

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

JULY 9, 2013

+ + + + +

The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
S. KATHRYN ALLEN, Vice Chairperson  
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Vice Chairperson  
OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist  
STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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TAMAR GLAZER, ESQ.  
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK

The transcript constitutes the minutes from the Public Meeting held on July 9, 2013.

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T-A-B-L-E O-F C-O-N-T-E-N-T=S

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Greater Washington Animal Services, Inc.,  
d/b/a City Dogs ..... 8

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Townhouses, LLC ..... 11

**Expedited Review Calendar**

Application No. 18583 of  
Oliver Samuels ..... 14

Application No. 18562 of New Jersey Avenue, LLC  
..... 17  
VOTE: 3-1 to approve ..... 21

Application No. 18390 of Community  
Three Development, LLC ..... 23  
VOTE: 3-1 to approve ..... 28

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

2 9:40 a.m.

3 CHAIR JORDAN: Good morning.

4 Would the meeting of the BZA please come to  
5 order. Good morning, ladies and gentlemen.

6 We're located at the Jerrily R.,  
7 Kress Memorial Hearing Room at 441 4th Street,  
8 N.W. Today's date is July 9th, 2013.

9 We're here for the meeting of the  
10 Board of Zoning Adjustment of the District of  
11 Columbia.

12 My name is Lloyd Jordan,  
13 Chairperson. To my left is Marcie Cohen, Member  
14 of the Zoning Commission. To my right is Vice  
15 Chair S. Kathryn Allen and to her right, Jeffrey  
16 Hinkle, Member of the Board.

17 Please be advised that this  
18 proceeding is being record by a court reporter  
19 and is also being webcast live. So, therefore,  
20 I'm going to ask you to refrain from any  
21 disruptive noises here in the meeting room. So,  
22 it's a good time now to check your cell phones

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1 and put those things on vibrate or silent.

2 The Board's hearing procedures are  
3 contained in writing by the back door to my left.  
4 So, if you're not familiar with how we operate  
5 at the Board of Zoning Adjustment, please take  
6 time to go look at those directions.

7 Additionally, there will be  
8 testimony being given by many of you here either  
9 as a witness or just to make comment regarding  
10 cases here on today's docket.

11 So, at this point, is when I want you  
12 to do two things for me.

13 If you're going to testify or  
14 provide -- or a statement in any case, I'm going  
15 to need you to fill out two witness cards. Two  
16 witness cards for each person and hand it to the  
17 court reporter prior to you testifying or  
18 providing a statement. That's one thing.

19 Now, I'm going to need all those  
20 people who are going to provide testimony and/or  
21 make a statement on the record to stand and take  
22 the oath or affirmation being given by the

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1 Board's Secretary.

2 So, if you would stand if you're  
3 going to provide any testimony.

4 MR. MOY: Good morning. Do you  
5 solemnly swear or affirm that the testimony  
6 you're about to present in this proceeding is the  
7 truth, the whole truth and nothing but the truth?

8 Ladies and gentlemen, you may  
9 consider yourselves under oath.

10 CHAIR JORDAN: Before we begin, I  
11 want to certainly thank this Board and the Zoning  
12 Commission and more importantly the staff for  
13 working with me as I was away for at least two  
14 meetings due to a family emergency issue and I  
15 really appreciate everybody bending over  
16 backwards and supporting me during that period  
17 of time. Especially, S. Kathryn Allen who had  
18 baptism under fire.

19 BZA VICE CHAIR ALLEN: Yes.

20 CHAIR JORDAN: Sitting in the hot  
21 seat and the beauty of all of it, I was able to  
22 -- my mother's in the hospital. She was in the

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1 hospital. She was 92 and so, we had to sit in  
2 intensive care with her the whole period of time.

3 But, the good thing about this is  
4 that I was able to webcast and watch everything.  
5 So, I saw you sweating, but handle it quite  
6 nicely, the various issues that came up during  
7 that period of time.

8 Again, I just really appreciate  
9 everything everybody did and certainly, the well  
10 wishes.

11 Let's do a couple of things a little  
12 bit out of order, Mr. Moy.

13 We have a crazy docket today. As  
14 many of you know, the Board reviews these cases  
15 and we've found they average between 8 to 12  
16 hours a week in preparation for these cases to  
17 review these files.

18 And in my particular review and  
19 certainly, we get advised by counsel and others,  
20 there's a lot of things going on with these files  
21 that may not even be ready for us to hear today.

22 So, I'm going to take some things a

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1 little bit out of whack here in order to try to  
2 manage this docket so we're not here until  
3 tomorrow and so, that we don't have people  
4 waiting here in this hearing room beyond when  
5 they need to be.

6 So, let me do this. Mr. Moy, let's  
7 have the parties for 18584 come forward, 18584.

8 They're not prepared to testify, but  
9 I want to have a word and conversation first and  
10 those people -- there is a party status request.

11 One, I need to -- have the party  
12 status individuals met and decided who's going  
13 to represent the party status group if there is  
14 going to be one?

15 MS. BRAY: Good morning, Mr.  
16 Chairman. Kinley Bray with the law firm of  
17 Arent Fox.

18 The parties have met. All parties  
19 that have requested party status have agreed to  
20 work together and Mr. Sandler who is sitting to  
21 my right and represents Mr. McMichael and I have  
22 been authorized by all parties to represent them

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1 and to present a consolidated case.

2 CHAIR JORDAN: So, you are  
3 representing a person with a party status  
4 request?

5 MS. BRAY: Yes.

6 CHAIR JORDAN: And there's been a  
7 meeting and you've all met and discussed that Mr.  
8 McMichael is going to take lead as party status.  
9 Is that correct? No.

10 MS. BRAY: No.

11 CHAIR JORDAN: You're representing  
12 who?

13 MS. BRAY: I'm representing the  
14 Moss Group. Judy Wood and Andie Moss, the  
15 owners of 1312 Pennsylvania Avenue, N.W. or  
16 S.E., sorry, that have requested party status.

17 CHAIR JORDAN: Okay. So, you're  
18 taking a lead for the -- and you guys are all --  
19 everybody's in agreement that you've  
20 consolidated? Okay. All right.

21 Then have you met with the  
22 Applicant?

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1 MS. BRAY: We have not.

2 CHAIR JORDAN: All right. So,  
3 who's representing the Applicant?

4 MR. SULLIVAN: I am, Mr. Chair.

5 CHAIR JORDAN: Then I want you guys  
6 to go out, meet, talk about your issues before  
7 you come back here before we call this case for  
8 a hearing. See what issues are still -- can be  
9 resolved or if they cannot be resolved and then  
10 come back and we will call the case in the normal  
11 sequence. Okay?

12 MR. SULLIVAN: Okay.

13 CHAIR JORDAN: Thank you.  
14 Appreciate it.

15 ZC VICE CHAIR COHEN: And I would  
16 suggest that the explanation of the acoustic  
17 study be a focus.

18 CHAIR JORDAN: One reason why I'm  
19 doing this, and hopefully we may generate a rule  
20 to this effect, is that we find people with party  
21 status and other issues or people opposing  
22 issues have not really had conversations.

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1 Sometimes they have, but sometimes it changes as  
2 you get here before us and we've had matters go  
3 on and on and find out the parties haven't spoken  
4 and then when they speak, it gets resolved.

5 So, that's what I'm asking you guys  
6 to do beforehand. Really appreciate it. Thank  
7 you.

8 Now, let's next deal with 18576. I  
9 just need the Applicant's -- 18576. That's Fort  
10 Lincoln Banneker. The Applicant's counsel and  
11 is the representative from Office of Planning  
12 present. Have you guys -- if you'll come  
13 forward please.

14 And there is a request for party  
15 status that has not been granted yet or been  
16 considered by the Board and also representatives  
17 of the ANC.

18 The ANC, what ANC number is that?  
19 ANC-5C I believe.

20 Is there a representative here from  
21 ANC-5C?

22 Let me first ask -- we're not going

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1 to get into the details of this case at this  
2 point. We're trying to take care of some things  
3 procedurally -- administratively rather.

4 There are a lot of questions that  
5 were raised by OP that were either missing or  
6 there was concerns about. So, has OP and the  
7 Applicant subsequently met since you generated  
8 your report?

9 MR. JESICK: We've spoken with the  
10 Applicant. We believe that they're going to  
11 submit information that would address our  
12 issues. To date, that information has not been  
13 submitted to the record, but we've seen  
14 preliminary drafts of plans --

15 CHAIR JORDAN: Okay.

16 MR. JESICK: -- and renderings.

17 CHAIR JORDAN: All right. So, I  
18 want you guys to meet.

19 MR. TUMMONDS: He has seen  
20 everything and once we formally subject them, we  
21 will address all of OP's comments.

22 CHAIR JORDAN: Okay. All right.

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1 I want to make sure that's happened because we  
2 don't need to take time doing that and there is  
3 a -- have you had a chance to meet with the --  
4 has the Fort Lincoln Civic Association had  
5 discussions?

6 MR. TUMMONDS: I think that, you  
7 know, as we --

8 CHAIR JORDAN: Yes or no?

9 MR. TUMMONDS: No.

10 CHAIR JORDAN: Okay. Then is there  
11 a representative here from the Fort Lincoln  
12 Civic Association? Okay. All right. So,  
13 then they're not here. So, we can't have that  
14 discussion.

15 Okay. I wanted to make sure that  
16 we've had this side conversations done and  
17 please move back. Thank you.

18 All right. Mr. Moy, then let's --  
19 so, Mr. Moy, let's then -- this is an interesting  
20 docket. Would you call 18583 please?

21 MR. MOY: Yes, sir. Good morning,  
22 Mr. Chairman and Members of the Board.

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1           That case would be Application  
2           Number 18583 of Oliver Samuels. This is for a  
3           special exception to allow for a second-story  
4           addition to an existing one-family detached  
5           dwelling under Section 223 and this case is on  
6           the Expedited Review Calendar, Mr. Chairman.

7           CHAIR JORDAN: All right. Is the  
8           Applicant here? A representative of the  
9           Applicant?

10           All right. We're going to pull  
11           this, Mr. Moy, from the Expedited Review for  
12           several reasons.

13           One, we don't have a Waiver of  
14           Hearing request in our file which is paramount  
15           to being on the Expedited Review Calendar and  
16           would you please contact -- then we also need to  
17           do -- there's an ownership issue that needs to  
18           be cleared and worked out on this matter because  
19           you have a different applicant and a different  
20           name as the ownership group and the Applicant,  
21           when you let him know that this case has been  
22           pulled, they also need to know that they need to

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1 address the requirements under 223 which they  
2 failed to do. Okay.

3 And so, set a date at your leisure,  
4 if you would, Mr. Moy.

5 MR. MOY: Yes, I'll do that, Mr.  
6 Chairman.

7 CHAIR JORDAN: Okay. Thank you.  
8 And remind them because I also did not have an  
9 ANC report or have they submitted this -- I don't  
10 know if they've submitted this to the ANC.

11 MR. MOY: Right. Right.

12 CHAIR JORDAN: So, remind them that  
13 they need to do that also.

14 MR. MOY: Right. Right. My  
15 preliminary thought, Mr. Chairman, is to  
16 reschedule this to next week, next Tuesday if  
17 that's convenient for the Board.

18 CHAIR JORDAN: I'm not trying to  
19 race to get it done.

20 MR. MOY: I understand.

21 CHAIR JORDAN: I mean really it's  
22 not -- what's comfortable for the Board by our

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1 schedule, then let's put it in.

2 MR. MOY: All right. All right.  
3 All right.

4 CHAIR JORDAN: And we want to make  
5 sure everybody has enough notice. Because the  
6 Applicant actually has to do some work here.

7 MR. MOY: That's right. That's  
8 right. Well, then I'll find the next convenient  
9 date for the month of July, Mr. Chairman.

10 CHAIR JORDAN: Right. Thank you.

11 MR. MOY: Okay. On my schedule,  
12 Mr. Chairman, the next --

13 CHAIR JORDAN: Okay. So, all  
14 right. Then let's do 18562.

15 MR. MOY: Okay. The application  
16 18562, this is 1538 New Jersey Avenue, LLC which  
17 is for a decision before the Board for a variance  
18 from the lot area requirements.

19 The Applicant submitted its  
20 post-hearing documents as required by the Board  
21 and it is in the case folders under Exhibits 36  
22 and 37. With that, I'll conclude my briefing to

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1 the Board.

2 CHAIR JORDAN: Thank you. Did we  
3 have -- there was a party in opposition here. We  
4 did have some people who were not supportive and  
5 provided testimony not in support and some other  
6 issues.

7 Then OP had recommended denial and  
8 raised some issues during the hearing that we  
9 then charged the Applicant to respond to and one  
10 of those issues was whether or not the value was  
11 -- where or not the financial hardship or the  
12 ability to manage this building still presented  
13 a financial hardship if it was either for sale  
14 versus rental and et cetera.

15 In the interim, we received a  
16 report, supplemental documentation, that  
17 there's been a reduction from seven units to six  
18 units and supporting documentation based upon  
19 the evaluation for -- between sales and rental  
20 and it does not show any real difference in  
21 regards to what would be considered a financial  
22 hardship.

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1 All right. If the Board's ready, we  
2 can go and proceed in regards to this.

3 This is a matter which I think we  
4 should grant relief. I believe there's a  
5 confluence of factors dealing with this  
6 particular property. The use that was prior is  
7 a church. The structure of the building in  
8 regards to the layout of the building as a  
9 church. There had been illegal construction  
10 and work performed in this building. The  
11 building has taken itself down and being in a  
12 dilapidated state. I think there's been a  
13 showing that there's an economic infeasibility  
14 issue dealing with this property and I think that  
15 the relief being requested by the Applicant  
16 would certainly be appropriate for this Board to  
17 do.

18 Any other person? Mr. Hinkle.

19 MEMBER HINKLE: Yes, thank you, Mr.  
20 Chair.

21 I certainly agree with your  
22 assessment and just note the fact that I

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1 appreciate the reduction from seven units to six  
2 units. Which was really a reduction in the  
3 relief required. Which I appreciate.

4 And also, the supplemental  
5 information I thought was helpful. That was  
6 supplied by the Applicant.

7 CHAIR JORDAN: Anyone else?

8 BZA VICE CHAIR ALLEN: Thank you,  
9 Mr. Chairman.

10 I wanted to just state for the record  
11 that I have reviewed the record and will be  
12 participating in the vote and also, that I concur  
13 with both of your statements. I agree  
14 wholeheartedly. Thank you.

15 CHAIR JORDAN: Thank you. Ms.  
16 Cohen.

17 ZC VICE CHAIR COHEN: And, Mr.  
18 Chairman, I did not participate in this hearings  
19 and I believe my colleague Chairman Hood did.

20 CHAIR JORDAN: Yes.

21 ZC VICE CHAIR COHEN: So, I will not  
22 be voting.

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1 CHAIR JORDAN: He's probably  
2 submitted an absentee ballot. So, we could go  
3 for that.

4 And so, with this, I would move that  
5 we grant the relief requested by the Applicant  
6 in Case 18562 based upon the dialogue that we  
7 just had as a Board.

8 MEMBER HINKLE: Second.

9 CHAIR JORDAN: Motion made and  
10 seconded. All those in favor signify by saying  
11 aye.

12 (Ayes.)

13 CHAIR JORDAN: Those opposed nay.  
14 Mr. Moy. The motion carries, Mr.  
15 Moy.

16 MR. MOY: Yes, it does, Mr.  
17 Chairman. As you indicated, we do have an  
18 absentee vote from a participant on the  
19 application, Mr. Hood and his absentee vote is  
20 to deny -- to deny the application.

21 So, that would give a final vote of  
22 3-1. This is on the motion of Chairman Jordan

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1 to approve the application. Second by Mr.  
2 Hinkle. Also in support Ms. Allen and, of  
3 course, Mr. Hood opposed and we have a seat  
4 vacant. So, the motion carries.

5 CHAIR JORDAN: Right. Thank you  
6 and do we need a -- can we get by with a summary  
7 order here because we did have others that were  
8 vocal in this matter. I'm just -- and OP. No,  
9 let's -- we need to have a full order. A full  
10 order.

11 If the Applicant will prepare -- if  
12 the Applicant's counsel would prepare a proposed  
13 finding of facts and conclusions of law, that  
14 would be good for us to submit.

15 MS. MOLDENHAUER: The one  
16 individual that was opposed there was actually  
17 a letter of support filed for her in the  
18 supplemental.

19 CHAIR JORDAN: Oh, so, she took it  
20 back.

21 MS. MOLDENHAUER: She took -- yes,  
22 it was -- she opposed it because she did not have

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1 enough information and we filed in a  
2 supplemental letter from her indicating that she  
3 had met with the Applicant and recommended  
4 support.

5 CHAIR JORDAN: But, we still have OP  
6 in denial as a party. Right?

7 MS. MOLDENHAUER: Yes, but OP -- I  
8 mean --

9 CHAIR JORDAN: Yes, for them to  
10 actually appeal it, we probably have -- I doubt  
11 that they would do that.

12 Let's go with a summary order.

13 MS. MOLDENHAUER: Thank you.

14 CHAIR JORDAN: And if it comes back  
15 and blows up, we know who we're going to get.

16 MR. MOY: All right. Thank you,  
17 Mr. Chairman.

18 CHAIR JORDAN: The former chair of  
19 this Board. Thank you. Okay. Three nine.

20 MR. MOY: The next application for  
21 a decision, and it's the last one for the  
22 decision making for the Board on the public

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1 meeting agenda, is Application Number 18390.  
2 This is the application of Community Three  
3 Development, LLC. This is a request for a  
4 modification and I believe that the request is  
5 for a change in the number of compact spaces as  
6 originally approved.

7 CHAIR JORDAN: I thought it was more  
8 -- okay. I do have some questions. Is the  
9 Applicant here? Come forward please.

10 MR. DONAHUE: Mr. Chairman, Ed  
11 Donahue on behalf of the Applicant.

12 CHAIR JORDAN: A couple of things.  
13 One, has notice gone to all parties in this  
14 matter?

15 MR. DONAHUE: Yes.

16 CHAIR JORDAN: Because I didn't see  
17 that in the file.

18 MR. DONAHUE: We provided copies to  
19 the ANC, to the Office of Planning. The Office  
20 of Planning is also filed their report.

21 CHAIR JORDAN: Good. Okay.

22 MR. DONAHUE: Yes, sir.

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1 CHAIR JORDAN: Office of Planning  
2 has a report? Do we have the Office of Planning  
3 report? Because I have -- maybe I missed it, but  
4 my file did not have a --

5 MR. MOY: Yes. Yes, we do, Mr.  
6 Chairman, and the Office of --

7 CHAIR JORDAN: What was the date of  
8 that report? When did we get it?

9 MR. MOY: It's dated July 2nd.

10 CHAIR JORDAN: Okay. Now, you  
11 know, has the Board got a copy of it? Was it sent  
12 to us? When did we get it? I must have missed  
13 it. Let me take a second. I need to see the OP  
14 report.

15 So, actually, this is out of time.  
16 It's out of time. Right? Did we -- no?

17 MR. MOY: It's right on time.

18 CHAIR JORDAN: Right on time.

19 MR. MOY: July 2nd.

20 CHAIR JORDAN: Okay.

21 MR. MOY: That's seven days.

22 CHAIR JORDAN: So, we get it right.

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1 MR. MOY: That's seven days.

2 CHAIR JORDAN: Just seven days.

3 MR. MOY: Yes, from the Office of  
4 Planning.

5 CHAIR JORDAN: All right. Let me  
6 ask you. We're losing four compact spaces.

7 MR. DONAHUE: We're actually  
8 gaining compact spaces. So, we're retaining  
9 the same number of parking spaces, but we're  
10 gaining in the mix.

11 CHAIR JORDAN: Two full -- the full  
12 --

13 MR. DONAHUE: We're gaining compact  
14 and losing some of the full-size legal spaces.

15 CHAIR JORDAN: Oh, I got you. Yes.  
16 All right.

17 And there's no change in the TDM?

18 MR. DONAHUE: No, there's really no  
19 change to anything except an interpretation at  
20 permitting that the pedestrian had to be taken  
21 sort of off-site. Out of the parking lot.

22 So, something that came through

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1 obviously well past BZA consideration, but it  
2 was at permitting where it was determined that  
3 the pedestrian ought to be taken away from the  
4 parking area. So, we created a pedestrian aisle  
5 to the side. Necessitating a shorter parking  
6 space.

7 CHAIR JORDAN: That's how that came  
8 about.

9 MR. DONAHUE: Yes, sir.

10 CHAIR JORDAN: Okay. Does the  
11 Board have any other questions about this  
12 application? Ms. Cohen.

13 ZC VICE CHAIR COHEN: Mr. Chairman,  
14 I did not sit in on any of the prior meetings and  
15 therefore, I will not be participating.

16 CHAIR JORDAN: Okay. Does the  
17 Board have any other issues or questions?

18 Then seeing none, then I would move  
19 that we grant the minor modification of the site  
20 plan as submitted by the Applicant.

21 MEMBER HINKLE: I'll second.

22 CHAIR JORDAN: A motion made and

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1 seconded. Any unreadiness? All those in favor  
2 signify by saying aye.

3 (Aye.)

4 CHAIR JORDAN: Those opposed nay?  
5 The motion carries. Mr. Moy.

6 MR. MOY: Yes, sir, staff would  
7 record the vote as 3-0. This is on the motion  
8 of Chairman Jordan to approve or grant the  
9 request for modification. Second the motion,  
10 Mr. Hinkle. Also, in support, Ms. Allen with no  
11 other participating members and we have a Board  
12 vacancy.

13 The motion carries, Mr. Chairman.

14 CHAIR JORDAN: All right. Thank  
15 you. Summary please.

16 MR. MOY: Yes, sir.

17 CHAIR JORDAN: Thank you.

18 MR. DONAHUE: Thank you, Mr.  
19 Chairman.

20 (Whereupon, at 10:04 a.m., the  
21 meeting was adjourned.)

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