?

22 MR. GYOR: Good morning Madam

1 Chair and members of the Board. Stephen Gyor
2 with the Office of Planning. We rest on the
3 record. Thank you.

4 VICE CHAIR ALLEN: Great, thank
5 you. Does the applicant have a question of
6 Office of Planning?

7 MR. SIKDER: No.

8 VICE CHAIR ALLEN: Okay. Do we
9 have any other public agencies that would like
10 to report?

11 (No response.)

12 VICE CHAIR ALLEN: Looks like we
13 do not have a report on file for DDOT.

14 MR. GYOR: Madam Chairman, we
15 received a DDOT report yesterday, Exhibit 24,
16 with no objection.

17 VICE CHAIR ALLEN: Thank you, and
18 then do we have report from ANC?

19 MR. GYOR: There's no ANC report
20 on file.

21 VICE CHAIR ALLEN: Is there anyone
22 here from ANC 7C that would like to testify?

1 ANC?

2 (No response.)

3 VICE CHAIR ALLEN: Thank you. Did
4 you contact the ANC about this at all?

5 MR. SIKDER: Yes. I also attended
6 the meeting with ANC.

7 VICE CHAIR ALLEN: Okay.

8 MEMBER HINKLE: When was that
9 meeting?

10 MR. SIKDER: That was in early, I
11 think, I have it in the record. The meeting
12 was on May 30th.

13 MEMBER HINKLE: And did they take
14 a vote at that time?

15 MR. SIKDER: No. They didn't take
16 any vote. It was shorter meeting with all the
17 ANC members, and they asked me some questions
18 and I answered. There were -- some of the
19 members, they asked me why did I buy this
20 small lot, when I knew I could not build a
21 house as a matter of right, and another member
22 asked me I should not build a house on this

1 lot at all.

2 Another person said design of this
3 house is not good, and I requested them if
4 they have any other idea, which they could not
5 tell me until today. The other member, Greg
6 Stewart, he said that he would inquire to OP
7 if they would allow to rezone this district,
8 this area.

9 So I thought he did, he contacted
10 with OP, but I did not hear anything since
11 then.

12 MEMBER HINKLE: Okay, thank you.
13 I appreciate your testimony, in terms of the
14 ANC.

15 VICE CHAIR ALLEN: Thank you.

16 COMMISSIONER TURNBULL: Do you
17 know if there was a quorum present?

18 MR. SIKDER: No. It did not seem
19 that they had any, there was a quorum or
20 anything there. Simply just said Greg Stewart
21 will contact OP and Office of Zoning, if they
22 could rezone. Otherwise, I don't see any

1 other document from ANC.

2 VICE CHAIR ALLEN: Okay, thank
3 you. Any comments or other questions from the
4 Board?

5 (No response.)

6 VICE CHAIR ALLEN: Again, we have
7 reviewed the -- I guess I should continue.
8 Hold on. Are there any parties or persons in
9 support of this application? Parties in
10 support of the application?

11 (No response.)

12 VICE CHAIR ALLEN: Are there any
13 parties or persons in opposition to this
14 application? Any parties in opposition?

15 (No response.)

16 VICE CHAIR ALLEN: Any closing
17 statement by the applicant?

18 MR. SIKDER: No, thank you.

19 VICE CHAIR ALLEN: Thank you. We
20 again, the Board has reviewed the file. We
21 appreciate all the comments from Office of
22 Planning and the applicant. My belief is that

1 you have met the standards of proof regarding
2 this request for variances, in terms of lot
3 width, lot area and side yard, the practical
4 difficulty in that the lot was created prior
5 to the area requirements of the existing
6 regulations, and its area and width are in
7 proportion to the other lots in this section
8 of the square, that you had no opportunity,
9 although it appears that you have tried, to
10 look at adjacent lots in order to do a
11 conforming lot.

12 That there would be no substantial
13 detriment to the public good, and that in fact
14 you would provide infill development
15 consistent with the surrounding neighborhood,
16 and then that there would be no substantial
17 harm to the zoning regs, and that relief could
18 be granted without impairing the intent,
19 purpose or integrity of the zoning
20 regulations.

21 In light of that, I would move to
22 grant relief that is sought.

1 MR. SIKDER: Thank you.

2 MEMBER HINKLE: I'll second that.

3 VICE CHAIR ALLEN: Any other
4 comments?

5 (No response.)

6 VICE CHAIR ALLEN: All in favor of
7 this motion?

8 (Chorus of ayes.)

9 VICE CHAIR ALLEN: Any opposed?

10 (No response.)

11 VICE CHAIR ALLEN: Ms. Rose.

12 MS. ROSE: Madam Chair, did you
13 make the motion?

14 VICE CHAIR ALLEN: Yes.

15 MS. ROSE: Staff would record the
16 vote as 3 to 0 to 2, with Ms. Allen making the
17 motion, seconding by Mr. Hinkle, with Mr.
18 Turnbull in agreement, to grant the
19 application. Mr. Jordan not present, not
20 voting and one seat vacant.

21 VICE CHAIR ALLEN: Okay. Summary
22 order, please.

1 MS. ROSE: Yes, Madam Chair.

2 VICE CHAIR ALLEN: Okay, thank
3 you. Okay, next case please.

4 Case No. 18572

5 MS. ROSE: The next application is
6 18572 of Shiau Feng Chen, pursuant to 11 DCMR
7 3104.2, for a special exception to establish
8 a pet grooming establishment under Section 736
9 in the C2A District, at premises 4824
10 MacArthur Boulevard, N.W., Square 1388, Lot
11 25.

12 VICE CHAIR ALLEN: Great. Would
13 you please state your name and your --

14 MR. MITCHELL: Good morning. My
15 name is David Mitchell. I'm the agent or the
16 owner and tenant.

17 VICE CHAIR ALLEN: Mr. Mitchell?

18 MR. MITCHELL: Yes.

19 VICE CHAIR ALLEN: Do we have a
20 letter authorizing Mr. Mitchell?

21 MR. MITCHELL: There should be a
22 letter in the file, and there would be a

1 letter from the ANC also in the file.

2 VICE CHAIR ALLEN: No, that's not
3 what I'm asking. Hold on please for a second.

4 (Pause.)

5 MR. VARGA: What was the question,
6 Ms. Allen?

7 VICE CHAIR ALLEN: Do we have a
8 letter authorizing Mr. Mitchell to speak on
9 behalf of the applicant?

10 MR. VARGA: Yes. It's under
11 Exhibit 6.

12 VICE CHAIR ALLEN: Thank you. My
13 trusty colleague just informed me of that.
14 Perfect, okay. Thank you, and you?

15 MS. PAGANO: I'm Penny Pagano,
16 chair of ANC 3D.

17 VICE CHAIR ALLEN: Excellent,
18 thank you. All right. So we have a request
19 for a special exception to allow a new dog
20 grooming establishment, and in fact have
21 reviewed the record. Do my colleagues have
22 any questions of the applicant?

1 (No response.)

2 VICE CHAIR ALLEN: No. I did just
3 wonder, Mr. Mitchell, is there any plan while
4 the dogs are there to actually walk them, and
5 is there a plan for where they would be walked
6 or anything like that?

7 MR. MITCHELL: I don't know that
8 there is, but it would be out, everything
9 would come out the front door onto MacArthur
10 Boulevard, which is a busy traffic street,
11 rather than the back, which is at an alley.

12 VICE CHAIR ALLEN: Right.

13 MR. MITCHELL: And so it was
14 stated in the application, as I recall, that
15 there would be little or no access from the
16 rear.

17 VICE CHAIR ALLEN: Okay. Do we
18 have a report from -- thank you. Do we have
19 a report from Office of Planning?

20 MR. JACKSON: Yes, Madam Chairman.
21 It should be in the file. My name is Arthur
22 Jackson, D.C. Office of Planning. We have a

1 report before you. We recommend approval,
2 based on the applicant's meeting all the
3 conditions relative to a dog grooming
4 establishment, and we'll be able to answer any
5 questions.

6 VICE CHAIR ALLEN: Thank you, Mr.
7 Jackson. I didn't mean to startle you there.
8 Do we have any other agencies that would like
9 to report?

10 (No response.)

11 VICE CHAIR ALLEN: We do have a
12 report on file from DDOT with no objection.
13 We have a representative from ANC 3D. Would
14 you like to make a comment please?

15 MS. PAGANO: I think we voted
16 unanimously to support this.

17 VICE CHAIR ALLEN: Excellent.
18 We'd appreciate very much your coming down to
19 testify, and will certainly give your vote
20 great weight.

21 MS. PAGANO: Thank you.

22 VICE CHAIR ALLEN: Any questions

1 for ANC?

2 (No response.)

3 VICE CHAIR ALLEN: Does the
4 applicant have any questions for the ANC?

5 MR. MITCHELL: No, I don't believe
6 so. Thank you.

7 VICE CHAIR ALLEN: Okay, thank
8 you. Any parties in support of this
9 application? Any parties in support of the
10 application?

11 (No response.)

12 VICE CHAIR ALLEN: Any parties or
13 persons in opposition to the application? Any
14 parties or persons in opposition?

15 (No response.)

16 VICE CHAIR ALLEN: Would the
17 applicant like to make a closing statement at
18 this time?

19 MR. MITCHELL: No. I think the
20 record speaks for itself. Thank you.

21 VICE CHAIR ALLEN: Okay. It
22 appears that the applicant has met all of the

1 criteria needed for this request. I would
2 like to note there is an error on the self-
3 certification form, Exhibit 5, which contains
4 a request for relief under Section 223. This
5 should obviously be deleted, and the request
6 be for Section 736.

7 MR. MITCHELL: Correct.

8 VICE CHAIR ALLEN: Okay. Having
9 met these, the request, I would move that we
10 approve the applicant's request for variance.
11 Is that right?

12 MR. MITCHELL: Special exception.

13 VICE CHAIR ALLEN: I'm sorry, for
14 special exception, correct.

15 COMMISSIONER TURNBULL: Second.

16 VICE CHAIR ALLEN: Second. Any
17 comments, questions?

18 (No response.)

19 VICE CHAIR ALLEN: It has been
20 moved and seconded to grant this request under
21 Section 736. All in favor?

22 (Chorus of ayes.)

1 VICE CHAIR ALLEN: Any opposed?

2 (No response.)

3 VICE CHAIR ALLEN: So moved.

4 MS. ROSE: The staff will report
5 the vote as 3 to 0 to 2, with Ms. Allen making
6 the motion, Mr. Turnbull seconding, and Mr.
7 Hinkle in agreement to grant the application.
8 Mr. Jordan not present, not voting and one
9 Board seat vacant.

10 VICE CHAIR ALLEN: Right. Summary
11 judgment please.

12 MS. ROSE: Summary order. Thank
13 you, Madam Chair.

14 VICE CHAIR ALLEN: Thank you.

15 MR. MITCHELL: Thank you very
16 much.

17 VICE CHAIR ALLEN: We're going to
18 take a short, five-minute break. Be right
19 back.

20 (Whereupon, a short recess was
21 taken.)

22 VICE CHAIR ALLEN: Okay. Let's

1 come back to order please. Ms. Rose?

2 Case No. 18573

3 MS. ROSE: The next application is
4 18573 of Kathleen M. Sullivan. This case was
5 originally filed pursuant to 11 DCMR 3103.2
6 for a variance from the use provisions, to
7 establish a rental apartment unit in the
8 basement of a one family row dwelling under
9 Subsection 320.3 in the R3 District at
10 premises 4463 Greenwich Parkway, N.W., Square
11 1350, Lot 8.

12 VICE CHAIR ALLEN: Thank you. Can
13 the parties state their names please?

14 MS. SULLIVAN: I'm Kathleen
15 Sullivan, the owner.

16 MS. PAGANO: Penny Pagano, chair
17 of ANC 3D.

18 VICE CHAIR ALLEN: Great, thank
19 you. Welcome. We understand that you are
20 requesting to establish a rental apartment in
21 the basement of a one family rowhouse, and
22 that you did a, you need a waiver of the 14-

1 day rule to allow for late plans. Do any of
2 my colleagues have any opposition to that?
3 Mr. Hinkle?

4 MR. VARGA: Madam Chair, just to
5 clarify. Just for the slight calculation
6 adjustment to the plans. That's the waiver
7 requests, is for to my understanding.

8 VICE CHAIR ALLEN: Okay. I think
9 we will allow that, accept that in, unless I
10 have strong opposition. Okay, and then the
11 applicant has requested to amend relief, to
12 allow special exception, and that you put us
13 the -- your posting was for the special
14 exception relief.

15 Okay. Can we have a statement
16 from the applicant regarding this please?

17 MS. SULLIVAN: Sure. So I am
18 requesting to rent my basement as a separate
19 unit. I know in other districts and zones
20 it's a matter of right and it's part of
21 legislation to change your mind. But at this
22 point, it's not, so I'm here obviously to try

1 to do the right thing.

2 I also know that I could rent it
3 as a room in my house, without getting a
4 special exception. But practically speaking,
5 I'm a girl that lives by myself, and I just
6 wanted it a separate area, is really all my
7 objective is right now, just for ease of use
8 and privacy.

9 So I have been working with the
10 Office of Planning to understand the criteria
11 for the special exception under 202.10, and
12 I've provided materials that I think show the
13 burden of proof for that, and that's really
14 all the case is about right now.

15 VICE CHAIR ALLEN: Okay. I have a
16 couple of questions, and I don't know about my
17 colleagues. Could you tell us what the
18 actual, just go through with us again what the
19 square footage is, how much of the house the
20 apartment unit is going to take?

21 MS. SULLIVAN: Sure.

22 VICE CHAIR ALLEN: When I looked

1 at the plans, I didn't see a kitchen, and I
2 was just wondering whether or not there was
3 actually a kitchen?

4 MS. SULLIVAN: In the rental
5 apartment?

6 VICE CHAIR ALLEN: Yeah. If you
7 can answer those for me, I would appreciate
8 it.

9 MS. SULLIVAN: So the total square
10 footage of the house is 2,044 square feet.
11 The ADO, I think that's Accessible Dwelling
12 Unit, and is 512 square feet. So it meets the
13 25 percent criteria for the rented area.

14 In the basement, there is an area
15 that's designated for the kitchen, but legally
16 I can't put a stove in until I get this
17 permit. So it's a wet bar technically. It's
18 a sink, dishwasher, refrigerator, freezer. So
19 there isn't a separate cooking unit right now,
20 because I was told by my architect that
21 legally I have to get this special exception
22 before I can install that.

1 VICE CHAIR ALLEN: Okay, thank
2 you. Any other questions of the applicant?

3 (No response.)

4 VICE CHAIR ALLEN: No. There
5 seems to be some discrepancy in the square
6 footage, so maybe we can have the Office of
7 Planning, if you can shed some light on this,
8 Mr. Cochran?

9 MR. COCHRAN: Well, for the most
10 part, OP would --

11 VICE CHAIR ALLEN: Can you just
12 state your name for the record?

13 MR. COCHRAN: Sure. For the
14 record again, my name is Steve Cochran from
15 the D.C. Office of Planning. For the most
16 part, OP is happy to stand on the record. It
17 is a revised application with revised drawings
18 and a revised request for relief.

19 So it's now actually not a rental
20 unit per se. It's in a special category of
21 accessory dwelling unit.

22 The owner understands from OP that

1 the owner of the house has to live there in
2 order to rent the unit out, and the owner
3 understands that that would be something that
4 would have to be, if she ever sells it, she
5 would have to inform the next owner of the
6 same thing, or if she ever moves out, that she
7 would not be able to rent it as long as she's
8 owning the building.

9 So given that, we're relying on
10 the information supplied by the applicant, and
11 we feel comfortable recommending approval of
12 the special exception.

13 VICE CHAIR ALLEN: Okay, thank
14 you. Any questions for Office of Planning
15 from the applicant or the ANC?

16 MS. PAGANO: No.

17 VICE CHAIR ALLEN: Okay, no?

18 MS. SULLIVAN: No.

19 VICE CHAIR ALLEN: Thank you. Any
20 questions by the Board for Office of Planning?

21 (No response.)

22 VICE CHAIR ALLEN: No. Okay. Do

1 we have any other agencies who'd like to
2 report?

3 (No response.)

4 VICE CHAIR ALLEN: We do have a
5 report from DDOT saying they have no
6 objection. And then a report from ANC?

7 MS. PAGANO: Yes. This came to
8 the ANC on June 1st as a variance, and I think
9 you were, the applicant was learning the,
10 understanding the procedures for the City the
11 first time. The ANC, there was considerable
12 concern in the community about multi-unit
13 development in this area. It's a dense,
14 fairly dense townhouse area with historic
15 preservation.

16 The ANC at that meeting decided to
17 give the community and the applicant some time
18 to work together. So we agreed at that point
19 to delay our decision on that. We held a
20 special meeting this past Monday night, and
21 voted 9 to nothing, that wasn't unanimous; one
22 commissioner was absent, to support the

1 application.

2 There were some things we asked
3 the BZA about, and one is just there was some
4 discussion, and as I think Mr. Cochran cited,
5 about the correct square footage for the
6 house, and neighbors and the applicant had
7 some disagreements about that.

8 The other question was under the
9 law, you are allowed to grant two waivers. If
10 more than two waivers were necessary for this,
11 as you decided this case, what would that do
12 to this application? Those were our two
13 concerns.

14 VICE CHAIR ALLEN: Thank you.

15 MS. PAGANO: Thank you.

16 VICE CHAIR ALLEN: Any questions
17 by the applicant of the ANC?

18 MS. SULLIVAN: No.

19 VICE CHAIR ALLEN: Okay. Any
20 questions from the Board?

21 COMMISSIONER TURNBULL: What was
22 the result of your square footage discussions?

1 MS. PAGANO: I think, and you'll
2 probably hear it from some of the neighbors in
3 the community, I think the concern was the
4 house size and the attic, and whether the
5 configuration of the attic would have brought
6 the house size to less than 2,000 square feet.

7 I think you're going to hear more
8 from the neighbors about that. So it was our
9 decision to let you all handle that one.

10 VICE CHAIR ALLEN: Thank you.

11 COMMISSIONER TURNBULL: Mr.
12 Cochran, you had no concerns about the square
13 footage?

14 MR. COCHRAN: I didn't go out to
15 the house, so I'm relying on -- I talked to
16 the architect, who's I believe registered in
17 Maryland, but also practices in D.C.
18 extensively he told me. So I just have to
19 rely on the information provided by the
20 applicant's architect.

21 COMMISSIONER TURNBULL: Okay.
22 Okay, thank you.

1 MR. COCHRAN: I did talk to him
2 first, and noticed that there were a couple of
3 things where he seemed to have actually --
4 there were some discrepancies in the first and
5 second floor. So he actually went out and
6 measured it again.

7 COMMISSIONER TURNBULL: Oh, okay.

8 VICE CHAIR ALLEN: Okay. Do we
9 have any parties or persons in support of this
10 application who would like to testify? Would
11 you state your name please? Sit down. Please
12 have a seat, and make sure your mic is on.
13 Push that button there, bright green light.

14 MR. SULLIVAN: It's on. Okay. My
15 name is Paul Sullivan. I assisted my daughter
16 in purchasing the home, and since inception,
17 with the exception of when she went to Chicago
18 and worked for two years, but other than that
19 it's been a group home for her and two of her
20 friends who are unrelated females.

21 We did extensive renovation to the
22 home when she returned. We have made it so

1 that it's a separate apartment, and we've
2 insulated and it is -- we've handled it
3 exactly that way, and we wanted to make sure
4 we did it legally, we got the architect's
5 drawings.

6 I think you'll hear at the ANC
7 meeting that was a discrepancy on how to treat
8 the storage. So we have storage that's just
9 in the attic, and there's storage on all of
10 the floors. So we don't, I don't know why we
11 wouldn't use the storage that's used in the
12 attic. It is used to store things.

13 So that's an item that the
14 neighbors were talking about, the square
15 footage. They said that it went below, but
16 because they don't, they're eliminating some
17 storage.

18 So what I wanted to say is that
19 we're trying to -- we renovated it especially
20 to have an apartment, so that she could live
21 separately, and we know that pending this
22 application, in order to do it, we need

1 approval.

2 VICE CHAIR ALLEN: Okay. Thank
3 you very much. Any questions by the applicant
4 or ANC for Mr. Sullivan? Thank you. Mr.
5 Sullivan, please make sure you submit the two
6 cards to, witness cards to our folks over
7 here. Thank you.

8 Do we have any parties or persons
9 in opposition to this application? Come down.
10 Would you all please make sure that your mics
11 are on? The bright green light should be
12 shining, and why don't we start from my left,
13 and please state your name for the record.

14 MS. TROTTER: Good morning. My
15 name is Gayle Trotter, and I am the ANC
16 commissioner for this district. This house
17 falls within my Single Member District.

18 VICE CHAIR ALLEN: Okay, and that
19 district is?

20 MS. TROTTER: ANC 3D09.

21 VICE CHAIR ALLEN: 3D09, and
22 that's Ms. Trotter?

1 MS. TROTTER: Yes.

2 VICE CHAIR ALLEN: Thank you.

3 Sir?

4 MR. PAUL: Good morning. My name
5 is Scott Paul. I'm a former neighborhood
6 commissioner and president of the Citizens
7 Association.

8 VICE CHAIR ALLEN: Thank you.

9 MR. PAUL: And also a neighbor in
10 the Foxhall Village.

11 MR. DeWITTE: Good morning. My
12 name is Conrad DeWitte. I'm also a neighbor.
13 I live on 44th Street around the corner from
14 the property, and I'm also a member of the
15 Foxhall Community Citizens Association Board
16 of Directors.

17 VICE CHAIR ALLEN: Okay. Ms.
18 Trotter, why don't we start with you?

19 MS. TROTTER: Thank you.

20 VICE CHAIR ALLEN: And can we do
21 whatever it is, is it three minutes, five
22 minutes, whatever it is please? Thanks. Hold

1 on just a second. Let's get your time
2 straight.

3 MR. VARGA: Madam Chair, we can
4 keep time over here. I can make a beeping
5 sound or something from this side of the dias.

6 VICE CHAIR ALLEN: Thank you very
7 much, Mr. Varga. Okay, Ms. Trotter, please.

8 MS. TROTTER: Thank you. This
9 discussion so far has missed some really
10 important facts and matters of law, so I'd
11 like to just go back through the facts of the
12 case and point out some important legal
13 matters as well.

14 This house is in my Single Member
15 District, and initially the application came
16 before the ANC as a use variance, to allow the
17 house to be split into two units.

18 The Foxhall Community Citizens
19 Association opposed the application, because
20 the applicant had failed to give proper
21 notice, and the FCCA believed that the
22 application presented serious issues for the

1 single family low density character of the
2 neighborhood.

3 The FCCA's goal is to preserve the
4 quality of life and unique architectural
5 character of Foxhall Village, and it played an
6 instrumental role in designating Foxhall
7 Village as a historic district.

8 After this deliberation at the
9 June 5th meeting, the ANC voted to encourage
10 the homeowner and the neighbors to discuss
11 ways to improve the application, and they
12 wanted to make sure that the application
13 complied with applicable law and did not
14 adversely affect the neighborhood.

15 After considerable discussion, the
16 applicant amended her application to request
17 a special exception under 202.10 of DCMR
18 11.202, rather than a use variance. The
19 applicant again failed to post any notice
20 within the prescribed period, and posted the
21 notice of what originally was supposed to be
22 the June 25th hearing only at noon on June

1 18th, by posting the orange notice sign on the
2 front of her property, on the front door of
3 her property.

4 The members of the FCCA Board of
5 Directors have continually communicated to me
6 that due to insufficient notice, the FCCA has
7 not had enough time to gather pertinent
8 information about this application.

9 The FCCA submitted a letter to
10 this Board requesting that the BZA delay its
11 decision until all relevant facts can be
12 ascertained with respect to this application.

13 As Commissioner Pagano noted,
14 Section 202.10 enumerates eight requirements
15 governing a BZA exception to permit the
16 addition of an accessory apartment with an
17 existing one family home, and provides that
18 the BZA may modify or waive not more than two
19 requirements.

20 The applicant demands an exemption
21 purporting to rely on two waivers: the house
22 type, which is required to be not -- it's

1 required to be detached. The house is
2 actually attached, and the second waiver she's
3 requesting is based on the minimum lot size,
4 and the lot size in this case is under 4,000
5 square feet.

6 Yet the application fails to
7 indicate that the applicant is also needing
8 four waivers for this application, which would
9 violate the two waiver maximum permitted under
10 202.10. The applicant claims that the
11 property's gross floor area is 2,044 square
12 feet.

13 Section 202.10 requires the
14 dwelling to have at least 2,000 square feet of
15 gross floor area, exclusive of garage space.
16 The applicant claims that the accessory
17 dwelling unit would occupy 512 square feet,
18 which is exactly 25 percent of the dwelling's
19 claimed gross floor area.

20 This section requires that the
21 accessory apartment occupy no more than 25
22 percent of the dwelling's gross floor area.

1 So this is the crux of what hasn't been
2 discussed so far.

3 The applicant claims that her
4 attic space represents 288 square feet of
5 gross floor area, and I will direct your
6 attention to the architect's plan, page five
7 of the architect's plans, that I hope you all
8 have.

9 In researching this, the law says
10 that the applicant's attic cannot count toward
11 gross floor area, because 11 DCMR 199.1
12 defines gross floor area specifically to
13 exclude attic space with structural head room
14 of less than 6-1/2 feet.

15 Representatives of the FCCA have
16 determined, based on a visual examination of
17 the front and the back of the property, as
18 well as their inspection of the interior attic
19 space of a structurally identical house
20 nearby, that the applicant's attic clearly
21 does not satisfy the requirement of 6-1/2 feet
22 of structural head room.

1 In my conversation with the
2 applicant, when I asked her about the
3 structural head room in the attic, she
4 represented that she did not know the height
5 of the attic and could not guess. She did
6 indicate that the attic is accessible only via
7 the ceiling, the ceiling access panel, and
8 that that attic is not habitable space.

9 I also contacted her architect
10 several times this week, because as you can
11 see, the plans do not show the height of the
12 attic, which is a clear requirement of the
13 statute, and the architect did not return any
14 of my calls.

15 So given that the property's attic
16 by law cannot count toward gross floor area,
17 the applicant fails to satisfy the requirement
18 of Section 202.10, for the dwelling to have at
19 least 2,000 square feet of gross floor area.

20 Similarly, the applicant also
21 fails to satisfy the requirement that the
22 accessory dwelling unit represent no more than

1 25 percent of the property's gross floor area.
2 As a result, the application would require a
3 waiver of four of the eight requirements in
4 Section 202.10, exceeding the maximum number
5 of two permitted waivers.

6 Four waivers from Section 202.10
7 would require the BZA to treat the application
8 as a use variance, rather than a special
9 exception, as I understand it. Allowing four
10 waivers in this case would have a detrimental
11 effect on the neighborhood, and also detract
12 from the efficacy of our zoning laws.

13 Whether the attic's structural
14 head room in fact satisfies the applicable
15 legal requirements is a material fact in the
16 BZA's consideration of this application, and
17 it could be readily verified through an
18 architect's certification, visual inspection
19 or photographic evidence submitted by the
20 applicant or other interested parties such as
21 the FCCA.

22 The residents in my Single Member

1 District elected me to represent their views
2 and interests in matters of concern to this
3 unique neighborhood, and the FCCA has
4 repeatedly and passionately expressed to me
5 their deep concerns over this application, and
6 the deleterious effects on this neighborhood.

7 I urge you to consider that
8 particular fact.

9 VICE CHAIR ALLEN: Thank you. I
10 allowed you to go a little bit over the five
11 minutes because of your ANC status. So
12 please, we will do three minutes for the other
13 two folks. I do have a question. Were you
14 part of the 9 to 0 vote in support of this
15 application?

16 MS. TROTTER: I was, because we
17 had the discussion at our Monday evening
18 meeting, and the resolution supported it as
19 long as the attic could be shown as complying
20 with this particular part of the law. That's
21 the -- I brought this to the ANC Monday night,
22 and for me, the attic height is the crux of

1 the issue.

2 I know for the FCCA, the crux of
3 the issue is the low density character of the
4 neighborhood, and the lack of notice for them
5 to properly research how it impacts the
6 historic district. But for me, it was the
7 verification of the fact or not how tall the
8 attic is.

9 VICE CHAIR ALLEN: Okay. You'll
10 have a chance in just a minute. Any questions
11 from my colleagues?

12 (No response.)

13 VICE CHAIR ALLEN: No. Does the
14 applicant have a question for Ms. Trotter?

15 MS. SULLIVAN: I don't have any
16 questions. I appreciate the research, but
17 she's never been inside my house or seen it.
18 So --

19 VICE CHAIR ALLEN: Okay, thank
20 you. Mr. Paul.

21 MR. PAUL: Yes, thank you.

22 VICE CHAIR ALLEN: I'm sorry. Do

1 you have a question for Ms. Trotter?

2 MS. PAGANO: Just to note that she
3 was one of the commissioners who voted with us
4 in the 9-0 vote. Thank you.

5 VICE CHAIR ALLEN: Okay, Mr. Paul.

6 MR. PAUL: Yes. I sent this in
7 yesterday afternoon, and I'm not sure if you
8 got copies.

9 VICE CHAIR ALLEN: We did today.

10 MR. PAUL: Do you have these?

11 VICE CHAIR ALLEN: We do.

12 MR. PAUL: Okay. Just as
13 background, you know, I've lived in the
14 neighborhood for quite a while, and I've
15 managed a number of these houses. I'm a real
16 estate agent.

17 I've sold over 70 of them in the
18 neighborhood, and I've been to -- they're
19 about 335 of these homes, and I've been in
20 more than half of them.

21 But the designer, the builder of
22 these, you know, he built them symmetrically

1 and he copied the design. So the floor plans
2 are usually the same, or they're mirror images
3 of each other.

4 The house in which the applicant's
5 row is in or is in the row, there are seven
6 homes, and you know, the first and the last
7 home are the same, you know, the second and
8 the sixth are the same, and so and so. But
9 basically they're mirror images of each other.

10 But of these houses, you know,
11 four of them are exactly the same floor plan.
12 They're just mirror images of each other. I
13 was able to get into the attic at 4455
14 Greenwich, which is a mirror image of the
15 house that the applicant is requesting the
16 exception on, okay, and the pictures that
17 you'll see there are in that attic, okay.

18 If you will bear with me and go
19 through. The first picture shows the
20 applicant's house. The second picture will
21 show, you know, the mirror image house and the
22 one in which I entered the attic, and you can

1 see the roof line is the same and of course
2 the house is the same.

3 You know, the interior of the
4 applicant has subsequently been changed. But
5 the interior floor space is the same. The
6 third picture is, you know, I crawled up into
7 the attic, and you can see directly ahead of
8 you, this is looking forward, a 12 inch beam,
9 and the little space in between there is
10 another 12 inches, which I crawled through.
11 You can see some air conditioning duct work
12 and some insulation there.

13 But then once through, you know, I
14 looked off to the right, and I enumerated the
15 bricks, you know. You can see the bricks.
16 Each of the bricks is three inches. So the
17 head space there, you know, at that point are
18 eight courses of bricks for 24 inches. If you
19 look forward a little bit, you know, you can
20 see another course of brick.

21 Flipping to the next picture,
22 looking all the way to the front right corner,

1 I can count 11 courses of bricks. That's 33
2 inches, okay.

3 The next picture, looking straight
4 ahead towards the front of the house,
5 underneath the rafters, you know, the roof
6 beams which are six inches, you know, just for
7 visual identification, and then this 12 inch
8 big beam across, and then three six-inch
9 subroof board.

10 So the total that you can see
11 there is 30 inches, okay. That's 30 inches of
12 head space. Then the last picture, you know,
13 from where I was, you know, crawled through,
14 through the roof attic there, looking back in
15 the other direction, and this is part of the
16 space that the architect is claiming is 288
17 square feet, I have rested my foot on the
18 ceiling beam there, and then you can see that
19 it's coming up and it's almost touching the
20 rafter. My foot is 12 inches long.

21 So you know, I would say that this
22 definitely does not conform to the 6-1/2 feet

1 that's required of the house, you know, for
2 the exception.

3 VICE CHAIR ALLEN: I'm sorry.
4 You're going to have to stop.

5 MR. PAUL: And again, this is a
6 mirror image house and, you know, these houses
7 can't be changed because they're within the
8 historic district, so you know, you can't
9 alter the facade. So I seriously doubt that
10 hers is any different.

11 VICE CHAIR ALLEN: Thank you.

12 MR. PAUL: Thank you.

13 VICE CHAIR ALLEN: Mr. DeWitte.

14 MR. DeWITTE: Thank you very much.
15 My name's Conrad DeWitte. I live in the
16 neighborhood.

17 VICE CHAIR ALLEN: Oh, I'm sorry.
18 I'm sorry, Mr. DeWitte. Yes. Do we have any
19 questions from the applicant of Mr. Paul?

20 MS. SULLIVAN: Again, I appreciate
21 the research, but it's not my home.

22 VICE CHAIR ALLEN: ANC, do you

1 have any questions?

2 MS. PAGANO: No questions.

3 VICE CHAIR ALLEN: Okay, from the
4 Board?

5 COMMISSIONER TURNBULL: Mr.
6 Trotter, have you been inside the applicant's
7 house?

8 MR. PAUL: I'm Mr. Paul, but no --
9 actually, I have been. I've been in it twice.
10 I'm a real --

11 COMMISSIONER TURNBULL: Been up in
12 the attic?

13 MR. PAUL: I have not been in her
14 attic, no.

15 MS. SULLIVAN: Have you been it
16 since I completely renovated the house?

17 VICE CHAIR ALLEN: Excuse me. I
18 already gave you an opportunity to ask
19 questions.

20 COMMISSIONER TURNBULL: So you
21 haven't been up in the attic of this house?

22 MR. PAUL: I've not been in her

1 attic, no.

2 COMMISSIONER TURNBULL: You
3 haven't been in this house, you haven't been
4 in the attic of this house?

5 MR. PAUL: I've been in that house
6 twice, more than twice, but I have not been in
7 that attic.

8 COMMISSIONER TURNBULL: Okay,
9 thank you.

10 MR. PAUL: Thank you.

11 VICE CHAIR ALLEN: Any questions?
12 No. Okay. Mr. DeWitte.

13 MR. DeWITTE: Thank you,
14 Commissioners. I live in the neighborhood.
15 My name's Conrad DeWitte, and I just wanted to
16 focus on notice a little bit. Notice isn't
17 just about giving residents a set time to
18 review an application. It's also about giving
19 people sufficient time to arrange schedules to
20 attend a BZA hearing.

21 When people might be able to
22 arrange their schedules to be at a mid-day

1 weekday meeting on 15 days' notice, it becomes
2 more difficult if not impossible to change
3 schedules on shorter notice, especially when
4 a person might have already arranged his or
5 her schedule to attend an earlier meeting,
6 such as the Tuesday meeting, which was moved
7 to today.

8 You know, regardless of the move
9 of the meeting date from Tuesday to Friday, I
10 don't think the 15-day notice requirement for
11 the sign to be on the front of the property
12 has been satisfied.

13 In order for the 15-day notice
14 requirement to have been satisfied for today's
15 meeting, the notice would have needed to have
16 been on the front of the property by the 13th,
17 and it wasn't.

18 In order for it to have met the
19 notice requirement for the Tuesday meeting, it
20 would have had to have been on the front of
21 the building by the 10th, and it wasn't. So
22 the Foxhall Community Citizens Association is

1 very concerned that the process be followed
2 for a special exception.

3 We're not against accessory units
4 per se, but we want to make sure that the
5 process is followed, and that the laws and
6 regulations are adhered to. Thank you very
7 much.

8 VICE CHAIR ALLEN: Thank you.
9 Does the applicant have any questions for Mr.
10 DeWitte?

11 MS. SULLIVAN: Can I comment?

12 VICE CHAIR ALLEN: Do you have a
13 question?

14 MS. SULLIVAN: I would say, were
15 you at the meeting June 5th, where this was
16 first discussed, as part of notice?

17 MR. DeWITTE: Yes, I was. May I
18 continue?

19 MS. SULLIVAN: No.

20 VICE CHAIR ALLEN: Okay, that's
21 fine. Is that, that's your question?

22 MS. SULLIVAN: I just wanted to

1 clarify, but this has been in discussion since
2 June 5th. It's not something that was, you
3 know, just brought up.

4 MR. DeWITTE: Well, there are
5 requirements for notice that need to be
6 followed.

7 VICE CHAIR ALLEN: Okay, got it.
8 Thank you. Any questions from the ANC?

9 MS. PAGANO: No.

10 VICE CHAIR ALLEN: Colleagues, do
11 you have questions?

12 (No response.)

13 VICE CHAIR ALLEN: If I can go
14 back to the Office of Planning or to staff, do
15 we certification on notice? Can we --

16 MR. VARGA: Madam Chairman, we do
17 have certification of notice as Exhibit 33,
18 submitted by the applicant on -- it was
19 exhibited on June 17th. According to the --
20 there's a sentence above the orange sign on
21 page 2 of 33, it says "Signs put up 6/17/13
22 because that was when I was confirmed I was

1 eligible for the special exception hearing,"
2 presumably after she had amended relief from
3 the use variance to the special exception.

4 (Pause.)

5 VICE CHAIR ALLEN: Okay, okay. Do
6 we have any other questions by anyone?

7 (No response.)

8 VICE CHAIR ALLEN: All right.
9 Just give me a second.

10 (Board conferring.)

11 VICE CHAIR ALLEN: Okay, okay.
12 We're going to do a couple of things. We're
13 going to postpone this decision for a decision
14 date, which Ms. Rose, please start looking for
15 a date for us, and I would plan, I would
16 suggest that we leave the record open, to
17 allow for very specific information.

18 We would like to have the
19 applicant provide some kind of information for
20 us regarding the size. I would suggest to
21 you, obviously you can provide whatever you
22 would like. I would suggest to you that some

1 kind of an architect's certification might be
2 very helpful here.

3 MS. SULLIVAN: Okay.

4 VICE CHAIR ALLEN: And we will
5 consider, frankly, whether the waiver -- I'm
6 not inclined to waive the notice, since there
7 are some objections to that.

8 But I would leave the record open
9 for the parties, or not parties, but for any
10 additional objections, letters of objections,
11 to make up for, I assume, to make up for some
12 lost time because of the notice question.
13 Anything else? Anything else from my
14 colleagues?

15 (No response.)

16 VICE CHAIR ALLEN: Okay. Office
17 of Planning?

18 MR. VARGA: Does that include a
19 supplemental report of OP if you feel that's
20 appropriate, based on new information?

21 VICE CHAIR ALLEN: Absolutely.

22 MR. VARGA: Thank you.

1 VICE CHAIR ALLEN: We'd very much
2 appreciate that. Okay.

3 MS. ROSE: How about responses
4 from anyone, just so I can get the dates
5 correct? No parties, okay.

6 VICE CHAIR ALLEN: I'm sorry?

7 MS. ROSE: There are no parties,
8 other than the ANC, so there would be no
9 responses from anyone?

10 VICE CHAIR ALLEN: That's correct.
11 Just letters, if they -- if letters in support
12 or opposition if they're so inclined.

13 MS. ROSE: All right.

14 MR. DeWITTE: Your Honor, may I?

15 VICE CHAIR ALLEN: I'm not Your
16 Honor.

17 MR. DeWITTE: Commissioner, may
18 the ANC be able to respond?

19 VICE CHAIR ALLEN: That is
20 actually, I'm sorry, out of order. ANC is a
21 party or, you know, has equivalent to party
22 status. So ANCs are certainly allowed to

1 submit supplemental information, okay. Can we
2 have --

3 MS. ROSE: Meeting dates, would
4 you like July 9th, 16th, 23rd. I think they
5 need adequate time to pull together the
6 material.

7 VICE CHAIR ALLEN: I think we
8 could go the 16th. We're pretty full on the
9 9th already; is that correct?

10 MS. ROSE: 16th.

11 VICE CHAIR ALLEN: And that gives
12 everybody about two weeks to do whatever.

13 MS. ROSE: Submissions would be
14 due from the applicant on July the 5th, and
15 any response would be due July the 12th at
16 three o'clock.

17 VICE CHAIR ALLEN: Is that doable?

18 MS. SULLIVAN: That's fine.

19 VICE CHAIR ALLEN: Okay, all
20 right.

21 COMMISSIONER TURNBULL: Madam
22 Chair, just a comment. We aren't really

1 saying that the applicant was late in posting;
2 there's just a question -- we're just allowing
3 some flexibility?

4 VICE CHAIR ALLEN: Right, because
5 I think it's -- there's a question about that,
6 yeah.

7 MS. ROSE: So are you closing the
8 record otherwise, and we're going to a public
9 meeting on this, a decision meeting?

10 VICE CHAIR ALLEN: I would say
11 yes.

12 MS. ROSE: Yes. The decision will
13 be held on July 16th, 9:30 a.m.

14 VICE CHAIR ALLEN: Okay. Thanks
15 everybody, and we appreciate everybody coming
16 down. Really do. Are we ready?

17 Case No. 18575

18 MS. ROSE: Next is Application
19 18575 of Donatelli Development, on behalf of
20 the Government of the District of Columbia,
21 pursuant to 11 DCMR 3103.2, for a variance
22 from the off street parking requirements under

1 Subsection 2101.1, to allow the construction
2 of a new residential building in the GA/C2A
3 District, at premises 3825 through 3829
4 Georgia Avenue, N.W., Square 3028, Lot 818.

5 VICE CHAIR ALLEN: Thank you. So
6 in this we have a request, as stated, to --
7 for parking variance, to allow construction of
8 a new residential building, 31 units, on a
9 vacant site in the Georgia Avenue Overlay
10 District.

11 I certainly want to applaud the
12 inclusionary zoning efforts that I observed in
13 this, and can you state your name and for the
14 record please?

15 MR. FREEMAN: Good morning, Madam
16 Chair, Board members. My name is Kyrus
17 Freeman. I'm an attorney with the law firm of
18 Holland and Knight, here on behalf of the
19 applicant. We have a full panel, but we're
20 happy to rest on the record and answer any
21 questions or otherwise make a presentation.

22 VICE CHAIR ALLEN: Thank you for

1 that choice. I think we have reviewed the
2 record, and it was fairly complete. Do you
3 have any specific questions?

4 (No response.)

5 VICE CHAIR ALLEN: I don't think
6 we have any questions, so if you are good with
7 --

8 MR. FREEMAN: I just want to make
9 a couple of clarifications, if you don't mind.
10 As you know, the record includes the letter of
11 support from the ANC. That's the ANC's
12 official position. We have the Office of
13 Planning's report in support.

14 I did just want to clarify what
15 the affordable housing requirement is, because
16 they had a different number than what we're
17 proposing. We're proposing four of the units,
18 not that this is relevant to the parking
19 variance, but I did just want to make it clear
20 on the record.

21 There are four units at 30 percent
22 of the AMI, and three units at 60 percent of

1 the AMI. So that's a total of seven units.
2 But that exceeds what would be provided
3 otherwise under IZ. So I just wanted to make
4 that clear on the record.

5 VICE CHAIR ALLEN: I think it said
6 eight or something like that in the report?

7 MR. FREEMAN: Yes ma'am.

8 VICE CHAIR ALLEN: Okay.

9 MR. FREEMAN: Secondly, with
10 respect to the DDOT report, we have -- they've
11 proposed two conditions. We have essentially
12 agreed to both of those conditions, subject to
13 a minor tweak.

14 The first condition is that the
15 applicant should offer a Capital BikeShare
16 membership or a car share membership to all
17 new tenants in perpetuity. We will agree to
18 do -- the applicant will agree to offer a one-
19 year Capital BikeShare membership or car share
20 membership, to all new residents at the
21 initial lease up of the building, which is
22 what I've seen kind of in most cases in front

1 of the BZA, and we accept their second
2 condition, and we'll be happy to provide a
3 transportation information screen.

4 But other than that, we agree with
5 their report and their findings that we won't
6 have any adverse impact, as well as the
7 findings of the Office of Planning report.
8 Thank you.

9 VICE CHAIR ALLEN: Thank you, Mr.
10 Freeman. Any questions for Mr. Freeman?

11 (No response.)

12 VICE CHAIR ALLEN: All right. May
13 we have the Office of Planning report?

14 MR. MORDFIN: Good morning Chair,
15 members of the Board. I'm Stephen Mordfin
16 with the Office of Planning, and the
17 application is seeking conformance of the
18 criteria for the granting of a variance
19 because the lot is unusually narrow and
20 shallow, making below grade parking difficult
21 or inefficient.

22 The site is well-served by other

1 transportation options.

2 VICE CHAIR ALLEN: Can you move
3 the mic more in your -- thank you.

4 MR. MORDFIN: The site is well-
5 served by other transportation options,
6 including public transit and ZipCar, and is
7 located in a very walkable neighborhood, and
8 the granting of this variance would allow for
9 the development of a long-vacant property with
10 a residential building in support of the
11 Georgia Avenue Overlay District.

12 Therefore, the Office of Planning
13 recommends that the Board grant the subject
14 application. Thank you.

15 VICE CHAIR ALLEN: Thank you. Any
16 questions by the applicant for Office of
17 Planning?

18 MR. FREEMAN: No, Madam Chair.

19 VICE CHAIR ALLEN: Any questions
20 from the Board?

21 (No response.)

22 VICE CHAIR ALLEN: Okay. Do we

1 have another report? Go ahead.

2 MR. ROGERS: Good morning. My
3 name is Jonathan Rogers, a representative from
4 DDOT. I'll just be brief in my comments.
5 Essentially, we expect parking demand from the
6 site to be minimal, and that the four parking
7 spaces provided on site, we expect that to be
8 sufficient.

9 In the case that there is
10 spillover parking, there is ample street
11 parking, but because of the DDOT's curbside
12 management programs and operations in place,
13 those aren't viable long-term solutions for
14 parking, and people would have to seek off-
15 street parking solutions.

16 I did want to clarify the last
17 bullet point under the recommendations in
18 brief in our report. On page one, it says
19 "The applicant has not committed to provide
20 the 11 secure bicycle parking spaces for the
21 District."

22 It's my understanding that the

1 applicant has indeed done that, and there was
2 just a miscommunication in that. But they
3 have agreed to provide the 11 secure parking
4 spaces that are required by the District.

5 I will say that the -- in order to
6 ensure that the minimal parking demand in the
7 future, DDOT does stand by its request to have
8 the one year Capital BikeShare/CarShare
9 membership available to all, excuse me, all
10 residents into the future, and that has been
11 granted by the BZA in other instances. I'd be
12 happy to answer any questions.

13 VICE CHAIR ALLEN: Thank you.
14 Does applicant have any questions?

15 MR. FREEMAN: No, Madam Chair.

16 VICE CHAIR ALLEN: The Board?

17 (No response.)

18 VICE CHAIR ALLEN: No, okay.

19 MEMBER HINKLE: Yes, I do Madam
20 Chair. Just for the applicant. I was just
21 looking at the plans, and trying to see where
22 the bicycle parking would be provided. Could

1 you describe it?

2 MR. FREEMAN: They are on our
3 ground floor plan, sheet -- give me a second,
4 please. We have boards, but this might be a
5 little quicker. Page A8, coming to the bottom
6 right. There's a bike storage room with a
7 note that says "11 bikes," our June 11th
8 plans.

9 (Pause.)

10 MEMBER HINKLE: Thank you.

11 VICE CHAIR ALLEN: Thank you.

12 COMMISSIONER TURNBULL: Just
13 following up on -- the rear of the building is
14 where the parking will be?

15 MR. FREEMAN: Yes sir.

16 COMMISSIONER TURNBULL: On your
17 previous plan, you sort of showed four spaces
18 with the blocks for the cars. On the later
19 one, I don't see anything. Are any of those
20 spaces going to be handicapped?

21 MR. FREEMAN: Let me have our
22 architect, Mr. Bill Bonstra, introduce himself

1 and then answer that question.

2 MR. BONSTRA: Thank you, Kyrus.
3 I'm Bill Bonstra, Bonstra Haresign Architects,
4 the architects for the project. A question
5 regarding the handicapped spaces. There are
6 four spaces, and one of the four is a
7 handicapped space, as required by code.

8 COMMISSIONER TURNBULL: Is
9 handicapped. Okay, thank you.

10 VICE CHAIR ALLEN: I have an
11 actual question about that as well. How will
12 the four spaces be available? I mean how is
13 it -- is there a plan for how they will be --
14 I mean are they going to be open, are they to
15 be purchased? I just want to understand.

16 MR. FREEMAN: Let me introduce
17 Larry Clark, who's the representative for
18 Donatelli Development. So he'll introduce
19 himself and answer that question.

20 VICE CHAIR ALLEN: Thank you.

21 MR. CLARK: Yes. My name is Larry
22 Clark, Vice President of Donatelli

1 Development. This was envisioned as an
2 apartment building. We have two other
3 apartment buildings, we actually have two
4 other properties on site. But the apartment
5 buildings that we have are managed, and I
6 guess we do it as a first-come, first-served.

7 Certainly, if there's a
8 handicapped person, they would have that
9 space. Typically, and not to get onto a
10 different subject, with the parking demand, if
11 there is no parking demand, we would end up
12 probably having Car to Go or additional ZipCar
13 spaces. We already have three spaces in our
14 other building about 50 yards away.

15 MR. FREEMAN: Okay. Could I ask
16 him to just elaborate on a point. Our traffic
17 expert report concluded that the supply is
18 sufficient to meet demand. The DDOT report
19 also agreed, that there's sufficient on street
20 supply.

21 The third point, which is
22 important to make, which you alluded to, is

1 that in the event that there's additional need
2 for parking spaces, they would make parking
3 available in one of their other two buildings.
4 So if you could just elaborate that on that
5 please?

6 MR. CLARK: I believe that is in
7 our report. OR George refers to that; I
8 believe DDOT as well, and maybe even Office of
9 Planning. But we do have -- one building has
10 161 units with 188 parking spaces. The other
11 building has 49 units with parking to code,
12 which is 25 spaces.

13 We at this point have a minimum of
14 45 available spaces unrented. That's why we
15 designed the building this way. We're very
16 familiar with what the parking requirements
17 have been in areas, and our building is next
18 to the Metros.

19 So we suspect we'll have someone
20 interested in the three or four spaces. If
21 not, we want to make sure there are additional
22 ZipCar or Car to Go spaces. If for some

1 reason there is a demand, we have plenty of
2 parking in our two other buildings, which are
3 about -- within 50 yards away.

4 VICE CHAIR ALLEN: Okay. Thank
5 you very much. Any other questions?

6 (No response.)

7 VICE CHAIR ALLEN: Great, thank
8 you. Any questions by the applicant of either
9 of the agencies?

10 MR. FREEMAN: No, thank you.

11 VICE CHAIR ALLEN: Do we have a
12 report of the Advisory Neighborhood
13 Commission? Anyone here from ANC 4C?

14 (No response.)

15 VICE CHAIR ALLEN: We do have a
16 report that it's been, they approve it. Any
17 parties or persons in support of this
18 application? Any parties in support?

19 (No response.)

20 VICE CHAIR ALLEN: Do we have any
21 parties or persons in opposition to the
22 application? Any parties or persons in

1 opposition? You are, sir. Do you want to
2 come on down? Would you please state your
3 name for the record, and you will have three
4 minutes to share with us. You have to push
5 your button on.

6 MR. JONES: Good afternoon. My
7 name is Timothy A. Jones. I am the Advisory
8 Neighborhood Commissioner for Single Member
9 District 4C08, which encompasses the site
10 which the parking variance is being sought.

11 Let me see. I've been a resident
12 of that neighborhood since 1959. I've served
13 newspapers in the neighborhood, been there a
14 long time, and I am in opposition to this
15 project because one, it is zoned C3A.

16 It is also in a historically
17 underutilized business district, which is a
18 SBA program, which has been established to
19 provide for job creation and business
20 formation, and with a residential use in a
21 neighborhood, would those characteristics be
22 the highest and best use?

1 Especially I see too many people
2 standing on the corner in that neighborhood,
3 and no jobs are being created in that
4 neighborhood.

5 VICE CHAIR ALLEN: I see. Is that
6 your testimony?

7 MR. JONES: The answer is yes.

8 VICE CHAIR ALLEN: Okay. Can you
9 -- we have a report from the ANC saying that
10 they are in approval of this. Were you part
11 of that vote?

12 MR. JONES: No. I was one of the
13 four dissenting votes in that vote. I think
14 it was 6-4 or 4-6, whatever it was. I was a
15 dissenting vote.

16 VICE CHAIR ALLEN: I've got it.

17 MR. JONES: In fact, I introduced
18 a resolution, a motion to oppose that, to keep
19 the file open, to request representation
20 before the Board, and possible enter into a
21 community-based agreement with the developer.

22 VICE CHAIR ALLEN: Okay. Thank

1 you very much. We always appreciate the ANC
2 and appreciate their coming down. We
3 certainly appreciate your comments.

4 MR. JONES: Yes.

5 VICE CHAIR ALLEN: Does the
6 applicant have any questions of -- I'm sorry,
7 sir. Can you give me your name again?

8 MR. JONES: My first name is
9 Timothy, middle initial is A, last name is
10 Jones.

11 VICE CHAIR ALLEN: Mr. Jones.

12 MR. FREEMAN: No, Madam Chair, we
13 don't have any questions for Commissioner
14 Jones. Thank you.

15 VICE CHAIR ALLEN: Thank you. My
16 colleagues, any questions of Mr. Jones?

17 COMMISSIONER TURNBULL: So you
18 don't believe it should be residential? You'd
19 rather see -- you want commercial?

20 MR. JONES: Yes. As I indicated
21 earlier, there's too many folks standing on
22 the corner in that neighborhood, and I hear

1 constant concern about the existing businesses
2 in that block. They don't hire anyone from
3 within the neighborhood.

4 And as I said, historically, there
5 was a site within that zone that is not
6 currently a historic, on the National Register
7 of Historic Places. But he reached out to
8 the community and hired people in the
9 community.

10 COMMISSIONER TURNBULL: Okay,
11 thank you.

12 MR. JONES: Thank you.

13 VICE CHAIR ALLEN: Thank you, sir.

14 MR. JONES: Thank you.

15 VICE CHAIR ALLEN: Okay. So do we
16 have a rebuttal closing statement by the
17 applicant?

18 MR. FREEMAN: Madam Chair, we
19 appreciate the comments. Just to kind of get
20 back to the standard of proof, we're here for
21 a parking variance. Everything in the record
22 indicates how we meet the three-part variance

1 test with respect to the parking variance, as
2 confirmed by the Office of Planning, as
3 confirmed by the Department of Transportation.

4 And as you've heard, the ANC, the
5 majority of the ANC voted to support the case,
6 based on the information we provided about how
7 we meet the standards of relief.

8 Our site is vacant. It's not
9 improved, it's not historic. It's zoned C2A.
10 C2A permits residential use, and again, the
11 issue here isn't the use; the issue is the
12 parking relief.

13 So we believe we meet the
14 standards for approval, and we would
15 respectfully request that you would approve it
16 with the two conditions that we agreed to, the
17 transportation information screen and the
18 BikeShare or CarShare membership for one year
19 at the initial lease up. Thank you.

20 VICE CHAIR ALLEN: Thank you. Any
21 other comments?

22 (No response.)

1 VICE CHAIR ALLEN: All right. So
2 given the relief requested, certainly I agree
3 that lot width and shallowness of the site is
4 exceptional, resulting in practical difficulty
5 to build a parking facility on that specific
6 space.

7 The property is well-served by
8 public transportation, as well as the
9 additional properties, as we've heard today,
10 so no substantial detriment to the public
11 good. The variance relief would allow
12 development of a long vacant property. So I
13 do not believe that we have substantial harm
14 to the zoning regs.

15 While I certainly understand our
16 person in or statements in opposition to this,
17 the use of the facility, as stated by the
18 applicant, is actually not in question at this
19 point, but parking relief.

20 For those reasons and the fact
21 that we had approval by the ANC, I would move
22 to approve the request, with conditions.

1 The first one being the applicant
2 shall over a one year CarShare or a Capital
3 BikeShare membership to all new tenants. I
4 would actually put a period there, and suggest
5 that it should be offered to all new residents
6 that one year. We'll give you the one year,
7 but it should happen with any new resident.

8 Number two, the applicant shall
9 provide a transportation information screen in
10 the lobby, that would show real-time arrival,
11 availability for nearby trains, buses,
12 CarShare and BikeShare.

13 (Off mic comment.)

14 VICE CHAIR ALLEN: Okay. So I
15 would move those, that approval with those
16 conditions.

17 COMMISSIONER TURNBULL: I'll
18 second.

19 VICE CHAIR ALLEN: Second. Any
20 comments?

21 COMMISSIONER TURNBULL: Again, I
22 would echo your concerns about Commissioner

1 Jones' comments, and I understand where he's
2 coming from. But I think the applicant, I
3 mean C2A. I mean as far as the use, it is an
4 option.

5 I mean they are more within their
6 rights to use, have a residential use, and the
7 question before us is really the parking
8 issue, and I would concur with your other
9 comments as well.

10 VICE CHAIR ALLEN: Thank you.
11 Okay, okay. All in favor?

12 (Chorus of ayes.)

13 VICE CHAIR ALLEN: Any opposed?

14 (No response.)

15 VICE CHAIR ALLEN: Ms. Rose.

16 MS. ROSE: Staff would record the
17 vote as 3-0 to 2, with the motion by Ms.
18 Allen, second by Mr. Turnbull, with Mr. Hinkle
19 voting to approve the application. Mr. Jordan
20 not present, not voting and one vacant seat on
21 the Board, the conditions, as specified in the
22 record.

1 VICE CHAIR ALLEN: Okay.

2 MR. FREEMAN: Madam Chair, can we
3 have -- we'd request a summary order, since
4 there are no parties in opposition.

5 VICE CHAIR ALLEN: Okay.

6 MR. FREEMAN: Thank you.

7 VICE CHAIR ALLEN: Thank you. With
8 no other business slated for -- oh, we do.

9 MS. ROSE: Staff just needs to
10 state on the record that Appeal No. 18577 of
11 Lawrence M. and Kathleen B. Ausebell was
12 postponed to the public hearing of July 30th,
13 2013, by mutual consent.

14 VICE CHAIR ALLEN: Excellent.

15 (Off mic comment.)

16 VICE CHAIR ALLEN: Okay. As
17 acting chairperson of the Board of Zoning
18 Adjustment for the District of Columbia, and
19 in accordance with Section 405(b)(4) of the
20 District of Columbia Administrative Procedure
21 Act, I move that the BZA hold closed meetings
22 via telephone conference on Monday, July 8th,

1 July 15th, July 22nd and July 29th, for the
2 purpose of seeking legal advice from counsel
3 and/or to deliberate upon but not voting on
4 the cases scheduled to be publicly heard or
5 decided by the Board on the day after each
6 such closed meeting, as those cases are
7 identified on the Board's agenda for July 9th,
8 23rd and 30th, 2013. Is there a second?

9 MEMBER HINKLE: Second.

10 VICE CHAIR ALLEN: Will the
11 Secretary please take a roll call vote on the
12 motion before us, now that it has been
13 seconded?

14 MS. ROSE: When I call your name,
15 please vote. Ms. Allen?

16 VICE CHAIR ALLEN: Aye.

17 MS. ROSE: Mr. Hinkle.

18 MEMBER HINKLE: Aye.

19 MS. ROSE: Mr. Turnbull.

20 COMMISSIONER TURNBULL: Aye.

21 MS. ROSE: Staff will record the
22 vote as 3 to 0 to hold the meetings. Thank

1 you.

2 VICE CHAIR ALLEN: As it appears
3 that the motion has passed, I hereby give
4 notice that the BZA will hold this
5 aforementioned closed meeting via telephone
6 conference.

7 Pursuant to Section 406 of the
8 District of Columbia Administrative Procedure
9 Act, notice will also be posted in the Office
10 of Zoning Electronic Reading Room, placed on
11 the Office of Zoning's electronic calendar on
12 its website, and published in the District of
13 Columbia Register in as timely a manner as
14 possible. Now no more business?

15 MS. ROSE: No more business.

16 VICE CHAIR ALLEN: By consensus,
17 we will adjourn.

18 MS. ROSE: Thank you.

19 VICE CHAIR ALLEN: Amen, and
20 speedy return of Mr. Jordan.

21 (Whereupon, at 11:47 a.m., the
22 public hearing was concluded.)

A				
able 41:4 50:7	agencies 18:16	44:22 45:12,18	77:2	27:7 30:17 31:9
68:13 73:21 79:18	26:11 29:8,10	46:8 47:15,22	amendment 7:16	32:5 35:17,22
absent 51:22	32:9 41:8 51:1	48:6 49:1,4,11	7:18 8:2	39:9,22 42:4,17
Absolutely 78:21	93:9	50:13,17,19,22	AMI 83:22 84:1	42:22 46:11,16
accept 7:16,21 46:9	agenda 103:7	51:4 52:14,16,19	ample 87:10	49:2 50:10,15
85:1	agent 38:15 67:16	53:10 54:8 56:2	analysis 28:11	51:9,17 52:6,17
access 40:15 63:7	aggressive 19:17	56:18,21 57:2,8	ANC 8:21 17:12	56:3 58:20 59:16
accessed 11:5	19:18	57:17,20 58:6	19:1,7 20:1,5	59:19 60:20 61:7
accessible 13:15	agree 28:19 84:17	65:9 66:9,13,19	26:14,15 32:18,19	61:10,16 62:3
48:11 63:6	84:18 85:4 99:2	66:22 67:5,9,11	32:22 33:1,4,6,17	63:2,17,20 64:20
accessory 7:9 49:21	agreed 16:8,15	71:3,11,13,17,22	34:14 35:1 39:1	66:14 68:15 69:4
60:16 61:16,21	17:2 18:6 24:19	72:3,17 73:11	39:16 41:13 42:1	71:19 75:9 76:18
63:22 75:3	25:6 51:18 84:12	75:8,12,20 76:7	42:4 45:17 50:15	77:19 80:14 81:1
accommodate 6:12	88:3 91:19 98:16	76:10,13 77:5,8	51:6,8,11,16	82:19 84:15,18
acknowledge 14:3	agreement 29:20	77:11 78:4,16,21	52:17 55:6 56:4	86:16 87:19 88:1
Act 102:21 104:9	37:18 44:7 95:21	79:1,6,10,15,19	56:15,20 58:16	88:14,20 93:8
acting 102:17	ahead 28:17,22	80:7,11,17,19	59:9 65:11,21	96:6 97:17 99:18
actual 47:18 90:11	69:7 70:4 87:1	81:4,10,14 82:5	71:22 76:8 79:8	100:1,8 101:2
add 14:2 17:22	air 69:11	82:22 83:5 84:5,8	79:18,20 83:11	applicant's 7:16
24:17 31:12	Alexander 8:20	85:9,12 86:2,15	93:13 95:9 96:1	9:4 25:5 28:20
addition 60:16	19:4	86:19,22 88:13,16	98:4,5 99:21	41:2 43:10 53:20
additional 6:19	Allen 1:14,17 4:3	88:18 89:11 90:10	ANCs 79:22	62:10,20 68:4,20
16:2 78:10 91:12	4:15 5:7,22 6:9	90:20 93:4,7,11	ANC's 83:11	72:6
92:1,21 99:9	7:22 8:22 12:14	93:15,20 95:5,8	and/or 103:3	application 3:12
address 13:1 24:11	13:21 15:10 17:7	95:16,22 96:5,11	answer 25:10 41:4	5:4,12 6:16 7:1,1
adequate 80:5	17:10,14 18:2,13	96:15 97:13,15	48:7 82:20 88:12	8:2 14:14 19:9,16
adhered 75:6	18:20 20:4,8,13	98:20 99:1 100:14	90:1,19 95:7	20:3,10,11,14
adjacent 26:2	20:18 21:2,13,20	100:19 101:10,13	answered 33:18	22:10 23:1 25:22
36:10	22:3,5,8,16 23:13	101:15,18 102:1,5	anticipated 11:14	26:4,21 27:4 30:7
adjourn 104:17	23:18 24:2,10	102:7,14,16	11:18	35:9,10,14 37:19
adjustment 1:4,16	25:11 26:6,10,13	103:10,15,16	apartment 45:7,20	38:5 40:14 42:9
4:9 46:6 102:18	26:18 27:2,6,11	104:2,16,19	47:20 48:5 55:1	42:10,13 44:7
Administrative	28:5,15 29:2,11	alley 11:20 40:11	55:20 60:16 61:21	45:3 49:17 52:1
102:20 104:8	29:14,16,18,22	allow 5:18 6:5,18	91:2,3,4	52:12 54:10 55:22
ADO 48:11	30:3,16,22 31:3	7:3 8:1 16:21	Appeal 102:10	56:9 58:15,19,22
adverse 85:6	31:17,20 32:4,8	23:9 34:7 39:19	appears 36:9 42:22	59:11,12,16 60:8
adversely 59:14	32:12,17,21 33:3	46:1,9,12 58:16	104:2	60:12 61:6,8 64:2
advice 103:2	33:7 34:15 35:2,6	77:17 82:1,7 86:8	applaud 82:11	64:7,16 65:5,15
Advisory 93:12	35:12,16,19 37:3	99:11	applicable 59:13	73:18 81:18 85:17
94:7	37:6,9,11,14,16	allowed 52:9 65:10	64:14	86:14 93:18,22
affect 25:7 59:14	37:21 38:2,12,17	79:22	applicant 6:2,18	101:19
affordable 83:15	38:19 39:2,6,7,12	allowing 64:9 81:2	7:14 8:11 9:7,22	appreciate 9:4 11:9
aforementioned	39:17 40:2,12,17	alluded 91:22	10:22 15:11,17	29:9 34:13 35:21
104:5	41:6,11,17,22	alter 71:9	16:3,8,14,21 17:2	41:18 48:7 66:16
afternoon 67:7	42:3,7,12,16,21	Amen 104:19	17:11 18:6 20:6	71:20 79:2 81:15
94:6	43:8,13,16,19	amend 46:11	20:20 21:4 23:19	96:1,2,3 97:19
	44:1,3,5,10,14,17	amended 59:16	23:22 24:16 26:7	appropriate 78:20

approval 26:19 27:9 41:1 50:11 56:1 95:10 98:14 99:21 100:15 approve 22:10 26:4 28:12 43:10 93:16 98:15 99:22 101:19 approving 20:2 architect 24:9 48:20 53:16,20 63:9,13 70:16 89:22 architects 24:8 90:3,4 architectural 59:4 architect's 55:4 62:6,7 64:18 78:1 area 30:10 31:7 34:8 36:3,5,6 47:6 48:13,14 51:13,14 61:11,15,19,22 62:5,11,12 63:16 63:19 64:1 areas 92:17 Arent 8:11 arrange 73:19,22 arranged 74:4 arrival 100:10 art 7:5,10 14:8,20 16:22 Arthur 40:21 artist 10:18 artists 10:14 14:11 14:17 15:2 16:1 arts 15:3 23:10 ascertained 60:12 asked 11:10 12:1 33:17,19,22 52:2 63:2 asking 39:3 assisted 54:15 Associates 24:5 association 8:8 57:7,15 58:19 74:22 assume 21:11	78:11 attached 61:2 attend 73:20 74:5 attended 33:5 attention 62:6 attic 53:4,5 55:9,12 62:4,10,13,18,20 63:3,5,6,8,12,15 65:19,22 66:8 68:13,17,22 69:7 70:14 72:12,14,21 73:1,4,7 attic's 64:13 attorney 2:10 82:17 Ausebell 102:11 authorizing 38:20 39:8 availability 100:11 available 88:9 90:12 92:3,14 Avenue 82:4,9 86:11 Aye 103:16,18,20 ayes 22:2 29:13 37:8 43:22 101:12 a.m 1:14 4:2 16:11 16:16 18:9 81:13 104:21 A8 89:5	68:9 beam 69:8 70:8,18 beams 70:6 bear 68:18 beauty 7:4 beeping 58:4 behalf 39:9 81:19 82:18 belief 28:7 35:22 believe 13:19 14:22 31:11 42:5 53:16 92:6,8 96:18 98:13 99:13 believed 58:21 best 5:2 94:22 better 15:21 bicycle 87:20 88:22 big 70:8 bike 89:6 bikes 89:7 BikeShare 84:15 84:19 98:18 100:3 100:12 BikeShare/CarS... 88:8 Bill 24:8 89:22 90:3 bit 6:11 65:10 69:19 73:16 block 97:2 blocks 89:18 board 1:4,16,18 4:8 4:17 5:10 6:12 7:16 10:3,11 12:13 14:7 15:5,8 22:11 25:15 26:4 29:21 30:20 31:18 32:1 35:4,20 44:9 50:20 52:20 57:15 60:4,10 70:9 72:4 77:10 82:16 85:15 86:13,20 88:16 95:20 101:21 102:17 103:5 boards 89:4 Board's 9:17 28:10 103:7 body 24:15	Bonstra 24:7,8,8 89:22 90:2,3,3 bottom 17:19 89:5 Boulevard 38:10 40:10 Bray 8:9,10 9:13 14:1 17:13 20:7 20:21 22:14 break 44:18 brevity 28:7 brick 69:20 bricks 69:15,15,16 69:18 70:1 brief 9:14 12:15 31:16 87:4,18 bright 54:13 56:11 bring 9:14 brought 11:20 12:21 53:5 65:21 76:3 build 31:4 33:20,22 99:5 builder 67:21 building 5:15 7:11 9:20,21 23:10 25:17 26:2 27:22 50:8 74:21 82:2,8 84:21 86:10 89:13 91:2,14 92:9,11 92:15,17 buildings 91:3,5 92:3 93:2 built 67:22 bullet 12:22 87:17 burden 47:13 buses 100:11 business 6:1 94:17 94:19 102:8 104:14,15 businesses 97:1 busy 40:10 button 54:13 94:5 buy 33:19 BZA 52:3 60:10,15 60:18 64:7 73:20 85:1 88:11 102:21 104:4	BZA's 64:16
C				
calculation 24:14 46:5 calculations 27:21 calendar 104:11 call 6:13 22:18 30:4 103:11,14 calls 63:14 cans 11:19 capacity 13:14 20:1 Capital 84:15,19 88:8 100:2 car 84:16,19 91:12 92:22 cards 56:6,6 cars 89:18 CarShare 98:18 100:2,12 case 3:4,8,10,12,16 3:18,20 5:8 6:5,14 6:15,17 9:9 10:2 10:10 14:9,10 22:15,19,20,21 24:1 30:4,5 38:3,4 45:2,4 47:14 52:11 58:12 61:4 64:10 81:17 87:9 98:5 cases 4:20 6:11 14:7 15:6 84:22 103:4,6 category 49:20 ceiling 63:7,7 70:18 celebrious 15:18 cellar 25:19 27:20 certainly 5:2 21:3,5 29:3 41:19 79:22 82:11 91:7 96:3 99:2,15 certification 43:3 64:18 76:15,17 78:1 chair 1:15 4:3 5:7 5:10,11,22 6:9 7:22 8:10,22 9:13				

12:14 13:21 14:2 15:10,15 17:7,10 17:13,14 18:2,13 18:20 20:4,8,13 20:18,21 21:2,13 21:20 22:3,5,14 22:16 23:13,18 24:2,10,22 25:11 26:6,10,13,18 27:2,6,11,13 28:5 28:15,19 29:2,11 29:14,16,22 30:2 30:3,16,20,22 31:3,17,20 32:1,4 32:8,12,17,21 33:3,7 34:15 35:2 35:6,12,16,19 37:3,6,9,11,12,14 37:21 38:1,2,12 38:17,19 39:2,7 39:12,16,17 40:2 40:12,17 41:6,11 41:17,22 42:3,7 42:12,16,21 43:8 43:13,16,19 44:1 44:3,10,13,14,17 44:22 45:12,16,18 46:4,8 47:15,22 48:6 49:1,4,11 50:13,17,19,22 51:4 52:14,16,19 53:10 54:8 56:2 56:18,21 57:2,8 57:17,20 58:3,6 65:9 66:9,13,19 66:22 67:5,9,11 71:3,11,13,17,22 72:3,17 73:11 75:8,12,20 76:7 76:10,13 77:5,8 77:11 78:4,16,21 79:1,6,10,15,19 80:7,11,17,19,22 81:4,10,14 82:5 82:16,22 83:5 84:5,8 85:9,12,14 86:2,15,18,19,22	88:13,15,16,18,20 89:11 90:10,20 93:4,7,11,15,20 95:5,8,16,22 96:5 96:11,12,15 97:13 97:15,18 98:20 99:1 100:14,19 101:10,13,15 102:1,2,5,7,14,16 103:10,16 104:2 104:16,19 Chairman 4:22 32:14 40:20 76:16 chairperson 4:16 102:17 chance 16:1 66:10 change 46:21 74:2 changed 69:4 71:7 changes 9:6 character 59:1,5 66:3 characteristics 94:21 check 27:18 Chen 3:16 38:6 Chicago 54:17 choice 83:1 Chorus 22:2 29:13 37:8 43:22 101:12 Christopher 23:22 cite 27:16 28:1,2 cited 52:4 Citizens 57:6,15 58:18 74:22 City 11:16 51:10 City's 25:3 claimed 61:19 claiming 70:16 claims 61:10,16 62:3 clarifications 83:9 clarify 16:8 46:5 76:1 83:14 87:16 Clark 90:17,21,22 92:6 clear 63:12 83:19 84:4	clearly 62:20 close 13:4,16 closed 13:11 102:21 103:6 104:5 closing 20:19 27:6 35:16 42:17 81:7 97:16 Cochran 2:17 15:14,15 17:8,15 17:17 18:4 21:17 49:8,9,13,14 52:4 53:12,14 54:1 code 90:7 92:11 colleague 39:13 colleagues 25:12 39:21 46:2 47:17 66:11 76:10 78:14 96:16 collected 10:7 collection 11:21 Collins 23:21,22 24:22 26:9 27:8 27:17 28:4 Columbia 1:2 4:9 81:20 102:18,20 104:8,13 come 4:4 40:9 45:1 56:9 94:2 comfortable 50:11 coming 10:14 41:18 70:19 81:15 89:5 96:2 101:2 comma 17:22 comment 41:14 75:11 80:22 100:13 102:15 comments 9:5 19:1 21:21 28:16 29:4 35:3,21 37:4 43:17 87:4 96:3 97:19 98:21 100:20 101:1,9 commercial 19:21 96:19 Commission 1:19 4:18 93:13	commissioner 1:20 1:21 8:21 19:5 20:1 21:10,18 28:14,18 34:16 43:15 51:22 52:21 53:11,21 54:7 56:16 57:6 60:13 72:5,11,20 73:2,8 79:17 80:21 89:12 89:16 90:8 94:8 96:13,17 97:10 100:17,21,22 103:20 commissioners 67:3 73:14 committed 87:19 communicated 60:5 community 13:8,12 14:13 51:12,17 53:3 57:15 58:18 74:22 97:8,9 community-based 95:21 compatible 10:19 10:20 compiled 9:16,18 complete 28:2 31:11 83:2 completely 72:16 complied 59:13 complies 14:22 compliment 15:17 complying 65:19 Comprehensive 15:1 concentration 15:3 concern 51:12 53:3 65:2 97:1 concerned 75:1 concerns 16:5 52:13 53:12 65:5 100:22 conclude 15:7 concluded 91:17 104:22 concludes 17:8	concur 101:8 condition 16:6,14 17:20 84:14 85:2 conditioning 69:11 conditions 17:16 18:5 21:11,15 22:12 41:3 84:11 84:12 98:16 99:22 100:16 101:21 conference 102:22 104:6 conferring 77:10 confident 9:10 19:14 configuration 53:5 confirmed 76:22 98:2,3 conform 70:22 conformance 85:17 conforming 36:11 connect 11:3 Conrad 57:12 71:15 73:15 consensus 8:3 104:16 consent 102:13 consider 65:7 78:5 considerable 51:11 59:15 consideration 64:16 consistent 36:15 constant 97:1 constitutes 2:19 constraints 13:14 construct 5:15 30:12 construction 5:18 9:19 23:9 82:1,7 consultant 24:5 contact 33:4 34:21 contacted 34:9 63:9 contain 14:5 contains 43:3 continually 60:5 continue 35:7
---	--	---	--	--

75:18 continued 6:17 convened 1:13 convenience 27:10 conversation 63:1 cooking 48:19 cooperative 15:18 copied 68:1 copies 12:12 67:8 corner 57:13 69:22 95:2 96:22 correct 24:14 28:4 43:7,14 52:5 79:5 79:10 80:9 correspondence 19:8 corridor 11:16 14:16 cost 14:19 costs 9:19 counsel 9:7 23:22 28:20 103:2 count 62:10 63:16 70:1 couple 47:16 54:2 77:12 83:9 course 69:1,20 courses 69:18 70:1 crawled 69:6,10 70:13 created 11:4 36:4 95:3 creation 94:19 criteria 12:4 15:5 43:1 47:10 48:13 85:18 critical 14:17 crux 62:1 65:22 66:2 curbside 87:11 currently 97:6 C2A 38:9 98:9,10 101:3 C2B 5:19 C3A 23:10 94:15	D 3:1 damage 9:21 date 7:18 74:9 77:14,15 dated 24:15 dates 79:4 80:3 Datta 8:18,18 daughter 54:15 David 38:15 day 46:1 103:5 days 74:1 DCMR 5:13 7:2 23:2 30:8 38:6 45:5 59:17 62:11 81:21 DDOT 18:22 26:14 32:13,15 41:12 51:5 84:10 87:4 88:7 91:18 92:8 DDOT's 87:11 deadline 7:20 December 24:15 decided 14:7 23:15 51:16 52:11 103:5 decision 6:4 51:19 53:9 60:11 77:13 77:13 81:9,12 deep 65:5 defines 62:12 definitely 70:22 definition 14:5 delay 51:19 60:10 delete 8:2 deleted 43:5 deleterious 65:6 deliberate 103:3 deliberation 59:8 demand 25:18 87:5 88:6 91:10,11,18 93:1 demands 60:20 dense 51:13,14 density 59:1 66:3 Department 25:4 98:3 describe 89:1 design 34:2 68:1	designated 48:15 designating 59:6 designed 10:15 14:11 92:15 designer 67:21 detached 30:13 31:5 61:1 detailed 9:18 12:10 12:10 determined 10:8 62:16 detract 64:11 detriment 36:13 99:10 detrimental 64:10 developer 95:21 development 3:22 36:14 51:13 81:19 86:9 90:18 91:1 99:12 DeWITTE 57:11 57:12 71:13,14,15 71:18 73:12,13,15 75:10,17 76:4 79:14,17 dias 58:5 different 71:10 83:16 91:10 difficult 29:6 74:2 85:20 difficulty 36:4 99:4 direct 62:5 direction 9:17 70:15 directly 69:7 director 19:20 Directors 57:16 60:5 disagreements 52:7 discrepancies 54:4 discrepancy 49:5 55:7 discuss 59:10 discussed 62:2 75:16 discussion 52:4 58:9 59:15 65:17	76:1 discussions 52:22 dishwasher 48:18 display 14:12 dissenting 95:13,15 district 1:2 3:14 4:9 7:12 14:21 16:1 19:5 23:11 30:7 30:13 34:7 38:9 45:9 56:16,17,19 58:15 59:7 65:1 66:6 71:8 81:20 82:3,10 86:11 87:21 88:4 94:9 94:17 102:18,20 104:8,12 districts 5:19 46:19 doable 80:17 document 12:13 35:1 documents 5:5 6:19,20 dog 39:19 41:3 dogs 40:4 Donatelli 3:20 81:19 90:18,22 door 13:12 40:9 60:2 doubt 71:9 drawing 10:10 drawings 49:17 55:5 Drive 5:20,20 duct 69:11 due 6:20 25:21 60:6 80:14,15 dwelling 30:13 45:8 48:11 49:21 61:14,17 63:18,22 dwelling's 61:18,22 D.C 1:14 2:10 40:22 49:15 53:17	earliest 27:10 early 33:10 ease 47:7 east 13:18 echo 100:22 effect 25:18 64:11 effects 65:6 efficacy 64:12 efforts 82:12 eight 60:14 64:3 69:18 84:6 either 11:6 93:8 elaborate 11:10 91:16 92:4 elected 65:1 electronic 104:10 104:11 eligible 77:1 eliminating 55:16 emergency 5:1 encompasses 94:9 encourage 12:15 24:21 59:9 ensure 88:6 enter 95:20 entered 68:22 entire 11:5 27:21 enumerated 14:14 69:14 enumerates 60:14 envisioned 91:1 equivalent 79:21 error 25:22 43:2 especially 15:22 55:19 74:3 95:1 ESQ 2:12 essentially 84:11 87:5 establish 38:7 45:7 45:20 established 94:18 establishment 38:8 39:20 41:4 estate 67:16 evening 17:1 65:17 evenings 16:18 18:10
---	--	--	---	---

event 13:13 92:1 events 14:13 everybody 80:12 81:15,15 evidence 64:19 exactly 28:8 55:3 61:18 68:11 examination 62:16 exceeding 64:4 exceeds 84:2 Excellent 18:13 29:11 39:17 41:17 102:14 exception 5:14 7:3 8:6 9:2 16:18 18:10 19:18 21:7 23:6 38:7 39:19 43:12,14 46:12,14 47:4,11 48:21 50:12 54:17 59:17 60:15 64:9 68:16 71:2 75:2 77:1,3 exceptional 99:4 exclude 62:13 exclusive 61:15 excuse 17:17 72:17 88:9 executive 19:20 exemption 60:20 exhibit 12:9 27:14 27:18,18 32:15 39:11 43:3 76:17 exhibited 76:19 existing 7:3 36:5 60:17 97:1 expect 87:5,7 expert 25:6 91:17 experts 25:3 explanation 12:10 expressed 65:4 extension 7:9 extensive 9:21 54:21 extensively 53:18 exterior 11:7 F	facade 71:9 facility 12:2,12,22 13:4,20 14:6,10 99:5,17 fact 17:6 36:13 39:20 64:14,15 65:8 66:7 95:17 99:20 facts 10:9 58:10,11 60:11 failed 58:20 59:19 fails 61:6 63:17,21 fairly 9:10 13:17 31:11 51:14 83:2 falls 56:17 familiar 24:19 92:16 family 5:1 30:12 45:8,21 59:1 60:17 far 22:16 58:9 62:2 101:3 favor 22:1 28:16 29:12 37:6 43:21 101:11 FCCA 58:21 60:4,6 60:9 62:15 64:21 65:3 66:2 FCCA's 59:3 feel 9:9,11 50:11 78:19 feet 48:10,12 53:6 61:5,12,14,17 62:4,14,21 63:19 70:17,22 females 54:20 Feng 3:16 38:6 file 6:19 32:13,20 35:20 38:22 39:1 40:21 41:12 95:19 filed 5:5 7:14,17,18 45:5 filing 7:15 11:1 finally 14:1 find 31:11 findings 85:5,7 fine 18:3 21:2 75:21 80:18 firm 8:10 82:17 first 6:15 10:20 15:16 16:8,11 17:20,21 18:7 19:12 51:11 54:2 54:4 68:6,19 75:16 84:14 96:8 100:1 first-come 91:6 first-served 91:6 five 16:10,17 18:8 57:21 62:6 65:10 five-minute 44:18 flat 5:17 flexibility 81:3 Flipping 69:21 floor 7:11 10:12,18 10:20 11:2,5 16:9 18:7 54:5 61:11 61:15,19,22 62:5 62:11,12 63:16,19 64:1 68:1,11 69:5 89:3 floors 55:10 focus 73:16 folks 23:19 56:6 65:13 96:21 followed 75:1,5 76:6 following 18:5 89:13 foot 70:17,20 footage 25:17 47:19 48:10 49:6 52:5,22 53:13 55:15 forgot 16:13 form 43:3 formation 94:20 former 57:5 Fort 3:4 5:12,20 forward 69:8,19 four 12:20 13:1 61:8 64:3,6,9 68:11 83:17,21 87:6 89:17 90:6,6 90:12 92:20 95:13 Fox 8:11 Foxhall 57:10,15 58:18 59:5,6 74:22 frankly 78:5 free 9:11 Freeman 82:15,17 83:8 84:7,9 85:10 85:10 86:18 88:15 89:2,15,21 90:16 91:15 93:10 96:12 97:18 102:2,6 freezer 48:18 Friday 1:9 4:7 74:9 friends 54:20 front 13:19 40:9 60:2,2 62:17 69:22 70:4 74:11 74:16,20 84:22 full 27:15 80:8 82:19 fully 20:2 future 88:7,10 G	given 9:21 13:6,13 50:9 63:15 99:2 gives 80:11 giving 73:17,18 go 28:17,22 47:18 53:14 58:11 65:10 68:18 76:13 80:8 87:1 91:12 92:22 goal 14:14 59:3 going 6:6,10 44:17 47:20 53:7 71:4 77:12,13 81:8 89:20 90:14 good 4:5 5:9 24:3,7 30:19 31:22 34:3 36:13 38:14 56:14 57:4,11 82:15 83:6 85:14 87:2 94:6 99:11 governing 60:15 Government 1:1 81:20 grade 85:20 grant 21:7,22 25:15 36:22 37:18 43:20 44:7 52:9 86:13 granted 36:18 88:11 granting 85:18 86:8 great 8:22 15:10 17:14 32:4 38:12 41:20 45:18 93:7 green 54:13 56:11 Greenwich 45:10 68:14 Greg 34:5,20 grooming 38:8 39:20 41:3 gross 61:11,15,19 61:22 62:5,11,12 63:16,19 64:1 ground 89:3 group 13:8 54:19 guess 35:7 63:5 91:6 Guggan 8:18
--	---	---

guidance 10:4 Gyor 31:22 32:1,14 32:19 H habitable 63:8 half 17:20 67:20 hand 12:17 handicapped 89:20 90:5,7,9 91:8 handle 53:9 handled 11:14,14 55:2 happen 100:7 happy 9:7 15:14 17:22 19:2 25:1,9 29:7 49:16 82:20 85:2 88:12 Haresign 24:8 90:3 harm 36:17 99:13 head 62:13,22 63:3 64:14 69:17 70:12 hear 6:5 9:7 19:2 34:10 53:2,7 55:6 96:22 heard 6:16 98:4 99:9 103:4 hearing 1:6,13 4:4 4:6,8,10 6:6,17,21 9:16 16:3 21:5 24:11 59:22 73:20 77:1 102:12 104:22 height 63:4,11 65:22 held 2:20 19:12 51:19 81:13 helpful 78:2 he'll 90:18 high 14:19,19 highest 94:22 Hinkle 1:18 4:17 22:10 29:3,19 33:8,13 34:12 37:2,17 44:7 46:3 88:19 89:10 101:18 103:9,17	103:18 hire 97:2 hired 97:8 historic 51:14 59:7 66:6 71:8 97:6,7 98:9 historically 94:16 97:4 hold 18:20,21 35:8 39:3 57:22 102:21 103:22 104:4 Holland 82:18 home 54:16,19,22 60:17 68:7 71:21 homeowner 59:10 homes 67:19 68:6 Honor 79:14,16 hope 62:7 hopefully 8:14 house 31:5 33:21 33:22 34:3 47:3 47:19 48:10 50:1 52:6 53:4,6,15 56:16 58:14,17 60:21 61:1 62:19 66:17 68:4,15,20 68:21 69:2 70:4 71:1,6 72:7,16,21 73:3,4,5 houses 67:15 68:10 71:6 housing 10:18 83:15 I idea 34:4 identical 62:19 identification 70:7 identified 103:7 identify 23:20 image 68:14,21 71:6 images 68:2,9,12 imagined 15:21 impact 28:9,10,21 85:6 impacts 26:2 66:5	impairing 36:18 important 58:10,12 91:22 impossible 74:2 improve 59:11 improved 98:9 inception 54:16 inch 69:8 70:7 inches 69:10,16,18 70:2,6,11,11,20 inclined 78:6 79:12 include 16:13 78:18 included 27:20 includes 83:10 including 86:6 inclusionary 82:12 increase 25:16,21 indicate 61:7 63:6 indicated 11:9 17:6 96:20 indicates 97:22 indicating 12:4 inefficient 85:21 infill 36:14 inform 50:5 information 9:18 10:7 12:2,6 16:2 50:10 53:19 60:8 77:17,19 78:20 80:1 85:3 98:6,17 100:9 informed 39:13 initial 84:21 96:9 98:19 initially 58:15 input 29:9,9 inquire 34:6 inside 66:17 72:6 inspection 62:18 64:18 install 48:22 instances 88:11 instrumental 59:6 insufficient 60:6 insulated 55:2 insulation 69:12	integrity 36:19 intent 36:18 interested 64:20 92:20 interesting 14:16 interests 65:2 interior 11:6 62:18 69:3,5 introduce 8:7 89:22 90:16,18 introduced 95:17 issue 13:10 66:1,3 98:11,11 101:8 issues 11:11 58:22 item 55:13 IZ 84:3 J Jackson 40:20,22 41:7 Jamie 24:4 JEFF 1:18 Jeffrey 4:16 Jerrily 1:13 4:6 job 94:19 jobs 95:3 JOHN 1:23 join 4:19 Joining 4:16 Jonathan 87:3 Jones 94:6,7 95:7 95:12,17 96:4,8 96:10,11,14,16,20 97:12,14 101:1 Jordan 4:22 22:10 29:20 37:19 44:8 101:19 104:20 judgment 44:11 July 6:8,9 80:4,14 80:15 81:13 102:12,22 103:1,1 103:1,7 June 1:10 2:20 4:8 4:11 6:18,20,21 11:1 51:8 59:9,22 59:22 75:15 76:2 76:19 89:7	K Kathleen 3:18 45:4 45:14 102:11 Kathryn 1:14,17 4:15 keep 24:21 58:4 95:18 kind 77:19 78:1 84:22 97:19 kinds 14:20 16:22 Kinley 8:10 kitchen 48:1,3,15 knew 33:20 Knight 82:18 know 9:1,8 19:19 22:17 34:17 40:7 46:19 47:2,16 55:10,21 63:4 66:2 67:13,22 68:6,7,10,21 69:3 69:6,13,15,17,19 70:5,6,12,13,21 71:1,6,8 74:8 76:3 79:21 83:10 Kress 1:13 4:6 Kyrus 82:16 90:2 L L 24:12 lack 66:4 ladies 4:5 Larry 90:17,21 late 7:15 46:1 81:1 law 8:10 52:9 58:10 59:13 62:9 63:16 65:20 82:17 Lawrence 102:11 laws 64:12 75:5 learning 51:9 lease 84:21 98:19 leave 77:16 78:8 led 15:18 left 56:12 legal 58:12 64:15 103:2 legally 48:15,21 55:4
--	--	--	---	--

legislation 46:21	31:6 33:20 34:1	measured 54:6	minimize 26:2	100:15 102:21
lens 14:6	36:2,3,4,11 38:10	mechanical 25:20	minimum 61:3	moved 11:2 21:21
letter 26:19 38:20	45:11 61:3,4 82:4	meet 91:18 97:22	92:13	43:20 44:3 74:6
38:22 39:1,8 60:9	85:19 99:3	98:7,13	minor 22:22 23:15	moves 50:6
83:10	lots 5:21 36:7,10	meeting 1:12 2:20	28:8,21 84:13	multi-unit 51:12
letters 78:10 79:11	low 59:1 66:3	10:6 33:6,9,11,16	minute 66:10	mutual 102:13
79:11	M	41:2 51:16,20	minutes 2:20 57:21	N
Let's 44:22 58:1	M 8:20 19:4 45:4	55:7 59:9 65:18	57:22 65:11,12	N 3:1
life 59:4	102:11	74:1,5,6,9,15,19	94:4	NAGELHOUT
light 36:21 49:7	MacArthur 38:10	75:15 80:3 81:9,9	mirror 68:2,9,12	2:12
54:13 56:11	40:9	103:6 104:5	68:14,21 71:6	name 4:15 8:8
Lincoln 3:4 5:12,20	Madam 5:10,11 8:9	meetings 19:12	miscommunicati...	23:21 30:17,20
line 17:18 69:1	9:13 14:1 15:15	102:21 103:22	88:2	38:13,15 40:21
list 12:18	17:13 20:21 22:14	meets 12:3 48:12	missed 58:9	49:12,14 54:11,15
listed 13:1 21:12	24:22 27:13 28:19	member 1:18 4:17	Mitchell 38:14,15	56:13,15 57:4,12
little 6:11 40:15	30:2 31:22 32:14	13:8 29:3 33:8,13	38:17,18,20,21	82:13,16 87:3
65:10 69:9,19	37:12 38:1 40:20	33:21 34:5,12	39:8 40:3,7,13	90:21 94:3,7 96:7
73:16 89:5	44:13 46:4 58:3	37:2 56:17 57:14	42:5,19 43:7,12	96:8,9 103:14
live 13:4 50:1 55:20	76:16 80:21 82:15	58:14 64:22 88:19	44:15	names 45:13
57:13 71:15 73:14	86:18 88:15,19	89:10 94:8 103:9	mixed 23:9	name's 24:4 71:15
lived 67:13	96:12 97:18 102:2	103:18	modification 22:22	73:15
lives 47:5	Maggie 8:13	members 1:16,19	23:15,16 24:12,20	narrow 85:19
live/work 15:2,22	main 15:3 19:22	5:10 6:12 13:9	25:16 26:4 27:19	National 97:6
living 14:17	majority 98:5	30:20 32:1 33:17	28:7	NCPC 1:18
LLC 3:8,10 5:13	making 22:8 29:18	33:19 60:4 82:16	modifications 25:7	nearby 62:20
7:2 23:1	37:16 44:5 85:20	85:15	28:13	100:11
Lloyd 4:22	managed 67:15	membership 13:11	modify 60:18	necessary 52:10
loading 23:5	91:5	84:16,16,19,20	Mohamed 30:20	need 5:3 7:21 11:17
lobby 100:10	management 87:12	88:9 98:18 100:3	moment 18:19	12:18 17:21 45:22
local 10:14 14:11	manner 104:13	Memorial 1:13 4:6	Monday 51:20	55:22 76:5 80:5
located 4:6 19:6	MARY 2:12	mention 4:21	65:17,21 102:22	92:1
86:7	Maryland 53:17	mentioned 17:20	month 16:18 18:10	needed 43:1 74:15
long 50:7 65:19	mass 14:17	met 10:2 36:1	19:13	needing 61:7
70:20 94:14 99:12	material 64:15	42:22 43:9 74:18	Mordfin 25:14	needs 102:9
long-term 87:13	80:6	Metro 13:17	85:14,15 86:4	neighbor 57:9,12
long-vacant 86:9	materials 47:12	Metros 92:18	morning 4:5 5:10	neighborhood
look 17:18 36:10	matter 5:11 10:5	mic 54:12 86:3	20:3 21:1 24:3,7	10:16,19 12:2,11
69:19	33:21 46:20	100:13 102:15	30:19 31:22 38:14	12:22 13:3,7,20
looked 10:11 14:6	matters 58:10,13	Michael 1:20 4:19	56:14 57:4,11	14:5,18 16:5
15:5 47:22 69:14	65:2	mics 56:10	82:15 85:14 87:2	19:22 29:6 36:15
looking 69:8,22	maximum 61:9	middle 96:9	motion 22:9 29:12	57:5 59:2,14
70:3,14 77:14	64:4	mid-day 73:22	29:19 37:7,13,17	64:11 65:3,6 66:4
88:21	ma'am 17:17 19:3	Milanovich 24:3,4	44:6 95:18 101:17	67:14,18 71:16
Looks 32:12	20:7 84:7	mind 24:21 46:21	103:12 104:3	73:14 86:7 93:12
lost 78:12	mean 41:7 90:12,14	83:9	move 6:6 21:6	94:8,12,13,21
lot 5:16 7:13 23:12	101:3,3,5	minimal 28:21 87:6	28:12 36:21 43:9	95:2,4 96:22 97:3
30:9,10,15 31:6,6		88:6	74:8 86:2 99:21	

neighbors 52:6 53:2,8 55:14 59:10 never 66:17 new 39:19 78:20 82:2,8 84:17,20 100:3,5,7 newspapers 94:13 night 51:20 65:21 non-conforming 7:4,5,9 9:3 21:8 noon 59:22 north 13:18 note 43:2 67:2 89:7 noted 60:13 notice 1:14 4:12 58:21 59:19,21 60:1,6 66:4 73:16 73:16 74:1,3,10 74:13,15,19 75:16 76:5,15,17 78:6 78:12 104:4,9 noticed 54:2 number 4:19 5:4 64:4 67:15 83:16 100:8 NYARKU 1:23 N.E 5:20,21 30:14 N.W 1:14 4:7 7:13 23:11 38:10 45:10 82:4 O objection 26:14 32:16 41:12 51:6 objections 8:1 18:22 78:7,10,10 objective 47:7 observed 82:12 obviously 43:5 46:22 77:21 occupancy 13:14 16:19 18:11 occupy 61:17,21 offer 84:15,18 offered 100:5 office 1:22 2:10,14	4:13 7:10 10:2 11:8 15:12,16 21:12,16 25:4,13 25:14 26:7 31:21 32:2,6 34:21 35:21 40:19,22 47:10 49:6,15 50:14,20 76:14 78:16 83:12 85:7 85:13,16 86:12,16 92:8 98:2 104:9 104:11 official 83:12 oh 54:7 71:17 102:8 okay 6:9,10 7:22 12:14 17:7 18:4 18:22 20:8 21:21 24:10 26:10 27:11 28:1 29:2 30:16 31:17,20 32:8 33:7 34:12 35:2 37:21 38:2,3 39:14 40:17 42:7 42:21 43:8 44:22 46:8,10,15 47:15 49:1 50:13,17,22 52:19 53:21,22 54:7,8,14 56:2,18 57:17 58:7 66:9 66:19 67:5,12 68:16,17 70:2,11 72:3 73:8,12 75:20 76:7 77:5,5 77:11,11 78:3,16 79:2,5 80:1,19 81:14 84:8 86:22 88:18 90:9 91:15 93:4 95:8,22 97:10,15 100:14 101:11,11 102:1,5 102:16 once 69:13 ones 28:3 one-page 12:13 OP 10:4 16:12,15 17:2,12 26:3 34:6 34:10,21 49:10,16	49:22 78:19 open 13:12,13 14:12 15:8 77:16 78:8 90:14 95:19 openings 16:22 operating 14:20 operations 87:12 opportunity 6:19 19:10,15 29:7 36:8 72:18 oppose 95:18 opposed 22:3 29:14 37:9 44:1 58:19 101:13 opposition 20:14 20:16 27:3,4 35:13,14 42:13,14 46:2,10 56:9 79:12 93:21 94:1 94:14 99:16 102:4 option 101:4 options 86:1,5 orange 60:1 76:20 order 4:4 6:11 22:15,17 24:15,20 27:16 30:1,3 36:10 37:22 44:12 45:1 50:2 55:22 74:13,18 79:20 88:5 102:3 organization 19:21 original 6:22 19:9 25:22 28:10 originally 4:10 45:5 59:21 outcome 15:19 Overlay 82:9 86:11 owner 8:17,19 30:21 38:16 45:15 49:22 50:1,2,5 owning 50:8 o'clock 80:16 O'Neill 8:13,13 P Padro 8:20,20 18:18 19:3,4	Pagano 39:15,15 41:15,21 45:16,16 50:16 51:7 52:15 53:1 60:13 67:2 72:2 76:9 page 16:11,15 17:5 17:6,19,21 62:6 76:21 87:18 89:5 panel 63:7 82:19 paragraph 17:18 parking 23:3 25:18 29:5 81:22 82:7 83:18 85:20 87:5 87:6,10,11,14,15 87:20 88:3,6,22 89:14 91:10,11 92:2,2,10,11,16 93:2 94:10 97:21 98:1,12 99:5,19 101:7 Parkway 45:10 part 46:20 49:10,16 65:14,20 70:15 75:16 95:10 partial 27:15 particular 13:3 65:8,20 parties 4:12 8:6 20:9,11,14,15 26:20,21 27:2,3 35:8,9,13,14 42:8 42:9,12,14 45:13 54:9 56:8 64:20 78:9,9 79:5,7 93:17,18,21,22 102:4 partly 14:18 party 79:21,21 passed 104:3 passionately 65:4 Paul 54:15 57:4,5,9 66:20,21 67:5,6 67:10,12 71:5,12 71:19 72:8,8,13 72:22 73:5,10 Pause 7:19 39:4 77:4 89:9	pending 55:21 Penny 39:15 45:16 people 13:4 16:10 18:9 73:19,21 87:14 95:1 97:8 percent 48:13 61:18,22 64:1 83:21,22 Perfect 39:14 period 59:20 100:4 permit 7:8 13:14 48:17 60:15 permits 98:10 permitted 9:20 61:9 64:5 perpetuity 84:17 person 34:2 74:4 91:8 99:16 persons 20:9 26:20 27:3 35:8,13 42:13,14 54:9 56:8 93:17,21,22 pertinent 60:7 pet 38:8 Peter 1:21 4:18 photographic 64:19 pickup 11:16 picture 68:19,20 69:6,21 70:3,12 pictures 68:16 place 30:14 87:12 placed 104:10 Places 97:7 plan 15:1 40:3,5 62:6 68:11 77:15 89:3,17 90:13 planning 2:14 6:3 10:3 11:8 15:13 15:16 21:12,16 25:4,13,15 26:8 31:21 32:2,6 35:22 40:19,22 47:10 49:7,15 50:14,20 76:14 78:17 85:7,13,16 86:12,17 92:9
---	--	--	--	--

98:2 Planning's 83:13 plans 22:22 23:16 27:14,15,16,20 46:1,6 48:1 62:7 63:11 68:1 88:21 89:8 played 59:5 please 4:4 5:3 6:13 18:20,21 22:6,19 23:14,20 30:4,4 30:17 37:22 38:3 38:13 39:3 41:14 44:11 45:1,13 46:16 54:11,11 56:5,10,13 57:22 58:7 65:12 77:14 82:14 89:4 92:5 94:2 103:11,15 pleased 21:4 plenty 93:1 point 12:7 19:2 25:3 46:22 51:18 58:12 69:17 87:17 91:16,21 92:13 99:19 points 9:11 12:20 13:1,2 policy 13:12 position 83:12 possible 95:20 104:14 post 59:19 posted 59:20 104:9 posting 4:13 46:13 60:1 81:1 postpone 77:13 postponed 4:12 102:12 practical 36:3 99:4 practically 47:4 practices 53:17 precisely 14:13 preliminary 5:11 premises 7:12 8:19 23:11 30:14 38:9 45:10 82:3	prescribed 59:20 present 1:16,19,22 2:10,14 22:11 29:20 34:17 37:19 44:8 101:20 presentation 82:21 presented 58:22 preservation 51:15 preserve 59:3 president 57:6 90:22 presiding 1:15 presumably 77:2 pretty 9:9 13:5 80:8 previous 89:17 previously 25:9 previously-appro... 24:14 prior 14:7 36:4 privacy 47:8 probably 53:2 91:12 Procedure 102:20 104:8 procedures 51:10 process 75:1,5 program 94:18 programs 87:12 project 24:6,9 90:4 94:15 proof 36:1 47:13 97:20 proper 58:20 properly 66:5 properties 11:22 91:4 99:9 Properties.com 3:14 30:8 property 11:20,22 30:21 57:14 60:2 60:3 62:17 74:11 74:16 86:9 99:7 99:12 property's 61:11 63:15 64:1 proportion 36:7	proposal 31:4 proposed 84:11 proposing 15:20 83:17,17 provide 14:11 17:15 36:14 77:19 77:21 85:2 87:19 88:3 94:19 100:9 provided 16:2 47:12 53:19 84:2 87:7 88:22 98:6 provides 60:17 providing 10:17 provisions 7:8 45:6 public 1:6,12 2:20 4:8,13 6:17 13:13 32:9 36:13 81:8 86:6 99:8,10 102:12 104:22 publicly 103:4 published 104:12 pull 80:5 purchase 9:22 purchased 90:15 purchasing 54:16 purporting 60:21 purpose 36:19 103:2 pursuant 1:14 5:13 7:2,7 21:8 23:2 30:8 38:6 45:5 81:21 104:7 push 54:13 94:4 put 46:12 48:16 76:21 100:4 putting 10:11 P-R-O-C-E-E-D-... 4:1 p.m 16:10,17,20 18:9,12 Q quality 59:4 question 32:5 39:5 52:8 65:13 66:14 67:1 75:13,21 78:12 81:2,5 90:1	90:4,11,19 99:18 101:7 questions 15:8,11 17:11 20:5 21:21 25:10,12 26:7 28:16 31:18 33:17 35:3 39:22 41:5 41:22 42:4 43:17 47:16 49:2 50:14 50:20 52:16,20 56:3 66:10,16 71:19 72:1,2,19 73:11 75:9 76:8 76:11 77:6 82:21 83:3,6 85:10 86:16,19 88:12,14 93:5,8 96:6,13,16 quicker 89:5 quite 29:6 67:14 quorum 6:5 34:17 34:19 R R 1:13 rafter 70:20 rafters 70:5 rationale 25:7 reached 97:7 read 5:3 6:22 12:19 18:1 21:15 readily 64:17 reading 31:3 104:10 ready 81:16 real 13:10 67:15 72:10 really 10:8 47:6,13 58:9 80:22 81:16 101:7 real-time 100:10 rear 11:7,20 40:16 89:13 reason 28:22 93:1 reasons 13:19 99:20 rebuttal 20:19 27:7 97:16	recall 40:14 received 32:15 recess 44:20 recognize 29:5 recommend 41:1 recommendations 15:2 18:15 87:17 recommended 10:3 recommending 26:19 50:11 recommends 25:15 26:3 86:13 reconfiguration 26:1 record 5:15 8:8 9:15 11:12 12:6 14:2 15:15 18:1 19:8 21:16 22:13 23:14 25:1 28:3 30:18 31:11 32:3 33:11 37:15 39:21 42:20 49:12,14,16 56:13 77:16 78:8 81:8 82:14,20 83:2,10,20 84:4 94:3 97:21 101:16 101:22 102:10 103:21 records 24:18 rectangular 24:13 recuse 6:3 redesigned 10:22 refers 92:7 refrigerator 48:18 regard 5:12 regarding 36:1 46:16 77:20 90:5 regardless 74:8 Register 97:6 104:13 registered 53:16 regs 36:17 99:14 regular 1:12 11:21 regulations 14:4 36:6,20 75:6 related 9:19 relation 12:20,21
--	---	--	--	--

relationship 6:1 relative 41:3 relevant 60:11 83:18 relief 5:4 7:17 25:8 36:17,22 43:4 46:11,14 49:18 77:2 98:7,12 99:2 99:11,19 rely 53:19 60:21 relying 50:9 53:15 remain 25:19 renovated 55:19 72:16 renovation 54:21 rent 14:19 46:18 47:2 50:2,7 rental 45:7,20 48:4 49:19 rented 48:13 repeatedly 65:4 replaced 7:5 report 15:12 16:12 16:16 17:9 19:1 22:7 25:13 26:14 26:15 29:17 31:16 31:21 32:10,13,15 32:18,19 40:18,19 41:1,9,12 44:4 51:2,5,6 78:19 83:13 84:6,10 85:5,7,13 87:1,18 91:17,18 92:7 93:12,16 95:9 reports 18:14 represent 27:14 63:22 65:1 representation 95:19 representative 41:13 87:3 90:17 Representatives 62:15 represented 63:4 representing 4:17 8:11 represents 62:4	request 7:14 8:5 9:2 21:7,22 22:15 27:9,19 36:2 39:18 43:1,4,5,9 43:10,20 49:18 59:16 82:6 88:7 95:19 98:15 99:22 102:3 requested 5:4 25:8 28:13 34:3 46:11 99:2 requesting 31:6 45:20 46:18 60:10 61:3 68:15 requests 46:7 require 64:2,7 required 60:22 61:1 71:1 88:4 90:7 requirement 7:15 23:8 62:21 63:12 63:17,21 74:10,14 74:19 83:15 requirements 5:17 23:4,5 30:10,11 31:7,8 36:5 60:14 60:19 64:3,15 76:5 81:22 92:16 requires 6:4 61:13 61:20 research 66:5,16 71:21 researching 62:9 resident 94:11 100:7 residential 10:11 10:17 11:3,4,15 11:17 13:7,18 82:2,8 86:10 94:20 96:18 98:10 101:6 residents 64:22 73:17 84:20 88:10 100:5 resolution 65:18 95:18 respect 60:12 84:10	98:1 respectfully 27:9 98:15 respond 79:18 responded 16:4 response 18:17 20:12,17 22:4 26:12,17 27:1,5 29:15 31:19 32:11 33:2 35:5,11,15 37:5,10 40:1 41:10 42:2,11,15 43:18 44:2 49:3 50:21 51:3 66:12 76:12 77:7 78:15 80:15 83:4 85:11 86:21 88:17 93:6 93:14,19 98:22 101:14 responses 79:3,9 rest 16:13 25:1 32:2 82:20 rested 70:17 restrictions 16:19 18:11 restrictive 17:5 result 14:19 19:11 52:22 64:2 resulting 99:4 retail/service/offi... 23:10 return 63:13 104:20 returned 54:22 review 9:4 16:2 19:10 29:8 73:18 reviewed 9:9 24:18 31:10 35:7,20 39:21 83:1 revised 27:21 49:17 49:17,18 revisions 19:11 revitalization 19:21 rezone 34:7,22 right 33:21 39:18 40:12 43:11 44:10	44:18 46:20 47:1 47:7,14 48:19 69:14,22 77:8 79:13 80:20 81:4 85:12 89:6 99:1 rights 101:6 Rogers 87:2,3 role 59:6 roll 103:11 roof 23:7 69:1 70:5 70:14 room 1:13,13 4:7 47:3 62:13,22 63:3 64:14 89:6 104:10 Rose 1:23 5:2,6,9 6:7,8,15 7:20 22:5 22:7,21 23:17 27:13 28:1 29:16 29:17 30:1,6 37:11,12,15 38:1 38:5 44:4,12 45:1 45:3 77:14 79:3,7 79:13 80:3,10,13 81:7,12,18 101:15 101:16 102:9 103:14,17,19,21 104:15,18 row 45:8 68:5,5 rowhouse 45:21 rule 46:1 rules 7:21 12:21 running 9:20 R2 30:13 R3 45:9 R4 7:12 R5D 5:19 S S 1:14,17 4:15 salon 7:4 satisfied 74:12,14 satisfies 64:14 satisfy 62:21 63:17 63:21 saw 9:6 saying 51:5 81:1	95:9 says 62:9 76:21 87:18 89:7 SBA 94:18 schedule 74:5 scheduled 4:11 6:21 103:4 schedules 73:19,22 74:3 scheduling 19:11 Scott 57:5 screen 85:3 98:17 100:9 se 49:20 75:4 seat 22:11 29:21 37:20 44:9 54:12 101:20 second 7:10 10:12 10:17 11:2,5 21:9 21:10,17,19 27:17 28:13,14 37:2 39:3 43:15,16 54:5 58:1 61:2 68:7,20 77:9 85:1 89:3 100:18,19 101:18 103:8,9 seconded 21:22 43:20 103:13 seconding 22:9 29:19 37:17 44:6 Secondly 12:1 84:9 Secretary 103:11 section 5:16 7:2,6 12:20 21:9 30:10 30:12 31:7,8 36:7 38:8 43:4,6,21 60:14 61:13,20 63:18 64:4,6 102:19 104:7 secure 87:20 88:3 see 17:16,16,19 18:21 28:22 34:22 48:1 63:11 68:17 69:1,7,11,15,20 70:10,18 88:21 89:19 94:11 95:1 95:5 96:19
--	--	---	---	---

seek 87:14 seeking 85:17 103:2 seen 66:17 84:22 self 43:2 self-explanatory 13:5 seller 24:12 sells 50:4 seminars 17:1 sent 67:6 sentence 76:20 separate 46:18 47:6 48:19 55:1 separately 55:21 serious 58:22 seriously 71:9 serve 10:15 served 19:4 86:5 94:12 set 27:15 28:2 73:17 seven 68:5 84:1 shallow 85:20 shallowness 99:3 shape 24:13 share 84:16,19 94:4 Shaw 19:22 shed 49:7 sheet 89:3 Shiau 3:16 38:6 shining 56:12 short 44:18,20 shorter 33:16 74:3 show 47:12 63:11 68:21 100:10 showed 89:17 shown 11:1 65:19 shows 12:10 68:19 sic 8:15 side 30:11 31:7 36:3 58:5 sign 60:1 74:11 76:20 significant 28:9 significantly 28:10 Signs 76:21	Sikder 30:19,21 31:1,2,15 32:7 33:5,10,15 34:18 35:18 37:1 Similarly 63:20 simply 25:1 34:20 single 11:4 31:5 56:17 58:14 59:1 64:22 94:8 single-member 19:5 sink 48:18 sir 57:3 89:15 94:1 96:7 97:13 Sit 54:11 site 82:9 85:22 86:4 87:6,7 91:4 94:9 97:5 98:8 99:3 sited 19:6 sitting 4:22 situation 13:6,16 six 70:6 sixth 68:8 six-inch 70:8 size 53:4,6 61:3,4 77:20 slated 102:8 slight 46:5 small 33:20 sold 67:17 solutions 87:13,15 sorry 8:6 21:13 28:17,18 43:13 66:22 71:3,17,18 79:6,20 96:6 sort 89:17 sought 36:22 94:10 sound 58:5 south 1:13 26:3 space 10:13 11:2,4 14:11 15:2,22 61:15 62:4,13,19 63:8 69:5,9,17 70:12,16 90:7 91:9 99:6 spaces 87:7,20 88:4 89:17,20 90:5,6	90:12 91:13,13 92:2,10,12,14,20 92:22 speak 26:21 39:8 speaking 47:4 speaks 42:20 special 5:14 7:3 8:5 9:2 21:7 23:6 38:7 39:19 43:12 43:14 46:12,13 47:4,11 48:21 49:20 50:12 51:20 59:17 64:8 75:2 77:1,3 Specialist 1:23,23 1:24 specific 11:11 15:5 31:10 77:17 83:3 99:5 specifically 10:15 12:3 14:8 62:12 specified 101:21 speed 9:15 speedy 104:20 spillover 87:10 split 58:17 square 5:21 7:13 23:12 25:16 30:14 36:8 38:10 45:10 47:19 48:9,10,12 49:5 52:5,22 53:6 53:12 55:14 61:5 61:11,14,17 62:4 63:19 70:17 82:4 Sr 1:23 staff 1:22 2:14 10:4 22:7 27:13 29:17 37:15 44:4 76:14 101:16 102:9 103:21 stair 11:6,7 stairwell 26:1 stand 49:16 88:7 standard 97:20 standards 36:1 98:7,14 standing 95:2	96:21 start 56:12 57:18 77:14 startle 41:7 state 8:7 30:17 38:13 45:13 49:12 54:11 56:13 82:13 94:2 102:10 stated 21:22 22:12 40:14 82:6 99:17 statement 9:11 20:19 27:7 28:6 31:10,13 35:17 42:17 46:15 97:16 statements 99:16 status 65:11 79:22 statute 63:13 Stephen 1:24 32:1 85:15 Steve 15:15 49:14 STEVEN 2:17 Stewart 34:6,20 stop 71:4 stops 13:17 storage 25:20 55:8 55:8,9,11,17 89:6 store 55:12 stored 11:19 story 31:5 stove 48:16 straight 58:2 70:3 street 1:13 4:7 7:13 14:21 15:4,4 23:1 23:11 40:10 57:13 81:22 87:10,15 91:19 Streets 19:22 strengthen 10:1 strike 23:14 strong 46:10 structural 62:13,22 63:3 64:13 structurally 62:19 structure 23:8 studio 7:6,10 10:18 11:2 16:9 18:8 subject 18:4 21:11	21:15 84:12 86:13 91:10 Submissions 80:13 submit 56:5 80:1 submitted 25:2 60:9 64:19 76:18 subroof 70:9 Subsection 5:17 7:11 23:4,6,7,8 45:9 82:1 Subsections 23:2 subsequently 69:4 substantial 36:12 36:16 99:10,13 sufficient 10:9 73:19 87:8 91:18 91:19 suggest 77:16,20,22 100:4 suggested 17:2 Sullivan 3:18 45:4 45:14,15 46:17 47:21 48:4,9 50:18 52:18 54:14 54:15 56:4,5 66:15 71:20 72:15 75:11,14,19,22 78:3 80:18 summary 22:15,17 30:1,3 37:21 44:10,12 102:3 supplemental 11:1 78:19 80:1 supplied 50:10 supply 91:17,20 support 10:9 11:9 19:9 20:9,11 26:19,20,22 35:9 35:10 41:16 42:8 42:9 51:22 54:9 65:14 79:11 83:11 83:13 86:10 93:17 93:18 98:5 supported 19:16,17 65:18 supportive 12:5 20:2
---	--	---	---	---

supposed 59:21 sure 13:22 17:4 46:17 47:21 49:13 54:12 55:3 56:5 56:10 59:12 67:7 75:4 92:21 surrounding 10:16 36:15 suspect 92:19 SWATCHROOM 8:17 12:11 symmetrically 67:22 T table 23:20 take 6:10 33:13,15 44:18 47:20 103:11 taken 44:21 talk 54:1 talked 53:15 talking 55:14 tall 66:7 technically 48:17 telephone 102:22 104:5 tell 34:5 47:17 tenant 8:14 38:16 tenants 84:17 100:3 terms 34:13 36:2 test 98:1 testified 19:7 testify 20:10,15 26:11,16 32:22 41:19 54:10 testimony 34:13 95:6 thank 5:9,22 6:10 7:22 8:9 9:12,13 10:4 13:21 15:9 15:12 17:10 18:14 19:2,3 20:4,22 21:14,14,20 22:18 22:18,19 23:13,18 24:2 25:11,12	26:5,6 27:8,11 28:5,15 29:12,22 31:2 32:3,4,17 33:3 34:12,15 35:2,18,19 37:1 38:2 39:12,14,18 40:18 41:6,21 42:6,7,20 44:12 44:14,15 45:12,18 49:1 50:13,19 52:14,15 53:10,22 56:2,4,7 57:2,8,19 58:6,8 65:9 66:19 66:21 67:4 71:11 71:12,14 73:9,10 73:13 75:6,8 76:8 78:22 82:5,22 85:8,9 86:3,14,15 88:13 89:10,11 90:2,9,20 93:4,7 93:10 95:22 96:14 96:15 97:11,12,13 97:14 98:19,20 101:10 102:6,7 103:22 104:18 thanks 28:6 57:22 81:14 they'd 24:17 thing 16:7 47:1 50:6 things 14:15 52:2 54:3 55:12 77:12 think 6:11 13:5,10 16:4 17:5 21:2 22:17 24:13,19 28:20,21 33:11 41:15 42:19 46:8 47:12 48:11 51:8 52:4 53:1,3,7 55:6 74:10 80:4,7 81:5 83:1,5 84:5 95:13 101:2 third 69:6 91:21 thought 10:16 12:5 21:6 34:9 three 16:15 17:6,18 17:19 31:5 57:21	65:12 69:16 70:8 80:16 83:22 91:13 92:20 94:3 three-part 97:22 time 9:5,22 10:4 11:18 19:11 20:22 27:9 31:14 33:14 42:18 51:11,17 58:1,4 60:7 73:17 73:19 78:12 80:5 94:14 timely 104:13 times 63:10 Timothy 94:7 96:9 today 4:12,16,20 6:16 34:5 67:9 74:7 99:9 today's 74:14 told 48:20 53:18 total 48:9 70:10 84:1 touching 70:19 townhouse 51:14 townhouses 3:6 5:13,19 TRACEY 1:23 traffic 40:10 91:16 trains 100:11 transcript 2:19 transit 86:6 transportation 24:5 25:5 85:3 86:1,5 98:3,17 99:8 100:9 trash 11:13,14,16 treat 55:7 64:7 tried 36:9 Trotter 56:14,15 56:20,22 57:1,18 57:19 58:7,8 65:16 66:14 67:1 72:6 true 10:17 trusty 39:13 try 46:22 trying 55:19 88:21 Tuesday 4:11 74:6	74:9,19 Turnbull 1:20 4:19 21:10,18 28:14,18 29:19 34:16 37:18 43:15 44:6 52:21 53:11,21 54:7 72:5,11,20 73:2,8 80:21 89:12,16 90:8 96:17 97:10 100:17,21 101:18 103:19,20 tweak 84:13 twice 72:9 73:6,6 two 11:10 13:17 16:18 18:10 52:9 52:10,12 54:18,19 56:5 58:17 60:18 60:21 61:9 64:5 65:13 80:12 84:11 91:2,3 92:3 93:2 98:16 100:8 type 60:22 typical 11:17 Typically 91:9 U U 14:21 unanimous 51:21 unanimously 41:16 underneath 70:5 understand 9:10 29:4 45:19 47:10 64:9 90:15 99:15 101:1 understanding 46:7 51:10 87:22 understands 49:22 50:3 underutilized 94:17 unique 59:4 65:3 unit 45:7 46:19 47:20 48:12,19 49:20,21 50:2 61:17 63:22 units 58:17 75:3 82:8 83:17,21,22	84:1 92:10,11 unrelated 54:20 unrented 92:14 unusually 85:19 upstairs 11:3 urban 13:6,16 urge 65:7 use 7:4,5,8,9 8:3 9:3,20 10:1,9,11 10:17,20 11:2,4 11:15,17 12:3 14:9 19:17 21:8 23:9 25:19 45:6 47:7 55:11 58:16 59:18 64:8 77:3 94:20,22 98:10,11 99:17 101:3,6,6 uses 14:8,20 25:20 usually 68:2 V vacant 22:12 29:21 31:5 37:20 44:9 82:9 98:8 99:12 101:20 Varga 1:24 39:5,10 46:4 58:3,7 76:16 78:18,22 variance 5:16 7:7 8:3 10:2,9 23:3,5 25:8 30:11 43:10 45:6 51:8 58:16 59:18 64:8 77:3 81:21 82:7 83:19 85:18 86:8 94:10 97:21,22 98:1 99:11 variances 30:9 31:6 36:2 verification 66:7 verified 64:17 viable 87:13 Vice 1:14 4:3,16 5:7,22 6:9 7:22 8:9,22 12:14 13:21 14:1 15:10 17:7,10,13,14
---	---	--	---	--

18:2,13,20 20:4,8 20:13,18,21 21:2 21:13,20 22:3,5 22:16 23:13,18 24:2,10 25:11 26:6,10,13,18 27:2,6,11 28:5,15 29:2,11,14,16,22 30:3,16,19,22 31:3,17,20 32:4,8 32:12,17,21 33:3 33:7 34:15 35:2,6 35:12,16,19 37:3 37:6,9,11,14,21 38:2,12,17,19 39:2,7,12,17 40:2 40:12,17 41:6,11 41:17,22 42:3,7 42:12,16,21 43:8 43:13,16,19 44:1 44:3,10,14,17,22 45:12,18 46:8 47:15,22 48:6 49:1,4,11 50:13 50:17,19,22 51:4 52:14,16,19 53:10 54:8 56:2,18,21 57:2,8,17,20 58:6 65:9 66:9,13,19 66:22 67:5,9,11 71:3,11,13,17,22 72:3,17 73:11 75:8,12,20 76:7 76:10,13 77:5,8 77:11 78:4,16,21 79:1,6,10,15,19 80:7,11,17,19 81:4,10,14 82:5 82:22 83:5 84:5,8 85:9,12 86:2,15 86:19,22 88:13,16 88:18 89:11 90:10 90:20,22 93:4,7 93:11,15,20 95:5 95:8,16,22 96:5 96:11,15 97:13,15 98:20 99:1 100:14	100:19 101:10,13 101:15 102:1,5,7 102:14,16 103:10 103:16 104:2,16 104:19 Vice-Chairperson 1:17 views 65:1 Village 57:10 59:5 59:7 violate 61:9 visual 62:16 64:18 70:7 vote 22:8 29:18 33:14,16 37:16 41:19 44:5 65:14 67:4 95:11,13,15 101:17 103:11,15 103:22 voted 41:15 51:21 59:9 67:3 98:5 votes 95:13 voting 22:11 29:21 37:20 44:8 101:19 101:20 103:3 W W 1:23 waive 7:15,21 60:18 78:6 waiver 45:22 46:6 61:2,9 64:3 78:5 waivers 52:9,10 60:21 61:8 64:5,6 64:10 walk 12:9 40:4 walkable 86:7 walked 40:5 walking 13:15 want 4:21 29:5 75:4 82:11 83:8 83:14,19 87:16 90:15 92:21 94:1 96:19 wanted 16:7 17:4 19:19 47:6 55:3 55:18 59:12 73:15	75:22 84:3 Warren 8:16 12:8 12:16 Washington 1:14 wasn't 51:21 74:17 74:21 way 55:3 69:22 92:15 ways 59:11 website 4:14 104:12 Wednesday 19:13 week 63:10 weekday 74:1 weeks 80:12 weight 41:20 Weixler 8:16,16 12:9,16,17 13:22 Welcome 8:22 24:10 30:22 45:19 Welden 24:4 well-served 85:22 99:7 went 10:10 54:5,17 55:15 wet 48:17 we'll 41:4 85:2 92:19 100:6 we're 6:10 15:8 24:18 44:17 50:9 55:19 75:3 77:12 77:12 80:8 81:2,8 82:19 83:16,17 92:15 97:20 we've 16:1 55:1,2 99:9 width 30:9 31:6 36:3,6 99:3 wish 5:2 wishing 26:11 witness 56:6 wonder 40:3 wondering 27:14 48:2 word 12:19,19 work 13:4 14:12 21:4 51:18 69:11	worked 10:1 54:18 working 14:18 47:9 wouldn't 55:11 Y yard 5:17 30:11 31:8 36:3 yards 91:14 93:3 yeah 48:6 81:6 year 84:19 88:8 98:18 100:2,6,6 years 19:7 54:18 yesterday 32:15 67:7 Z ZipCar 86:6 91:12 92:22 zone 97:5 zoned 94:15 98:9 zones 46:19 zoning 1:4,16,19,22 1:23,23,24 4:9,14 4:18 12:21 14:3 34:21 36:17,19 64:12 82:12 99:14 102:17 104:10 Zoning's 104:11 0 0 22:8 29:18 37:16 44:5 65:14 103:22 1 1st 51:8 10th 74:21 10:00 4:2 10:30 16:20 18:12 1019 30:14 11 5:13 7:2 23:2 30:8 38:6 45:5 62:11 70:1 81:21 87:20 88:3 89:7 11th 89:7 11.202 59:18 11:47 104:21 12 69:8,10 70:7,20 12th 80:15	120 23:12 13 19:6 13th 74:16 1350 45:11 1388 38:10 14 45:22 14th 3:10 14:21 23:1,11 15 74:1 15th 103:1 15-day 74:10,13 1527 3:8 7:1,12 8:11 1529 8:14 16th 80:4,8,10 81:13 161 92:10 17th 76:19 1728 3:10 23:1,11 18th 6:20 11:1 60:1 18034 14:9 18453 3:10 22:20 23:1 18557 3:8 6:13,14 6:16 18572 3:16 38:4,6 18573 3:18 45:2,4 18575 3:20 81:17 81:19 18576 3:4 5:8,12 18577 102:10 18578 3:12 30:5,7 188 92:10 1959 94:12 199.1 62:11 2 2 22:8 29:18 37:16 44:5 76:21 101:17 2F 26:15 2,000 53:6 61:14 63:19 2,044 48:10 61:11 20001 1:14 2002.3 7:11 2003 7:6 21:9 2003.5 12:20
--	--	---	--	---

2012 24:15	3104.2 38:7	6-4 95:14		
2013 1:10 2:21 4:8	320.3 45:9	6/17/13 76:21		
4:11 6:18,20,21	33 70:1 76:17,21	60 83:22		
102:13 103:8	335 67:19			
202.10 47:11 59:17	38 3:16	7		
60:14 61:10,13	3825 82:3	7C 32:22		
63:18 64:4,6	3829 82:3	70 67:17		
207 23:12	397 7:13	736 38:8 43:6,21		
2101.1 23:4 82:1	4	8		
22 3:10	4 30:15	8 45:11		
22nd 103:1	4C 93:13	8th 102:22		
220 1:13	4C08 94:9	8:00 16:11,16 18:9		
2201.1 23:6	4th 1:13 4:7 6:18	81 3:22		
223 43:4	4,000 61:4	812 7:13		
23rd 80:4 103:8	4-6 95:14	813 5:21		
24 32:15 69:18	401 30:10 31:7	814 5:21		
25 38:11 48:13	405 30:12 31:8	818 82:4		
61:18,21 64:1	405(b)(4) 102:19	9		
92:12	406 104:7	9 51:21 65:14		
25th 4:11 6:21	411.11 23:7	9th 3:8 6:8,10 7:2		
59:22	411.5 23:8	7:12 8:12 15:4		
2516 5:16	42 5:18	80:4,9 103:7		
2516.5 5:18	4325 5:21	9-0 67:4		
28 1:10 2:21	44th 57:13	9:00 16:10,17 18:9		
28th 4:8	441 1:13 4:7	9:30 1:14 81:13		
288 62:4 70:16	4455 68:13			
29 5:21	4463 45:10			
29th 103:1	45 3:18 92:14			
3	46 27:14,18,18			
3 22:8 29:18 37:16	4824 38:9			
44:5 103:22	49 92:11			
3D 39:16 41:13	49th 30:14			
45:17	5			
3D09 56:20,21	5 3:6 43:3			
3-0 101:17	5th 59:9 75:15 76:2			
30 3:14 70:11,11	80:14			
83:21	50 91:14 93:3			
30th 33:12 102:12	512 48:12 61:17			
103:8	5175 30:14			
3028 82:4	6			
31 5:21 82:8	6 3:8 39:11			
3102.3 7:7	6E01 8:21 19:7			
3103.2 5:14 23:2	6th 24:15			
30:9 45:5 81:21	6-1/2 62:14,21			
3104.1 5:14 7:2	70:22			
23:3				

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This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 06-28-13

Place: Washington, DC

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