

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

APRIL 8, 2014

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
MARNIQUE HEATH, Board Member
JEFFREY HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, COMMISSIONER
OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALLISON MYERS, ESQ.
MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Meeting held on April 8, 2014.

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

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Case Numbers:

18638	8
18710	32
18291A	38

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

2 9:44 a.m.

3 CHAIRMAN JORDAN: If the hearing
4 would please come to order. We=re located in
5 the Jerrily R. Kress Memorial Hearing Room of
6 441 4th Street, Northwest. And today=s date is
7 April 8th, 2014.

8 We=re here for a meeting and a
9 hearing of the Board of Zoning Adjustment of the
10 District of Columbia.

11 My name is Lloyd Jordan,
12 chairperson. To my left is Marnique Heath, a
13 member of the Board. To her left is Peter May,
14 a member of the Zoning Commission, sitting in
15 as a member of the Board today.

16 Please be advised that these
17 proceedings are being recorded by a court
18 reporter sitting to my right. One of those
19 things this morning, technical mouth problems
20 too. And also being webcast live. So I=m
21 going to ask you to please refrain from any
22 disruptive noises here in the hearing room

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1 today. So let=s take this time to make sure we
2 silenced anything that can ring and all that
3 kind of stuff.

4 And I just have a new laptop. And
5 I think I learned how to turn it off, but if you
6 hear something, and I go AOOh, my God, it=s me,@
7 because I=ve been studying on this thing all
8 weekend, and still have to learn it as we go
9 along.

10 So I=m going to need you to do two
11 things if you=re going to testify today or
12 provide the Board any statements. If you=re
13 going to provide the Board any statement or
14 address the Board in any manner or testify in
15 any case, I=m going to need you to do two things.

16 The first of which I=m going to need
17 you to complete two witness cards per person.
18 That=s two witness cards per person. And prior
19 to your testimony, prior to your testimony,
20 please give those witness cards to the court
21 reporter sitting -- I keep having problems with
22 that word -- who=s over here to my right.

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1 The last thing I'm going to need you
2 to do, I'm going to ask you now to stand and take
3 the oath, which will be administered by the
4 Board secretary, Mr. Moy.

5 Seated, that=s the word, seated.

6 MR. MOY: Good morning. Even if
7 you think you=re going to testify, it=s good to
8 take the oath anyway.

9 CHAIRMAN JORDAN: And if you just
10 feel like taking the oath because this is
11 America and mom and apple pies, come on. Let=s
12 go for it.

13 MR. MOY: All right. Do you
14 solemnly swear or affirm that the testimony you
15 are about to present is the truth, the whole
16 truth, and nothing but the truth?

17 Ladies and gentlemen, you may
18 consider yourselves under oath.

19 CHAIRMAN JORDAN: All right.
20 Thank you. Mr. Moy, any announcements?

21 MR. MOY: Yes. Good morning, Mr.
22 Chairman, member of the Board.

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1 A just very quick one. And for the
2 record that on the docket today, that Appeal
3 Numbers 18735 and 18737 have been rescheduled
4 to next Tuesday, April the 15th.

5 And that completes what I need to say this
6 morning, Mr. Chairman.

7 CHAIRMAN JORDAN: Good. And we
8 appreciate everyone=s ability to come back
9 today with the rescheduling of this particular
10 docket.

11 Let=s -- we have some cases here for
12 public decision. If you would, Mr. Moy call
13 the first one.

14 MR. MOY: Is that 18638, sir?

15 CHAIRMAN JORDAN: Yes. I know
16 we=re going to lose you, so pretty soon --

17 MR. MOY: I=m good. I=ll stay as
18 long as I can.

19 CHAIRMAN JORDAN: You really have
20 to go to this training.

21 MR. MOY: I know.

22 CHAIRMAN JORDAN: So --

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1 MR. MOY: The first of the three
2 cases for a decision before the Board is 18638.
3 This is the application of the Rosebusch, LLC
4 and Gregg M. Busch.

5 The application has been amended
6 and now it reads for request for a special
7 exception from the roof structure setback
8 requirements under Section 411, and the roof
9 structure Arts Overlay in Subsection
10 1902.1(a)/770.6, and variance from the off
11 street parking requirements under Section
12 2101.1.

13 Mr. Hinkle is recused.

14 Mr. Chairman, and I believe all of
15 the requisite documents have been filed.
16 There are two filings from the applicant, in
17 Exhibits 48 and 49. And the party opponents
18 have filed under Exhibit 50.

19 CHAIRMAN JORDAN: And I think one
20 member of the Board has a couple of
21 announcements. So --

22 MS. HEATH: For the record, I=d

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1 just like to state that I was not a part of the
2 initial hearing of this case. But I=ve
3 reviewed all documents, and am up to speed.

4 CHAIRMAN JORDAN: And the record, the
5 complete record in the case?

6 MS. HEATH: I=ve reviewed the
7 complete record of the case.

8 CHAIRMAN JORDAN: And
9 additionally, do you have --

10 MS. HEATH: Additionally, I
11 believe there to be someone who is a part of this
12 case who I have done business with. But I
13 believe fully that there is no -- there are no
14 issues, there is no relation between myself,
15 this person, and this case. And so, I see no
16 reason why I can=t speak on behalf of the Board.

17 CHAIRMAN JORDAN: So there=s no
18 pecuniary relationship?

19 MS. HEATH: Correct.

20 CHAIRMAN JORDAN: I think that=s
21 acceptable. Don=t you?

22 Thank you for --

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1 MS. HEATH: Okay. Thank you.

2 CHAIRMAN JORDAN: Okay. We have
3 before us case 18638 which is up for a decision
4 as Rosebusch. It=s up for a special exception
5 variance. Does anyone have a -- the Board
6 ready to deliberate any thought on the matter,
7 anyone?

8 COMMISSIONER MAY: Mr. Chairman,
9 as I recall, there were two key issues with this
10 case. And one was the parking variance and the
11 other was roof top relief. I believe the roof
12 top relief has been addressed based on comments
13 that were provided by the Board. So I=m
14 satisfied with that.

15 And I am satisfied with regard to
16 the parking variance. And I believe that the
17 mitigation of excluding the building from
18 residential parking permit program is
19 sufficient to grant the requested relief.

20 CHAIRMAN JORDAN: All right.
21 Anybody else have any other thoughts?

22 (No audible response.)

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1 This is one which I=ve been toying
2 with and gone back and forth. I=ve looked at
3 the record, the full record, and the hearing a
4 couple of times. And gone back through the
5 exhibits. And I do have some concerns about
6 the relief being requested.

7 You know, what I thought that the
8 presentation -- and there has not been any
9 evidence showing that there -- well, let me go
10 back. Clearly, this property is unique. I
11 think there=s been a clear showing that this
12 property is unique as it=s a very narrow
13 property in depth and overall size. And also
14 that this property has to be developed with
15 three historic buildings which is being
16 required to be maintained during this process.

17 But where I=m having some
18 difficulties in regards to the variance request
19 -- and I know it=s in my eye -- is the request
20 for parking relief. I don=t think the record
21 shows that there has been a showing that there=s
22 a real practical difficulty or that this

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1 project cannot be done within the zoning
2 regulations. There was absolutely no evidence
3 of any other attempted use -- ability to do this
4 project except for the amount of units that were
5 proposed.

6 Now the opponents raised that in
7 their cross-examination. It still wasn't
8 addressed. And so, the applicant as well as
9 the support that was given for this project by
10 OP and the ANC, no one presented any evidence
11 that there -- that any alternatives were not
12 viable and that could meet within the zoning
13 regulations. That=s just my initial thought
14 on this.

15 There was no presentation that less
16 than the number of units -- there was no
17 economic information presented that supported
18 that there=s a practical difficulty or that any
19 lesser units would allow for parking in this
20 spot, or that it could not be done. And that
21 we=ve -- and we even asked from the dais a couple
22 of times about that.

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1 So it just kind of left open the
2 question for me, which I'm still staggering
3 with, whether or not the project can be done
4 with less units, and then what would be the --
5 would there be an impact on the requested
6 relief.

7 Further, and I think we even
8 leapfrogged in regard for the parking relief.
9 Where the evidence that was done, and the
10 analysis that was done, and what has been
11 submitted to this Board -- and I went back
12 through the record to see, had I missed the
13 boat. There was no evidence submitted on the
14 traffic impact, the new traffic impact or the
15 parking in the area, on the community. The
16 evidence presented was analysis, basically, of
17 general information, we know based upon what
18 was presented to the Board, we clearly know, the
19 various alternative means of transportation
20 around, but what was the impact of this project
21 would have on traffic or parking? Is it going
22 to go up 2 percent? What=s the impact on the

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1 parking? I don=t think that -- that whole step
2 was skipped. And we went from that point to
3 here=s the mitigation.

4 So we went from there=s some
5 alternative ways of transportation, no direct
6 conversation or evidence presented on the
7 impact increase of traffic or parking, but we
8 leapfrogged there to here=s some mitigation,
9 here=s some things in which we think we can
10 mitigate any impact.

11 So it kind of left me and still has
12 me questioning the ability whether or not that
13 met the burden. And I believing that it did
14 not.

15 And to me, it=s kind of taking the
16 cart in front of the horse. We need to -- the
17 Board really needs to know what are the impacts,
18 is there going to -- the analysis, you say well,
19 we think there=s going to be 2 percent increase
20 in traffic impact, however, it=s going to be
21 mitigated by xyz. That wasn=t presented, in my
22 opinion, to the Board nor any alternatives to

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1 that.

2 So I feel that the burden has not
3 been met regarding the relief for parking. And
4 clearly, the opponents show, although
5 anecdotal evidence, that this area is already
6 impacted by parking. It=s substantially
7 impacted by parking. And to grant this relief
8 would have additional impact on that, based
9 upon the anecdotal evidence presented by the
10 opposition, which could have, I believe, been
11 offset had someone put that evidence before us.

12 I=ve been toying with the special
13 exception relief for the height requirement,
14 relief from the 1902, which is also evaluated
15 at a 1906.

16 And the applicant has alleged that
17 this relief is necessary -- well, let me go
18 back. There is two requirements. One, as we
19 all know, the relief under 1902.1 requires --
20 it allows a special exception around it but 1906
21 provides that there=s certain criteria. And the
22 important part of that criteria is it=s the

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1 impact upon the Arts Overlay and the impact on
2 the community.

3 What I understand, by going through
4 the -- looking at the tape again -- and going
5 through the documents that were submitted, that
6 the applicant wants this additional height.
7 Yes, it gave a discussion about the need for the
8 extra height so that the -- to override the
9 equipment on the penthouse. But importantly,
10 they pushed an argument to this Board that the
11 additional height for the elevator penthouse
12 will allow additional amenity to the building,
13 and that everybody was attracted for having
14 roof top terraces.

15 And as you know -- and that it would
16 support the Art Overlay.

17 And also, there was the argument
18 made that this is -- the other real reason for
19 this is so that we can give recreational
20 facilities for people to gather for the
21 residents.

22 However, the opposition showed that

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1 the building=s proposed height would dwarf the
2 building next door. Particularly those -- the
3 building next door at levels 1 through 5, and
4 would overshadow their use.

5 I guess what brought me home on this
6 point was that the applicants= architect
7 admitted that the deck size could be reduced,
8 and with the deck size being reduced, there
9 wouldn=t be a need for additional elevation in
10 the roof and there was a viable alternative for
11 this.

12 Based upon the evidence as I saw it
13 and as I just announced, I would think that this
14 would have an adverse impact on the
15 neighborhood, and a detriment as well.

16 That=s my thoughts on it.

17 I don=t want to call you. If you
18 have to add or something -- let= just -- I=m
19 finished speaking. I mean, just persuade me
20 one way or the other.

21 MS. HEATH: I was less concerned
22 about the parking requests. And satisfied by

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1 the TDM measures that we proposed.

2 But I do share your concerns about
3 the variance for additional height. And
4 particularly as it relates to the architects
5 stating that the additional height could be
6 mitigated through other means and addressing
7 the design in a different way.

8 CHAIRMAN JORDAN: Please, Peter,
9 help me on this one.

10 COMMISSIONER MAY: Sure. So I=m
11 -- well, obviously, I don=t agree with the
12 concern about parking. And I=m not sure that
13 I can persuade you but I=ll make my explanation
14 of my thinking on this.

15 The site is exceptionally
16 constrained as you noted yourself. It=s a
17 small site. And it has the historic buildings
18 on it. And it is not practical to try to build
19 a lot of underground parking for it.

20 So what that might lead to is the
21 conclusion that the building should just be
22 smaller or composed of fewer units so somehow

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1 it can meet that requirement.

2 Well, yes, I guess that=s possible.
3 But in order to get relief from this Board it
4 is not typical that we require an exhaustive
5 examination of every alternate configuration
6 of buildings. Simply that what we do require
7 is a proof that this is an unusual, an
8 exceptional circumstance, which I think that it
9 is. And that there is a practical difficulty
10 associated with trying to do something that
11 complies with the zoning regulations.

12 Yes, I guess it could be argued that
13 they could create a building with a fewer number
14 of units. But I think, frankly, it would make
15 everything about the situation worse. Because
16 if you were to reduce the number of units to the
17 point where you could park every car on the
18 site, you would not have the exception from RPP.
19 I mean, there=s no reason for them to grant it
20 or to offer that. And I think that
21 actually is an exceptional benefit. I mean, I
22 will admit that we don=t -- this is a little bit

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1 unproven, the exception to RPP. But we are
2 seeing it on an increasing basis and I think
3 that we have an obligation, the city has an
4 obligation to make this work as a mitigation
5 measure. That the Department of
6 Transportation needs to step up and make sure
7 everything is done so that the Zoning
8 Commission and the BZA can rely on this as a
9 mitigation measure. And particularly when the
10 city is encouraging greater numbers of housing
11 units in transit friendly areas. And that=s
12 what this is.

13 So I think that we=d wind up with a
14 worse result with a fewer number of units that
15 comply with the zoning requirement.

16 The second thing about relief, a
17 variance relief is that there=s not a -- there=s
18 no question of degree of relief. It=s sort of
19 a yes or no question. Does it meet the test or
20 not.

21 And I think, you know, in this
22 circumstance it meets the test. So the number

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1 of units can be, you know, one more than might
2 meet the parking requirement or it can be ten
3 more to meet the parking requirement because
4 they've met the test.

5 So I honestly do believe that they
6 have met the test and that the relief is
7 appropriate and that the mitigation,
8 especially, is important in the granting of
9 this project.

10 On the height issue, I was very
11 uncomfortable with the building's height when
12 there -- in the original configuration, which
13 included an elevator that ran all the way up to
14 the full height of the penthouse. And was
15 quite visible from the street. And I think I
16 made those views very clear. I think what
17 they've done to address that is acceptable. I
18 honestly can't recall something -- they had
19 exactly what the level of relief is that they're
20 requiring over the -- requesting over the
21 required penthouse height. But I did not view
22 that as exceptional. And all of the set backs

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1 are being met, which I think is the most
2 important.

3 So I=m, you know -- I understand
4 that there may be some adverse impact to
5 adjacent units, but to some extent, those were
6 at risk and we could wind up with a building just
7 as tall or very nearly as tall with the same
8 level of impact, and completely within the --
9 completely matter of right. I mean, I they
10 reduce the number of units to the point where
11 they only needed four parking spaces then they
12 could fit the four parking spaces, and they
13 could have every bit as much height. And
14 instead, what we get is a building with a lot
15 more units, a lot more people close to transit,
16 and a mitigation that I think is actually going
17 to be better than what would happen in the
18 matter of right.

19 So I=m comfortable with this
20 project. I wasn=t, in the initial version.
21 But they fixed the elevator penthouse, I=m
22 happy.

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1 CHAIRMAN JORDAN: I appreciate
2 that. In fact, you did give me an additional
3 element that I didn=t realize in my analysis.
4 And that was the -- there could be a building
5 built there as a matter of right, which would
6 have that same type of height.

7 This is one, like I said, this is
8 giving me some pause.

9 But regarding the alternatives, and
10 the variances, the variance request here, they
11 have to show that there is -- that there be an
12 undue burden. That is a gauge. There is a
13 gauge about how much relief that=s necessary.
14 It doesn=t mean that you can come in and go from
15 zero to 60, if there=s some alternatives. And
16 that goes into the factor about its impact on
17 the neighborhood, and etcetera.

18 So I don=t want to say that I
19 disagree with you that they=re required to show
20 that there are other ways that -- that any
21 potential alternatives cannot work. I think
22 there are, based upon how much relief was

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1 requested.

2 So like I said, this is one that just
3 gives me some great pause. I'm still not there
4 on the parking. I do think that we did just
5 skip ahead.

6 There has been testimony that the
7 parking relief, the parking mitigation -- and
8 I'm going to go back to parking mitigation for
9 a second, Mr. May, because what's -- this is
10 really something that's been beating up the
11 Board and as well as others. And I understand
12 why you said this, but it's not the way it
13 happens now that we've kind of doing some of our
14 own diligence. And we're going to have a
15 further meeting on this. But RPP is not being
16 -- is not enforced by the Department of
17 Transportation. It's enforced by DMV, which
18 hasn't really talked to Department of
19 Transportation like they should talk to DMV.
20 And so there's a hodgepodge.

21 Because, in fact, we've had them
22 here when the Department of Transportation told

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1 us that you couldn't restrict the parking and
2 RPP to building and DMV is the one who actually
3 does go out and do it. So that's another issue.
4 And we really, as a District, got to get our arms
5 around this RPP use and restriction.

6 So, even if you do RPP, there is no
7 restriction for people having visitors coming
8 to the property and coming out and looking at
9 it.

10 And I know you and Ms. Heath think
11 that they've actually met this test and that the
12 mitigation is substantial enough to offset
13 anything.

14 So I just, like I said, I just got
15 a concern about the parking on this. So I think
16 what we would do is, certainly, I would look for
17 you, one of you two, to make a motion in regards
18 to this case. But let's hear the item, so that
19 we don't just do one type of motion because I
20 might be willing to agree to one thing and not
21 the other. If that's --

22 COMMISSIONER MAY: I'm willing to

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1 make a motion. I need to have the right piece
2 of paper in front of me to separate them so I
3 know exactly what=s being requested again.
4 I=m not sure I have the latest --

5 CHAIRMAN JORDAN: They would be the
6 -- well, the two items are one, would be a
7 variance for parking relief.

8 COMMISSIONER MAY: Right.

9 CHAIRMAN JORDAN: And then the
10 others, yes, the parking relief required and
11 the others is -- and that=s under 2101.

12 COMMISSIONER MAY: Right.

13 CHAIRMAN JORDAN: For the parking
14 relief. And then the special exceptions are
15 the 1902 as its catalyst is 1906. So.

16 COMMISSIONER MAY: Okay.

17 CHAIRMAN JORDAN: Yes, so it --

18 COMMISSIONER MAY: Right. Okay.
19 So -- hold on a second.

20 I would move approval of the
21 requested parking variance, 19 spaces required
22 to provided, and under -- relief from 2101.1 for

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1 parking. And ask for a second. Oh, subject to
2 the mitigation that were specified by the
3 applicant and required by DDOT. Oh, maybe for
4 -- I'm going by the -- an earlier -- this is why
5 it's a little unclear in my files and piles of
6 paper.

7 MS. HEATH: So with that
8 modification to the language, I would second --

9 CHAIRMAN JORDAN: All right.
10 Motion made and second to support the parking
11 relief as last amended and with, including as
12 conditions, the mitigation plan that's
13 submitted.

14 COMMISSIONER MAY: Right.

15 CHAIRMAN JORDAN: All those in
16 favor of the question, signify by saying aye.

17 (Aye.)

18 Those opposed, nay.

19 (Nay.)

20 Mr. Moy, let's have that for that
21 question.

22 MR. MOY: The staff recorded the

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1 vote as 2 to 1. This motion of Mr. May to --
2 for approval of the parking relief under
3 2101.1. Second motion, Ms. Heath. So that=s
4 two in support of the motion. And Chairman
5 Jordan opposed to deny the motion. And we have
6 two members not present, not voting.

7 CHAIRMAN JORDAN: So we don=t have
8 a decision on that.

9 MR. MOY: The motion fails, Ms.
10 Chairman.

11 CHAIRMAN JORDAN: No, does it fail
12 -- we don=t have a decision.

13 MR. MOY: Decision. Correct.

14 CHAIRMAN JORDAN: We don=t have a
15 decision. And we do have two members who -- or
16 one -- well, one member who --

17 MR. MOY: Yes. One member is
18 recused --

19 CHAIRMAN JORDAN: -- absentee
20 ballot --

21 MR. MOY: -- member not present.

22 CHAIRMAN JORDAN: -- let=s get that

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1 --

2 MR. MOY: That=s correct.

3 CHAIRMAN JORDAN: -- set on the
4 docket for the date.

5 What is the second motion, please,
6 Mr. May?

7 COMMISSIONER MAY: Sure. I would
8 move approval of requested special exception
9 relief from roof structure requirements under
10 Sections 411 and 1902.1(a).

11 MS. HEATH: I=ll second.

12 CHAIRMAN JORDAN: All right.
13 Motion made and seconded that the special
14 exception for provision -- regulations 1902 be
15 approved.

16 All those in favor signify by saying
17 aye.

18 (Chorus of ayes.)

19 Those opposed, nay.

20 (No audible response.)

21 Mr. Moy.

22 MR. MOY: The staff would record

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1 the vote as 3 to 0, the motion of Mr. May, to
2 approve special exception relief from the roof
3 top structures under 411 and 1902.1. Second
4 the motion was Ms. Heath. Also in support,
5 Chairman Jordan, with a member recused and a
6 member not present and not voting. The motion
7 carries.

8 CHAIRMAN JORDAN: Okay. All
9 right. So we need to obtain the absentee
10 ballot from Board member Allen regarding the
11 parking relief.

12 MR. MOY: The staff was just doing
13 that next week, next Tuesday, April 15th?

14 CHAIRMAN JORDAN: Okay.

15 MR. MOY: Yes. Sound good or
16 another day?

17 CHAIRMAN JORDAN: April 15th?
18 Yes. Oh, we have a misdate on that.

19 MR. MOY: That=s right.

20 CHAIRMAN JORDAN: You are
21 definitely -- that=s right, in the afternoon.

22 COMMISSIONER MAY: I=ll be here for

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1 the one --

2 CHAIRMAN JORDAN: Okay. Okay.

3 Let=s do that. Let=s do that. The 15th.

4 MR. MOY: Okay. Good.

5 Our next matter is 18710.

6 Well, excuse -- let=s take a brief
7 two minute recess. Make it a five minute
8 recess.

9 (Whereupon, the above-entitled
10 matter went off the record at
11 10:45 a.m. and went back on the
12 record went back on the record at
13 10:51 a.m.)

14 CHAIRMAN JORDAN: Ms. Rose, we are
15 calling 1710.

16 MS. ROSE: Michael Chung.

17 CHAIRMAN JORDAN: Yes. Okay.

18 MS. ROSE: The next case for
19 decision today is application number 18710 of
20 Michael Y. Chung pursuant to 11 DCMR 3103.2 for
21 a variance from the use provisions to allow a
22 fast food restaurant under Subsection 701.1 in

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1 the C-1 District that premises 607 Chesapeake
2 Street Southeast, Square 6208, lot 106.

3 The case was heard on February 25th,
4 2014. Scheduled for a April 1st decision which
5 was postponed to today. The Board requested
6 additional information to supplement the
7 record from the applicant, but the material was
8 not received. This case is before you for
9 decision.

10 CHAIRMAN JORDAN: Can you -- do you
11 have in your record exactly what was supposed
12 to be submitted to the Board?

13 MS. ROSE: Let=s see. It says the
14 applicant was requested to submit additional
15 information attending to the burden of proof
16 for the required use variance.

17 CHAIRMAN JORDAN: All right.

18 MS. ROSE: And the Board also left
19 the record open for the ANC AD to file a
20 resolution letter.

21 CHAIRMAN JORDAN: Okay. This is
22 when we tried to give another bite to the

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1 applicant to supplement the record. And for
2 some reason the applicant failed to provide
3 that information. With that, I don=t think
4 that they presented any evidence that there was
5 any undue hardship.

6 I think we also had an issue about
7 posting or something, on this.

8 But certainly, we didn=t get the
9 requested information that was necessary to
10 show that there was a hardship on this case.
11 That=s just my initial thought.

12 Mr. Hinkle.

13 MR. HINKLE: Yes. Thank you, Mr.
14 Chair.

15 I tend to agree. I think this
16 application was weak in terms of a burden of
17 proof.

18 I do understand that there=s been a
19 fast food operation at this location for a
20 number of years. But that initially was
21 initiated, if you will, back in 2006 under a C
22 of O that required the owner to pursue a use

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1 variance. And apparently, that never
2 happened.

3 And you know, even though there=s an
4 existing use, an existing fast food restaurant
5 at this location, and there was actually a
6 subsequent C of O given for that use, you know,
7 the applicant was in front of the Board this
8 year to request that use variance, and to
9 provide some burden of proof so that we could
10 approve it. And I just don=t see that.

11 You know, I think the fact that just
12 because DCRA provided a C of O before, for me,
13 that=s not sufficient in terms of, you know,
14 granting a use variance. I need to see more in
15 terms of how this building had some unique
16 factor in order to accommodate the use, what
17 would be the practical difficulty, the
18 hardship. And you know, I was hoping to get
19 that from the applicant, but he, as you said,
20 you know, we kept the record open for that, and
21 we just didn=t receive it.

22 So with that, I can=t support the

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1 application.

2 CHAIRMAN JORDAN: Anyone else?

3 COMMISSIONER MAY: Mr. Chairman,
4 you know, I want to support this. And you know,
5 the Office of Planning did, I think, probably
6 more than they had to, to try to make the case
7 on behalf of the applicant. And I would, I'm
8 almost willing to go there just on the basis of
9 that. That there was the previous C of O was
10 issued in error, but it was something upon which
11 the owner of the building relied upon and the
12 owner of the business relied upon when
13 purchasing the business.

14 So I mean, it's an unfortunate
15 circumstance. If there had been any
16 indication at all that the applicant was really
17 making an effort here, I think I would go along
18 with it, but you know, since we got nothing, I'm
19 unhappily agreeing with you.

20 CHAIRMAN JORDAN: Yes. And you
21 know, that's exactly where I am. You just took
22 the words out of my mouth.

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1 Ms. Heath, do you have --

2 MS. HEATH: Yes. I feel the exact
3 same way. But with no new documents being
4 presented, there=s nothing else we can do.

5 CHAIRMAN JORDAN: Well, let me go a
6 step further before we move this to a vote.

7 Not only is there -- the applicant
8 failed to do so, but the applicant was called
9 by the office several times to submit the
10 documentation. So I mean, come on, we=ve done
11 -- we=ve gone beyond where we should be.

12 So with that, I would move that we
13 deny the relief requested in 18710.

14 MS. HEATH: Second.

15 CHAIRMAN JORDAN: Motion made and
16 seconded.

17 Ready for the question, all those in
18 favor signify by saying aye.

19 (Chorus of ayes.)

20 Those opposed, nay.

21 (No audible response.)

22 Carried.

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1 Ms. Rose.

2 MS. ROSE: Yes. Ms. Heath, did you
3 hear this case?

4 CHAIRMAN JORDAN: I'm sorry?

5 MS. HEATH: Yes.

6 MS. ROSE: All right. Then the
7 staff will record the vote as 4 to 0 to 1, with
8 Mr. Jordan, seconded by --

9 CHAIRMAN JORDAN: Ms. Heath.

10 MS. ROSE: -- Ms. Heath, and with
11 Mr. Hinkle and Mr. May in support of the motion
12 to deny the application, and Ms. Allen not
13 present/not voting.

14 CHAIRMAN JORDAN: All right.
15 Thank you. 18291-a. 18291-a.

16 MS. ROSE: Yes. The next
17 application is 18291-a, a motion for a two year
18 timing extension of the final order in the
19 application of Mount Olive Baptist Church
20 pursuant to Section 3130 of the zoning
21 regulations.

22 This motion is before you for

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1 decision today.

2 CHAIRMAN JORDAN: Okay. Thank
3 you. Is the Board ready to deliberate on
4 18291?

5 This is one which -- well, I can
6 support for the relief especially since the
7 applicant did do the supplemental filing, and
8 it was really a great supplemental filing. It
9 really put them over the top. And I really feel
10 for them, the need, why they do need this
11 continued, this continuation of the time
12 extension.

13 They spent money; this is a church
14 that was probably was sophisticated and
15 development process; they spent money,
16 actually gave money to a developer, who then,
17 subsequently went bankrupt; and it=s just bad.

18 So I would support this.

19 Anybody else?

20 MR. HINKLE: No, I tend to agree
21 with you, Mr. Chairman. I do appreciate the
22 supplemental filing. I thought it was

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1 complete, as you mentioned. And I certainly
2 support this application.

3 CHAIRMAN JORDAN: Do you want to
4 make the motion?

5 MR. HINKLE: So I'll make a motion.
6 I'll make a motion to approve the request for
7 a two year time extension on order 18291 the
8 Mount Olive Baptist Church.

9 MS. HEATH: I'll second.

10 CHAIRMAN JORDAN: Motion made and
11 seconded.

12 Any additional discussion?

13 (No audible response.)

14 All those in favor signify by saying
15 aye.

16 (No audible response.)

17 Those opposed, nay.

18 (No audible response.)

19 The motion carries.

20 MS. ROSE: Staff will record the
21 vote as 3 to 0 to 2. With Mr. Hinkle, Ms. Heath,
22 and Mr. Jordan in support of the motion; Ms.

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1 Allen and Ms. Cohen not present/not voting.

2 (Whereupon, the above-entitled
3 matter was adjourned at 10:56 a.m.)

4

5

6

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