

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MAY 8, 2012

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
RASHIDA MacMURRAY, Board Member  
JEFFERY HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
STEVEN COCHRAN  
ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing held on May 8, 2012.

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

2 9:41 a.m.

3 CHAIRPERSON JORDAN: Good morning.

4 Would this hearing please come to order.

5 We're located at the Jerrily R. Kress Memorial  
6 Hearing Room at 441 4th Street, N.W. Today's  
7 date is May 8, 2012, for the public hearing of  
8 the Board of Zoning Adjustment, the District  
9 of Columbia.

10 My name is Lloyd Jordan,  
11 Chairperson. To the right of me is Rashida  
12 MacMurray. To the right of her is Jeffrey  
13 Hinkle, both Board members.

14 Please be advised that this  
15 proceeding is being recorded by a court  
16 reporter and is also being webcast live.  
17 Accordingly, we must ask that you refrain from  
18 any disruptive noise or actions in the hearing  
19 room. The Board hearing procedures and how we  
20 will process applications can be found on the  
21 table in the back by the door.

22 Let's begin today's hearing

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1 agenda. All individuals wishing to testify  
2 today, please raise and take the oath.

3 Mr. Secretary, would you please  
4 administer that.

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

9 WITNESSES: I do.

10 MR. MOY: Ladies and gentlemen,  
11 you may consider yourself under oath.

12 CHAIRPERSON JORDAN: We'll handle  
13 any preliminary matters with the cases as  
14 called.

15 MR. MOY: Very good. Thank you,  
16 Mr. Chairman. With that, good morning. Good  
17 morning to the Board members.

18 The first application before the  
19 Board is continued hearing from last Tuesday,  
20 Application 18273-A.

21 This is a request for a  
22 modification of approved plans for Application

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1 No. 18273 of 1328-1330 Wisconsin Ave., LLC, et  
2 al, pursuant to 11 DCMR 3103.2, for a variance  
3 from the floor area ratio requirements under  
4 Section 771, a variance from the lot occupancy  
5 requirements under Section 772, and a variance  
6 from the rear yard requirements under Section  
7 774, to allow rear additions to existing  
8 buildings in the C-2-A District at premises  
9 1328, 1330, 1332, and 1336 Wisconsin Avenue,  
10 N.W. Property located in Square 1231, Lots  
11 824 and 8453.

12 CHAIRPERSON JORDAN: Very good.  
13 Good morning, Mr. Sullivan.

14 MR. SULLIVAN: Good morning.

15 CHAIRPERSON JORDAN: Would you  
16 please introduce yourself for the record,  
17 please?

18 MR. SULLIVAN: Yes. Thank you.  
19 My name is Martin Sullivan with the law firm  
20 of Sullivan and Barros.

21 CHAIRPERSON JORDAN: Now, we  
22 received two additional documents from you, I

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1 believe. As I said before, I don't know if we  
2 necessarily need any testimony or if you want  
3 to explain. Let me, if you don't mind, go to  
4 OP and get their opinion in regards to the  
5 documents that were submitted.

6 MR. COCHRAN: Thank you, Mr.  
7 Chair. Based on the information that the  
8 Applicant submitted, OP is now happy to  
9 recommend approval.

10 CHAIRPERSON JORDAN: Thank you.

11 Mr. Sullivan, just for the record,  
12 would you summarize -- just summarize those  
13 two documents for the record, please.

14 MR. SULLIVAN: Okay. Yes. Thank  
15 you, Mr. Chairman. The first documents is a  
16 letter from Mr. Ramadani's real estate  
17 advisor. I think the two key points from that  
18 are his opinion that the value of the square  
19 footage -- the real estate per square foot at  
20 that location is \$600 to \$700 a square foot.  
21 The other thing that he opined on is that  
22 there is no reasonable way to use the property

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1 for residential use.

2 Then the other document is from  
3 the new architect and it's a construction  
4 estimate under what is the currently approved  
5 proposal and what would be built under the  
6 modified request.

7 Without going into great detail,  
8 the bottom line comparing the \$600 a square  
9 foot because these construction estimates are  
10 for unfinished space, and combining that with  
11 the construction estimates, building the  
12 smaller addition is not economically feasible.

13 In fact, it's a significant loss.  
14 Building the now proposed and what was  
15 originally proposed addition works out under  
16 the numbers. That is the basis of an undue  
17 hardship is the approximately \$30,000 loss  
18 that would be taken under the currently  
19 approved construction, in addition to the fact  
20 that space can't be used for any other use  
21 other than retail.

22 CHAIRPERSON JORDAN: Let me ask

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1 you, what is option A and option B? They were  
2 referenced but I didn't see them particularly  
3 carved out.

4 MR. SULLIVAN: I'm sorry. Yeah,  
5 they weren't clear on that. Option A is what  
6 is currently approved by the Board. Option B  
7 is what was originally requested back last  
8 summer and what is being requested now in the  
9 modification.

10 CHAIRPERSON JORDAN: Very good.  
11 Anyone have any questions of the Applicant?

12 MEMBER HINKLE: No, Mr. Chairman,  
13 but I did want to state that I was not here  
14 for the hearing last week but I have reviewed  
15 the record and will participate further in  
16 this case.

17 CHAIRPERSON JORDAN: Thank you.

18 Anyone from ANC present? We do  
19 have a letter from the ANC in support that  
20 meets all the criteria to be given great  
21 weight which we will do so.

22 Any other department reports?

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1 Anything more from OP?

2 Anyone in the audience in support  
3 of this application? Anyone in opposition?

4 Mr. Sullivan, is there anything  
5 more you want to say?

6 MR. SULLIVAN: No, thank you.

7 CHAIRPERSON JORDAN: I'm going to  
8 close the record for this hearing. We are  
9 going to pass for a decision until next  
10 Tuesday when our Zoning Commission Member  
11 Konrad Schlater can participate. We'll have  
12 it on the docket for next week for decision.  
13 Thank you.

14 MR. SULLIVAN: Thank you.

15 MR. MOY: The next application for  
16 public hearing --

17 CHAIRPERSON JORDAN: Mr.  
18 Secretary, let's bring in Mr. May, please.

19 MR. MOY: He's on his way.

20 CHAIRPERSON JORDAN: Okay. Let's  
21 wait.

22 MR. MOY: The next application

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1 before the Board for a hearing is Application  
2 No. 18347. This is the application of Rick  
3 and Alexis Juneja, I believe, pursuant to 11  
4 DCMR 3104.1.

5 This is for a special exception to  
6 allow a rear garage addition to the existing  
7 one-family row dwelling under Section 223, not  
8 meeting the lot occupancy (Section 403) and  
9 nonconforming structure (Subsection 2001.3)  
10 requirement in the R-4 District at premises  
11 216 7th Street, N.E. Property located at  
12 Square 865, Lot 88.

13 Let me for the record state that  
14 Mr. Peter May, representative from the Zoning  
15 Commission, has joined the dias and will be  
16 hearing the rest of the cases from today.

17 Thank you.

18 Okay. Introduce yourself for us.

19 MS. FOWLER: Good morning. My  
20 name is Jennifer Fowler, Fowler Architects.  
21 I reside at 1819 D Street, S.E.

22 CHAIRPERSON JORDAN: Okay. I

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1 believe this record is pretty clear. We've  
2 had the opportunity to examine this record.  
3 If you have the opportunity if you want to put  
4 on full testimony or we can just ask you some  
5 questions or we can just move this thing  
6 along.

7 Does anyone have any questions  
8 from the Applicant?

9 OP?

10 MR. GOLDSTEIN: We're supportive  
11 of the application and happy to rest on the  
12 record.

13 CHAIRPERSON JORDAN: Do we have a  
14 DOT letter? I believe we did. We have a  
15 letter from the Department of Transportation  
16 where they indicated there were no objections,  
17 no potential adverse impact.

18 Is anyone present from the ANC?  
19 We do have a letter from the ANC who voted  
20 unanimously six to zero, but they also have a  
21 caveat in their motion and the resolution  
22 asking in regards to modification of a 12-foot

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1 setback but that is no longer applicable since  
2 the 12-foot setback has been dealt with  
3 appropriately.

4           Anyone else in support? We do  
5 have a letter from the Capitol Hill Historic  
6 Society indicating their support for this --  
7 Capitol Hill Restoration Society. Thank you  
8 -- indicating their support for this special  
9 exception. Is anyone in opposition? Going  
10 once, going twice, three times.

11           Is there anything you want to say  
12 in closing on this particular application?

13           MS. FOWLER: I just wanted to  
14 thank Mr. Goldstein for his assistance with  
15 the project. We did submit the application  
16 with an average 12-foot setback from the alley  
17 center line but we ended up pushing it back so  
18 that it cleared the 12 feet completely. That  
19 was really the only hitch we came across but  
20 he was very helpful with that. Thank you for  
21 your time.

22           CHAIRPERSON JORDAN: Thank you.

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1 Glad to hear that. Based upon the record, I  
2 find that the Applicant has satisfied the  
3 burden of proof required for the elements to  
4 receive a special exception from Section 403  
5 in 2001. No parties appeared at the public  
6 hearing in opposition to this application.

7 Accordingly, a decision from the  
8 Board to grant this application would not be  
9 adverse to any party having also given great  
10 weight to the Office of Planning and to the  
11 ANC and their particular report. I find that  
12 there is no substantially adverse affect upon  
13 the surrounding properties.

14 There is no impact on light and  
15 air. There is no visual intrusion upon the  
16 character of the property -- the area  
17 surrounding the property. The geographical  
18 representations which have been submitted to  
19 the Board we find to be factual and proper and  
20 the lot occupancy does not exceed 70 percent.

21 With that, I believe that we can  
22 grant this special exception as requested in

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1 the application and I would so move.

2 MEMBER MacMURRAY: Mr. Chairman, I  
3 second the motion.

4 CHAIRPERSON JORDAN: Motion made  
5 and seconded that we approve the application  
6 for the special exception. Any unreadiness?  
7 Seeing none, all those in favor aye.

8 BOARD MEMBERS: Aye.

9 CHAIRPERSON JORDAN: Those opposed  
10 nay. The motion carries.

11 Mr. Secretary.

12 MR. MOY: Staff would record the  
13 vote as four to zero to one. This is on the  
14 motion of Chairman Jordan to approve the  
15 relief from special exception 223, seconding  
16 the motion of Ms. MacMurray. Also in support  
17 of the motion Mr. May, Mr. Hinkle. We have a  
18 Board member not present and not  
19 participating. Again, the final vote is four  
20 to zero to one. The motion carries.

21 CHAIRPERSON JORDAN: Certainly I  
22 believe this is proper for a summary order.

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1 MR. MOY: Yes. Thank you, Mr.  
2 Chairman.

3 CHAIRPERSON JORDAN: Thank you.

4 MR. MOY: The next application  
5 before the Board for public hearing is  
6 Application No. 18345.

7 This is the application of Kevin  
8 and Anne MacMillan pursuant to 11 DCMR 3103.2  
9 and 3104.1, for a special exception to allow  
10 a rear garage addition to an existing one-  
11 family row dwelling under Section 223, not  
12 meeting the lot occupancy (Section 403)  
13 requirements, and a variance from the  
14 accessory building height requirements under  
15 Subsection 2500.4. This is in the R-2  
16 District at premises 2933 Tilden Street, N.W.  
17 Property located in Square 2235, Lot 68).

18 CHAIRPERSON JORDAN: Very good.  
19 Thank you. Good morning.

20 MR. MacMILLAN: Good morning, Mr.  
21 Chairman.

22 CHAIRPERSON JORDAN: Would you

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1 please introduce yourself for the record?

2 MR. MacMILLAN: Sure. I'm Kevin  
3 MacMillan. I'm the resident at 2933 Tilden  
4 Street.

5 CHAIRPERSON JORDAN: 93 --

6 MR. MacMILLAN: 2933 Tilden.

7 MR. SUMMERSGILL: I'm Commissioner  
8 Bob Summersgill with ANC-3F here in favor.

9 CHAIRPERSON JORDAN: Thank you. I  
10 think we do have some preliminary issues in  
11 this particular matter. We have a need for  
12 approval of special exception for Section  
13 401.1, which I believe is required for this  
14 particular application, and that a variance is  
15 necessary under 2500.4 for the height  
16 requirements for the accessory garage of 15  
17 feet including the grade.

18 I know the application did not  
19 include that so we are going to ask you to --  
20 you can make an oral motion for us to amend  
21 your application if that's what you wish.

22 MR. SUMMERSGILL: Yes, Mr.

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1 Chairman. I would appreciate that.

2 CHAIRPERSON JORDAN: I think there  
3 is not any problem from the Board or anyone to  
4 accept the oral motion to amend in light of  
5 the additional relief that is necessary in the  
6 401 and under 2500 so we will accept that  
7 motion and grant that.

8 That raises another issue that I  
9 believe we need some board action on. That is  
10 the issue of whether or not there is a  
11 requirement or a need to have the Applicant  
12 renounce this application since the variance  
13 request was not there in the general notice.

14 It's my thought that we not  
15 require it in this matter since this has been  
16 properly noticed. The height indication is on  
17 the plan itself. There has a complete  
18 disclosure to all parties.

19 I think everybody who possibly has  
20 an interest in this has written their support.  
21 I don't think there is anybody else that could  
22 be left out there who are not aware of this

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1 request.

2 With that, does anyone have any  
3 other thoughts about that?

4 MEMBER HINKLE: No, Mr. Chair. I  
5 agree with that assessment.

6 CHAIRPERSON JORDAN: With that  
7 then I would move that we waive the provision  
8 requirements under 3113 that requires notice  
9 on this application -- additional notice on  
10 this application. That would be my motion.  
11 I need a second from someone.

12 MEMBER HINKLE: Second.

13 CHAIRPERSON JORDAN: Motion made  
14 and seconded that under the authority under  
15 3100.5 that we waive the requirements for  
16 additional notice under 3113. Motion made and  
17 seconded. Any questions? All those in favor  
18 signify by saying aye.

19 BOARD MEMBERS: Aye.

20 CHAIRPERSON JORDAN: Those opposed  
21 nay. The motion carries.

22 I believe the record is pretty

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1 full in your case. It's pretty  
2 straightforward. I don't think we have -- I  
3 don't have any questions regarding the relief  
4 necessary.

5 Does any other Board members have  
6 a question for the Applicant?

7 MEMBER MacMURRAY: No, Mr.  
8 Chairman. I don't have a question but I just  
9 want to note that -- I think this might be a  
10 little premature but going to OP's report that  
11 the proposed garage is similar to the  
12 additional two-story dwelling that is already  
13 in the neighborhood which goes to the support  
14 of why I think that they're --

15 CHAIRPERSON JORDAN: Is there  
16 anything else you want to provide us at this  
17 point?

18 MR. MacMILLAN: No, not at this  
19 point, Mr. Chairman. Thank you.

20 CHAIRPERSON JORDAN: Then we can  
21 turn to the Office of Planning, please.

22 MR. JACKSON: My name is Arthur

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1 Jackson, D.C. Office of Planning. I'm here  
2 representing Karen Thomas who was not able to  
3 be here today. You have the Office of  
4 Planning's report before you. We would simply  
5 stand on the record. We are available to  
6 answer any questions that you may have on this  
7 application.

8 CHAIRPERSON JORDAN: Any questions  
9 for Office of Planning? Very good.

10 Anyone here from the Department of  
11 Transportation or any other Government agency?

12 We do have a letter, I believe,  
13 from the Office of -- the Department of  
14 Transportation which expressed no objections  
15 and no concerns about your application and the  
16 ANC, please.

17 MR. SUMMERSGILL: I just want to  
18 say that we voted unanimously five zero zero  
19 in support. We were aware of the height  
20 variance but since this lot is on a hill, it  
21 doesn't quite apply. It would be essentially  
22 the same height as the surrounding garages.

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1 Garages are typical on this alley and this  
2 would be a welcome asset.

3 As well as it has a slanted roof  
4 to collect rainwater runoff in a cistern for  
5 later use reducing the overall -- reducing  
6 water runoff into the river, or Rock Creek in  
7 this case.

8 The slanted roof with the windows  
9 also allows for passive heating in the winter  
10 which is a nice plus. We think this is  
11 exactly the kind of development we want in the  
12 neighborhood.

13 CHAIRPERSON JORDAN: Thank you  
14 very much. I appreciate you coming down.

15 MR. SUMMERSGILL: Sure.

16 CHAIRPERSON JORDAN: Any other  
17 persons in support?

18 We do have two letters which were  
19 submitted by the residents at 2931 Tilden;  
20 Gillespie and Belcher at 2935. I think I saw  
21 another -- oh, the Gillespies at 2139 in  
22 support.

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1           Any other person in the audience  
2           in opposition to this application? For the  
3           record, no one identified themselves being in  
4           opposition.

5           Is there anything else you want to  
6           add to the record that is necessary?

7           MR. MacMILLAN: No, thanks.

8           CHAIRPERSON JORDAN: I know this  
9           is really a tough hearing you're having.

10          Does any other Board member have  
11          any questions for the Applicant or anyone?

12          COMMISSIONER MAY: I just have  
13          one. I mean, this is not really that  
14          important but why did you choose to slope the  
15          roof toward the alley rather than toward the  
16          property? It's very unusual.

17          MR. MacMILLAN: It's being sloped  
18          toward the property, I believe.

19          COMMISSIONER MAY: The property?  
20          That doesn't seem to be what is indicated.

21          MR. MacMILLAN: The high side is  
22          on the south side so it will be able to

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1 collect solar light in the winter but then not  
2 -- with the sun being higher in the summer  
3 when it's hotter it won't shine directly into  
4 the windows so it's passive solar heating.

5 COMMISSIONER MAY: Oh, I see.  
6 Into the garage there. Got it. Thanks.

7 CHAIRPERSON JORDAN: Good. Well,  
8 we'll close this record for this particular  
9 hearing. I believe we can deliberate now if  
10 the Board is willing.

11 I believe the record is pretty  
12 full in this matter and it clearly shows that  
13 the Applicant has met the burden of proof for  
14 showing the elements necessary for the grain  
15 of his special exception from 401.3 regarding  
16 the lot width and the lot area, and 403.2 for  
17 the lot occupancy requirement.

18 There is no party appearing here  
19 in opposition to this application. There  
20 hasn't been any showing that this application  
21 would present an adverse affect on the  
22 surrounding properties, no impact on light and

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1 air, no visual intrusion to the character of  
2 the properties in the area.

3 The diagrams and drawings were  
4 appropriate and certainly represent the change  
5 being made. The lot occupancy will not exceed  
6 the 50 percent requirement. With that, I  
7 would submit to the Board that this Applicant  
8 should be granted this special exception as  
9 requested.

10 Additionally, based upon the same  
11 information in the record and the need for a  
12 variance that the variance also be approved.  
13 There exist an exceptional situation and  
14 condition to the property that creates a  
15 practical difficulty to meet the requirements  
16 of the Zoning Regulation. As we said before,  
17 there is no detriment to the public or to the  
18 Zoning Regulations to grant this variance.

19 With that, I move that this  
20 application be approved for both the special  
21 exception and the variance.

22 MEMBER MacMURRAY: Mr. Chairman, I

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1 second the motion.

2 CHAIRPERSON JORDAN: Motion made  
3 and seconded that the application for the  
4 special exception and the variance as amended  
5 be approved. Any unreadiness or questions?

6 Seeing none, all those in favor  
7 signify by saying aye.

8 BOARD MEMBERS: Aye.

9 CHAIRPERSON JORDAN: Those opposed  
10 nay. The motion carries.

11 Mr. Secretary.

12 MR. MOY: Yes, Mr. Chairman. The  
13 staff would record the vote as four to zero to  
14 one. This is on the motion of Chairman Jordan  
15 to approve the application for special  
16 exception relief under Section 223 as amended.

17 Seconding the motion Ms.  
18 MacMurray. Also in support of the motion Mr.  
19 May, Mr. Hinkle, a Board member not present  
20 and not participating. Again, the final vote  
21 is four to zero to one.

22 CHAIRPERSON JORDAN: Thank you.

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1 Appreciate it very much.

2 MR. MacMILLAN: Thank you.

3 MR. SUMMERSGILL: Thank you.

4 CHAIRPERSON JORDAN: I'm still  
5 bewildered on the four to zero to one. One  
6 stands for an abstention. We don't have an  
7 abstention.

8 MR. MOY: Yes. Well --

9 CHAIRPERSON JORDAN: We have an  
10 absence.

11 MR. MOY: That's right. Absence,  
12 not voting.

13 CHAIRPERSON JORDAN: So it's four  
14 to zero.

15 MR. MOY: It's four to zero but I  
16 usually have a third column.

17 CHAIRPERSON JORDAN: I just think  
18 it's proper for the record that we show that  
19 because an abstention actually kind of sends  
20 a signal, I think.

21 COMMISSIONER MAY: Isn't it  
22 recorded in the record, though, as not present

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1 and not voting?

2 MR. MOY: Not present and not  
3 voting. Exactly.

4 CHAIRPERSON JORDAN: Okay.

5 COMMISSIONER MAY: That is what is  
6 usually stated on Zoning cases.

7 CHAIRPERSON JORDAN: Okay. We put  
8 four to zero and then we put the one. You  
9 actually write on the side --

10 MR. MOY: One not present and not  
11 voting.

12 CHAIRPERSON JORDAN: Okay.

13 COMMISSIONER MAY: It's not listed  
14 as an abstention. It adds up to five.

15 CHAIRPERSON JORDAN: I've been  
16 involved with several cases where someone was  
17 on the record for abstaining versus recusing  
18 himself and they got into a whole big issue  
19 about what abstention really meant and so  
20 that's kind of why I kind of brought it  
21 because we kind of take it lightly, but good.  
22 Thanks.

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1 Next case. Oh, summary order.

2 MR. MOY: All right. You waive  
3 the requirements.

4 CHAIRPERSON JORDAN: I was reading  
5 the list. Summary order, summary order.  
6 Thanks, Cliff.

7 MR. MOY: The next and last  
8 application before the Board's morning session  
9 is Application No. 18344. This is the  
10 application of JBG/New York Avenue Hotel, LLC,  
11 pursuant to 11 DCMR 3104.1 and 3103.2.

12 This is for a variance from the  
13 parking requirements under Section 2101.1, a  
14 variance from the compact car parking space  
15 provisions under Sections 2115.2 and 2115.4,  
16 and a special exception from the roof  
17 structure requirements under Sections 411 and  
18 770.6, to permit the development of a hotel in  
19 the C-3-C District at premises 33 New York  
20 Avenue, N.E. Property is located in Square  
21 671, Lot 27.

22 CHAIRPERSON JORDAN: Thank you,

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1 Mr. Secretary.

2 Good morning.

3 MS. SHIKER: Good morning.

4 CHAIRPERSON JORDAN: Can we make  
5 sure that all witnesses have their green light  
6 showing on their microphone there? If you  
7 will introduce yourselves, please.

8 MS. SHIKER: Good morning,  
9 Chairman, and members of the Board. My name  
10 is Christine Shiker and I'm with the law firm  
11 of Holland & Knight representing the Applicant  
12 in this case.

13 To my right is Andrew McIntyre  
14 from the JBG Companies representing the  
15 Applicant. Farther to the right is Mr. Steve  
16 Sher, also with the law firm of Holland &  
17 Knight.

18 On my left is Andrea Schaub with  
19 the architectural firm of Cooper Carry. And  
20 Ms. Jami Milanovich is the farthest on the  
21 left with Wells & Associates, the traffic  
22 consultant. We also have Brook Katzen from

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1 the JBG Companies in the audience. Thank you.

2 CHAIRPERSON JORDAN: Okay. What  
3 is this document we just received? Is this  
4 what we already have in the record?

5 MS. SHIKER: We submitted a copy  
6 of the PowerPoint presentation that we have  
7 available for use in our presentation or with  
8 questions today, as well as Mr. Sher's report  
9 evaluating the case.

10 CHAIRPERSON JORDAN: So this is  
11 just repetitive information?

12 MS. SHIKER: That is correct.

13 CHAIRPERSON JORDAN: I don't know  
14 if we need a full presentation on this  
15 application. I believe the record is pretty  
16 full. The Board may have some questions for  
17 you. Then if you would respond to that, I  
18 think it might be a better way to handle it  
19 because we have all reviewed the record in  
20 this matter.

21 I think the issues can be handled  
22 more succinctly that way unless you feel like

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1 you want to go through a full presentation.  
2 I know you've gotten the PowerPoint kind of  
3 thing going and you might want to just shoot  
4 it and get some exercise.

5 MS. SHIKER: Mr. Chairman, we  
6 would be happy to answer questions of the  
7 Board. I would ask that the Board qualify our  
8 expert witnesses for the discussion today. We  
9 have submitted three expert witnesses, Ms.  
10 Schaub on architecture, Ms. Milanovich in  
11 traffic engineering, and Mr. Sher in land use  
12 and planning.

13 Their resumes were submitted in  
14 the prehearing submission at Exhibits H, I,  
15 and J respectively. Ms. Milanovich and Mr.  
16 Sher have been accepted numerous times as  
17 experts before this Board. Ms. Schaub is  
18 appearing today for the first time before this  
19 Board. She has been a practicing architect  
20 for over 16 years with 12 years focused in the  
21 hospitality industry and hotels.

22 CHAIRPERSON JORDAN: Yes. Just a

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1 second, please. I took a look at this earlier  
2 and I'm just trying to find out where I made  
3 the indication. Okay. Yes, everyone except  
4 Ms. Schaub has been previously identified and  
5 has been approved by this Board as an expert  
6 in this matter. I don't have any problems  
7 with the acceptance of Ms. Schaub as an  
8 expert. I think her qualifications meet that  
9 so we will accept her as an expert witness.

10 MS. SHIKER: Thank you.

11 CHAIRPERSON JORDAN: Does the  
12 Board have any questions on the application?

13 COMMISSIONER MAY: Yes.

14 CHAIRPERSON JORDAN: Please.

15 COMMISSIONER MAY: The really  
16 amazing thing about this application is a  
17 request for a complete variance from parking  
18 relief. I need to understand exactly why you  
19 think that's appropriate.

20 Relief on some level made some  
21 sense. I saw an earlier plan that showed a  
22 reasonable attempt to get parking in a very

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1 difficult site. That was where you started  
2 out.

3           There was some resistance from the  
4 Department of Transportation, I guess, having  
5 to do with vault space parking so if somebody  
6 could sort of walk me through all that and  
7 explain to me why you think this can work this  
8 way.

9           CHAIRPERSON JORDAN: And I would  
10 join that same issue.

11           MS. SHIKER: Of course. So just  
12 to refresh everyone, the original parking plan  
13 that Commissioner -- Board Member May is  
14 referring to was a plan that was accessed from  
15 New York Avenue and did provide vault space.  
16 The Applicant's team met numerous times, five  
17 times, with DDOT to try to resolve these  
18 issues.

19           Ultimately DDOT determined that  
20 there would be no access from New York Avenue  
21 and expressed grave concern about the vault  
22 space which required a re-evaluation of the

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1 application once it was filed. At that point  
2 that is when the architect and engineers  
3 looked at the location of the garage.

4 I'm going to ask Ms. Schaub to  
5 walk you through the ground floor plan, how  
6 the parking garage would work. Then we can  
7 talk further into given the site constraints,  
8 especially the small size of the site and the  
9 unusual shape, the trapezoidal shape, how that  
10 starts to increase cost that would lead to a  
11 practical difficulty. Mr. McIntyre can  
12 address that prong of the issue.

13 I'll start with Ms. Schaub.

14 MS. SCHAUB: To start off with the  
15 site-specific information, the site itself, as  
16 Christy had mentioned, is very small in  
17 nature. It is 112 feet on the south side and  
18 67 feet on the west side. Those are the two  
19 angles -- the two lines of the site here that  
20 form our south and west spaces.

21 In addition to that, of course, it  
22 is a through site. It sits in between New

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1 York Avenue and N Street. Therefore, we've  
2 got an acute angle across New York Avenue  
3 creating some additional complexities with the  
4 geometries of the site.

5 We originally had a ramp space  
6 that entered the site up here on the northeast  
7 corner that came down into the garage. As  
8 Christy mentioned, we were using a vault space  
9 at that point as well to try to hit the amount  
10 of parking that is required from the  
11 regulations.

12 With the solution from DDOT to  
13 remove that ramp -- they asked us to go ahead  
14 and flip everything around to the N Street  
15 side -- it causes several problems both from  
16 a parking standpoint and from a layout  
17 standpoint on the ground floor.

18 I'll go through the layout on the  
19 ground floor first and then we'll jump down  
20 into the garage. The way that the plan is set  
21 up, because we are a through site we do have  
22 entrances both off of New York Avenue and N

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1 Street. We have a through lobby from a  
2 circulation standpoint.

3 We do have our core situated in  
4 the center and I can get into some more detail  
5 on that if we need to about why it is where it  
6 is. We also have a loading facility back-of-  
7 house spaces that are associated with the  
8 functions of the hotel.

9 In introducing a ramp on this  
10 face, basically on the southeast corner, which  
11 is the place that made the most sense because  
12 of the length of that wall, it really did  
13 disrupt the ground floor to the point where we  
14 had a hard time trying to fit all the  
15 components that were required to get into the  
16 hotel and have it function. They weren't  
17 fitting. That being said and moving down into  
18 the garage level.

19 CHAIRPERSON JORDAN: Which screen  
20 is that? Which panel would it be in?

21 MS. SCHAUB: Oh, I didn't number  
22 them unfortunately.

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1 CHAIRPERSON JORDAN: Okay.

2 MS. SCHAUB: It is --

3 MS. SHIKER: It's about halfway  
4 through the PowerPoint. These two plans are  
5 also found at Exhibit D in your prehearing  
6 submission.

7 MS. SCHAUB: So this is the plan  
8 of the garage taking a look at moving the ramp  
9 onto N Street and how we would get into the  
10 garage and actually place full-size parking  
11 spaces within the space.

12 One thing to make note of, the  
13 plans that we had originally submitted with  
14 the vault we were taking advantage of the idea  
15 of using compact spaces. We had enough spaces  
16 per level that we could group those into more  
17 or less groups of five and maintain something  
18 close to what the regulations are in the  
19 zoning ordinance.

20 In this case because we had so few  
21 spaces per level we felt it appropriate to  
22 provide full-size spaces. As you move down

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1 into the garage, as you can see on the first  
2 level we were only able to accommodate five  
3 spaces.

4 The main reason because we have to  
5 accommodate the ramp, the drive aisles, and  
6 there is a good bit of infrastructure for the  
7 hotel just to function, utility spaces and  
8 other back-of-house spaces that are required  
9 to be on this level.

10 Moving down to the next level down  
11 we have a total of eight spaces which is what  
12 we would end up with on each level after this  
13 one if we continue down. Again, eight spaces  
14 on this level and five on the upper.

15 If we were to try to meet the 54  
16 spaces that were required by the zoning  
17 ordinance, we would end up with seven levels  
18 of parking which you're talking over 70 feet  
19 of excavation so there is a difficulty there  
20 from a construction standpoint. In addition  
21 to that from an operation standpoint it  
22 becomes very difficult to actually utilize a

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1 garage of that nature.

2 One other little piece I failed to  
3 mention earlier. I mentioned the site is 112  
4 feet across the south side and 67 feet on the  
5 west side. We also in the process of design  
6 discovered we have two encroachments on both  
7 the east and west side.

8 On the west side the Covenant  
9 House building encroaches onto our site by  
10 just under a foot. On the east side we have  
11 a one-foot-six encroachment. We're being  
12 pushed a little bit farther so, again, just the  
13 compression there is --

14 MS. SHIKER: Okay. Thank you.  
15 That is like the first step of creating the  
16 practical difficulty. Here you have a very,  
17 very small number of spaces that can be put  
18 into a reasonable size garage. Then you start  
19 to evaluate what is the cost of providing  
20 these spaces.

21 We have submitted to the Board a  
22 letter from Herman Stewart Construction

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1 summarizing those costs. I'm going to ask Mr.  
2 McIntyre to talk about that. As we have  
3 briefed in our prehearing submission,  
4 excessive cost can lead to practical  
5 difficulties in providing parking.

6 COMMISSIONER MAY: Before you go  
7 there, that's not really what troubles me.  
8 The question I have actually has to do with  
9 DDOT's position. I don't know if anybody from  
10 DDOT is here and whether they will be able to  
11 speak to it later. No? Okay. If you could  
12 explain to me why they had "grave concerns"  
13 about the vault parking, as you said.

14 I understand their resistance in  
15 wanting to have a curb cut on New York Avenue,  
16 although I would argue that sometimes things  
17 like this are inevitable. Explain to me why  
18 they didn't want to have the vault parking  
19 because if you could have made -- if you've  
20 got the vault parking, the cost of the parking  
21 per space would be improved.

22 MS. SHIKER: DDOT has uniformly

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1 taken the position in recent times, recent  
2 months --

3 COMMISSIONER MAY: Oh, recent.  
4 Just on the last few months? Because I  
5 remember them recommending approval of vault  
6 spaces.

7 MS. SHIKER: Six months. I would  
8 say six to 12 months this has become the new  
9 position and policy of the District Department  
10 of Transportation. I hate to speak for them  
11 in terms of what their policies are but we are  
12 consistently hearing from DDOT that they do  
13 not want parking in vault space.

14 They also have other issues with  
15 vault space in general because they believe it  
16 is the taking of public space. This is an  
17 issue. It's coming down to utility vaults as  
18 well. I mean, it certainly is something that  
19 we see being discussed and coming up in  
20 matter-of-right developments and PUDs and in  
21 BZA cases.

22 This situation with the

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1 elimination of the vault space and, more  
2 importantly, the relocation of the curb cut  
3 which causes so many difficulties for the  
4 site, we determined that it was best to seek  
5 the relief based on the practical difficulties  
6 that we have encountered on the site.

7 COMMISSIONER MAY: Okay. So one  
8 last question which is did you look at garage  
9 elevators and what that would do? I mean, we  
10 approved a PUD with a garage elevator and it  
11 was never built. It was modified subsequently  
12 but we actually had approved one some time  
13 ago.

14 MS. SHIKER: I'll ask Mr. McIntyre  
15 to answer that question whether they looked  
16 into that or not. I know that a variety of  
17 solutions had been looked at. I would then  
18 ask Ms. Milanovich to talk about the  
19 evaluation that went into looking at what the  
20 capacity is, the work that has been done in  
21 terms of what the actual demand is for this  
22 limited --

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COMMISSIONER MAY: I understand that. This is all on the record.

MS. SHIKER: Okay.

COMMISSIONER MAY: That's the only mitigating factor that you have going for you here. The other aspect of it is how you manage a hotel without parking. If the hotel operator is willing to do it, then there is an understanding of demand and there is an understanding of how you manage it that I wouldn't necessarily question because they are putting their money where their mouth is, if you will, or the developer is putting their money where their mouth is with regard to making it operate.

I just have a question about whether it's -- how practical it really is and what the potential impacts are to the neighborhood in the circumstance. There is a lot of emphasis on things like bus lines and so on. I don't imagine they are going to get

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1 a lot of people coming to the hotel by bus.  
2 They may be traveling by bus once they get  
3 here but I just can't imagine that is really  
4 that much of an advantage.

5 MS. SHIKER: You certainly have  
6 the tour buses that come and the taxis and the  
7 Metro. I will have Mr. McIntyre talk to that.  
8 I will tell you that the ANC voted unanimously  
9 to support --

10 COMMISSIONER MAY: It's in the  
11 record, too. Thank you.

12 MR. McINTYRE: Thank you. Couple  
13 of items. First, back to the curb cut itself  
14 before I answer your question on the parking  
15 lift. The location of that curb cut is  
16 particularly onerous in our mind because of  
17 the proximity to Metro, the New York Avenue  
18 Metro. We really see this as being --  
19 becoming the primary entrance to the hotel.

20 We feel that because of the New  
21 York Avenue presence that we do need to have  
22 dual lobbies. Whether it's for an elevator

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1 lift or a garage ramp, you all of a sudden  
2 diminish this entire elevation to back-of-  
3 house service. You won't have the ability to  
4 turn it into a through lobby. With respect to  
5 the elevator, we did not look at that and  
6 evaluate the cost.

7           What I will tell you is that in  
8 the past when we have looked at that solution,  
9 we have found that you have to have a lot  
10 higher economies of scale to make that worth  
11 the cost because those elevator systems are  
12 not only a function of the cost to create the  
13 structure, which you are doing with the  
14 parking garage, but then you have to put a lot  
15 of hidden mechanical, expensive mechanical  
16 equipment into that structure.

17           Right now if we were just to do  
18 two levels, or about \$160,000 a space, which  
19 is about \$120,000 or \$130,000 more than what  
20 an actual -- an average parking space cost.

21           COMMISSIONER MAY: I'm sorry, how  
22 much more?

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1 MR. McINTYRE: Right now we're  
2 about \$130,000 more. Maybe \$125,000 more than  
3 an average space. You are going to throw  
4 additional mechanical equipment in there on  
5 top of the structure. If you reduce some of  
6 the structure, you still have to build the box  
7 and that is where a lot of the cost is coming  
8 from.

9 Maybe we get more spaces and be a  
10 little bit more efficient, but the cost of  
11 mechanical equipment for a parking system  
12 would still require an entrance. It would be  
13 on N Street and we would drop down into a more  
14 expensive box because of the equipment.

15 The last item that you mentioned  
16 that had to do with operations, I think at any  
17 given time we are either the largest or one of  
18 the largest hotel developer/owner/operators in  
19 the D.C. Metropolitan area. We live on our  
20 revenues and that's a function of guest  
21 satisfaction.

22 We have two hotels in this

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1 submarket already that 100 percent valet. We  
2 will make sure that this is executed in a way  
3 that our guests are absolutely satisfied or  
4 else we won't be in the market for very long.  
5 That is just the reality of it.

6 We are consistent with the rest of  
7 the hotels in the submarket and it is to our  
8 benefit to not allow this to be an impact  
9 operations. We talked with our operator,  
10 we've talked with our brand, and we've talked  
11 internally with our assess management folks  
12 and everybody is very comfortable with the  
13 solution. Thank you.

14 COMMISSIONER MAY: Okay.

15 CHAIRPERSON JORDAN: If you are  
16 doing the elevator, how many spaces do you  
17 think you will be able to achieve?

18 MR. McINTYRE: I think if we do  
19 the elevator, we would probably get rid of the  
20 ramp. We would still need the circulation of  
21 the cars. I don't know these mechanical  
22 systems well enough to be able to speak to

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1 their efficiency.

2 I would imagine that per level  
3 maybe we could add a couple more spaces, two  
4 or three. I would hesitate to say it would be  
5 more than that because you still have to move  
6 the cars around. There might be mechanical  
7 requirements that are unknown and you still  
8 need the other services and the cores and the  
9 elevators and such.

10 You would get the space back from  
11 the ramps but still have to move cars and in  
12 and around you have to have some sort of  
13 conveyance system from the way I've understood  
14 these things. I don't think our geometry  
15 really works for any of the office shelf  
16 systems that you are thinking about. We have  
17 looked at them.

18 We continue to look at them. We  
19 know that sooner or later adjacent to our site  
20 there are big Government blocks that those  
21 might be the right solution for them just  
22 because you need a certain amount of density

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1 and geometry.

2 CHAIRPERSON JORDAN: And your  
3 footprint is so small.

4 MR. McINTYRE: It is but we still  
5 believe this is going to be a very successful  
6 project regardless.

7 CHAIRPERSON JORDAN: Any other  
8 questions from anyone?

9 MEMBER MacMURRAY: Mr. Chairman, I  
10 have a couple questions.

11 I noticed in here there is a  
12 discussion about the vehicle trips and the  
13 comparison to St. Gregory, the Hilton Garden  
14 and Hilton Garden downtown. The location on  
15 New York Avenue to me doesn't seem like it's  
16 a comparison because New York Avenue is a  
17 major throughway coming from -- if you are  
18 coming north you are coming into the city.

19 Traffic in general if you go on  
20 any afternoon is highly congested. My concern  
21 is about eliminating spaces and saying that  
22 recognizing on the premise that people will be

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1 coming and they would be using the Metro or  
2 other accessible -- or vans or any other usage  
3 of some kind of mobile transportation. I  
4 can't really understand how that is going to  
5 work in this area.

6 MS. SHIKER: I'm going to ask Ms.  
7 Milanovich who did the study to answer that  
8 question. I will point out that it is  
9 anticipated that this hotel will kind of have  
10 dual purposes, business, travel, Government  
11 contractors during the week, tourists on the  
12 weekend so you have a variety of different  
13 modes that you're looking at in terms of  
14 transportation.

15 Ms. Milanovich had studied that  
16 and made the determinations with DDOT on the  
17 location so I'll pass it to her.

18 MS. MILANOVICH: Sure. We  
19 actually looked at four hotels we studied in  
20 order to determine the estimated parking  
21 demand for the proposed hotel. We believe  
22 that the demand at these hotels are indicative

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1 of what can be expected at the proposed hotel  
2 for several reasons.

3 First, the hotels that we studied  
4 are in the Washington, D.C. comp set. They  
5 are very comparable. They are in the same  
6 city. They like the proposed hotel are select  
7 service hotels so their operating  
8 characteristics are very similar.

9 They don't have a lot of  
10 conference room space or those types of spaces  
11 that would generate their own traffic. The  
12 space within the hotel is simply there to  
13 serve the demands of the guests. Then also  
14 each of the four hotels is located in close  
15 proximity to transit.

16 Actually, I believe, at least  
17 three, maybe all four of them, are actually a  
18 little bit farther away from transit than the  
19 subject hotel is. We believe that the  
20 presence in proximity to the transit station  
21 and being one stop from Union Station really  
22 does lend itself to having other options

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1 available to guests rather than bringing their  
2 own car.

3 Certainly we do contemplate that  
4 some people will choose to bring their own car  
5 and we've made accommodations for that to  
6 accommodate those elsewhere. In terms of  
7 predicting what the peak demand is for the  
8 hotel, we really do believe that the four  
9 hotels that were studied in the District are  
10 very similar and very indicative of what can  
11 be expected at this hotel.

12 CHAIRPERSON JORDAN: Any other  
13 questions on parking?

14 Let me ask you, tell me a little  
15 bit about the outreach to the property owners  
16 on both sides of this hotel. What kind of  
17 outreach has there been?

18 MR. McINTYRE: We've been in  
19 discussions with Covenant House probably going  
20 back to last year, August of last year. They  
21 are fully aware of our development plans. I  
22 would not speak for them to say one way or the

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1 other in support or not. I don't know of any  
2 objections that they have.

3 We had discussions about  
4 potentially purchasing their site but it's not  
5 really in the context of this property. They  
6 have some long-term strategic plans that they  
7 are looking to put that property on the  
8 market. They have been very good discussions.

9 We are in the midst of a contract  
10 negotiation on a crane over-swing agreement  
11 now for this project. Then the neighbor to  
12 the other side we have an option to purchase  
13 their land as well. We are on good terms with  
14 those neighbors.

15 CHAIRPERSON JORDAN: When you say  
16 an option to purchase as well, you don't have  
17 an option on the Covenant House.

18 MR. McINTYRE: No, I apologize.  
19 We do not. We have an option to purchase on  
20 the subject property.

21 CHAIRPERSON JORDAN: So to really  
22 complete the question, we don't have any

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1 reason to believe that any of our neighbors  
2 are unaware of the project or have any issue  
3 with it.

4 MS. SHIKER: I would just add that  
5 we have also been working closely with Tony  
6 Goodman who is the single member district  
7 representative for NoMA and he is a very  
8 active participant in all NoMA development.  
9 He has been supportive of the project  
10 throughout the time and was very supportive of  
11 the project and the full parking variance to  
12 the ANC at the meeting.

13 CHAIRPERSON JORDAN: Any other  
14 questions for the applicant anyone?

15 Mr. May.

16 COMMISSIONER MAY: Yes, a couple  
17 more.

18 Can you explain to me the layby  
19 situation? I know you would like to have one  
20 and DDOT is resisting. Is that still just up  
21 in the air with them?

22 MS. SHIKER: We have shown a layby

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1 for the valet operations and we believe that  
2 is the best way to accommodate the taxis,  
3 buses, vehicles to the site. We have had  
4 initial discussions with DDOT.

5 At those initial discussions there  
6 was more of a positive feeling towards the  
7 layby from DDOT in their oral discussions  
8 indicating that their policies, DDOT's  
9 policies, support laybys for hotels in the  
10 city.

11 DDOT does not support laybys for  
12 any other type of use in the city. We did see  
13 the report saying that those issues would need  
14 to be resolved through the permitting process  
15 and we plan to continue to work with them to  
16 resolve that issue.

17 COMMISSIONER MAY: Okay. Then one  
18 last question which is the facade on the  
19 eastern side where you have an option to  
20 purchase that property. To you anticipate at  
21 some point potentially expanding the hotel in  
22 that direction?

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1 MR. McINTYRE: No, we do not.

2 COMMISSIONER MAY: Okay. But you  
3 are anticipating that they will eventually  
4 build to the full -- that site will eventually  
5 be fully built out so that your large blank  
6 wall will --

7 MR. McINTYRE: Correct.

8 COMMISSIONER MAY: -- will not be  
9 visible anymore because --

10 MR. McINTYRE: It's interesting.  
11 That is correct. For a couple of reasons,  
12 just to add a little bit, we really can't  
13 expand just because of the nature of that  
14 wall. The other reasons is just the nature of  
15 the market and the type of hotel. We don't  
16 see a need to grow the size of the hotel.

17 COMMISSIONER MAY: Okay. If this  
18 were a PUD I would have a whole lot to say  
19 about that wall. As walls like that go, it's  
20 not too bad. It looks like it's being  
21 articulated and that there is some effort to  
22 introduce some vertical lines in some depth

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1 and so on. It's going to be a very, very  
2 obvious wall for a long time. All right.  
3 Thanks.

4 CHAIRPERSON JORDAN: Is that a  
5 Hyatt sign? Is that what that is? The  
6 colorful Hyatt sign?

7 MR. McINTYRE: That's correct.

8 CHAIRPERSON JORDAN: Any other  
9 questions of the Applicant? Anyone?

10 Let's turn now to -- is there  
11 anything else you want to say on these issues  
12 that we raised?

13 MS. SHIKER: Not at this time.  
14 Thank you.

15 CHAIRPERSON JORDAN: Let's turn  
16 now to the Office of Planning.

17 MR. JACKSON: Good morning, Mr.  
18 Chairman and members of the Board. Arthur  
19 Jackson again with the D.C. Office of  
20 Planning. We have our report before you. We  
21 looked at the issues that were raised in the  
22 application.

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1                   We did an analysis and we  
2 supported the relief that was requested by the  
3 Applicant. We also note that the memorandum  
4 from the Department of Transportation that is  
5 in support of the application. We note the  
6 ANC report that was in support of the  
7 application.

8                   We think overall the Applicant has  
9 addressed all the issues that we raised. That  
10 includes a brief summary of the Office of  
11 Planning's report. We are available to answer  
12 questions.

13                   CHAIRPERSON JORDAN: Thank you.  
14 Any questions for Office of Planning, anyone?

15                   COMMISSIONER MAY: Do you have any  
16 position on the layby?

17                   MR. JACKSON: We defer that to the  
18 Public Space Committee because one of the  
19 issues that we have probably is because we are  
20 looking at the traffic routes on M Street. It  
21 appears it's a one-way street -- it's a two-  
22 way street now.

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1                   Our concern -- our thought would  
2 be we wonder what the future of that  
3 circulation pattern would be. I mean, M  
4 Street comes to a dead end at North Capitol so  
5 you can turn right or left and you can't go  
6 across.

7                   COMMISSIONER MAY: Right.

8                   MR. JACKSON: As long as --

9                   COMMISSIONER MAY: You can turn  
10 right. I don't think --

11                  MR. JACKSON: No, no, you can turn  
12 right.

13                  COMMISSIONER MAY: You can't turn  
14 left, though.

15                  MR. JACKSON: No, no, you turn  
16 right.

17                  COMMISSIONER MAY: Right.

18                  MR. JACKSON: Then you have to go  
19 across New York Avenue to go across and  
20 turn --

21                  COMMISSIONER MAY: It's more or  
22 less like a U turn, right?

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1 MR. JACKSON: Yes.

2 COMMISSIONER MAY: You can't  
3 really even make a right onto North Capitol.

4 MR. JACKSON: Like a panhandle.

5 COMMISSIONER MAY: Right.

6 MR. JACKSON: The concern is --

7 COMMISSIONER MAY: I've done that  
8 loop and it takes a really long time to get  
9 back to where you started, I'll tell you.

10 MR. JACKSON: So because of the  
11 limited circulation pattern there, the  
12 presence of the layby would not be as much of  
13 an issue because you are not going to have a  
14 lot of traffic that is going to be rushing  
15 through to get through the light. Basically  
16 you always have to stop.

17 I guess in the long term, though,  
18 will that always remain a two-way street or  
19 will it make sense at some point to make it  
20 one-way. The logic there is if it's going to  
21 be one-way it probably would still be toward  
22 North Capitol.

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1           I don't think given the location  
2           and the current situation and the fact that  
3           it's not going to be a raceway or anything, I  
4           don't think having a layby there to serve  
5           buses, cars, taxis, and other conveyances  
6           would be an issue.

7           Also during the Applicant's  
8           presentation to DDOT, which I witnessed, they  
9           were very concerned about making sure that the  
10          pedestrian pathway to their hotel was always  
11          maintained in good order so the presence of a  
12          layby as designed would not inhibit potential  
13          customers or people who are trying to get back  
14          and forth to the Metro so we don't see it  
15          being a problem.

16                 COMMISSIONER MAY: Has the Office  
17                 of Planning been engaged with DDOT on their  
18                 positions regarding parking and vault space  
19                 and placement of curb cuts and situations like  
20                 this?

21                 MR. JACKSON: We have listened  
22                 intently.

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1 COMMISSIONER MAY: Listened.

2 MR. JACKSON: Yes.

3 COMMISSIONER MAY: That's what  
4 concerns me is there's -- I'm not sure that  
5 DDOT is being totally consistent or, frankly,  
6 totally right in their approach on these  
7 things. Some of these are planning issues and  
8 not just transportation issues.

9 I mean, is it really beneficial to  
10 the street life here, the pedestrian street  
11 life here, to do everything that you can to  
12 maintain high speed through traffic on New  
13 York Avenue. I'm not sure that it really  
14 does.

15 So is the right balance being  
16 struck between the need to allow people to  
17 quickly exit the city versus the street life  
18 and the inconvenience of vehicles crossing the  
19 sidewalk occasionally at a hotel of all  
20 things? I don't know the right answer to  
21 that. I just don't feel like this is being  
22 properly explained. If DDOT were here I would

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1 ask them to explain it, but this is also your  
2 domain in my view.

3 If I can't get an opportunity to  
4 cross-examine, or to question DDOT on this, I  
5 would at least ask that the Office of Planning  
6 take that up and ask some of these hard  
7 questions so that we can get really good  
8 answers next time around.

9 MR. JACKSON: We are, of course,  
10 in continuing discussions about overall policy  
11 issues. Of course, on a case-by-case basis we  
12 are using those as opportunities to refine  
13 their positions on certain cases or mutual  
14 positions in certain instances and we support  
15 each other, particularly in instances that are  
16 more important than others. I think it's an  
17 ongoing conversation and they are adjusting  
18 their views.

19 COMMISSIONER MAY: I hope it is an  
20 ongoing conversation. I hope you share some  
21 of the results of that with us.

22 MR. JACKSON: We have received I

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1 can think within the last few weeks probably  
2 the same similar type of report regarding  
3 vault space from DDOT. As I think about it,  
4 I think most of them, and correct me if I'm  
5 wrong, Mr. Hinkle, anything regarding New York  
6 Avenue and Mass. Massachusetts Avenue I think  
7 is where they kind of really -- I think they  
8 have been routinely pushing back on vault  
9 space that we've seen here. That might be an  
10 issue.

11 COMMISSIONER MAY: I think it  
12 frankly would be more helpful to me if DDOT  
13 were to include something in their report  
14 other than the sentence saying that DDOT's  
15 views on vault space parking and curb cuts on  
16 New York Avenue were explained to the  
17 Applicant.

18 I mean, that doesn't enlighten me  
19 at all because I want to understand why they  
20 think these things are absolute no-nos on this  
21 project. You know, it's not a deal killer on  
22 the project from my perspective but it's not

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1 very informative.

2 MR. JACKSON: Okay. I'll convey  
3 your concerns with better information on their  
4 decisions.

5 COMMISSIONER MAY: All right.  
6 Thank you.

7 CHAIRPERSON JORDAN: They use the  
8 same line in all --

9 CHAIRPERSON JORDAN: Okay. Anyone  
10 have any questions -- other questions of the  
11 Office of Planning? I'm sure DDOT is not here  
12 but we do have their report in the record  
13 which indicated no objection based upon what  
14 they have already reported.

15 Any representatives from the ANC-  
16 6C? We do have a letter from ANC-6C  
17 unanimously supporting this application and we  
18 will give that great weight.

19 Any persons in the audience in  
20 support? Any persons in opposition? If you  
21 would, if you would like to do any wrap-up, we  
22 would be glad to have it.

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1 MS. SHIKER: Thank you. Based on  
2 the evidence in the record, we believe that  
3 the Applicant has met its burden of proof for  
4 the variance standard for the elimination of  
5 parking as well as for the special exception  
6 standard for the walls of equal height and  
7 restructure setback on the southern court  
8 wall.

9 We would request that the Board  
10 consider this application at its earliest  
11 convenience as the Applicant is eager to move  
12 forward with this project as soon as possible.  
13 Thank you.

14 CHAIRPERSON JORDAN: Thank you.  
15 We'll move into deliberations at this point.  
16 Again, DDOT is not here but that is not the  
17 issue that we're having.

18 Any Board member have anything  
19 they want to say about this application?

20 MEMBER MacMURRAY: I recognize  
21 that the need to balance between development  
22 of an area that is a throughway to the city

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1 coupled with the practical difficulty of being  
2 -- I have driven on New York Avenue numerous  
3 times and I understand from a practical  
4 standpoint the parking situation driving it  
5 can be quite the nightmare trying to get in  
6 that area. I kind of wish that the applicant  
7 would continue to figure out a little bit more  
8 strategically than saying no parking.

9 I think that solution for the long  
10 term of even just the precedent from this  
11 Board is not going to be sending a good  
12 message, but I understand that the need for  
13 that whole NoMA area being revitalized.  
14 That's just putting my point on the record.

15 CHAIRPERSON JORDAN: Anyone else?

16 COMMISSIONER MAY: Yeah, I share  
17 some of the concern about trying to strike the  
18 right balance in that neighborhood. I think  
19 that the lack of parking at this particular  
20 building is -- it's risky.

21 If the Applicant is willing to  
22 take the risk, I think that is where the

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1 primary risk is, I think in the long run we  
2 will see more substantial development of the  
3 whole block and there will be certainly a  
4 reasonable amount of parking associated with  
5 those facilities.

6 I would think that the Applicant  
7 in the long run, and I have to believe you  
8 have already considered this, is thinking  
9 about the prospect of getting parking space in  
10 the building next door when it's developed  
11 rather than having to travel distances in  
12 order to get to parking spaces.

13 Traveling distances in that area  
14 is in itself a difficult thing. We wind up  
15 having to have a lot more valet staff if it  
16 takes you 20 minutes to drive a half a block.  
17 I can see the solution working itself out in  
18 the long run. I think there is work to be  
19 done.

20 Traffic patterns and circulation  
21 in DDOT's realm to try to make life in that  
22 area a little bit more practical or, I guess,

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1 traffic patterns a bit more practical. But  
2 that's not what we're here to solve today.

3 With regard to the other relief  
4 that has been requested and the roof  
5 structures, it's not ideal but I certainly  
6 understand the circumstance that leads to the  
7 need for relief in these couple of areas  
8 because of the size of the site and the need  
9 to be able to accommodate necessary rooftop  
10 structures.

11 I'm glad that we're not having to  
12 wrestle with trying to squeeze a rooftop pool  
13 in there and then that's what's driving it.  
14 Fortunately the rooftop pool is on the lower  
15 roof so that makes it an easier call to make.

16 It seems like what's there is only  
17 what is really necessary. I'm comfortable  
18 with that and I look forward to having more  
19 information from DDOT in the future when it  
20 comes to cases like this and in general about  
21 what their policy is as we see more  
22 development in this area.

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1                   CHAIRPERSON JORDAN: As we come to  
2 this particular property and the relief that  
3 is requested, I think that the Applicant has  
4 made a showing that this is an exceptional  
5 condition. This property is a small  
6 footprint, very, very small footprint.

7                   In that whole general area of New  
8 York Avenue, as we've all been saying over and  
9 over again, is really going to start to be  
10 even more contact as things happen in that New  
11 York Avenue.

12                   I think for all those reasons it  
13 adds that the Applicant has made the required  
14 showing of practical difficulty in having  
15 below-grade parking facilities here because of  
16 the shape of the lot, the extensive cost in  
17 trying to do it, and the issues raised by DDOT  
18 in its prevention from you being able to touch  
19 the vault.

20                   I think that we've made -- they've  
21 made a case for this relief and the necessity  
22 for what has to happen in regards to the

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1 penthouse and the height and the different  
2 level of the roof. I think they've made that  
3 showing.

4 Any other thoughts?

5 COMMISSIONER MAY: Mr. Chairman.

6 CHAIRPERSON JORDAN: Yes.

7 COMMISSIONER MAY: I just wanted  
8 to make one other comment which is that I  
9 actually -- I don't want the Applicant to  
10 regard the scrutiny here as any sort of  
11 negativity because I think, frankly, the idea  
12 of trying to do this project in this  
13 neighborhood at this time in this manner is  
14 commendable in many ways.

15 The fact that you've done it  
16 despite the complications of working out your  
17 parking situation and getting through it and  
18 getting all the support that you've gotten and  
19 getting the ANC support I think is  
20 commendable.

21 I hope that it is highly  
22 successful and we'll start to see some of the

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1 areas that are significantly under developed,  
2 large parking lot areas for example, that  
3 something more beneficial will start to happen  
4 in those areas.

5 CHAIRPERSON JORDAN: Seeing that  
6 the Applicant has met its burden of showing  
7 what's necessary for a variance here, that the  
8 exceptional condition exist, and the practical  
9 difficulty and the necessity in regards to  
10 parking and why they are asking for the  
11 relief, and in regards to the roof special  
12 exception, that they met this burden, I would  
13 move that we approve the Applicant's request  
14 for the variance and for the special  
15 exception.

16 COMMISSIONER MAY: Second.

17 CHAIRPERSON JORDAN: Motion made  
18 and seconded to approve the application for  
19 the special exception as requested and the  
20 variance. Any unreadiness? All those in  
21 favor signify by saying aye.

22 BOARD MEMBERS: Aye.

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1 CHAIRPERSON JORDAN: Those opposed  
2 nay. The motion carries.

3 Mr. Secretary.

4 MR. MOY: Thank you, Mr. Chairman.  
5 At my own risk, staff will record the vote as  
6 four to zero to one. This is on the motion of  
7 Chairman Jordan, second the motion of Mr. May.  
8 Also in support of the motion Ms. MacMurray  
9 and Mr. Hinkle. We have a Board member not  
10 present and not participating and not voting.  
11 Again, the final vote is four to zero to one.

12 CHAIRPERSON JORDAN: Seeing that  
13 there are no parties in opposition and that  
14 this decision is in favor of the Applicant, I  
15 believe this is prime, Mr. Secretary, that we  
16 issue a summary order.

17 MR. MOY: Thank you, sir.

18 CHAIRPERSON JORDAN: Thank you.

19 MS. SHIKER: Thank you very much.

20 MR. McINTYRE: Thank you.

21 (Whereupon, at 10:52 a.m. off the  
22 record for lunch to reconvene at 1:10 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

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1:10 p.m.

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CHAIRPERSON JORDAN: If we would bring this hearing to order, please. Good afternoon. We are located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. Today's date is May 8, 2012, for the public hearing of the Board of Zoning Adjustment, the District of Columbia.

My name is Lloyd Jordan, Chairperson. To the left of me is Peter May, representative of the Zoning Commission. To the right of me is Rashida MacMurray, Board member. To the right of her is Jeffrey Hinkle, a Board member.

Please be advised that this proceeding is being recorded by a court reporter and is also being webcast live. Accordingly, we must ask that you refrain from any disruptive noise or actions in the hearing

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1 room. The Board's hearing procedures and  
2 processes, how we will process applications,  
3 are contained in a handout back by the door if  
4 you need to read it.

5 Let's begin this afternoon's  
6 hearing. If any individual is going to  
7 testify, we ask that you stand and be sworn in  
8 by the secretary, please.

9 MR. MOY: Do you solemnly swear or  
10 affirm that the testimony you're about to  
11 present in this proceeding is the truth, the  
12 whole truth, and nothing but the truth?

13 WITNESS: I do.

14 MR. MOY: You may consider  
15 yourself under oath.

16 CHAIRPERSON JORDAN: I'm not aware  
17 of any preliminary matters with this  
18 particular application, Mr. Secretary. Would  
19 you call the case then, please.

20 MR. MOY: Thank you, Mr. Chairman.

21 Good afternoon, Board members.

22 The application before the Board for the

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1 afternoon session is Application No. 18346.  
2 This is the application of Wagtime, LLC,  
3 pursuant to 11 DCMR 3103.2 and 3104.1 for a  
4 special exception pursuant to Subsection  
5 802.21, and a variance from Subsection  
6 801.7(a)(iii), and (a)(iv)(D), to permit an  
7 animal boarding and animal shelter use in the  
8 C-M-1 District at premises 900 M Street, S.E.  
9 Property located in Square 952, Lot 34.

10 CHAIRPERSON JORDAN: Thank you.

11 Would you introduce yourself,  
12 please?

13 MR. FREEMAN: Good morning,  
14 Chairman Jordan. For the record, my name is  
15 Kyrus Freeman. I'm a partner at the law firm  
16 of Holland & Knight on behalf of the Applicant  
17 Wagtime.

18 Seated to my immediate right is  
19 Mr. Ofer Khal on behalf of Wagtime, Lisa  
20 Schreiber on behalf of Wagtime, and Mr. Steven  
21 E. Sher of the law firm of Holland & Knight as  
22 our land use expert.

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1 CHAIRPERSON JORDAN: Before we  
2 begin, let me ask are there any parties in  
3 opposition to this application in the  
4 audience?

5 Mr. Freeman, we have taken a look  
6 at the application. I think we've all  
7 reviewed it so it wouldn't be necessary for  
8 you to present your full presentation.  
9 However, we would probably want the right to  
10 ask questions and some further development of  
11 issues that we may find as Board members that  
12 need to be further dealt with if that is okay  
13 with you.

14 MR. FREEMAN: Absolutely, sir.

15 CHAIRPERSON JORDAN: I know you  
16 are tendering Mr. Sher as an expert. Is that  
17 correct?

18 MR. FREEMAN: Yes, sir.

19 CHAIRPERSON JORDAN: And Mr. Sher  
20 has already been accepted probably 357,000  
21 times as an expert since the creation of this  
22 building so we will accept him as an expert,

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1 of course. He has already been accepted.

2 With that, I'm going to, if I can,  
3 defer to Board members regarding questions  
4 about this application. Does anyone have  
5 questions?

6 MEMBER MacMURRAY: Mr. Chairman, I  
7 have two quick questions. The first is I  
8 noticed the hours of operation. Is it just  
9 boarding for individuals who already own their  
10 dogs and they are going away traveling and be  
11 boarding, as well as shelter providing for  
12 strays or any other kind of dog?

13 MR. FREEMAN: When you say the  
14 hours of operation, what are you referring to?

15 MEMBER MacMURRAY: Oh, drop off  
16 particularly for the dogs.

17 MR. FREEMAN: Are you looking at  
18 the --

19 MEMBER MacMURRAY: Sorry. Exhibit  
20 28 which I know we'll get to in a little bit  
21 for the Office of Planning but I was just  
22 trying to get an understanding of what they

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1 envision as far as operations for the dogs.

2 CHAIRPERSON JORDAN: Be sure that  
3 the microphone -- yes. Thank you.

4 MR. KHAL: My name is Ofer Khal  
5 and I'm one of the owners. This is my wife  
6 Lisa Schreiber. Both of us, of course, own  
7 Wagtime. We operate a 24-hour daycare and  
8 boarding facility so we dogs staying  
9 overnight, client's dogs and, of course,  
10 shelter dogs.

11 The store hours are only 7:00  
12 until 8:00 and we do allow for clients to come  
13 and pick up their dogs before 11:00 at night.  
14 No activity like no one comes in and no one  
15 goes out between 11:00 at night and 7:00 in  
16 the morning.

17 MEMBER MacMURRAY: Thank you.

18 CHAIRPERSON JORDAN: Any other  
19 questions for the Applicant?

20 Let me ask you, tell me a bit  
21 about the interaction with the neighboring  
22 business? I think it's a pizza restaurant?

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1                   MR. FREEMAN: The existing  
2 building is owned by a single landlord. The  
3 landlord has -- we understand that the  
4 landlord has been in touch with the pizza  
5 delivery to confirm that they have no issues  
6 with respect to the proposed uses at the site  
7 because it's the same property owner.

8                   CHAIRPERSON JORDAN: It's right  
9 next door to the pizza restaurant and the  
10 parking lot use and all that so I was  
11 concerned whether or not they actually had any  
12 dialogue with them.

13                  MR. FREEMAN: So the proposed  
14 parking spaces that are shown on the site  
15 plan, a number of those parking spaces are  
16 allocated to the dog daycare and the other  
17 remaining portion, I think approximately  
18 three, are allocated towards the pizza. The  
19 pizza place, by the way, is just a takeout.  
20 It's not a sit-in establishment.

21                  CHAIRPERSON JORDAN: Is that going  
22 to be one of the alternative meals for the

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1 dogs? Pizza for like a gourmet --

2 Any questions from any Board  
3 members?

4 Let's turn now to Office of  
5 Planning. We do have Office of Planning's  
6 report. I'll turn to you.

7 MR. MORDFIN: Good afternoon  
8 Chairman and members of the Board. I'm  
9 Stephen Mordfin with the Office of Planning.  
10 The Office of Planning does find the  
11 application for the animal boarding to be in  
12 conformance with the criteria for dog boarding  
13 because these would be located in a masonry  
14 building and approved with an air filtration  
15 system.

16 Animal waste would be placed in  
17 bags. It would not abut a residence. There  
18 would be no external yards and windows and  
19 doors would be kept closed to prevent noise  
20 from emanating from the building. We also  
21 find that the application conforms to the  
22 granting of variances to allow an animal

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1 shelter to abut a residential use.

2 That is because the site is  
3 divided into three commercial spaces all  
4 located on one lot. The building is, again,  
5 of masonry construction with the windows and  
6 doors kept closed. It would not result in  
7 substantial harm to the zoning regulations as  
8 it is an unusually shaped property within an  
9 industrial district.

10 And we also find that the  
11 application is in conformance to the criteria  
12 for the granting of a variance to permit an  
13 outdoor run to be located less than 100 feet  
14 from residential use because the only outdoor  
15 area available is only 53 feet from the  
16 residential uses.

17 The Applicant would minimize the  
18 impact of that distance by reducing the hours  
19 the animals could be outside and reducing the  
20 number of animals that would be permitted.  
21 Therefore, the Office of Planning recommends  
22 approval of the application subject to the

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1 conditions contained within the report. Thank  
2 you.

3 CHAIRPERSON JORDAN: Thank you.  
4 The 53 feet is actually not -- that's the  
5 residential district. Would that be correct?  
6 Not actually residences?

7 MR. MORDFIN: It's residences.  
8 The entire square is zoned industrially.  
9 Those residences are located within an  
10 industrial zone. The zoning regulations say  
11 residential district or residential use. In  
12 this case it's residential uses.

13 CHAIRPERSON JORDAN: I didn't  
14 realize they were that close.

15 Any questions for the Office of  
16 Planning?

17 Mr. May.

18 COMMISSIONER MAY: Yeah, just one  
19 quick one. In the file we have probably four  
20 or five sets of conditions. I just want to  
21 know that the conditions that were in your  
22 report are consistent with the conditions that

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1 were negotiated with the ANC and that are  
2 cited by the Restoration Society without doing  
3 a word-for-word check which would really be a  
4 test for my mind. Can you assure us that  
5 those conditions are all essentially all the  
6 same?

7 MR. MORDFIN: They are essentially  
8 all the same. I did supplement the ones that  
9 had been worked out with the Applicant and the  
10 ANC to add what to my report is condition  
11 number 3 that all windows and doors within the  
12 building should be kept close.

13 The purpose for that is because  
14 there were other instances in other dog  
15 boarding where with the windows opened the  
16 neighbors were complaining that they could  
17 hear noise going on. Since then we have  
18 recommended that windows and doors be kept  
19 closed in all applications for dog boarding.

20 COMMISSIONER MAY: Do we have a  
21 reasonable expectation that the windows and  
22 doors are going to be relatively sound proof?

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1 The windows in my house are not very sound  
2 proof. Older windows tend to be less so. I  
3 mean, since you got into that whole issue

4 MR. MORDFIN: I don't don't know  
5 anything about the windows in this building.  
6 My only experience is just that it was an  
7 issue where they had --

8 COMMISSIONER MAY: Where the  
9 windows were open.

10 MR. MORDFIN: Where they had  
11 opened them on nice days and there were  
12 complaints from neighbors. We did not have  
13 complaints from the neighbors while the  
14 windows were closed during the colder weather  
15 months.

16 COMMISSIONER MAY: Okay. Thanks.

17 CHAIRPERSON JORDAN: Any other  
18 agency? Department of Transportation or  
19 anyone? Did we get a letter? Yes, we did  
20 receive a letter from the Department of  
21 Transportation. The letter stated they had no  
22 objection to the application.

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1 Is there anyone here from ANC-6B?

2 Yes, please. Come forward. Turn  
3 the microphone on and please give us your  
4 name.

5 MS. OLDENBURG: Yes. I'm Kirsten  
6 Oldenburg. I'm the ANC commissioner 6B-04.  
7 That is my single member district in which  
8 this facility is going to be located.

9 CHAIRPERSON JORDAN: Thank you.

10 We do have a letter and a  
11 recommendation from the ANC but if you wish to  
12 elaborate.

13 MS. OLDENBURG: I just wanted to  
14 state that -- just restate that we had sent a  
15 letter. We had voted unanimously on this  
16 case. Part of that was a proviso that Wagtime  
17 adopt the conditions that we had put together.

18 I had negotiated those -- the  
19 residents and I negotiated that set of  
20 conditions with the Applicant and the  
21 Applicant prior to the ANC hearing readily  
22 accepted them so I'm here today just to ask

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1 you to grant the relief that the Applicant is  
2 seeking but only with those conditions  
3 attached.

4 I understand from what Mr. Mordfin  
5 has said he's added a condition to -- added  
6 one additional which would be -- I certainly  
7 agree with the necessity of that one. We  
8 didn't think about that when we were doing  
9 ours.

10 I would also like to comment on  
11 that, that the building has been within the  
12 last couple of years been totally renovated so  
13 I would suspect that the windows are not the  
14 kind of windows that Mr. May and I have in our  
15 -- well, mine have been upgraded. Sorry -- in  
16 our houses on Capitol Hill.

17 I also wanted to just state that  
18 these conditions are extremely important to  
19 the neighborhood because of the impact on it  
20 of the operations of Dogma, a dog daycare  
21 facility located a block away.

22 When the new zoning rules covering

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1 this type of facility were established, Dogma  
2 was grandfathered in and, accordingly, has not  
3 been subject to the standards in the  
4 regulations. This has caused problems in the  
5 neighborhood.

6 The neighbors of the proposed  
7 facility need these additional conditions  
8 including the establishment of the liaison  
9 committee to assure them that Wagtime will  
10 operate in a different manner from what they  
11 are experiencing from Dogma and, if problem do  
12 arise, they have a way to address them. Thank  
13 you.

14 CHAIRPERSON JORDAN: Thank you. I  
15 appreciate you coming.

16 Any other persons in the audience  
17 in support that wishes to testify? Any  
18 persons in opposition?

19 Mr. Freeman, let me ask a couple  
20 of things. One, I think the ANC had another  
21 kind of condition, and I don't know what the  
22 discussion was, about the use of valet parking

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1 issue.

2 MR. FREEMAN: Right. The ANC  
3 condition -- let me backtrack. The conditions  
4 that we agreed to with the ANC are attached to  
5 the ANC resolution, Capitol Hill Restoration  
6 Society resolution, and they are enumerated in  
7 our prehearing statement. Those are all the  
8 same verbatim.

9 Item No. 6 says, "The Applicant  
10 will encourage all customers to park on the  
11 lot adjacent to M Street or use its valet  
12 parking service when dropping off animals."  
13 That will discourage customers from parking  
14 basically on neighborhood streets. That does  
15 not appear to be in the Office of Planning's  
16 report.

17 CHAIRPERSON JORDAN: That was the  
18 next thing I was about to ask. I don't see  
19 that in the Office of Planning's report. Let  
20 me ask, if I may, why that -- can you explain  
21 why you might have not included that one?

22 MR. MORDFIN: Oh, with the valet

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1 parking? The valet parking is something that  
2 would be offsite if they were parking in front  
3 on M Street and dropping off their animals.  
4 I didn't include it because it's within public  
5 space and not within private property. It's  
6 not within the part of the property that has  
7 zoning on it. That is why I didn't include  
8 that.

9           You can park on M Street. To the  
10 extent possible the Applicants could park  
11 there. I did discuss it with DDOT. They saw  
12 no issues with it as long as you follow the  
13 parking regulations with the amount of time  
14 that you could park there. That was why I  
15 didn't include that in my conditions.

16           Also, I did add a second condition  
17 that I misspoke before. The second one was  
18 that I put in that the approval should be for  
19 a period of five years. The reason for that  
20 is because this type of use has the potential  
21 to cause issues and also because the Applicant  
22 has requested to be closer to residential uses

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1 than would otherwise be permitted for the  
2 animal shelter.

3           Therefore, because this is the  
4 first time they are coming before us at this  
5 location, we suggest that it have a time  
6 period on it to give the community the  
7 opportunity that for some reason if this  
8 doesn't work out as proposed that there is --  
9 that this would have to come back before the  
10 Board in order to continue after the five-year  
11 period.

12           CHAIRPERSON JORDAN: So the  
13 differences between what the ANC has requested  
14 and OP appears to be No. 6 regarding the valet  
15 parking and then the issue about a five-year  
16 kind of sunset on the permission authority.

17           MR. FREEMAN: OP added two  
18 conditions, conditions 1 and 3, 1 being a  
19 five-year term and 3 being all windows have to  
20 be kept closed. It did not include condition  
21 6 of what we agree to with the neighbors.

22           CHAIRPERSON JORDAN: Let me ask

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1 the question about enforceability on the  
2 committee one. I'm assuming there is not  
3 going to be -- at least the ANC would have  
4 representatives and then ANC would have the  
5 burden, I believe, to try to make sure that  
6 the Applicant has another resident or so.

7 That's my only concern about us  
8 using -- issuing an order where it might  
9 require someone that is not before the Board  
10 to take an action. For instance, the other  
11 resident and other people who were suppose to  
12 participate in this -- on this committee,  
13 another neighborhood representative.

14 That was my only other concern  
15 regarding this. I guess you've already had  
16 discussion and kind of began to talk about how  
17 this committee was going to operate and form.

18 MR. FREEMAN: We had generally but  
19 to the extent that someone is not on the  
20 neighborhood committee and let's just say  
21 we're not doing item No. 5, anybody has the  
22 right to go to the Office of Zoning to kind of

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1 make sure that the conditions of an order are  
2 being enforced. You don't have to be a member  
3 of the committee to ensure that conditions are  
4 being enforced.

5 CHAIRPERSON JORDAN: I'm sure of  
6 that, yeah.

7 MR. FREEMAN: Right.

8 CHAIRPERSON JORDAN: I'm just  
9 saying if there is a lack of people on the  
10 committee. As time goes on that might become  
11 that way but we can live with it and let you  
12 guys work it out. That's probably the best  
13 way of going about this.

14 Any other questions?

15 COMMISSIONER MAY: I just wanted  
16 to clarify. So with the two additional  
17 conditions from the Office of Planning, you're  
18 okay with those?

19 MR. FREEMAN: We are okay with  
20 having a term given that is a common  
21 condition. With respect to No. 3, all windows  
22 and doors within the building shall be kept

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1 closed, we would like to add when dogs are in  
2 that room. If the dogs aren't in the room, we  
3 would like to be able to open that window.  
4 Then I guess we would add 6 back to this list.

5 CHAIRPERSON JORDAN: I just put  
6 that back. Which one was it about the doors  
7 and windows? Oh, when dogs are in. Okay.

8 COMMISSIONER MAY: I assume the  
9 Office of Planning would have no objection to  
10 that modification.

11 MR. MORDFIN: I have no objection  
12 to that modification.

13 CHAIRPERSON JORDAN: What room are  
14 we referring to because it's a general  
15 condition within the building.

16 MR. FREEMAN: I guess it would say  
17 all windows and doors within the building  
18 shall be kept closed when dogs are in a  
19 particular room. I mean, we could -- if you  
20 look at the site plan, there are a number of  
21 different areas within the building.

22 CHAIRPERSON JORDAN: Let me tell

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1 you that I am really guarded about having  
2 conditions that (1) are subject to  
3 interpretation, and (2) that something is not  
4 really enforceable.

5 MR. FREEMAN: Or we can take it  
6 out.

7 CHAIRPERSON JORDAN: No. I think  
8 we are going to -- no, I understand. I think  
9 there is a concern for that and I think it's  
10 necessary.

11 MR. FREEMAN: So, for example,  
12 when I'm looking at the site plan here --

13 CHAIRPERSON JORDAN: Let me ask  
14 Office of Planning.

15 Is there any particular room in  
16 the site plan that would be more of a problem  
17 for having animals in, dogs in, or whatever,  
18 to the residents? Of it is something that you  
19 have a concern about the whole building as you  
20 have indicated here?

21 MR. MORDFIN: Well, generally we  
22 have this concern about it with this whole

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1 building. Every other animal or dog boarding  
2 that has come before the Board we've added  
3 that condition. We've added that for each  
4 one.

5 For this application the windows  
6 that would be closer to the residential uses  
7 would be more of a concern than the ones on  
8 the east side of the property where the animal  
9 boarding is. The purpose is just to confine  
10 noise to the extent possible for the building.

11 MR. FREEMAN: Mr. Chairman, we'll  
12 just leave the condition as it is.

13 CHAIRPERSON JORDAN: Yeah, I think  
14 we are leaning that way. You might have to  
15 run back and forth or close a door or window  
16 if somebody brings a dog in. If the windows  
17 are up and nobody is in the place, no dogs in  
18 the place, then it becomes an enforcement  
19 nightmare.

20 Are there any other questions we  
21 need to ask of anyone, the Applicant or OP?  
22 Anyone?

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1                   Mr. Freeman, if you want to close  
2 first.

3                   Yes.

4                   MS. OLDENBURG: I apologize. I  
5 just would like to get some clarification on  
6 this document that we are talking about. The  
7 number 6, has that been returned as a  
8 condition or has that been taken out? I would  
9 speak to how important that is to the  
10 neighborhood.

11                   CHAIRPERSON JORDAN: You don't  
12 have to do so. We have not issued our  
13 decision and order but I think it's our  
14 feeling that we would have that in.

15                   MS. OLDENBURG: Okay. Because it  
16 is a commercial zone -- industrial zone the  
17 residents who live there have no residential  
18 permit parking so they have a real problem  
19 with parking on that block. That is why it's  
20 there.

21                   I just want to say I'm really -- I  
22 want to thank the Office of Planning for

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1 adding the five-year term. I think that is a  
2 very appropriate thing to do in this case.

3 CHAIRPERSON JORDAN: Thank you.

4 Mr. Freeman, if you would wrap  
5 this up, please.

6 MR. FREEMAN: Thank you. Again,  
7 thank you for your time today. I think the  
8 record clearly indicates how we meet the  
9 burden of proof for the special exception and  
10 the variance relief. We appreciate the ANC  
11 support, the Office of Planning support, DDOT  
12 support.

13 And the Capitol Hill Restoration  
14 Society also submitted a letter in support.  
15 We feel we meet all the standards. We would  
16 ask that the Board approve our application,  
17 add the conditions in OP's report, and No. 6  
18 from the other conditions stated in the  
19 letters.

20 With that we have nothing further.  
21 Thank you.

22 CHAIRPERSON JORDAN: Thank you.

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1 We will close this record.

2 Let me ask the Board if you think  
3 at this time we can deliberate? Anyone have  
4 anything you want to add either way? Okay.

5 I think based upon the record the  
6 Applicant has shown the necessities required  
7 for variance relief, that this property  
8 possesses an exceptional situation due to the  
9 size of the lot and where it's located and how  
10 close it is to the residents for it to be able  
11 to operate.

12 Therefore, it presents a practical  
13 difficulty in regards to the use of the  
14 property that there will be no substantial  
15 detriment to the public good. That has been  
16 weighed in by the ANC who we also give great  
17 weight to and the Office of Planning who we  
18 give great weight to. There will be no  
19 resulting harm to the zoning regulations.

20 Similarly, that the request for  
21 special exception should be granted in that  
22 there was no objectionable condition with the

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1 property's use based upon what has been  
2 presented to us today.

3 The fact that it's a masonry  
4 building and there is going to be a  
5 requirement that the doors are closed and that  
6 the use, although it will abut the residential  
7 district, has been mitigated to some extent so  
8 that this application will be one that we can  
9 grant -- I would offer would be one that we  
10 can grant the variance and special exception  
11 relief requested.

12 With that, I would move the  
13 approval of this application.

14 MEMBER MacMURRAY: Mr. Chairman, I  
15 second the motion.

16 CHAIRPERSON JORDAN: Motion made  
17 and seconded that we approve this application  
18 for the variance and special exception with  
19 the conditions -- if I may, with the  
20 conditions in the OP report and adding to that  
21 No. 6 of the ANC report that required the  
22 Applicant to encourage all customers to park

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1 in a lot adjacent to M Street, S.E. or use the  
2 valet parking.

3 That section we would add to this  
4 order. And give leeway to the Office of  
5 Zoning and OAG to make the word more effective  
6 has been offered.

7 Anything else for this order?  
8 With that, all those in favor signify by  
9 saying aye.

10 BOARD MEMBERS: Aye.

11 CHAIRPERSON JORDAN: Those opposed  
12 nay? The motion carries.

13 Mr. Secretary.

14 MR. MOY: Staff will record the  
15 vote as four to zero to one. This is on the  
16 motion of Chairman Jordan to approve the  
17 application for both the special exception and  
18 variance relief with conditions as stated by  
19 the Board.

20 Seconding the motion Ms.  
21 MacMurray. Also in support of the motion  
22 Peter May and Jeffrey Hinkle and a Board

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1 member not present and not participating and  
2 not voting. Again, four to zero to one.

3 CHAIRPERSON JORDAN: Since we have  
4 no one in opposition and this decision is in  
5 favor of the Applicant, then I believe this is  
6 prime for a summary order.

7 MR. MOY: Yes. Thank you, Mr.  
8 Chairman.

9 MR. FREEMAN: Thank you.

10 CHAIRPERSON JORDAN: We have one  
11 other item of business that we need as a Board  
12 to take care of today and that is to decide  
13 upon whether we are going to have a closed  
14 meeting on May 14, 2012.

15 As Chairperson of the Board of  
16 Zoning Adjustment for the District of Columbia  
17 in accordance with Section 405(b)(4) and  
18 (b)(13) of the District of Columbia  
19 Administrative Procedures Act, I move the BZA  
20 hold a closed meeting via telephone conference  
21 on May 14, 2012,, for the purpose of seeking  
22 legal counsel from our counsel and

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1 deliberating upon the following cases  
2 scheduled for upcoming decision: Case No.  
3 18371, Case 18374, Case 18361, Case 18330,  
4 Case 18240, Case 18404, Case 18273, and Case  
5 18321.

6 I move that we approve this closed  
7 meeting. Second?

8 MEMBER MacMURRAY: Mr. Chairman, I  
9 second.

10 CHAIRPERSON JORDAN: Motion made a  
11 seconded that we approve this closed meeting.

12 A roll call vote, please.

13 MR. MOY: Yes. When I call the  
14 Board member's name, if you would please reply  
15 by yes or no, aye or nay.

16 Mr. May.

17 COMMISSIONER MAY: Yes.

18 MR. MOY: Chairman Jordan.

19 CHAIRPERSON JORDAN: Aye or nay.

20 Aye.

21 MR. MOY: Ms. MacMurray.

22 MEMBER MacMURRAY: Yes.

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1 MR. MOY: Mr. Hinkle.

2 MEMBER HINKLE: Yes.

3 MR. MOY: We have a Board member  
4 not present and not participating. The motion  
5 carries, Mr. Chairman.

6 CHAIRPERSON JORDAN: Thank you.

7 As it appears that the motion has  
8 passed, I hereby give notice that the BZA will  
9 hold this aforementioned closed meeting via  
10 telephone conference pursuant to Section 406  
11 of the District of Columbia Administrative  
12 Procedures Act.

13 Notice will also be posted in the  
14 Office of Zoning electronic reading room,  
15 placed on the Office of Zoning's electronic  
16 calendar on its website, and published in the  
17 District of Columbia's register in as timely  
18 a manner as practical.

19 Is there any other business that  
20 needs to come before the Board today? Seeing  
21 none, we stand adjourned.

22 (Whereupon, at 1:39 p.m. the

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1 hearing was adjourned.)