

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY
JULY 15, 2014

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., S. Kathryn Allen, Vice Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

S. KATHRYN ALLEN, Vice Chairman
MARNIQUE HEATH, Member
JEFFREY HINKLE, Member

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL TURNBULL, FAIA

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Board Secretary
STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT
MATT JESICK
STEPHEN MORDFIN
KAREN THOMAS

The transcript constitutes the
minutes from the Public Hearing held on July 15,
2014.

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

(9:40 a.m.)

VICE CHAIR ALLEN: Good morning, ladies and gentlemen.

We are located in the Jerrily R. Kress Memorial hearing Room at 441 4th Street, N.W. This is the July 15th, 2014, Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is S. Kathryn Allen. I'm Vice Chair of the Board of Zoning Adjustment, sitting in for our Chair, Mr. Jordan, who is away today, out of town.

Joining me is Marnique Heath, Board Member, to my immediate left. To her left, Michael Turnbull, representing the Zoning Commission, and to my right, Board Member Jeffrey Hinkle.

Copies of today's hearing agenda are available to you, and are located in the wall bin near the door. Please be advised that this proceeding is being recorded by a court

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1 reporter and is also webcast live.
2 Accordingly, we ask you to refrain from any
3 disruptive noises or actions in the room.

4 When presenting information to the
5 Board, please turn on and speak in to the
6 microphone, you'll see a little green light,
7 first, stating your name and your home address.

8 When you are finished speaking,
9 please turn your microphone off, so that it is
10 no longer picking up sound or background noise.

11 All persons planning to testify,
12 either in favor or opposition, please stand at
13 this time to be sworn in by our secretary.

14 MR. MOY: Good morning. Do you
15 solemnly swear or affirm that the testimony
16 you're about to present in this proceeding is
17 the truth, the whole truth, and nothing but the
18 truth?

19 (Chorus of ayes.)

20 MR. MOY: Ladies and gentlemen, you
21 may consider yourselves under oath.

22 VICE CHAIR ALLEN: Thank you. Also

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1 each witness, please fill out two witness
2 cards. These cards are located on the table near
3 the door and on the witness tables. Upon coming
4 forward to speak to the Board, please give both
5 cards to the reporter sitting at the table to
6 my right. So please get two cards, fill them
7 out, and have them ready when you come up to
8 speak.

9 All right. Mr. Moy, do we have any
10 preliminary matters?

11 MR. MOY: Yes. I do have two items
12 for the record with respect to cases on the
13 docket. The first is Application No. 18794 of
14 Newton Street Development 3 LLC. This
15 application has been postponed and rescheduled
16 to September 16, 2014.

17 And finally, Application No. 18759
18 of I.S. Enterprises, Inc., that application has
19 been withdrawn by the Applicant. And that
20 completes the preliminary matters, Madam
21 Chairperson.

22 VICE CHAIR ALLEN: Thank you, Mr.

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1 Moy. Before we get started, is there anyone
2 here representing Ann Campbell? It's Case No.
3 18776. Can you come forward, please.

4 Yes, come on up. Go ahead. Sit
5 down. Sit down, please.

6 Can you state your name for the
7 record and who you are, please.

8 MR. CAMPBELL: I'm Brian Campbell.
9 I am her son.

10 VICE CHAIR ALLEN: Okay. So we do
11 not have on our, in our filing, an ANC letter
12 or a affidavit of posting. Do you have that
13 information? Or that evidence?

14 MR. CAMPBELL: I have an affidavit
15 of posting. I don't have an ANC letter.

16 VICE CHAIR ALLEN: Yes. You
17 wouldn't. I'm just indicating that we don't
18 have those, and so you have it to present.

19 MR. CAMPBELL: Yes.

20 VICE CHAIR ALLEN: Okay. Can you go
21 ahead and give it to the secretary, so that we
22 can verify that it's in order, please? Thank

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1 you. All right. Then you can go back and sit
2 down, and we'll call you. Yes, please bring it
3 to him now.

4 Mr. Moy, will you call --

5 MR. MOY: Yes. Well, before I do
6 that, just on Mr. Campbell's case, according to
7 the filing for affidavit posting, it says that
8 he filed signs on June 20th, which would be in
9 keeping with the regulation, 15 days prior to
10 the hearing, and of course he's just submitted
11 the affidavit, which requires a five day
12 submission. So the Board will probably want to
13 addressing waiving the time requirements to
14 file it today, July 15.

15 And other than that, it's in order.

16 VICE CHAIR ALLEN: Okay. Thank you.

17 MR. MOY: So the first application
18 before the Board for public hearing is
19 Application No. 18798. This is an application
20 of Janet Katowitz, pursuant to 11 DCMR 3104.1.

21 Madam Chair, this is a request for
22 a special exception for a rear deck addition to

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1 an existing one-family row dwelling under
2 section 223, as advertised, for not meeting the
3 lot occupancy, rear yard and nonconforming
4 structure requirements in R-4 District at
5 property, 1425 North Carolina Avenue, N.E.,
6 Square 1056, Lot 94.

7 I believe, Madam Chair, that the
8 affidavit of posting was filed but I don't
9 believe there was a request for a waiver of time
10 for that. And that's it.

11 VICE CHAIR ALLEN: Mr. Moy, why
12 would we need a waiver of time?

13 MR. MOY: I don't have the copy with
14 me, but I believe, unless I'm wrong, since the
15 Applicant's here, it's Exhibit No. 29. I
16 believe it was filed yesterday. But of course
17 I could be wrong.

18 MR. SULLIVAN: Excuse me, Madam
19 Chairman. My name is Marty Sullivan, on behalf
20 of the Applicant. We filed on Thursday but we
21 filed after 3:00 p.m. So technically, it was a
22 day late. The affidavit.

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1 VICE CHAIR ALLEN: Okay.

2 MR. SULLIVAN: Things filed after
3 3:00 p.m. are considered received the next day.

4 VICE CHAIR ALLEN: Right. I got it.
5 I got it. Okay. So we will waive that if no one
6 has problems with that.

7 Okay. Thank you.

8 So can we have a -- would you
9 introduce yourself, please.

10 MS. KATOWITZ: Janet Katowitz. My
11 address is 1425 North Carolina Avenue, N.W.,
12 Washington, D.C. 20002.

13 VICE CHAIR ALLEN: Welcome.

14 MR. SULLIVAN: Marty Sullivan,
15 attorney/counsel for the Applicant.

16 VICE CHAIR ALLEN: Okay. so Mr.
17 Sullivan, if you would just maybe do a very
18 brief -- I think, for the most part, we've all
19 read and digested your presentation, and feel
20 that it's -- most of the information is here.
21 Does anybody have any specific questions on
22 this?

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1 (No response.)

2 VICE CHAIR ALLEN: So if you want to
3 do a very, very -- I would encourage you to do
4 a very brief opening.

5 MR. SULLIVAN: Thank you, Madam
6 Chair. I would like to point out, because it
7 wasn't mentioned beforehand, that we amended
8 the application to include variance relief from
9 the 50 percent yard requirement. That was my
10 fault, for not applying for it originally,
11 because the only published BZA opinion on that
12 seems to imply that structures under four feet
13 would not count in that 50 percent calculation,
14 and that's what I went with. And it was actually
15 a member of the ANC, that alerted me about a
16 transcript that gave me some information on the
17 Zoning Administrator having a different
18 opinion than that, and so at that point we
19 amended the application for that.

20 So I would also note, we do have a
21 letter from the ANC. I don't know if you have
22 it in your file because it was just received.

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1 VICE CHAIR ALLEN: Yes. We do.

2 MR. SULLIVAN: Okay. Thank you.
3 I'll be brief.

4 Obviously, that Section 223 relief
5 only relates to the portion of the deck that's
6 higher than four feet and within 70 percent, and
7 because of where it's located, and its size,
8 it's no impact on the light and air or privacy
9 of neighbors.

10 And that portion of the deck is
11 pretty small. So most of it serves a purpose of
12 just providing a narrow landing for the exit
13 from the properties three egress points to the
14 rear of the property.

15 Regarding the variance relief,
16 together with the portions of the existing
17 house and the upper deck, it would end up
18 occupying about 74 o5 75 percent of the required
19 rear yard. So Ms. Katowitz can describe some of
20 the unique conditions, if you want me to go
21 through that.

22 VICE CHAIR ALLEN: I think we are

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1 good.

2 MR. SULLIVAN: Understood.

3 VICE CHAIR ALLEN: I don't think
4 anyone had questions on that.

5 MR. SULLIVAN: The only thing I'd
6 like to address, then, is the Office of Planning
7 has suggested a condition on a privacy fence,
8 and Ms. Katowitz can answer questions on that,
9 if you want to ask. But we're not sure that that
10 will benefit the neighbors, or that they'll
11 desire that.

12 The one neighbor on the east is in
13 support of the current plan, and they've had
14 discussions about when you do the plan, we'll
15 both talk about what sort of privacy fence we
16 want, because a privacy fence might impact
17 light and fair as well.

18 And the other neighbor, there's not
19 much of the deck near them because it's only the
20 narrow part of the deck, and there's a space
21 there.

22 So not necessarily against the

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1 privacy fence, not sure if the neighbors would
2 want it. Especially on the lower portion of the
3 deck, it would kind a defeat the purpose of
4 providing some living space a little higher up.
5 But if the neighbors want it on the sides, then
6 we would agree to do that.

7 But as a condition, I -- we're not
8 comfortable with it being a condition because
9 the neighbors might not agree to that. Thank
10 you.

11 VICE CHAIR ALLEN: Okay. Thank you.

12 Does the Board have any questions
13 for the Applicant?

14 MEMBER HEATH: One additional
15 question. Have you addressed DDOT's comment
16 about the gate swinging in to public space?

17 MR. SULLIVAN: No, actually I
18 didn't even -- I didn't catch that comment. But
19 Janet, if you want to talk about that. Are you
20 aware of the gate?

21 MS. KATOWITZ: The gate on the
22 alley?

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1 MR. SULLIVAN: Yes.

2 MS. KATOWITZ: We can have the gate
3 swing inward as opposed to outward. That's
4 fine. I have no issue with that.

5 VICE CHAIR ALLEN: Okay. Any other
6 questions from the Board?

7 (No response.)

8 VICE CHAIR ALLEN: Office of
9 Planning?

10 MR. JESICK: Thank you, Madam
11 Chair, members of the Board. My name is Matt
12 Jesick. The Office of Planning supports the
13 application. We recommend approval of the
14 special exception pursuant to Section 223, as
15 well as the variance that has been requested by
16 the Applicant. We did recommend a condition of
17 approval, to erect a privacy fence on either
18 side of the property.

19 However, we were simply looking out
20 for the privacy of the neighbors. If the
21 neighbors are willing to work that out with the
22 Applicant and the Board is fine with that, we're

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1 also fine with that not being a condition of
2 approval. Whatever the Board feels is
3 appropriate. That concludes my testimony. I'd
4 be happy to answer any questions.

5 VICE CHAIR ALLEN: All right. I
6 think there was some question about either
7 side. Did you mean both sides, or one or the
8 other?

9 MR. JESICK: Yes. I apologize, if
10 it wasn't worded clearly. We were looking at
11 both sides.

12 VICE CHAIR ALLEN: Okay. Thank you.
13 Any questions for the Applicant? Do you have any
14 questions for Office of Planning?

15 COMMISSIONER TURNBULL: Madam
16 Chair, might I ask OP a question?

17 VICE CHAIR ALLEN: Oh, sure. I was
18 going to back, but go right ahead.

19 COMMISSIONER TURNBULL: Okay. Now
20 that was mainly on the higher deck, or --

21 MR. JESICK: We were looking at
22 both the upper deck and the lower deck.

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1 COMMISSIONER TURNBULL: And the
2 lower deck. Okay. I think this is an interesting
3 little caveat here, that it's up to the owners
4 to weigh in on this. So that puts us in a little
5 awkward position as how we go ahead, I think.
6 I mean, I would agree with Mr. Jesick. He's
7 looking out for the next-door neighbors. But if
8 the next-door neighbors are okay with it, then
9 I think the Office of Planning would be okay
10 with it.

11 So it's just a administrative
12 procedure for us to figure out how we're going
13 to handle it.

14 VICE CHAIR ALLEN: Right. Why don't
15 we see if there are any neighbors that are going
16 to testify, and then we can maybe think a little
17 bit more about that.

18 Okay. Does the Applicant have any
19 questions for OP?

20 MR. SULLIVAN: No, we don't. Thank
21 you.

22 VICE CHAIR ALLEN: Okay. Is anyone

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1 here from DDOT?

2 (No response.)

3 VICE CHAIR ALLEN: And apparently
4 they have recommended no objection, and they
5 have the one comment that Ms. Heath already
6 alluded to. And we did receive a letter from
7 ANC 6A. Is anyone here from ANC 6A? ANC 6A?

8 (No response.)

9 VICE CHAIR ALLEN: We did receive a
10 letter in support. That's correct, Mr. Moy?

11 MR. MOY: Yes, ma'am.

12 VICE CHAIR ALLEN: Okay. Do we have
13 any parties or persons in support of the
14 application here? Any parties in support of the
15 application?

16 (No response.)

17 VICE CHAIR ALLEN: Do we have any
18 parties or persons in opposition to the
19 application?

20 Sir, please come up and -- please
21 sit down, turn your mike on, and identify
22 yourself and your address, please. It should

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1 be green. There's a green -- it's bright. It
2 should be a bright green light.

3 MR. McCAIN: There you go.

4 VICE CHAIR ALLEN: There you go.

5 MR. McCAIN: Good morning.

6 VICE CHAIR ALLEN: Good morning.

7 MR. McCAIN: I'm Robert McCain.
8 My address is 1418 North Carolina Avenue, and
9 I received this notice in the mail, and I just
10 thought it would be in my best interest to find
11 out exactly what was going on, because prior to
12 receiving this notice, I was not aware that
13 something was going on in a neighboring house
14 that would affect my property.

15 VICE CHAIR ALLEN: Okay. So you've
16 heard, or had an opportunity to know what's
17 happening. Are you opposed to it? Are you in
18 support of it?

19 MR. McCAIN: I didn't know what was
20 going on, so I'm neither/nor.

21 VICE CHAIR ALLEN: Okay. So we
22 appreciate you coming down, and hopefully

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1 you'll get the information that you need and --

2 MR. MCCAIN: Okay. I just wanted to
3 be aware of what was going on.

4 VICE CHAIR ALLEN: Okay. And that's
5 certainly your right, and that's why we do the
6 posting, to make sure that the neighbors are
7 aware.

8 MR. MCCAIN: I'm not the house
9 directly connected, but I'm like the next
10 house.

11 VICE CHAIR ALLEN: We got it.

12 MR. MCCAIN: In fact, you got to go
13 through my house to get to her house in this
14 alley. And that was really my concern, the
15 alleyway that connects our two houses.

16 VICE CHAIR ALLEN: Great. Thank
17 you, sir.

18 MR. MCCAIN: You're very welcome.

19 VICE CHAIR ALLEN: We appreciate
20 it. All right.

21 Applicant, do you have a closing
22 statement or any rebuttal that you want to make?

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1 MR. SULLIVAN: No. Thank you.

2 COMMISSIONER TURNBULL: Madam
3 Chair, I wonder if I might just interject, just
4 do one more question on the deck. Lighting. What
5 kind of lighting do you propose to have on the
6 deck>?

7 MS. KATOWITZ: There are no plans
8 for lighting at this time.

9 COMMISSIONER TURNBULL: No light.
10 Is there anything on the wall, you know, the
11 back of the wall, like a -- nothing?

12 MS. KATOWITZ: No, no. I don't have
13 lights out the back, actually.

14 COMMISSIONER TURNBULL: And if you
15 were to put on lights, it would be very simple
16 down-lighting?

17 MS. KATOWITZ: Absolutely.

18 COMMISSIONER TURNBULL: Okay.

19 VICE CHAIR ALLEN: Okay. Is the
20 Board ready to deliberate?

21 All right. I believe on the face of
22 this application, that the burdens have been

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1 met. We have support from the various groups and
2 but for the question about whether we want to
3 do the condition, which we can discuss further.
4 I would support the application.

5 Does anyone else have anything they
6 would like to say? Mary, could you come here.

7 COMMISSIONER TURNBULL: You know,
8 I don't see an issue with supporting this other
9 than the privacy fence to, you know, to
10 resolve that.

11 VICE CHAIR ALLEN: All right. Do
12 we have any other discussion?

13 (No response.)

14 VICE CHAIR ALLEN: Mr. Turnbull, do
15 you have anything you'd like to share?

16 COMMISSIONER TURNBULL: No. We
17 were just kind a thinking outloud about the
18 effect of the fence on the neighbors too. The
19 pros and cons. Whether it would be -- on one
20 side, it's only a small little fence on the
21 upper part of the deck. But to put it on the
22 lower and upper on the one side seems like a bit

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1 of a burden. Seems like a lot. It may impact the
2 neighbors, cast more shadows in to the
3 property.

4 So it needs a little study, I guess.
5 I mean, I'm not quite sure how you want to
6 approach that, but there's several ways of
7 looking at it, being it does screen, and yet at
8 the same time it could provide some other
9 issues.

10 VICE CHAIR ALLEN: Any other
11 thoughts on that?

12 MEMBER HEATH: I would recommend
13 that the Applicant discuss the pros and cons of
14 the fence with their neighbor, because my guess
15 is that the neighbors, you know, if they're
16 not as concerned about privacy, they probably
17 are going to be concerned about the impacts of
18 light, and shadows being cast in their yard, so
19 --

20 MS. KATOWITZ: Right. My neighbor
21 to the east, like Almee, basically asked that
22 when it's time to build the deck, can we work

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1 together and decide what the fencing is. So that
2 is my plan, and we're on good terms. he wrote
3 a letter of support for the plan.

4 VICE CHAIR ALLEN: Okay. So why
5 don't we -- I'll go ahead and move that we
6 accept, or approve the required relief sought.

7 Do I have a second?

8 MEMBER HEATH: Second.

9 VICE CHAIR ALLEN: It's been moved
10 and seconded. Any other thoughts? Comments?
11 We'll do it without the condition, obviously.

12 All in favor?

13 (Chorus of ayes.)

14 VICE CHAIR ALLEN: Any opposed?

15 (No response.)

16 VICE CHAIR ALLEN: Mr. Moy, can you
17 do the call and -- go ahead.

18 MR. MOY: Yes. Madam Chair, Staff
19 would record the vote as four to zero, this on
20 the motion of Chairperson Allen to approve the
21 amended relief requested. Second to the motion:
22 Ms. Heath. Also in support: Mr. Turnbull, Mr.

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1 Hinkle. We have a Board member not present with
2 us today. So the motion carries, four to zero.

3 VICE CHAIR ALLEN: Great. Would
4 you do a summary order, please.

5 MR. MOY: Yes, ma'am.

6 VICE CHAIR ALLEN: All right. Thank
7 you.

8 Mr. Moy, can you call 776, please.
9 We're going to take it a little bit out of order.

10 MR. MOY: Yes. Application No.
11 18776. This is the Application of Ann Campbell,
12 pursuant to 11 DCMR 3108.2, as advertised, for
13 variances from the lot occupancy and court
14 requirements for a second floor rear deck, and
15 stair additions in the C-2-A District, at
16 premises 700 and 702 Kentucky Avenue -- or
17 rather, Kennedy Street, N.W., Square 3152, Lots
18 59 and 60.

19 VICE CHAIR ALLEN: Thank you. We
20 have a couple of preliminary items. The OP
21 report, I understand, was not timely, and they
22 have sought a waiver of time. Are there any

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1 objections to that?

2 (No response.)

3 VICE CHAIR ALLEN: All right. Then
4 we will accept that.

5 And Mr. Campbell, do you have a
6 letter of authorization from your -- is it your
7 mother, Ann Campbell?

8 MR. CAMPBELL: No.

9 VICE CHAIR ALLEN: You do not?

10 MR. CAMPBELL: No, ma'am. Sorry. I
11 just didn't quite --

12 MEMBER HINKLE: So we do have a
13 letter of authorization for Mary Ann Brazil.

14 MR. CAMPBELL: That's my wife.

15 MEMBER HINKLE: That's your wife.

16 MR. CAMPBELL: Right. So one step
17 even removed from me to my mom.

18 MEMBER HINKLE: Sure, sure.

19 (Pause.)

20 MR. CAMPBELL: Madam Chair, it's
21 certainly something I can get. I just didn't
22 know --

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1 VICE CHAIR ALLEN: Yes. No. That's
2 fine.

3 MR. CAMPBELL: Sorry to --

4 VICE CHAIR ALLEN: Don't worry
5 about it. Well, no, you need to worry about it.
6 You need to definitely make sure that something
7 gets filed, please, with our office. But, yes,
8 we're going to move forward and at least hear
9 the case.

10 So does the Board have any
11 particular questions on this case? Anything
12 that came to mind?

13 COMMISSIONER TURNBULL: No. My
14 questions relate mainly to the Office of
15 Planning's report.

16 VICE CHAIR ALLEN: Okay. Right. So
17 Mr. Campbell, you have the right to make a
18 statement or put on your case, but as our
19 illustrious Chair often says, when we aren't
20 asking you to do that and we're ready the case
21 fairly carefully, that you might step in to
22 something you don't want to step in to, but it's

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1 certainly your choice, if you would like to
2 present a case at this point. Or you can just
3 rest on the record.

4 MR. CAMPBELL: The chair's very
5 comfortable. I'll just sit here and -- thank
6 you.

7 VICE CHAIR ALLEN: Great. Office of
8 Planning.

9 MS. ELLIOTT: Thank you, Madam
10 Chair. For the record, my name's Brandice
11 Elliott. I'm representing the Office of
12 Planning. I reviewed this application for 700
13 Kennedy Street, and prior to filing the report,
14 we did actually have some challenges contacting
15 the Applicant to get some of the information
16 that we needed.

17 That might have aided us in
18 recommending approval versus not able to
19 support. So at the time we filed the report, we
20 opted to not support just because we didn't feel
21 the Applicant had sufficiently addressed the
22 three-prong variance test. We have continued

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1 working with the Applicant since filing our
2 report, and I think that we're in a position
3 where we're able to recommend approval.

4 In fact, we just received
5 information just last week, that kind of helped
6 out with the justification of the variance.

7 So we've been informed that when the
8 property was acquired, there were additional
9 structures on the property, that included a
10 garage, a water tower, and the egress stairs
11 that are shown in the photographs in the
12 application, and, in total, they amounted to
13 360 square feet of area.

14 The proposed decks, combined, equal
15 316 square feet of area. So in our view, the
16 proposal for the decks is actually bringing the
17 lot closer to conformity with the current
18 zoning regulations.

19 Also, we have received floor plans
20 from the Applicant demonstrating that they're
21 working -- each unit is a two-bedroom at 800
22 square feet. There are existing load-bearing

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1 walls that are being used to, you know,
2 reconfigure the floor plan and make it more
3 efficient, and we feel that that, in itself, is
4 kind of limiting based on where those walls are.

5 And so that the deck actually
6 provides additional common area that would be
7 valuable to, of course, anyone that resides in
8 those residences. But we also have the Kennedy
9 Street Small Area Plan, which guides the
10 redevelopment and further growth of this area.

11 And the Small Area Plan encourages
12 the revitalization of this corridor, and we
13 feel that the proposed decks do add to that, and
14 will aid the tenant in getting some stable
15 tenants that will add to the vibrancy of this
16 area. So in that regard, we feel fairly
17 comfortable recommending approval now, and I'd
18 be happy to answer any questions you may have.

19 VICE CHAIR ALLEN: Thank you, Ms.
20 Elliott. Does the Board have any questions?

21 COMMISSIONER TURNBULL: Thank you,
22 Madam Chair. So Ms. Elliott, the photographs

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1 that we received also have been -- the property
2 has changed a bit since that time?

3 MS. ELLIOTT: My understanding is
4 that the stairs and landing were still there and
5 the water tower is still there. But there was
6 an accessory garage at the rear that was
7 removed.

8 COMMISSIONER TURNBULL: Okay. So
9 these pictures still may be fairly accurate as
10 to --

11 MS. ELLIOTT: Yes. Based on my last
12 conversations with the Applicant, they are
13 still there.

14 COMMISSIONER TURNBULL: So is that
15 box at the top, is that the water tower?

16 MS. ELLIOTT: That's the water
17 tower that's -- there was actually a laundromat
18 in one of the structures, so it served that use.

19 COMMISSIONER TURNBULL: Okay.
20 Thank you.

21 MEMBER HINKLE: Ms. Elliott, you
22 had a question regarding the variance for the

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1 open court. Could you explain that. I don't know
2 if -- I had the same question, and I don't quite
3 understand it, and I know it grew from the memo
4 from the Zoning Administrator. But if you've
5 looked in to that issue a little more, it'd be
6 helpful.

7 MS. ELLIOTT: Unfortunately, I have
8 looked in to it, but I haven't received a
9 response. So the Zoning Administrator did
10 require relief for both lot occupancy and a
11 court for this case. We used magnifying glasses
12 and we weren't able to locate the court.
13 However, if the Board wants to proceed and be
14 safe, and make a recommendation concerning that
15 court, I'm totally comfortable with that as
16 well.

17 MEMBER HINKLE: Thank you. I don't
18 know if the Board has questions about that. I
19 can't identify the court as well, but I'm
20 certainly -- if we're moving forward and we're
21 comfortable with any sort of relief on the lot
22 occupancy, I could also support court relief.

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1 VICE CHAIR ALLEN: All right. Thank
2 you. Thank you for your questions.

3 Do we have anyone here from DDOT on
4 this? DDOT?

5 (No response.)

6 VICE CHAIR ALLEN: They apparently
7 filed no objection.

8 Is anyone here form ANC 4D? And it's
9 my understanding we do not have a report from
10 ANC 4D?

11 MR. MOY: That's correct.

12 VICE CHAIR ALLEN: All right. Are
13 there any parties in support of this
14 application?

15 (No response.)

16 VICE CHAIR ALLEN: Any parties or
17 persons in opposition?

18 (No response.)

19 VICE CHAIR ALLEN: All right.

20 Does the Applicant have anything
21 else you'd like to add, or --

22 MR. CAMPBELL: No. Thank you.

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1 VICE CHAIR ALLEN: Okay. Thank you.
2 It would be the Chair's recommendation that we
3 put this for a vote, move it forward, because
4 it would be, I think it would be helpful to get
5 a ANC report, and also just have a little more
6 time to look at some of those -- the information
7 from OP. I assume you're going to amend your
8 report?

9 MS. ELLIOTT: Sure. I would be happy
10 to.

11 VICE CHAIR ALLEN: Yes. That would
12 be helpful for the record as well. Mr. Moy, do
13 we have a date that we can schedule for a --

14 MR. MOY: Yes, Madam Chair. Staff
15 would suggest -- my guess is -- and anyone can
16 correct me if I'm wrong -- but I don't believe
17 there's any ANC meetings in the month of August,
18 because I was going to propose the Board set this
19 for decision on the last hearing day before the
20 August recess, which would be July 29th.

21 VICE CHAIR ALLEN: Mr. Moy, can you
22 hold just one second.

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1 Mr. Campbell, do you know if anyone
2 has presented to the ANC, if the ANC has met on
3 this proposal, or when that's supposed to occur?

4 MR. CAMPBELL: I reached out and I
5 never heard back, and part of it's just my own
6 ignorance in terms of the process, probably. So
7 my guess is no.

8 MR. MOY: That's helpful. So I'm
9 thinking, then, Madam Chair, in abundance of
10 caution, to allow time for the Applicant, I
11 would suspect -- to meet up with the ANC, we're
12 looking at a decision date in September.

13 VICE CHAIR ALLEN: September.

14 MR. MOY: So I would suggest
15 mid-September, which would put us for a
16 decision, for Tuesday, September 16th.

17 VICE CHAIR ALLEN: Okay. So Mr.
18 Campbell, I would recommend that you go across
19 the hall to the Office of Zoning, and just ask
20 for someone to just maybe talk to you a little
21 bit about that process. Or maybe reach out to
22 Ms. Elliott and make sure that you understand

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1 what we need from that.

2 MR. CAMPBELL: She's been very
3 helpful, so --

4 VICE CHAIR ALLEN: I'm sure she has.
5 Oh, and don't forget to please file the letter,
6 authorization letter.

7 MR. CAMPBELL: Certainly.

8 VICE CHAIR ALLEN: Okay.

9 MR. MOY: You know what, Madam
10 Chair? Just to amend the date, because I'm
11 looking at the schedule and I notice that Mr.
12 Turnbull is coming back to sit with the Board
13 on September 23rd. So I'll leave it to the Board
14 as to whether you want to see Mr. Turnbull on
15 two Tuesdays, back to back.

16 VICE CHAIR ALLEN: I was going to
17 say it seems like one time to me, but if you would
18 prefer us to wait till the 23rd, we will.

19 MR. MOY: Whatever your desire.

20 VICE CHAIR ALLEN: Why don't we
21 leave it on the original date.

22 MR. MOY: Fine. Very good.

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1 VICE CHAIR ALLEN: If that's okay.
2 Mr. Turnbull, you can send us a --

3 COMMISSIONER TURNBULL: I'd be
4 happy to walk over.

5 VICE CHAIR ALLEN: Okay. Great.
6 Thank you. All right. I think we're good.

7 All right. Thank you, Mr. Campbell.

8 MR. CAMPBELL: Thank you.

9 VICE CHAIR ALLEN: Okay. The next
10 case, please. Thank you, Ms. Elliott.

11 MR. MOY: Okay. I assume we're going
12 back to the top of the batting order.

13 VICE CHAIR ALLEN: 797.

14 MR. MOY: So that would be
15 Application No. 18797, this an application of
16 John Ferguson and Veronica Slajer. That's
17 pursuant to DCMR 3103.2.

18 Madam Chair, this is a request for
19 a variance relief from the lot occupancy
20 requirements under section 403.2, a variance
21 from the nonconforming structure provision
22 under subsection 2001.3. This is relief that has

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1 been advertised for an addition to an existing
2 one-family row dwelling in the R-4 District at
3 626 A Street. S.E.

4 VICE CHAIR ALLEN: Thank you.
5 Welcome. Can you please identify yourselves and
6 give us your address.

7 Please. You have to turn on your mike
8 and I assume everyone got sworn in, and has given
9 your cards -- great. Thank you.

10 MR. FERGUSON: I'm John Ferguson,
11 626 A Street, S.E.

12 VICE CHAIR ALLEN: Excellent. Thank
13 you.

14 MR. JONES: Kim Jones, 118 11th
15 Street, S.E.

16 VICE CHAIR ALLEN: Okay.

17 MR. SLAJER: Hello. Good morning
18 Veronica Slajer, 626 A Street, S.E. Kim Jones
19 is our architect.

20 VICE CHAIR ALLEN: Thank you. I was
21 just going to ask him what his role here was.
22 Okay. Thank you.

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1 All right. So again, as we often say,
2 and discuss when we're here, that the Board
3 members spend a lot of time reading and
4 reviewing the files, and all of that sort of
5 thing.

6 I think we probably do have a couple
7 of questions. But prior to that, let me just
8 confirm whether or not you asked for a variance
9 from 2001.3. Do you know whether that was part
10 of your file or not?

11 MR. JONES: I did talk to Mr. Nero
12 about that, and he said that it would be added
13 to the application.

14 VICE CHAIR ALLEN: Okay. I think
15 your clients have to do that. So can we just make
16 sure that somebody does that technically. You
17 have to just amend your application to make sure
18 that that's in there. Okay? Please.

19 Thank you. All right.

20 Does the Board have any preliminary
21 questions before we allow them to speak? Any
22 questions?

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1 (No response.)

2 VICE CHAIR ALLEN: Okay. I think
3 there was just, in general, a question that came
4 to mind as we reviewed this, was if there was
5 any -- and I guess I don't know if this is for
6 the architect or for the Applicants. But did you
7 look at any possible way to do this without
8 requiring a variance? Was there any
9 consideration for that? Or did you look at that
10 at all, and was it just not available, or didn't
11 make sense?

12 MR. JONES: Yes. We looked at it.
13 The nature of the lot, that it's already
14 nonconforming, area-wise, and we're not
15 increasing the tabulated area at all. So any
16 addition we did, including enclosing of the
17 courtyard, would require the variance.

18 VICE CHAIR ALLEN: Okay. And if you
19 could -- this is the time when you would make
20 your statement, and it would be helpful, for the
21 record, if you would sort of just walk us through
22 the analysis in terms of the practical

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1 difficulty detriment, no detriment to the
2 public good, no substantial harm, that sort of
3 thing.

4 Could you just sort of walk us
5 through what your thoughts on that were. It
6 wasn't immediately apparent, to me, from what
7 you submitted.

8 So could you just talk about how --
9 present the case of why you think that this
10 project deserves to have this relief.

11 MR. JONES: The existing house has
12 the kitchen in the basement, and we would like
13 to move the kitchen to the first floor.

14 In order to have room on the first
15 floor, because where we're like to put the
16 kitchen is within the dog leg, we wanted to
17 enclose the space of the dog leg. The dog leg's
18 approximately four and a half by 16 feet. This
19 would bring the back of the house, including the
20 dog leg, to be flush with the neighbors to the
21 east and the west, so that it won't project at
22 all beyond any of these houses. So it's not even

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1 visible from the direct east and west neighbors,
2 because it's flush with the back of their house.

3 It's not visible from any public
4 space. It's possible, that if you went in the
5 alley to the eastern end of it, you might get
6 a glimpse of it, but pretty much, it's invisible
7 from public space.

8 So it doesn't create any light or air
9 infringement on either of the neighbors.

10 VICE CHAIR ALLEN: Okay. Any
11 questions? Go ahead.

12 COMMISSIONER TURNBULL: I just have
13 one. Doesn't filling in that courtyard
14 technically increase the lot occupancy?

15 MR. JONES: It doesn't because the
16 courtyard was nonconforming, and it was already
17 included in the lot occupancy.

18 COMMISSIONER TURNBULL: Oh. Okay.
19 Okay. I can verify that with Mr. Mordfin. But
20 thank you.

21 VICE CHAIR ALLEN: Anything else?

22 (No response.)

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1 VICE CHAIR ALLEN: Okay. Anything
2 else that the Applicant would like to say?

3 No. We're good. All right. Can we
4 hear from the Office of Planning, please.

5 MR. MORDFIN: Good morning, Madam
6 Chair, and members of the Board. I'm Stephen
7 Mordfin with the Office of Planning.

8 And in response to Mr. Turnbull's
9 question, the existing court that's there is
10 less than five feet in width, so because of that
11 it counts towards the lot occupancy. It's four
12 and a half feet.

13 COMMISSIONER TURNBULL: Thank you
14 for clarifying. You're right. That strikes a
15 chord. Thank you.

16 MR. MORDFIN: So because of that,
17 the addition that's proposed by the Applicant
18 does not change any of the numbers for the
19 property. But what it does do is it eliminates
20 a nonconforming section of courtyard and
21 actually brings the property more in to
22 conformance with the zoning regulations.

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1 But to go through the three-part
2 test, the exceptional difficulty is is that it
3 is an unusual property, where you're got a
4 building that's connected to its carriage
5 house, there is no rear yard, and it has this
6 nonconforming aspect to it.

7 So anything that they do to this
8 property would require a variance, and if they
9 built in to the open courtyard area, that would
10 actually increase the lot occupancy.

11 And there would be no substantial
12 detriment to the public good, because it's going
13 to be pretty much invisible to most of the
14 property surrounding it. It goes within an area,
15 it's not going to extend out beyond the rear wall
16 of the house, the rear wall of the adjoining
17 houses.

18 So it will be pretty much invisible.
19 It won't block any windows for either neighbors,
20 or for the existing property, and because it's
21 bringing it more in to conformance with the
22 zoning regulation, there is no substantial harm

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1 to the zoning regulations. It will be more in
2 conformance.

3 And so therefore, the Office of
4 Planning does recommend approval of this
5 application.

6 VICE CHAIR ALLEN: Thank you. Mr.
7 Mordfin helped you all out a lot. I just want
8 to give you credit for that.

9 Okay. So any one here from DDOT? Any
10 questions -- I'm sorry -- for Office of
11 Planning?

12 Applicant, do you have any questions
13 for Office of Planning?

14 No? All right. Anyone here from
15 DDOT?

16 (No response.)

17 VICE CHAIR ALLEN: No. Any parties
18 in support of the application? Any parties in
19 support?

20 (No response.)

21 VICE CHAIR ALLEN: Any parties in
22 opposition?

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1 (No response.)

2 VICE CHAIR ALLEN: All right. So
3 Applicant, you have a right to do a closing
4 statement, or any kind of rebuttal now.

5 MS. SLAJER: I just want to mention,
6 I think Jack was pointing -- Jack is John
7 Ferguson, but he goes by Jack. We're pretty
8 proud of all the letters that we gathered. So
9 we have letters from not just our immediate
10 neighbors on all four sides, but we have letters
11 in the greater neighborhood, and everybody's,
12 you know, excited about not only are we going
13 to have our kitchen on the main floor but we'll
14 have a bathroom on the main floor.

15 So, I mean, we're not the only ones
16 that realize that it is a different kind of
17 place, where you have to go downstairs, or
18 actually in to the courtyard, or the carriage
19 house, to use the facilities.

20 VICE CHAIR ALLEN: Thank you. Thank
21 you. Any additional questions? Is the Board
22 ready to deliberate?

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1 Although ANC -- I'm sorry. I didn't
2 call. Is anybody here from ANC 6B?

3 Anyone here from ANC 6B?

4 (No response.)

5 VICE CHAIR ALLEN: And we have
6 nothing on file, Mr. Moy?

7 MR. MOY: No, ma'am.

8 VICE CHAIR ALLEN: Did the
9 Applicants reach out to the ANC?

10 MR. JONES: Yes. We visited ANC 6B.
11 It's in ANC 6B02, and they voted favorably. And
12 we also met with Capitol Hill Restoration, and
13 they were fine.

14 VICE CHAIR ALLEN: Okay. So if we
15 can get a copy of that for the record. If you
16 can get a copy of that letter for the record,
17 we could go ahead, if you're ready to
18 deliberate.

19 Okay. Based on the record, and the
20 strong support from the Office of Planning, and
21 the strong support from the neighbors, I would
22 move that we approve the relief sought for

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1 18797.

2 COMMISSIONER TURNBULL: Second.

3 VICE CHAIR ALLEN: It's been moved
4 and seconded. Any discussion?

5 (No response.)

6 VICE CHAIR ALLEN: All in favor?

7 (Chorus of ayes.)

8 VICE CHAIR ALLEN: Any opposed?

9 (No response.)

10 VICE CHAIR ALLEN: Okay. It's so
11 moved.

12 Mr. Moy.

13 MR. MOY: Yes, Madam Chair. Staff
14 would record the vote as four to zero, this on
15 a motion of Vice Chair Allen for the relief
16 requested. Second the motion, Mr. Turnbull.
17 Also in support: Ms. Heath and Mr. Hinkle. We
18 have a Board member not present. The motion
19 carries.

20 VICE CHAIR ALLEN: Fine. Mr. Moy,
21 we could do a summary order.

22 MR. MOY: Thank you.

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1 VICE CHAIR ALLEN: And just please
2 remember that we would need the amended *... for
3 the 2001.3 variance as well as the ANC letter.
4 Please make sure we get that supplemented. Thank
5 you.

6 MS. SLAJER: Thank you, Madam
7 Chair.

8 VICE CHAIR ALLEN: Thank you. Thank
9 you for coming down.

10 The next case, Mr. Moy.

11 MR. MOY: That would be Application
12 18796. This is the Application of 1801 4th
13 Street, N.W. LLC. As advertised and captioned
14 for variance relief on the lot occupancy
15 requirements under subsection 403.2, rear yard
16 requirements, under section 404, and side yard
17 requirements under subsection 405.6, to
18 redevelop an existing building in to a flat, in
19 the R-4 District at 1801 4th Street, N.W.

20 Madam Chair, I believe that the
21 Applicant has amended for a nonconforming court
22 relief as well as GFA, but I would ask for a

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1 confirmation from the Applicant.

2 VICE CHAIR ALLEN: All right.
3 Hello, everybody. Could you please introduce
4 yourselves for the record?

5 MS. BATTIES: Good morning. Leila
6 Batties with the law firm of Holland & Knight,
7 on behalf of the Applicant, 1801 4th Street,
8 N.W. LLC.

9 VICE CHAIR ALLEN: Thank you.

10 MR. KONAPELSKY: David Konapelsky
11 with GTM Architects on behalf of the Applicant.

12 MR. SWARM: Good morning Tom Swarm,
13 property owner.

14 VICE CHAIR ALLEN: Welcome. All
15 right. So, Ms. Batties, can you confirm or
16 verify the request, the relief that's being
17 requested, specifically 406.3, and I guess the
18 --

19 MS. BATTIES: Sure. The first
20 variance is to have a building that exceeds the
21 lot occupancy. We're proposing a lot occupancy
22 of 70 percent, more or less, where 60 percent

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1 is permitted under the code. We're seeking a
2 variance for rear yard relief. We have a rear
3 yard of 4 feet, 8 inches, where a minimum of 20
4 feet is required.

5 We are also seeking a variance for
6 the side yard requirements. We have a side yard
7 of three feet where a 10 foot minimum is
8 required. And then finally, there's a court
9 niche on the north side of the property that is
10 nonconforming, so we're seeking a variance for
11 that as well.

12 And really, all of these variances
13 are a result of the property being substandard,
14 as it is now, and because this property is in
15 the LeDroit Park Historic District, we are
16 basically restricted in terms of what can we
17 done on the property in terms of reconstructing
18 a rowhouse that is similar to the one that was
19 there previously.

20 VICE CHAIR ALLEN: Okay. Thanks.
21 And so 408.2 is not -- you are not seeking that?

22 MS. BATTIES: Is that the lot

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1 coverage? I'm sorry. Lot size?

2 VICE CHAIR ALLEN: No. I think that
3 was not necessary. So we're just confirming that
4 it wasn't -- that you didn't suggest it. That's
5 fine. Let me see. I think that the record was
6 relatively complete, and there was an issue, I
7 think, that something was wrong on the affidavit
8 of posting, if I recall.

9 Right. It says that it would entail
10 the redevelopment of an existing building,
11 which obviously this is, you're building a new
12 building, but we did not see that that was
13 significant, since everything else was -- since
14 the project itself was posted.

15 And I guess could you just -- the one
16 question I did have was if you -- and maybe I
17 just missed it -- but how did the building that
18 was there, how did it get torn down, or why was
19 it gone? Was that the one that was the funeral
20 home?

21 MS. BATTIES: No. Actually, Madam
22 Chair, the funeral home is still existing. It's

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1 been converted in to a six-unit apartment
2 building. That sits right at the corner of
3 Florida and Rhode Island Avenue.

4 This property has served as a
5 parking lot, essentially, for the funeral home,
6 for decades. We talked about when the original
7 building was destroyed. We don't have any record
8 of that.

9 VICE CHAIR ALLEN: Okay. I mean, I
10 just was wondering.

11 MS. BATTIES: Yes. I was curious
12 myself.

13 VICE CHAIR ALLEN: All right. Any
14 other questions from the Board? Obviously, you
15 can make a presentation, although I think we're
16 pretty clear on this.

17 But I don't know -- if anybody has
18 specific questions that you would like them to
19 address?

20 COMMISSIONER TURNBULL: Currently,
21 there shows a curb cut going in, which was
22 obviously approved by Department of

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1 Transportation at some point. I take it there's
2 no problem in getting rid of that curb cut?

3 MS. BATTIES: That's correct. The
4 sidewalk will be restored and access will be
5 from the alley to the rear only. Vehicular
6 access.

7 COMMISSIONER TURNBULL: Okay.
8 Thank you.

9 VICE CHAIR ALLEN: Okay. Any other
10 questions by Board members?

11 (No response.)

12 VICE CHAIR ALLEN: As I said, I
13 found the record to be complete, but if you would
14 like to make any statement.

15 MS. BATTIES: I have no
16 presentation. I do want to note that you will
17 not see a letter of support from ANC 1B. We did
18 have a recommendation of approval from the
19 Design Review Committee, ANC 1B's Design Review
20 Committee. The full ANC was supposed to meet
21 last Thursday, but that meeting was canceled for
22 lack of a quorum. So we weren't able to get a

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1 letter of support prior to this meeting.

2 VICE CHAIR ALLEN: But it was on
3 their agenda, and did you reach out --

4 MS. BATTIES: Absolutely.
5 absolutely.

6 VICE CHAIR ALLEN: Okay. Good to
7 know. Thank you. If you have nothing else,
8 Office of Zoning? Office of Planning. Sorry.
9 Planning.

10 MS. THOMAS: Good morning, Madam
11 Chair, members of the Board. Karen Thomas for
12 the Office of Planning. We have nothing further
13 to add. We're just pleased that the Applicant
14 has worked diligently with Historic
15 Preservation in trying to replicate a structure
16 that conforms to the character of the row, and
17 we're happy to see and we're happy to support
18 the addition of a flat in this neighborhood.
19 Thank you.

20 VICE CHAIR ALLEN: Thank you.
21 Applicant, any questions for Office of
22 Planning?

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1 MS. BATTIES: No questions.

2 VICE CHAIR ALLEN: Board, any
3 questions?

4 (No response.)

5 VICE CHAIR ALLEN: All right. Do we
6 have a representative from DDOT?

7 (No response.)

8 VICE CHAIR ALLEN: And I understand
9 that they recommend no objection.

10 And we've already heard from Ms.
11 Batties about the ANC. Anyone here from ANC 1B?

12 (No response.)

13 VICE CHAIR ALLEN: Okay. Are there
14 any parties in support of this application?
15 Parties in support?

16 (No response.)

17 VICE CHAIR ALLEN: Any parties in
18 opposition?

19 (No response.)

20 VICE CHAIR ALLEN: Any rebuttal or
21 final statement?

22 MS. BATTIES: Only to note that we

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1 do have a letter of support from our adjacent
2 property owner at 1803 4th Street, which was
3 submitted in to the record. Nothing further.
4 Thank you.

5 VICE CHAIR ALLEN: Okay. Thank you.
6 Is the Board ready to deliberate on this?

7 Based on the record, and support
8 from Office of Planning, I would move to grant
9 the relief sought.

10 MEMBER HEATH: Second.

11 VICE CHAIR ALLEN: Any discussion?
12 (No response.)

13 VICE CHAIR ALLEN: All in favor.
14 (Chorus of ayes)

15 VICE CHAIR ALLEN: Mr. Moy.

16 MR. MOY: Staff would record the
17 vote as four to zero, based on the motion of Vice
18 Chair Allen, second the motion, Ms. Heath. Also
19 in support, Mr. Turnbull and Mr. Hinkle. A Board
20 member not present. Unanimous vote, Madam
21 Chair.

22 VICE CHAIR ALLEN: Thank you. You

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1 can do a summary order. Thank you. Thank you very
2 much.

3 MS. BATTIES: Thank you so much.

4 VICE CHAIR ALLEN: The next case,
5 please.

6 MR. MOY: The next application
7 before the Board is Application No. 18795. This
8 is the application of Gerard Boquel and Lew
9 Hages, pursuant to 11 DCMR 3103.2.

10 Madam Chair, we'll need
11 clarification on the relief being requested,
12 but as advertised and captioned, it is a
13 variance relief from lot occupancy under
14 section 772, off-street parking requirements
15 under 2101.1, and a variance from the building
16 on alley lots provisions requirement under
17 subsection 2507.3, to allow an alley dwelling
18 in the DC/C-2-C District, premises 2123 Twining
19 Court, N.W., Square 68, Lots 708 to 808.

20 And, again, Staff would request
21 confirmation on the exact relief.

22 VICE CHAIR ALLEN: Thank you. Can

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1 everyone identify yourselves, please? And
2 everybody's been sworn in and given cards, who
3 plans to speak?

4 Can you go ahead and identify
5 yourself? Please make sure your mike is on.

6 MR. SMITH: David Smith. I'm the
7 real estate agent.

8 MR. HAGES: Lew Hages. I'm one of
9 the owners of the property.

10 VICE CHAIR ALLEN: Great. Thank
11 you.

12 MR. SULLIVAN: Marty Sullivan,
13 counsel for the Applicant.

14 MR. FINGEROTH: Ari Fingeroth, the
15 general contractor for the project.

16 VICE CHAIR ALLEN: Okay. Mr.
17 Sullivan, can you please confirm the relief
18 sought, as well as let us know if you are in fact
19 providing parking.

20 MR. SULLIVAN: Yes. I noticed, when
21 I was going through this, in preparation for the
22 hearing, that we didn't self-certify and I

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1 intended to self-certify. So I would like to
2 submit that now. Because the zoning, the
3 referral from the Zoning Administrator was
4 incorrect.

5 The first thing that it provided was
6 special exception relief under 2507.2, and
7 there is no special exception relief available
8 under 2507.2. Regarding --

9 VICE CHAIR ALLEN: So Mr. Sullivan,
10 we don't necessarily need to go through that
11 whole list, if you are going to self-certify,
12 I would think.

13 MR. SULLIVAN: Okay.

14 VICE CHAIR ALLEN: So why don't you
15 provide that to our secretary, and then just go
16 ahead and confirm what relief you are seeking,
17 please.

18 MR. SULLIVAN: Yes. We're
19 requesting relief under 2507.3 for a conversion
20 of a nonresidential structure to residential
21 structure, to one-family dwelling, and an alley
22 lot that does not have 30-foot-wide access all

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1 the way out to the street.

2 We are also requesting lot occupancy
3 relief. Even though the current lot occupancy
4 will be in that decrease, we're removing a small
5 portion of the building and adding a smaller
6 portion there, so because of the process of
7 that, it's technically a change that requires
8 lot occupancy relief. In addition to that --

9 VICE CHAIR ALLEN: And that's under
10 772, is that --

11 MR. SULLIVAN: Yes. That's correct.
12 Under 772.1.

13 VICE CHAIR ALLEN: Okay.

14 MR. SULLIVAN: And then, for the
15 same reason, we're also requesting relief under
16 2001.3 for an addition to a building that does
17 not conform as to lot occupancy.

18 VICE CHAIR ALLEN: Okay. Great. And
19 are you in fact providing parking, so there's
20 --

21 MR. SULLIVAN: We are. There's a
22 two-space garage.

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1 VICE CHAIR ALLEN: That's fine. I
2 just wanted to confirm that.

3 VICE CHAIR ALLEN: Okay. Any
4 specific questions from the Board?

5 COMMISSIONER TURNBULL: Most of my
6 questions would be related to the Office of
7 Planning report again.

8 VICE CHAIR ALLEN: Okay.

9 COMMISSIONER TURNBULL: But we did
10 have an exhibit, there's a note from HPRB, which
11 their second page talks about encouraging you
12 to look at option C, go back and meet with them,
13 and make some changes to the terrace. Have you
14 gone to HPRB to --

15 MR. SULLIVAN: Yes. We have.

16 COMMISSIONER TURNBULL: And do we
17 have drawings reflective of that meeting?

18 MR. SULLIVAN: I believe you do,
19 because the current plan is that Plan C.

20 COMMISSIONER TURNBULL: Could that
21 be somehow confirmed?

22 MR. SULLIVAN: Sure. It took place

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1 a long time ago ,so the only plans I've ever seen
2 are Option C, but we can --

3 COMMISSIONER TURNBULL: So you
4 could submit a letter for the record, stating
5 that in fact the plants we have reflect points,
6 the second and third point of HPRB's request?

7 MR. SULLIVAN: Yes.

8 COMMISSIONER TURNBULL: I mean,
9 part of it was also the HVAC aspect. Did you
10 encourage the Applicant to consider the amount
11 of roof removal such as a different type of HVAC
12 system? Did you respond to that?

13 MR. SULLIVAN: We did, and we did
14 reduce the size and the number of air
15 conditioning units.

16 COMMISSIONER TURNBULL: Okay. All
17 right. I guess I don't -- I think, for the
18 record, I think we'd like to see that that's
19 reflected, that you did do that.

20 VICE CHAIR ALLEN: Thank you, Mr.
21 Turnbull. Mr. Sullivan, I just want to confirm
22 that the relief that you're seeking under

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1 2507.3, as it relates to 3103.5(d), is in fact
2 that you're seeking area variance, because I
3 guess there's some --

4 MR. SULLIVAN: That is correct.
5 Yes. And I wanted to point that out, that a year
6 ago, the Zoning Commission made this
7 distinction between conversions and new
8 construction, and I think laid down a lower
9 standard for conversions.

10 VICE CHAIR ALLEN: Yes, good. Thank
11 you. All right. So again we've looked at the
12 record very carefully. I have to say, this is
13 a very interesting project, one that we don't
14 see every day, for sure, and if you feel there's
15 anything else that you want to add prior to us
16 hearing from Office of Planning or whatever,
17 feel free.

18 MR. SULLIVAN: Thank you. I would.
19 Just to address I think what the main point of
20 the Office of Planning was regarding the
21 variance tests. We've asked the Applicant's
22 real estate agent, an experienced commercial

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1 real estate agent, to testify about the relative
2 value of the residential and the commercial use,
3 and how the commercial use was not really viable
4 any more in this spot because it's surrounded
5 by the residential uses, and just the change in
6 character of this space, and it's a different
7 age, today, if you will. I have that testimony
8 and I can pass, and David Smith is here to give
9 his short testimony on that point. Thank you.

10 VICE CHAIR ALLEN: I would say yes,
11 if you could just keep it relatively short, that
12 would be great.

13 MR. SMITH: Certainly. Thank you.
14 Madam Chair. I am a senior vice president of
15 investment sales and leasing at J Street
16 Companies, a Washington D.C. based commercial
17 real estate firm that has developed properties
18 here, in the District. Over the past 27 years,
19 I've developed quite a bit of knowledge of these
20 type of properties, especially in the Dupont
21 Circle area, where our offices were originally
22 located under our former company's name.

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1 The property in question, 2123
2 Twining Court, had been operated as a commercial
3 building, most recently in the past two years
4 was a bar/nightclub, and before that as a
5 restaurant, and originally built as a carriage
6 house.

7 The area matured, and as this
8 maturation occurred, it was primarily
9 residential, that was thriving within that
10 market and area, and with some commercial facing
11 P Street, which is on the north side of the
12 property.

13 The previous owners were winding
14 down their business and trying to sell the
15 building, and that's when I represented Mr.
16 Hages and Dr. Boquel to purchase the property,
17 and for residential use at that time.

18 And there were no line of commercial
19 bidders. At that point in time, we negotiated,
20 well, below the asking price, and I closed on
21 the transaction at that time.

22 And even since the time of that

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1 closing, what I've been experiencing, not only
2 here but throughout the entire District, is that
3 commercial is becoming very much smaller,
4 offices smaller, retail certainly smaller, and
5 it has to be extremely viable and visible to be
6 -- to sustain itself as a business in the
7 District.

8 So for all of those reasons, you
9 know, I don't see the continued use of the
10 property for commercial use to be viable, and
11 certainly their single family dwelling to be an
12 excellent addition to the neighborhood.

13 VICE CHAIR ALLEN: Okay. Thank you.
14 Anything else, Mr. Sullivan?

15 MR. SULLIVAN: Thank you, Mr.
16 Smith. Just a question for Mr. Hages. When you
17 purchased the property, you assumed you could
18 use it as residential and weren't aware that it
19 was not permitted, as a matter of right, to be
20 converted, is that correct?

21 MR. HAGES: Correct.

22 COMMISSIONER TURNBULL: So your

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1 realtor never presented that to you?

2 MR. HAGES: No.

3 COMMISSIONER TURNBULL: Don't you
4 think you were remiss in pointing that out to
5 them?

6 MR. SMITH: This was in December of
7 2012, and at that point in time it was a change
8 of use, and there were historic issues, et
9 cetera, and a lot of construction issues, and
10 those were all discussed at the time.

11 But there were certainly, at that
12 point in time, residential uses within
13 commercial properties throughout Dupont
14 Circle.

15 COMMISSIONER TURNBULL: But you
16 didn't mention it to them then, that there could
17 be a issue?

18 MR. SMITH: It was two years ago. You
19 know, exactly what I discussed, I just don't
20 recall.

21 COMMISSIONER TURNBULL: Sounds
22 like Ronald Reagan's back. Thank you.

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1 VICE CHAIR ALLEN: Anything else,
2 Mr. Sullivan?

3 MR. SULLIVAN: No. Thank you.

4 VICE CHAIR ALLEN: Okay. Thank you.
5 Office of Planning.

6 MS. ELLIOTT: Thank you, Madam
7 Chairman. Again, Brandice Elliott representing
8 the Office of Planning, and I feel very lucky
9 that Mr. Jackson thought that I was worthy of
10 representing him in this case.

11 So the testimony of Mr. Smith is
12 actually very helpful in clarifying one of the
13 issues that we had in justifying the variance
14 for the residential use. I think one of our big
15 concerns was the fact that, you know, a 30-foot
16 wide alley is required for a residential lot on
17 an alley lot, and we're struggling with why a
18 commercial use couldn't be in this building,
19 given that we have over 40 years of C of Os,
20 showing that businesses have continued to
21 operate here.

22 So I think that the testimony does

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1 help satisfy some of those issues, at least in
2 addressing some of those issues that we were
3 having.

4 If the Board does decide that it
5 would support the residential use on the alley
6 lot, OP would be also willing to support the
7 additional variances that have been requested
8 pertaining to the lot occupancy and the 2001.3.
9 But only to the extent necessary to maintain the
10 original footprint of the building.

11 We haven't heard anything from the
12 Applicant as to why the garage needs to actually
13 be accommodated with an addition. Certainly, it
14 has been reviewed and it's been approved by the
15 Historic Preservation Board.

16 But given that the building is
17 actually going to be gutted, we're not sure why
18 it's necessary to have that addition for the
19 garage. But other than that, I would be happy
20 to answer questions that you may have concerning
21 the report. Thanks.

22 VICE CHAIR ALLEN: Thank you. I have

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1 one question, then if the Board members have any
2 additional questions, and then we'll go to the
3 Applicant.

4 Do you know if any thought was given
5 by Office of Planning, or any review of the
6 Dupont, I guess it's Dupont overlay, and that
7 it's got, I guess a preference for residential
8 uses, or applications in that area?

9 MS. ELLIOTT: I'm sure that that was
10 considered with the report. In fact, Mr. Jackson
11 is probably one of the most research savvy, you
12 know, people that work in our office. But I think
13 that in this case, there was just some
14 additional information that was needed as well.

15 For instance, I know that when I was
16 speaking with Mr. Sullivan out in the hallway,
17 he did point out that there are residential uses
18 surrounding this, so that this would actually
19 kind of be complementary to that, and a little
20 less disruptive than some of the previous
21 commercial uses that have occupied the
22 building.

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1 So I don't think the concern is
2 necessarily about -- it relates to the
3 requirement for a 30-foot alley for the
4 residential use, and I think that that was a big
5 part of our reservation in supporting the
6 application.

7 But again, you know, certainly the
8 use is compatible with what's going on around
9 it, and I think that if the Board chooses to
10 support it, then we can support you on that.

11 VICE CHAIR ALLEN: Okay. Any other
12 questions?

13 MEMBER HINKLE: Yes. Thank you. Mr.
14 Jackson's report notes that he did reach out to
15 the Department of Transportation and Emergency
16 Management Services. Have you heard back from
17 them, or do you know if he has?

18 MS. ELLIOTT: To my knowledge, he
19 hasn't received any additional information from
20 them.

21 MEMBER HINKLE: Thank you.

22 VICE CHAIR ALLEN: Thank you. Any

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1 other questions from the Board? Mr. Turnbull.

2 COMMISSIONER TURNBULL: Thank you,
3 Vice Chair. Ms. Elliott, I'm just still trying
4 to look at this, at the plan, and I think the
5 Applicant needs to answer your question, that
6 you brought up earlier about the garage. I'm
7 just curious about how access -- how easy it is
8 to access the garage, I guess, at this point,
9 in the alley. It's hard to tell. We don't really
10 have a good plot plan that shows entry into the
11 garage, and how that's going to actually be
12 achieved.

13 Did you look at that? Have you
14 reviewed that at all?

15 MS. ELLIOTT: I'm not aware of any
16 --

17 MEMBER HINKLE: It looks like it's
18 kind of like a dead end, and it's hard to tell
19 what really happens at that corner. It looks
20 like there's other garages that may -- it looks
21 like it may be bigger than 15 feet. But it's hard
22 to tell.

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1 MS. ELLIOTT: I have a really
2 terrible copy of a black-and-white GIS map that
3 I'd be willing to share with you, if you want
4 to see how the alleys do wrap around the lot.

5 MEMBER HINKLE: Yes. I wouldn't
6 mind seeing that.

7 (Pause.)

8 VICE CHAIR ALLEN: Any other
9 questions by the Board? Does the Applicant have
10 any questions for Office of Planning? And I
11 would too like to hear your response to Ms.
12 Elliott's question regarding the garage.

13 MR. SULLIVAN: We have no
14 questions. Thank you. Would you like to hear our
15 response now?

16 VICE CHAIR ALLEN: Okay. Sure.

17 MR. SULLIVAN: On the issue of the
18 garage, first of all -- I'll have the contractor
19 talk about it -- but my understanding is that
20 we have a net decrease in the lot occupancy, and
21 they wanted to put two garage spaces in because
22 it's a residential use, and there's no --

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1 because it takes up so much of its lot, even
2 though there's a lot of parking around there,
3 none of it is dedicated to this property.

4 So in order to put those two spaces
5 in, at that area, and the east side of this
6 building was the best location for access to
7 that, they had to remove the stairway and this
8 little one-story shed building that was there.

9 And so they're putting it in within
10 the same footprint that was there before. The
11 practical difficulty came about because they
12 couldn't do that without removing the stairway
13 and that first story shed.

14 So that's the practical -- I don't
15 think that we necessarily -- we couldn't have
16 gone down to 80 percent anyway, while providing
17 the garage. So the idea was provide the garage
18 in the same footprint, and it ended up being a
19 little less of a footprint. But I can have the
20 contractor address that issue, and explain
21 that, and he can also talk about the amount of
22 space there is in order to pull in to those

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1 garage spaces on that side.

2 MR. FINGEROTH: In terms of the
3 parking and access to the parking spaces, right
4 now, at the 21st Street side, north, south, they
5 get a little turned around on. They'd like it
6 to be the east side of the building. Right now,
7 there are two parking spaces that we've using
8 next to the fire escape.

9 I know -- I drive a full-size Chevy
10 pickup truck, and you can make the turn in to
11 that area without even needing a three-point
12 turn. It's my understanding that it's the
13 north-south alley that is what restricts the
14 variance. I could be mistaken on that one. But
15 the east-west. And on the east end of the
16 building there is a tremendous amount of space
17 for maneuvering.

18 In terms of when the architect and
19 the engineer met about the structure, to be able
20 to put the two-car garage in, I know that's when
21 we discussed having to slide that small bump out
22 that the last owners put on to house a walk-in

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1 cooler, had to shift over to the south end of
2 the lot.

3 I know we tried to shrink the massing
4 as much as possible. One other conversation
5 that did come up when we were meeting with the
6 Historic Office for approval. Option A, B, and
7 C that were referred to in one of their notes
8 had different orientations for some outdoor
9 space. Option C had the smallest amount of
10 outdoor space, and one of the comments that
11 Historic made with that -- you could use the top
12 of that bump out addition for some outdoor
13 space, as a railed-off balcony.

14 But I think that's also part of the
15 desire for wanting to keep that space intact.

16 VICE CHAIR ALLEN: Thank you. Any
17 additional questions from the Board for Office
18 of Planning?

19 (no response)

20 VICE CHAIR ALLEN: Or the
21 Applicant?

22 (No response)

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1 VICE CHAIR ALLEN: All right. So we
2 just heard that we did not get anything
3 additional from DDOT, other than a letter of no
4 objection.

5 Is anyone here from DDOT?

6 (No response)

7 VICE CHAIR ALLEN: And then we
8 understand we do not have a letter from the ANC
9 2B. Do you have any discussion on that?

10 MR. SULLIVAN: And I understand, I
11 discovered that as well myself, and we -- they
12 did vote unanimously in support of this. They
13 also unanimously supported a resolution for
14 Historic Preservation as well, and the meeting
15 took place four to six weeks ago. It was the June
16 meeting, actually. So I'm sorry that I didn't
17 follow up and get that. If you can leave the
18 record open, I'm sure I can get that.

19

20 VICE CHAIR ALLEN: Okay. Thank you.
21 Any parties or persons in support of the
22 application?

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1 (No response)

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

4 (No response)

5 VICE CHAIR ALLEN: Mr. Sullivan, do
6 you have any closing remarks you'd like to make?

7 MR. SULLIVAN: No. I just would like
8 to point out that the position of this on an
9 alley lot is extremely unique, because it's not
10 just the back of a property. It really is
11 isolated. And in regard to the outstanding
12 question about Fire and EMS, this is a pretty
13 large alley system here, comparatively
14 speaking, so I wouldn't expect that they would
15 have a problem with that. Other than that, no
16 other comments. Thank you.

17 VICE CHAIR ALLEN: I guess just one
18 last question on the alley. From what I gather,
19 you could go anywhere from 10 to 30, but that
20 it could -- you could lose as much as 15 feet
21 on the alley.

22 Is that -- I'm a little confused by

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1 what is it that you actually think is going to
2 happen in the alley? What size would be left?
3 It says there's a range, as opposed to an actual
4 number that I'm looking at. But maybe you have
5 better -- I don't know. Is it because the alley
6 changes with itself, or is there --

7 MR. SULLIVAN: Why we can't -- why
8 it doesn't comply, you mean, with the --

9 VICE CHAIR ALLEN: No. I was just
10 trying to figure out what exactly --

11 MR. SULLIVAN: Regarding the lot
12 occupancy change?

13 VICE CHAIR ALLEN: No. The alley
14 width.

15 MR. SULLIVAN: It's 30 feet right to
16 the south of it, and then it's 15 feet in the
17 north-south alley right to its west.

18 VICE CHAIR ALLEN: So it's that it's
19 different at different places.

20 MR. SULLIVAN: Yes.

21 VICE CHAIR ALLEN: Yes. I got it.

22 MR. SULLIVAN: Yes. And the smallest

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1 alley's to the north, where there's not much
2 going on.

3 VICE CHAIR ALLEN: Okay. I just
4 wanted to make sure I understood that. Got it.
5 Okay. Thank you. Any other questions by any of
6 the Board members?

7 (No response)

8 VICE CHAIR ALLEN: Okay. Thank you.
9 The pleasure of the Board. Are you
10 ready to deliberate or -- Mr. Turnbull?

11 COMMISSIONER TURNBULL: Sure.

12 VICE CHAIR ALLEN: Any comments?
13 Anyone like to share their thoughts on this one?
14 Go ahead.

15 MEMBER HEATH: I'm inclined to
16 support this request, and you know, I think the
17 project is a really nice one. Speaking
18 architecturally, I like what has been proposed,
19 and I think that they've met the test for being
20 approved for this request. So I would support
21 -- do you want me to make a motion? I will make
22 a motion to support this request for a variance.

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1 MEMBER HINKLE: I'll second that. I
2 think they've proven the case, that this is
3 truly a unique property. I'm familiar with this
4 lot and familiar with the square, and the alleys
5 are pretty extensive in this, and --

6 VICE CHAIR ALLEN: I'm sorry. Say
7 that again.

8 MEMBER HINKLE: The alleys are
9 fairly extensive within this square, and, you
10 know, I struggle with the idea that you could
11 have an intense commercial use at the site, but
12 you can't have a single-family house, and I find
13 that kind of a quirk in the zoning code. So I
14 certainly support this request as well.

15 MEMBER HEATH: One additional thing
16 that I would say with this motion, based on
17 general counsel, is that I'm making a motion in
18 support of this application as self-certified.
19 So I just wanted to add that. Thank you.

20 VICE CHAIR ALLEN: Thank you. Mr.
21 Turnbull, any thoughts, or --

22 COMMISSIONER TURNBULL: No. I could

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1 support this. I just think, for the record, we
2 need -- I think there's three items that have
3 to be submitted. The self-certification, the
4 ANC report, and the HPRB responses to items two
5 and three that they had in, I guess it's our
6 Exhibit 11, on page two of the HPRB report.

7 VICE CHAIR ALLEN: Thank you. Yes.
8 We did get the -- yes, the self-certificate,
9 they just delivered that.

10 COMMISSIONER TURNBULL: That's
11 right. You're right. We did get it.

12 VICE CHAIR ALLEN: Okay. All those
13 in favor? The motion has been moved and
14 seconded. All those in favor, say aye.

15 (Chorus of ayes.)

16 VICE CHAIR ALLEN: Mr. Moy.

17 MR. MOY: Staff would record the
18 vote as four to zero, this on a motion of Ms.
19 Heath to approve the application as she has
20 cited. Second the motion, Mr. Hinkle. Also in
21 support Mr. Hinkle -- or rather, Mr. Turnbull
22 and Vice Chair Allen. And I believe also the

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1 record would be left open to receive from the
2 Applicant addressing the two points in the HPRB
3 letter, as well as a copy of the ANC 2B report.

4 So the motion carries, as I said,
5 four to zero. Unanimous vote.

6 VICE CHAIR ALLEN: Okay. Thank you,
7 Mr. Moy, and I think we can do a summary on this
8 one as well.

9 MR. MOY: Thank you.

10 VICE CHAIR ALLEN: Since there's no
11 opposition. Thank you very much, and
12 congratulations, and if there's no other
13 business, I do want to thank my colleagues for
14 helping me out today. I appreciate it very much.
15 And Ms. Elliott, as well as the staff, always.
16 We appreciate your support.

17 We're adjourned.

18 (Whereupon, at 11:07 a.m., the
19 hearing was adjourned.)

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