

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY  
APRIL 6, 2010

+ + + + +

The Regular Public Meeting  
convened in Room 220 South, 441 4th Street,  
N.W., Washington, D.C., 20001, pursuant to  
notice at 10:00 a.m., Meridith Moldenhauer,  
Madam Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH MOLDENHAUER, Chairperson  
SHANE L. DETTMAN, Vice Chairperson  
(NCPC)  
NICOLE SORG, Member

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

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The transcript constitutes the minutes from the Public Meeting held on April 6, 2010.

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

WELCOME:

Meridith Moldenhauer. . . . .4

WASHINGTON MIDDLE SCHOOL FOR GIRLS  
APPLICATION NO. 18048 - ANC - 8A

Request for Postponement. . . . .8

AFTERNOON SESSION:

JAMES RAVITZ  
APPLICATION 18047

For Decision

VOTE TO APPROVE 18047 (2-2-1) . . . . . 33

VOTE TO DENY 18047 (2-2-1). . . . . 34

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

10:02 a.m.

CHAIRPERSON MOLDENHAUER: The hearing will come to order. Good morning, ladies and gentlemen. This is the April 6th, 2010 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Meridith Moldenhauer, chairperson. Joining me today is Vice Chair Shane Dettman representing the National Capital Planning Commission; Nicole Sorg, representing mayoral appointee; and Peter May, representing the Zoning Commission.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door.

Please be advised that this proceeding is being recorded by a court reporter and is also Web cast. Accordingly, we must ask you to refrain from any disturbing noise or actions in the hearing room.

When presenting information to the

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1 Board, please turn on and speak into the  
2 microphone first stating your name and your  
3 home address. When you're finished speaking,  
4 please turn your microphone off so that your  
5 microphone is no longer picking up sound or  
6 background noise.

7 All persons planning to testify  
8 either in favor or in opposition are to fill  
9 out two witness cards. These cards are  
10 located to my left on the table near the door  
11 and on the witness tables. Upon coming  
12 forward to speak to the Board, please give  
13 both cards to the reporter sitting to my  
14 right.

15 The order of proceeding for a  
16 special exception and variances is: (1)  
17 Statement and witnesses of the applicant; (2)  
18 Government reports, including the Office of  
19 Planning and Department of Public Works; (3)  
20 reports of the ANC; (4) parties and persons in  
21 support; (5) parties and persons in  
22 opposition; and finally (6) closing remarks of

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1 the applicant.

2 Pursuant to 3117.4 and 3117.5,  
3 the following time constraints will be  
4 maintained. The applicant, persons or parties  
5 will have 60 minutes collectively. The  
6 appellees or persons and parties in opposition  
7 will have 60 minutes collectively. And any  
8 individuals testifying will have three  
9 minutes. These time constraints do not  
10 include cross-examination or questions from  
11 the Board. Cross-examination of witnesses is  
12 permitted by the applicant or parties.

13 The ANC within which the property  
14 is located is automatically a party in a  
15 special exception or variance case. Nothing  
16 prohibits the Board from placing reasonable  
17 restrictions on cross-examination, including  
18 time limits, and limitations on the scope of  
19 cross-examination.

20 The record will be closed at the  
21 conclusion of each case except for any  
22 material specifically requested by the Board,

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1 and the Board and the staff will specify a  
2 time at hearing exactly what is expected and  
3 the date that that person must submit the  
4 evidence to the Office of Zoning. After the  
5 record is closed no other information will be  
6 accepted by the Board.

7           The Sunshine Act requires that the  
8 public hearing of each case be held in the  
9 open before the public. The Board may,  
10 consistent with its Rules of Procedure and the  
11 Sunshine Act, enter into executive session  
12 during and after the public hearing on a case  
13 for purposes of reviewing the record and  
14 deliberating on the case.

15           The decision of the Board in these  
16 contested cases must be based exclusively on  
17 the public record. To avoid any appearance of  
18 the contrary the Board requests that persons  
19 present do not engage the members of the Board  
20 in conversation.

21           Please turn off all beepers and  
22 cell phones at this time so not to disturb

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1 these proceedings.

2           The Board will now consider any  
3 preliminary matters. Preliminary matters are  
4 those which relate to whether a case will or  
5 should be heard today such as requests of  
6 postponement, continuance or withdrawal, or  
7 whether the proper and adequate notice of the  
8 hearing is being given.

9           If you are not prepared to go  
10 forward with a case today, or if you believe  
11 that the Board should not proceed, now is the  
12 time to raise such a matter.

13           Does the staff have any  
14 preliminary matters?

15           MS. BAILEY: Madam Chair, there's  
16 one additional case on the docket for this  
17 morning. It's the application of the  
18 Washington Middle School for Girls, No. 18048.  
19 And the applicant in that case, Madam Chair,  
20 is requesting that the hearing be postponed.  
21 And I think there was a representative sitting  
22 at the table who's capable of speaking on that

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1 matter.

2 CHAIRPERSON MOLDENHAUER: Thank  
3 you very much. Will you please introduce  
4 yourself?

5 MS. REED: Sure. Good morning,  
6 Madam Chair, Board and the ancillary agencies.  
7 My name is Dianna Reed. I reside at 428  
8 Legato Terrace in Silver Spring, Maryland.

9 CHAIRPERSON MOLDENHAUER: And  
10 would you like to provide us with some  
11 information as to why the case will be  
12 postponed and the time frame that you're  
13 looking to postpone the case for?

14 MS. REED: Sure. There was  
15 actually difficulty coordinating with the  
16 Office and Tax and Revenue for the 200-foot  
17 radius. More specifically, the radius that  
18 was provided was incorrect and the information  
19 was sent out to residents that are not in the  
20 immediate adjacent of the Washington Middle  
21 School for Girls.

22 At this point, I've actually

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1 contacted Anthony Muhammad, the ANC president  
2 for the correct area adjacent to the school.  
3 And unfortunately, I was not able to get on  
4 the April agenda. The May 6th agenda is the  
5 closest deadline, or I'm sorry, the next  
6 meeting that I'll be able to speak on behalf  
7 of the school.

8 So, I'm asking that the Board  
9 consider allowing us to present to you all on  
10 the June 8th agenda.

11 CHAIRPERSON MOLDENHAUER: Thank  
12 you very much. I think that we are available.  
13 I'm going to ask to look at the calendar for  
14 June 8th to see if that would be a time that's  
15 open.

16 MS. BAILEY: Madam Chair, it seems  
17 as if there may be space either for the  
18 morning session or the afternoon, whichever  
19 the Board prefers, or perhaps the applicant  
20 may have a preference.

21 CHAIRPERSON MOLDENHAUER: I think  
22 the morning session, the deliberation of the

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1 morning session will take some time, so I  
2 probably would recommend to have it in the  
3 afternoon, if that's okay with the applicant.

4 MS. REED: Yes, that's fine.

5 Thank you.

6 MS. BAILEY: Would that be first  
7 or last of the day in the afternoon?

8 CHAIRPERSON MOLDENHAUER: We can  
9 just add it as the last case.

10 MS. BAILEY: The last case? Thank  
11 you, Madam Chair.

12 CHAIRPERSON MOLDENHAUER: If  
13 there's no other additional discussions from  
14 the applicant, I would just like to state for  
15 the record that at this point in time any  
16 party status applications should be in. I  
17 don't believe we have any in our current file.  
18 So, if there are any individuals that come  
19 forward and want to seek party status, they'll  
20 actually need to seek a waiver at the time of  
21 the June meeting.

22 So with that, we will postpone

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1 this case, this application for Washington  
2 Middle School for Girls until June 8th in the  
3 afternoon session for third in the day. Thank  
4 you.

5 MS. REED: Thank you.

6 CHAIRPERSON MOLDENHAUER: Ms.  
7 Bailey, do we have anything else on the agenda  
8 for this morning?

9 MS. BAILEY: Not for the morning,  
10 Madam Chair. That's it.

11 CHAIRPERSON MOLDENHAUER: Well,  
12 thank you. Then we will end this morning's  
13 session and we'll reconvene at 1:00.

14 (Whereupon, the hearing was  
15 recessed at 10:11 a.m. to reconvene at 1:00  
16 p.m. this same day.)

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

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1:15 p.m.

4

CHAIRPERSON MOLDENHAUER: This

5

meeting will please come to order.

6

Good afternoon, ladies and

7

gentlemen. This is the April 6th public

8

meeting of the Board of Zoning Adjustment for

9

the District of Columbia.

10

My name is Meridith Moldenhauer,

11

chairperson. Joining me today is Vice Chair

12

Shane Dettman, representing the National

13

Capital Planning Commission. To my left is

14

Nicole Sorg, mayoral appointee. To her left

15

is the Zoning Secretary, Mr. Clifford Moy;

16

Mary Nagelhout from OAG; and Beverley Bailey,

17

Zoning Specialist.

18

Copies of today's meeting agenda

19

are available to you and are located to my

20

left in the wall bin near the door.

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We do not take any public

22

testimony at our meetings unless the Board

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1 asks someone to come forward.

2 Please be advised that this  
3 proceeding is being recorded by a court  
4 reporter and is also Web cast live.

5 Accordingly, we must ask that you to refrain  
6 from any disruptive noise or actions in the  
7 hearing room. Please turn off all beepers and  
8 cell phones.

9 Does the staff have any  
10 preliminary matters? If not, let's proceed  
11 with the agenda.

12 MR. MOY: Yes, good afternoon,  
13 Madam Chair and members of the Board.

14 The one case for decision is the  
15 application 18047 of James Ravitz. Madam  
16 Chair, as you'll recall, the applicant has  
17 been amended and reads as follows:

18 This is pursuant to 11 DCMR  
19 3103.2, for a variance from the court  
20 requirements under section 406, and a variance  
21 from the nonconforming structure provisions  
22 under subsection 2001.3. This is to allow a

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1 rear addition to an existing one-family row  
2 dwelling in the R-3 District at premises 1425  
3 33rd Street, Northwest. And this is in Square  
4 1244, Lot 172.

5 On the 16th of March, 2010, the  
6 Board completed public testimony, closed the  
7 record and scheduled its decision on April  
8 6th. The Board requested additional  
9 information to supplement the record by March  
10 23rd, 2010.

11 The supplemental information in  
12 your case folders, Madam Chair, are this:  
13 First, is from the applicant dated March 23rd  
14 identified as Exhibit 31. We also have as a  
15 second filing a signed letter from ANC-2E  
16 Chair Ryan Lewis. Again, it's Exhibit 32. We  
17 have two filings for a preliminary matter,  
18 Madam Chair, since the record was closed on  
19 the 23rd of March. The first is a letter from  
20 Michael Moore and Sara Hope Franks. This was  
21 a letter filed in support identified at  
22 Exhibit 30 and 33. There was an additional

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1 filing, but it's the same document, and the  
2 staff would note that it's also identified in  
3 Tab E of the applicant's supplemental filing.  
4 The second filing is from Council Member Jack  
5 Evans, Exhibit 34 dated April 2nd.

6 The Board is to act on the merits  
7 of the requested variance relief. And that  
8 completes the staff's briefing, Madam Chair.

9 CHAIRPERSON MOLDENHAUER: Thank  
10 you very much. First matter of business is to  
11 determine whether or not we should admit the  
12 two additional documents which we did not  
13 request. And since the record was closed, we  
14 typically do not allow any additional evidence  
15 into the record.

16 Exhibit 30 was a duplicate, as Mr.  
17 Moy stated, so I believe that that -- you  
18 know, whether it's admitted in as Exhibit No.  
19 31, Exhibit E, or whether it's admitted in as  
20 Exhibit No. 30, that really is a distinction  
21 without a difference. So, we will admit that  
22 document.

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1                   The other one is Exhibit No. 34,  
2                   which is from Council Member Evans. And I  
3                   believe that, you know, out of respect for the  
4                   council member -- despite the fact that the  
5                   record was closed and we're trying to really  
6                   uphold the standard of having everything in at  
7                   that date, or if it's not in at that date, to  
8                   actually provide specific statements as to why  
9                   there was good cause shown, it's not being  
10                  filed by the specific date or why there was no  
11                  prejudice. I don't believe that there would  
12                  be any prejudice to admitting that. Thus, if  
13                  my fellow board members agree, we'll also  
14                  admit that into evidence.

15                                   (No audible response.)

16                                   CHAIRPERSON MOLDENHAUER: By  
17                                   nodding of the heads it seems that we all  
18                                   agree on that, so both documents will be  
19                                   admitted in.

20                                   Now, we'll move forward to the  
21                                   deliberations. And I'll turn to Vice Chair  
22                                   Shane Dettman to start us off.

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1                   VICE CHAIRMAN DETTMAN: Thank you,  
2 Madam Chair.

3                   As Mr. Moy briefly described, this  
4 is a an application for a request for a  
5 variance from the provisions of 406, which are  
6 the open court, as well as 2001.3, which is  
7 additions to nonconforming structures.

8                   The property is also nonconforming  
9 with respect to lot area and lot width and lot  
10 occupancy. However, those are existing  
11 nonconformities that are not being changed as  
12 a result of the application and thus relief  
13 from those three areas of the Zoning  
14 Regulations is not necessary.

15                  The applicant is proposing to raze  
16 an existing one-story addition to the rear of  
17 the subject property and reconstruct on the  
18 same footprint a two-story addition to the  
19 property for purposes of essentially enlarging  
20 what's described as a very small rear bedroom  
21 on the second floor of the property.

22                  Essentially, given the height of

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1 the two-story addition, the required open  
2 court width that would be necessary to comply  
3 with the Zoning Regulations is roughly 7.3  
4 feet. Currently the property has a  
5 nonconforming open court width of about 4  
6 feet, 10 inches, according to your Exhibit No.  
7 2, which I think is nonconforming as it is  
8 right now. And then because of the increase  
9 in height, it increases the required width of  
10 the open court again to 7 foot, 3 inches.

11 Just briefly for the Board's  
12 convenience, the standard with which we have  
13 to review this application is the variance,  
14 test which states simply in 3103.2; and I  
15 won't read the whole thing -- it states that  
16 "Whereby reason of exceptional narrowness  
17 shallowness or shape of a specific piece of  
18 property at the time of the original adoption  
19 of the Zoning Regulations, the strict  
20 application of the regulations would result in  
21 particular an exceptional practical  
22 difficulties upon the property owner." And it

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1 authorizes the Board to grant relief from the  
2 Zoning Regulation given the three-prong test,  
3 and the third prong being that the relief can  
4 be granted without substantial detriment to  
5 the public good or without substantially  
6 impairing the intent, purpose and integrity of  
7 the Zone Plan.

8           Having reviewed the record and the  
9 post-hearing submissions, I am in favor of  
10 granting the relief and I'll discuss how I  
11 applied the three prongs to this test.

12           Again, noting the language of  
13 3103, I think that a lot of times the Board  
14 will look at the size of surrounding  
15 properties in the block, in the neighborhood,  
16 in the square, and the applicant in their  
17 post-hearing also mentions that. They argue  
18 a confluence of factors, and the first one is  
19 the small size of the lot relative to the  
20 surrounding properties. This is a split-zone  
21 square and roughly 28 lots on the square are  
22 zoned R-3. And the subject property is

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1 smaller than roughly two-thirds of the other  
2 residentially-zoned lots on the property.

3 I'm persuaded that that is an  
4 exceptional condition. However, if you were  
5 to look elsewhere in terms of determining  
6 whether or not the size of the subject  
7 property is indeed exceptional, I think that  
8 you could essentially put blinders on and look  
9 at the size of the lot, which is 16.87 feet in  
10 width and 100 feet in depth, and say if you  
11 were to strictly apply the Zoning Regulations  
12 with respect to height, lot occupancy, in this  
13 case, open court width, what would be the  
14 resultant allowable development on the second  
15 story of the addition? And if you were to  
16 strictly apply the regulations; meaning, if  
17 you were to strictly apply the 7.3 foot-wide  
18 open court, the resultant development is a  
19 room that only has a room of 9.5 feet, not  
20 including the width of the walls that are  
21 necessary in construction. I think that that  
22 presents a practical difficulty upon the

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1 property owner. That's not a very big room.  
2 In fact, it's not much wider than the small  
3 bedroom that currently exists on the second  
4 floor which they're trying to expand so that  
5 they can accommodate their growing family.

6 So, looking at it not in terms of  
7 the minimum requirements that the regs put in  
8 place, not in terms of the size of the  
9 properties in the surrounding area, just  
10 simply looking at how the strict application  
11 of the Zoning Regulations play out on this  
12 small property, I think that the first prong  
13 is met. And I think that it does give rise to  
14 a practical difficulty upon the property owner  
15 in terms of the space that the regulations  
16 would provide for the applicant.

17 And so, going onto the third prong  
18 of the variance test, I don't see any  
19 potential for detriment to the public good,  
20 nor the Zone Plan. I think that there are  
21 enough exceptional conditions on this property  
22 to differentiate it from a similar request,

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1 either next door or within the general  
2 vicinity.

3 I also will note for the Board  
4 that the application does have the support of  
5 the Commission of Fine Arts; a Mr. Paul  
6 Maysak, which lives directly across the alley;  
7 Madam Chair, you mentioned Michael Moore,  
8 which I believe owns the house directly to the  
9 south of the applicant; and also it has the  
10 support of Council Member Jack Evans. In  
11 addition, to which the Board needs to give  
12 great weight, the applicant was able to obtain  
13 the support of Advisory Neighborhood  
14 Commission 2E, and that is our Exhibit No. 32.  
15 I believe it was a unanimous vote.

16 And just briefly touching upon the  
17 Office of Planning's report, the Office of  
18 Planning, which the Board also needs to give  
19 great weight to, was unable to support the  
20 project simply because they found that the  
21 application failed on the first prong. They  
22 did not see any kind of specific, in their

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1 words, uniqueness, and that not having found  
2 any uniqueness they were not able to move onto  
3 the second prong. However, I think, as I've  
4 stated, I disagree with the Office of Planning  
5 in that I do see that this particular piece of  
6 property is exceptional and that the case has  
7 been made.

8 So with that, Madam Chair, I'll  
9 turn it back to you for further comment.

10 MEMBER SORG: I think my thoughts  
11 on this case go very closely with Mr.  
12 Dettman's, and I thought that his analysis was  
13 extremely detailed.

14 And I would say with regard to the  
15 first prong of the test, I am personally in  
16 general also leaning towards granting the  
17 variance. But, I'm not sure if I find that  
18 the two-thirds of the lots in the square being  
19 smaller terribly convincing, but I do find  
20 that the narrowness of the property itself and  
21 the difficulty, you know, that is contained  
22 within that of improving upon the property for

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1 the enjoyment of the family and their growing  
2 family is something that does come in with  
3 regard to the first prong. But in general, I  
4 think that I am in agreement with Mr.  
5 Dettman's analysis.

6 CHAIRPERSON MOLDENHAUER: Thank  
7 you very much. I hear Mr. Dettman's comments  
8 and I hear Ms. Sorg's comments, but  
9 unfortunately I don't seem to fall in the same  
10 line of analysis. I think that I agree more  
11 with OP in the fact that the applicant has  
12 failed on the first prong.

13 I think when I go through the  
14 additional submission there are four different  
15 elements for whether or not the applicant  
16 satisfies a confluence of factors. And in  
17 going through each of those, I don't think  
18 that they make a strong enough case. And I'm  
19 just going to go through them one at a time.

20 The first one in which, Mr.  
21 Dettman, you said that you wanted to put a  
22 blinder and look at just whether or not the

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1 property would conform with the requirements  
2 of the Zone Plan, I don't agree with that. I  
3 think that you really need to make sure that  
4 the property in conjunction with the other  
5 local areas -- and it's not defined as to  
6 whether it's, you know, the block, the square,  
7 the neighborhood. But what we have from the  
8 applicant on our record is that, you know, the  
9 property is small and is either equal to or  
10 potentially larger than; I'm going to use the  
11 reverse analysis that's provided, 33 percent  
12 of the lots in the area. So, I think that a  
13 33 percent similarity does not create an  
14 exceptional circumstance. I think it creates  
15 a fact that there are other lots in the area  
16 that are, you know, that size or potentially  
17 a lot smaller. We don't know the exact  
18 factors. And because of that, I don't really  
19 see, and I agree with OP, that there is an  
20 exceptional circumstance.

21 The next factor that was submitted  
22 was that the property was rendered

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1 nonconforming by merely the institution of the  
2 Zoning Regs, and I think that the Board very  
3 rarely and OP does not, you know, consider  
4 that to be a factor, nor do I. You know, I  
5 think that it's something that can come in  
6 regards to a confluence as factors as an  
7 individual factor, maybe addressing a certain  
8 element. But here, just in and of itself, I  
9 don't think is enough to create an exceptional  
10 circumstance.

11           The third one is the existing of a  
12 one-story rear addition. And I think that  
13 just merely because it had a lower-level --  
14 there was debating testimony as to whether or  
15 not potentially there was initially or  
16 originally a second store. There was no  
17 additional determination that there was ever  
18 a second story on the property. There was  
19 evidence that other neighbors had second  
20 stories, but if there wasn't one, just because  
21 it has a first story that needs to be  
22 repaired, which can be repaired as a matter of

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1 right, that doesn't create a exceptional  
2 circumstance to then put a second floor on, to  
3 then increase an nonconforming use and  
4 increase the open court nonconformity in my  
5 mind.

6 And then, the last one is the  
7 issue of a smaller second floor room. And I  
8 think that, you know, here there was a good  
9 argument, but I just don't think that it meets  
10 the high standard of a variance. It's  
11 persuasive, but it doesn't come to the  
12 threshold required for a variance. And  
13 because of that, I then don't even get into  
14 the additional factors. If I could have found  
15 that there was, you know, a small level where  
16 it's gray and it just kind of pushed me over  
17 a little bit, then I could potentially pull in  
18 some of the strong arguments that the third  
19 prong would, you know, push me towards  
20 approving, but I just don't see that  
21 unfortunately in this case.

22 And so, I will then now open back

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1 up the floor for any additional comments based  
2 on the comments that have been made so far.

3 VICE CHAIRMAN DETTMAN: Thank you,  
4 Madam Chair, and I think you make a few good  
5 points, especially with respect to the second  
6 factor that the applicant points out in its  
7 post-hearing about the property being rendered  
8 nonconforming when the Zoning Regulations were  
9 put in place. I think that that in and of  
10 itself certainly should not be considered as  
11 an exceptional condition simply because of  
12 what that opens up in terms of all the  
13 variance cases that will come to the BZA. I  
14 think that the presumption when the Zoning  
15 Regulations were put in place was that it was  
16 going to create nonconformities and that  
17 owners of nonconforming properties were given  
18 flexibility to add to their property by way of  
19 matter of right in 2001.3, and then  
20 furthermore as a special exception under 223.

21 But I do think it's worth noting  
22 that when the Zoning Regulations were put in

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1 place all of that flexibility that was put in  
2 there for property owners that owned  
3 nonconforming properties was completely  
4 eliminated as an opportunity to reasonably  
5 expand their property. For this specific  
6 piece of property, you know, it went to a lot  
7 occupancy of 75 percent, so it can't come  
8 under 2001.3. 223 is gone. And they  
9 automatically raise up to the variance  
10 standard, which you've noted is extraordinary  
11 relief, and that's language that's been used  
12 in past court cases.

13           However, so in a sense we have an  
14 applicant who wishes to raise their family in  
15 the city, remain a District of Columbia  
16 resident, but they're stuck with a property  
17 and a rear bedroom that's 75 square feet,  
18 which does not meet modern standards in any  
19 way, shape or form, and they can't do anything  
20 with it. And, you know, small bedrooms are  
21 small bedrooms, but when you have one that  
22 simply does not even meet, as the applicant

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1 states, the 2006 International Residential  
2 Building Code for "other habitable rooms shall  
3 have a floor area not less than 70 square feet  
4 and any horizontal distance of at least seven  
5 feet wide." And one of the horizontal  
6 distances in this room is only five feet wide.

7 I think assembling those factors  
8 does create a very exceptional condition and  
9 one that I could see being very difficult to  
10 replicate in future applications.

11 CHAIRPERSON MOLDENHAUER: Ms.  
12 Sorg, would you like to make any additional  
13 comments?

14 MEMBER SORG: (No audible  
15 response.)

16 CHAIRPERSON MOLDENHAUER: No?  
17 Well then, at this time I would like to see if  
18 there's any motions.

19 VICE CHAIRMAN DETTMAN: Madam  
20 Chair, I would move to approve Application No.  
21 18047 for variance relief from the provisions  
22 of section 406, open court width requirements,

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1 and section 2001.3 to accommodate a two-story  
2 rear addition to an existing single-family row  
3 dwelling located at 1425 33rd Street,  
4 Northwest.

5 MEMBER SORG: I'll second.

6 CHAIRPERSON MOLDENHAUER: A  
7 motion's been made and seconded. Any further  
8 deliberations?

9 (No audible response.)

10 CHAIRPERSON MOLDENHAUER: Hearing  
11 none, all those in favor say aye.

12 MR. DETTMAN: Aye.

13 MS. SORG: Aye.

14 CHAIRPERSON MOLDENHAUER: All  
15 those opposed? Nay.

16 Mr. Moy, are there any additional  
17 votes?

18 MR. MOY: Yes, Madam Chair.

19 Before I give the final vote, we do have an  
20 absentee ballot from Mr. Turnbull who is also  
21 a participant on this application, and his  
22 absentee ballot is to deny the application.

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1 His comment is that no new evidence presented  
2 related to meeting the first two prongs of the  
3 variance test was convincing for him. So, he  
4 would vote in opposition to this motion, which  
5 would give a total vote of 2-2-1, no other  
6 board member participating on that one.  
7 Again, this on the motion of the Vice Chair,  
8 Mr. Dettman, to approve the application.  
9 Supporting the motion is Ms. Sorg. So again,  
10 the motion fails for a lack of a majority  
11 vote.

12 CHAIRPERSON MOLDENHAUER: Due to  
13 the fact that the motion failed for a lack of  
14 majority vote, I will then submit a motion to  
15 deny the application 18047. Do I have a  
16 second?

17 (No audible response.)

18 CHAIRPERSON MOLDENHAUER: Mr. Moy,  
19 I don't know if Mr. Turnbull could second my  
20 motion since he's not present.

21 MR. MOY: Well, I would defer to  
22 our counsel, but in the past boards one of the

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1 board members would second to bring the motion  
2 to a vote.

3 CHAIRPERSON MOLDENHAUER: Thank  
4 you very much, Mr. Moy.

5 VICE CHAIRMAN DETTMAN: Madam  
6 Chair, for purpose of the vote, I'll second  
7 that motion.

8 CHAIRPERSON MOLDENHAUER: Thank  
9 you. Motion's been made and seconded. All  
10 those in favor, say aye. Aye.

11 All those opposed?

12 VICE CHAIRMAN DETTMAN: Opposed.

13 MR. MOY: Again, the absentee  
14 ballot from Mr. Turnbull is to deny the  
15 application, so he would be support of this  
16 motion made by the Chair Ms. Moldenhauer to  
17 deny the application, seconded by Mr. Dettman.  
18 So, that would give a total vote of 2-2-1.

19 CHAIRPERSON MOLDENHAUER: Based on  
20 the fact that both motions have now failed for  
21 lack of a majority vote, what we'll do is I  
22 will see if both members are in agreement to

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1 postpone the case until we have a fifth member  
2 to read the record. Do I have a consensus to  
3 postpone the case?

4 (No audible response.)

5 CHAIRPERSON MOLDENHAUER: What  
6 we'll do then is since we are not exactly sure  
7 as to when we'll have a fifth member appointed  
8 by the mayor, we will put this on a date for  
9 a status update, and then if there's any  
10 additional motions that are filed by the  
11 applicant, we can consider those at that time.

12 MR. MOY: Yes, the only other  
13 thing staff would add, Madam Chair, is that  
14 when that does occur, when the staff has an  
15 idea when the new fifth member of the Board  
16 would appear for the hearing, you know, I can  
17 announce as the secretary when that fifth  
18 member would likely participate at a meeting.

19 CHAIRPERSON MOLDENHAUER: Thank  
20 you. Our meeting is then adjourned, and I  
21 will open up our afternoon hearing.

22 (Whereupon, the meeting was

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1

concluded at 1:38 p.m.)

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