

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 21, 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 9:58 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT
MAXINE BROWN-ROBERTS
STEPHEN MORDFIN
MATT JESICK
JOEL LAWSON

The transcript constitutes the
minutes from the Public Hearing held on
October 21, 2014.

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TABLE OF CONTENTS

	<u>PAGE</u>
Application of Timothy and Erin Barley, 18835, ANC-6A	4
Application of Beth Antunez, 18836, ANC-6A	7
Application of 2341 Ontario Road, LLC, 18814, ANC-1C	11
Application of The Preparatory School of D.C., 18792, ANC-4C	17
Appeal of Dr. Joan Evelyn Kinland, 18827, ANC-3C	29
Application of Karl B. and Julie C. Moeller, 18837, ANC-6B	112
Application of 2737 Sherman Avenue, N.W., LLC, and Gwendolyn Rucker, 18838, ANC-1B	182

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

(9:58 a.m.)

CHAIRPERSON JORDAN: We'll move to our hearing calendar. Let's call the first one, please.

MR. MOY: All right. The first case for hearing is Application Number 18835 of Timothy and Erin Barley. This is, Mr. Chairman, a request for a special exception under Section 223, not meeting the rear yard requirements.

CHAIRPERSON JORDAN: Okay. Can we have the persons for this case? Please introduce yourself.

MS. FOWLER: Good morning. Jennifer Fowler.

MR. BARLEY: Good morning, Mr. Chairman. Tim Barley.

CHAIRPERSON JORDAN: Okay. I think this one was pretty straightforward. Does the Board have any issues with this matter? Okay.

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Ms. Fowler, as you know, it appears that we have no issues. You have support from all the required places to have support. It=s up to you to make a determination whether or not you think it=s necessary for you to do a presentation to the Board, but the Board is pretty comfortable what we have in the record would support your request for relief.

MS. FOWLER: Okay. Thank you. We don=t need to make a presentation. Thank you.

CHAIRPERSON JORDAN: Then, we would turn to the Office of Planning and see if there is anything in addition.

MS. ELLIOTT: Good morning, Mr. Chairman, members of the Board. For the record, I=m Brandice Elliott with the Office of Planning. And we are recommending approval of this request and have nothing to add. Be happy to answer any questions you have.

CHAIRPERSON JORDAN: Board, any questions for Ms. Elliott?

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ZC VICE CHAIR COHEN: No.

CHAIRPERSON JORDAN: Okay. Anyone here from Department of Transportation for this case? We do have a letter of no objection to the requested relief from the Department of Transportation.

Is there anyone here from ANC-6A?

ANC-6A? We do have a letter in support from ANC-6A, which we will give great weight, unanimous vote in support of this application.

Is there anyone here wishing to speak in support of the application? Anyone in support? Anyone in opposition? Anyone in opposition? We do have a letter in support from the home at 1231 F Street, the adjoining property neighbor.

Then, we will close the record based upon what is already -- what has been submitted, and I would move that we grant the relief in 18835.

ZC VICE CHAIR COHEN: Second.

CHAIRPERSON JORDAN: Motion made

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and second. All those in favor of the motion, aye.

(Chorus of ayes.)

Those opposed, nay. The motion carries. Mr. Moy?

MR. MOY: Staff would record the vote as five to zero, this on the motion of Chairman Jordan to grant the request for a special exception relief under Section 223, not meeting the rear yard requirements. Seconding the motion, Ms. Cohen; also in support, Ms. Heath, Vice Chairperson Allen, and Mr. Hinkle.

CHAIRPERSON JORDAN: Summary, please. Summary order.

MR. MOY: Thank you, sir.

CHAIRPERSON JORDAN: Good. Thank you. Thank you.

MR. MOY: The next application before the Board is Application Number 18836 of Beth Antunez. Again, this is another special exception relief under Section 223,

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not meeting the lot occupancy, rear yard, and non-conforming structure requirements as advertised.

CHAIRPERSON JORDAN: Okay. Oh, you're still here. Okay. Please identify yourselves for the record.

MS. FOWLER: Good morning. Jennifer Fowler.

MS. ANTUNEZ: Beth Antunez.

CHAIRPERSON JORDAN: Okay. Again, I think this is one that I'm comfortable with in reviewing the record, that the record supports the requested relief. Does the Board have any other issues with this application, anything you need to hear from the applicant? Any concerns?

(Several responses in the negative.)

Mr. Hinkle, are you -- I can give you a second. You're good? Okay.

All right. Again, Ms. Fowler, we believe the record supports presently the

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relief requested. Are you waiving?

MS. FOWLER: Yes. I'll rest on the record. Thank you.

CHAIRPERSON JORDAN: Okay. Then, we'll turn to the Office of Planning for any additional input.

MS. BROWN-ROBERTS: Good morning, Mr. Chairman and members of the Board. Maxine Brown-Roberts for the record.

And I also have no additional information regarding the BZA case and rest on the record. Thank you.

CHAIRPERSON JORDAN: Okay. Thank you.

Board, any questions for Office of Planning?

ZC VICE CHAIR COHEN: No.

CHAIRPERSON JORDAN: Okay. All right. Applicant, any questions for Office of Planning?

MS. FOWLER: No, thank you.

CHAIRPERSON JORDAN: Anyone here

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from the Department of Transportation for this case? We do have a letter of no objection from the Department of Transportation supporting this application.

Anyone here from ANC-6A on this case? We do have a letter of support from ANC-6A, unanimous letter in support of this application.

Is anyone here wishing to speak in support of the application? Anyone here wishing to speak in support? We have several letters from adjacent neighbors, property owners. There is at least three of them from 1417, 1421, and 1423 F Street, which we appreciate people weighing in on this one.

Anyone wishing to speak in opposition? Anyone wishing to speak in opposition?

Then, we will close the record, and I would move that we grant the relief requested in 18836.

MEMBER HEATH: Second.

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CHAIRPERSON JORDAN: Motion made and second. Any additional discussion? All those in favor, aye.

(Chorus of ayes.)

Those opposed, nay. The motion carries. Mr. Moy?

MR. MOY: Yes, sir. Thanks. Staff would record the vote as five to zero, this on the motion of Chairman Jordan to approve the application requesting relief under Section 223, not meeting lot occupancy, rear yard, and nonconforming structure requirements. Seconding the motion, Ms. Heath; also in support, Ms. Cohen, Vice Chairperson Allen, and Mr. Hinkle. The motion carries, sir.

CHAIRPERSON JORDAN: Summary, please.

MR. MOY: Thank you.

CHAIRPERSON JORDAN: Let=s call 18814, I believe. Yes, let=s call that one.

MR. MOY: Okay. That, again,

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would be Application Number 18814. This is the application of 2341 Ontario Road, LLC. This is a request for special exceptions. This is what has been advertised from the zoning boundary crossing a lot provisions under 2514.2, roof structure provisions under Subsection 411.11, and this is property at 2341 Ontario Road, Northwest.

CHAIRPERSON JORDAN: Okay. Thank you. Please identify yourselves.

MR. CRONIN: Good morning. Christian Cronin.

MR. COLLINS: Christopher Collins with Holland & Knight.

MS. BLOOMFIELD: Jessica Bloomfield with Holland & Knight.

MR. SMITH: Norman Smith, Norman Smith Architecture.

CHAIRPERSON JORDAN: Okay. Thank you. I don't see any issues with this one either, in my review of the record. I don't know if the Board has any other issues or

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things they need to drill down with this applicant on?

Okay. I think, Mr. Collins, you know how we operate. I think we are in agreement that the record supports the application for relief. Are you willing to waive? Do you want to put on a presentation? Do you want to step out there?

MR. COLLINS: We are happy to answer any other questions that the Board may have.

CHAIRPERSON JORDAN: Okay. Then, let's turn to the Office of Planning and see if there is anything in addition to what -- any change to their already recommended report.

MS. BROWN-ROBERTS: Good morning, Mr. Chairman, and members of the Commission. Again, Maxine Brown-Roberts.

The project manager on this case is Megan Rappolt, and she is a new addition to the office, and we'd just like to introduce

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her to you today.

CHAIRPERSON JORDAN: Welcome.
Welcome.

MS. BROWN-ROBERTS: Okay.

CHAIRPERSON JORDAN: Anything --
yes, go ahead.

MS. RAPPOLT: We'll just stand on
the record. Thanks.

CHAIRPERSON JORDAN: Okay. Board,
any questions for OP? Yes, Ms. Cohen?

ZC VICE CHAIR COHEN: Yes. I
don't know. Maybe I don't have the
appropriate record, but I thought Demian and
Wilbur was the architect for this? No?

MR. SMITH: I'm the architect for
it. Norman Smith.

CHAIRPERSON JORDAN: 18814?

ZC VICE CHAIR COHEN: Yes. Okay.
No, I have a different -- 18814, you said?

CHAIRPERSON JORDAN: Yes, yes.

ZC VICE CHAIR COHEN: Okay. Thank
you.

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CHAIRPERSON JORDAN: All right.

ZC VICE CHAIR COHEN: Getting used to my computer.

CHAIRPERSON JORDAN: Anyone who -- we've been pushing automation. As you know, we used to come in with stacks of papers and files, so we've been moving to an electronic process and we're all still trying to get our arms around it.

Anyone here from DDOT on this case? We do have a letter of no objection from Department of Transportation.

Anyone here from ANC? Which ANC is this? Which ANC is that?

MR. MOY: 1C, sir.

CHAIRPERSON JORDAN: Anyone here from ANC-1C? We do have a letter of support from ANC-1C, and we understand an agreement has been reached in discussion with the applicant on -- and they voted in support of this application.

Anyone here wishing to speak in

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support of this application? Anyone here wishing to speak in support?

Anyone in opposition?

Then, we would turn back -- I would close this record based on what has been submitted, and I would move that we grant the relief requested in 18814. Any discussion? All those in favor, aye.

(Chorus of ayes.)

Those opposed, nay. The motion -- what, I didn't get a second?

MEMBER HEATH: I second it.

CHAIRPERSON JORDAN: Okay. Well, quick, right? You know, you guys are usually racing to hit the second. You have to see them up here. It's like go for the second, go. So now you all are deferring to one another.

Okay. So we'll do it again. So motion has been made, and it has been properly seconded by?

MEMBER HEATH: Me. Marnique.

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CHAIRPERSON JORDAN: Okay.

MEMBER HEATH: Second.

CHAIRPERSON JORDAN: All right.

All those in favor of the motion, aye.

(Chorus of ayes.)

Those opposed, nay. See, we did do the nays. The motion carries. Mr. Moy?

MR. MOY: Yes, sir. Staff would record the vote as five to zero, this on the motion of Chairman Jordan to approve the relief requested. For the record, I neglected to mention earlier this application was amended for 14 apartment houses as well as adding relief under Section 1403.1, special exception.

Seconded the motion -- seconding is Ms. Heath. Okay. Also in support, Ms. Cohen, Vice Chairperson Allen, and Mr. Hinkle.

CHAIRPERSON JORDAN: Summary, please.

MR. MOY: Yes, sir. Thank you.

CHAIRPERSON JORDAN: Okay. Then,

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let=s call 18 -- thank you very much -- 18792.

MR. MOY: Okay. That would be Application 18792 of The Preparatory School of D.C.

CHAIRPERSON JORDAN: Yes.

MR. MOY: Here, Mr. Chairman, this is a request for a special exception for a private school and, as captioned, for 120 students and 10 staff under Section 206 at property 4501 16th Street, Northwest.

CHAIRPERSON JORDAN: Great. Welcome. Please identify yourselves.

MS. NORTH: Betty North, Preparatory School.

MR. REAVIS: Richard Reavis, Preparatory School.

CHAIRPERSON JORDAN: The last name again?

MR. REAVIS: Reavis.

CHAIRPERSON JORDAN: Reavis. Okay.

MR. ALUKO: Shane Aluko, Clifford

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Botham.

CHAIRPERSON JORDAN: Alugo?

MR. ALUKO: Yes. Aluko.

CHAIRPERSON JORDAN: Aluko. Spell that for me.

MR. ALUKO: A-L-U-K-O.

CHAIRPERSON JORDAN: Okay. Ms. North, you are -- what=s your -- let=s go back again and tell us your relationship.

MS. NORTH: The Director.

CHAIRPERSON JORDAN: You=re the Director of the school. Okay.

MS. NORTH: Yes. Owner.

CHAIRPERSON JORDAN: And an owner?

MS. NORTH: Yes.

CHAIRPERSON JORDAN: Okay. Mr. Reeves?

MR. REAVIS: Vice Principal.

CHAIRPERSON JORDAN: Reavis. Vice Principal. Okay. Mr. Aluko?

MR. ALUKO: Attorney with Clifford Botham.

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CHAIRPERSON JORDAN: Must be cousins to -- okay. So we've corrected the issue with the affidavit posting. We actually posted it, and it's all in. That's the reason why we didn't go forward before. I think this is one where the only issue that we see is there's just two questions.

I think we generally deal with the Office of Planning. Let me kind of take this out and go Planning first, and then come back to the applicant, because I think the Board is there -- at least I am -- and there is just two issues that we need to kind of resolve. So would you identify -- we'll go to Office of Planning for --

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

CHAIRPERSON JORDAN: Mr. Mordfin, we have a couple of issues. Let me ask you -- let me take the easy one first. In the proposed conditions, it says that AThe

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applicant shall utilize offsite play area on Arkansas between Upshur and@ -- is it Allison?

So what are you saying? Are you saying that they have to -- they have other -- they have ability to have some play area there on the property, right?

MR. MORDFIN: Well, this is for outdoor play area, and the applicant did not submit a plan depicting where this outdoor play area would be or even indicate that they would have it. They indicated to me that they were going to take the children to this public park.

CHAIRPERSON JORDAN: Okay.

MR. MORDFIN: So that was the reason for that.

CHAIRPERSON JORDAN: Okay. Let=s find out. So what is -- where is the play area, the outside play area for the children?

MS. NORTH: It=s about a block and a half away from the school. It=s a rec center, and that=s where the kids go.

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CHAIRPERSON JORDAN: So there is nothing on the --

MS. NORTH: But we don=t -- we don=t have anything at the present. Maybe in years to come.

CHAIRPERSON JORDAN: Okay. That=s --

MS. NORTH: But right now, no.

CHAIRPERSON JORDAN: So if you do take them outside, they have to go offsite to this --

MS. NORTH: To the play area, yes.

CHAIRPERSON JORDAN: To the play area. Okay.

MS. NORTH: Yes.

CHAIRPERSON JORDAN: Got it. Then let me turn back, again, to Mr. Mordfin and ask the question about -- there seems to be -- the applicant is requesting 120 students, and your recommendation is 100. Can you explain why?

MR. MORDFIN: The applicant

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subsequently submitted information to the Office of Planning and indicated 100, which is why I put down 100.

CHAIRPERSON JORDAN: Okay.

MR. MORDFIN: So you=re okay with 120 as --

CHAIRPERSON JORDAN: Yes. And that=s where you are, you=re still asking for 120?

MS. NORTH: If it=s possible, yes.

CHAIRPERSON JORDAN: Okay. No, we just have to resolve these potential issues, and we certainly give great weight to Office of Planning=s recommendation. So it=s important that they are on board or know what=s going on.

MS. NORTH: May I ask a question, please?

CHAIRPERSON JORDAN: You can. Are you sure?

MS. NORTH: If in the future -- are we allowed to, if it=s permitted by the

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church, to put a playground for our preschoolers on the property? Is that something we have to redo?

CHAIRPERSON JORDAN: I just don=t know how -- what would be the zoning requirement. So that=s something I=m not going to provide -- we don=t provide --

MS. NORTH: Okay. That=s okay.

CHAIRPERSON JORDAN: -- that kind of -- answers to those questions.

MS. NORTH: All right. Thank you.

CHAIRPERSON JORDAN: Okay. So, Board, is there any issues or questions we have? I think we resolved -- to my understanding.

Okay. So you have the opportunity to do a presentation. I trust, to let you know, that I don=t think it=s necessary. The only thing you can do is probably go down, but at least stay where you are. So we=re going to take your head nodding that you=re waiving your presentation. Okay?

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MS. NORTH: Yes.

CHAIRPERSON JORDAN: Is there anything else from Office of Planning that you want to input?

ZC VICE CHAIR COHEN: I just want to ask the applicant, you did see the Office of Planning=s comments.

MS. NORTH: Yes, we did. We read through them.

ZC VICE CHAIR COHEN: And you agree with all of them?

MS. NORTH: Yes.

ZC VICE CHAIR COHEN: Okay. Thank you.

MS. NORTH: You=re welcome.

CHAIRPERSON JORDAN: Well, we=ve got a difference in the number of employees. Thank you, Ms. Cohen. That=s one I didn=t catch. The number of employees -- we had not to exceed 10, and then we have not to exceed eight. Is there a fixed opinion on that, Mr. Mordfin?

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MR. MORDFIN: My understanding was that, you know, while we were working on the application they changed it to eight, which is the reason that I put down eight.

MS. NORTH: Yes. Because there=s eight.

CHAIRPERSON JORDAN: Okay. So you don=t need 10.

MS. NORTH: No.

ZC VICE CHAIR COHEN: But with additional children, the 20 additional children, you wouldn=t need more employees?

MS. NORTH: Well, yeah, but they will be, like, part-time people. So --

CHAIRPERSON JORDAN: That=s okay. I got you. Okay.

MS. NORTH: Okay.

CHAIRPERSON JORDAN: All right. Mr. Mordfin, anything else we need to --

MS. NORTH: Thank you.

MR. MORDFIN: I have nothing else, sir.

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CHAIRPERSON JORDAN: Thank you.
Anyone here from Department of Transportation?
There was some type of -- what was their
condition? Because I -- I missed it.

ZC VICE CHAIR COHEN: Okay. The
conditions from DDOT. APickup and dropoff
shall occur curbside in front of the school
along Allison Street. Appropriate curbside
signage is needed. And the applicant shall
work with DDOT=s Safe Routes to School
Coordinator to establish curbside signage.@

CHAIRPERSON JORDAN: And the
applicant is aware of the requirements of
Department of Transportation?

MS. NORTH: Yes. We have been
communicating.

CHAIRPERSON JORDAN: Okay. All
right. Do we have an ANC letter on this? Is
that the one that -- all right. So we do have
a recommendation from ANC-4C, is it,
recommending approval.

Is there anyone here wishing to

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testify in support of this application?
Anyone wishing to testify in support?

Anyone wishing to testify in
opposition?

Then, we will close the hearing,
and I would move -- well, let me offer these -
- I would move that we grant the relief
requested with the following conditions --
that the number of children will not exceed
120; that the number of employees shall not
exceed 10; that the other conditions, as
proposed by the Office of Planning, be
implemented, as well as the conditions offered
by the Department of Transportation be
included.

VICE CHAIRMAN ALLEN: Second.

CHAIRPERSON JORDAN: Motion made
and second. Any discussion? All those in
favor of the motion, aye?

(Chorus of ayes.)

Those opposed, nay. The motion
carries. Mr. Moy?

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MR. MOY: Staff would record the vote as five to zero, this on the motion of Chairman Jordan to approve the application for the relief under Section -- what did I say -- 206. And this is for 120 students. And some clarity here for me, Mr. Chairman. Was that for eight faculty staff, or 10?

CHAIRPERSON JORDAN: Ten.

MR. MOY: Ten.

CHAIRPERSON JORDAN: Ten, ten.

MR. MOY: Okay. We bumped it up to 10. Okay. Ten. And seconding the motion is Vice Chair Allen; also in support, Ms. Cohen, Ms. Heath, and Mr. Hinkle. Motion carries, sir.

CHAIRPERSON JORDAN: Summary, please. Summary order.

Very good. Thank you.

MR. REAVIS: Thank you.

MS. NORTH: Question. What do we do now in order to get the --

CHAIRPERSON JORDAN: Why don=t you

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go across the hall and talk to the Office of Zoning. They'll tell you how we --

MS. NORTH: Okay.

CHAIRPERSON JORDAN: -- process it.

MS. NORTH: Thank you. You all have a blessed day.

CHAIRPERSON JORDAN: You, too. Thank you.

Okay. I guess we have to go to -- well, all right. I'm being pushed to take a break. Five minutes? Let's do five minutes. (Whereupon, the above-entitled matter went off the record at 10:20 a.m. and resumed at 10:25 a.m.)

CHAIRPERSON JORDAN: Okay. Folks, let's go back into session, please.

Would you please call 18827?

MR. MOY: Yes, sir. The next case before the Board is Appeal Number 18827. This is of Dr. Joan Evelyn Kinland, which is appealing the decision of the Zoning

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Administrator to allow child development center and religious or clerical residence use in the R-1-B district at premises 3855 Massachusetts Avenue, Northwest.

CHAIRPERSON JORDAN: Thank you. All right. Please introduce yourselves, please. Let's start to my right.

MR. POSTULKA: John Postulka, Assistant General Counsel, DCRA.

MR. LeGRANT: Good morning. Matthew LeGrant. I'm the Zoning Administrator at DCRA.

PASTOR OWENS: Hello. Dave Owens, Pastor of Embassy Church.

MR. SILVEIRA: Victor Silveira, ANC-3C07.

MR. SULLIVAN: Good morning. Marty Sullivan on behalf of the applicant, or the appellant. Sorry.

MS. BOUCHER: Maureen Boucher, daughter of the applicant -- appellant.

CHAIRPERSON JORDAN: Your name

again?

MS. BOUCHER: Maureen Boucher.

CHAIRPERSON JORDAN: Okay. This matter is before us on an appeal filed by the appellant to the challenge the decision of the Zoning Administrator regarding the -- allowing a child development center and use of residence at the property at 3855 Massachusetts Avenue, Northwest.

We have reviewed the briefs submitted by the parties, and one issue that we need to see if we really have jurisdiction in the issue on this is the timeliness of filing this appeal. I'm going to ask that DCRA, Mr. Postulka, will go ahead and present that. And then, we also need to hear from you, Mr. Sullivan, because depending on how we handle this particular issue is whether or not we need any other evidence going forward.

Is that okay with you, Board? Is that -- okay. All right. Go ahead.

MR. POSTULKA: Thank you. Our

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position is that the appeal of that issue is not timely. A building permit was issued in August 2011 allowing the property to be converted to a child care center. About a month later, a certificate of occupancy was issued authorizing that that premises be used for a child development center.

This appeal was not filed until almost three years later. Because appeals must be filed within 60 days of the zoning decision, our position is that the appeal is not timely. And even though the appellant did make complaints to the Zoning Administrator, that did not restart the clock running because it was simply a reaffirmance of the earlier zoning decision.

CHAIRPERSON JORDAN: Let me ask a question. Did the 2011 building permit indicate a child development center?

MR. POSTULKA: Yes. It says convert school to child care center.

CHAIRPERSON JORDAN: And the 2001

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C of O has it on there also. I think that=s what it --

MR. POSTULKA: That=s right.

CHAIRPERSON JORDAN: And the building permit, to your knowledge, was posted as well as the C of O?

MR. POSTULKA: I can=t speak to that as far as what the Embassy Church did with the building permit, but the child --

CHAIRPERSON JORDAN: Can we find out from Reverend Owens, that was posted?

PASTOR OWENS: They were posted where the center was being located.

CHAIRPERSON JORDAN: The other issue for me is, I wasn=t certain about the letter that came that was sent to the Zoning Administrator. What was that date? Was that 2011? Or 2013? Was it 2013, the letter that was sent?

MR. POSTULKA: From the appellant complaining about the --

CHAIRPERSON JORDAN: Yes.

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MR. POSTULKA: I don=t have a copy of that letter with me, but --

CHAIRPERSON JORDAN: But was it a letter sent by the appellant?

MR. POSTULKA: Yes. Before -- I believe it was sometime early 2014.

CHAIRPERSON JORDAN: I thought it was 2013, and then another letter came --

MR. POSTULKA: Oh, I=m sorry. It was. It was September 13, 2013.

CHAIRPERSON JORDAN: And that letter inquired at that time about the child development center.

MR. POSTULKA: Right.

CHAIRPERSON JORDAN: Now, what I=m confused about in the record, did DCRA or Mr. LeGrant give a response in 2013?

MR. POSTULKA: 2014.

CHAIRPERSON JORDAN: So nothing happened with that in 2013, not until the May something response in 2014, would that be correct?

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MR. POSTULKA: That=s right.

CHAIRPERSON JORDAN: Okay. Okay.

Anything else you want to --

MR. POSTULKA: No.

CHAIRPERSON JORDAN: -- say at this point? Mr. Sullivan, please?

MR. SULLIVAN: Yes. Thank you, Mr. Chairman. Martin Sullivan from the law firm of Sullivan & Barros here on behalf of the appellant.

CHAIRPERSON JORDAN: Let me give you -- I=m sorry. Let me give you the opportunity -- I did elicit testimony from Reverend Owens -- if you need to cross on that.

MR. SULLIVAN: Okay.

CHAIRPERSON JORDAN: So if you want -- do you want to --

MR. SULLIVAN: I=m sorry. You say you want to have him do testimony now?

CHAIRPERSON JORDAN: He gave testimony.

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MR. SULLIVAN: Oh.

CHAIRPERSON JORDAN: He provided me information about the posting, and I didn't know if you wanted to cross on that.

MR. SULLIVAN: No. Thank you.

CHAIRPERSON JORDAN: Okay.

MR. SULLIVAN: The issue of timeliness in this case relates to an unlawful use. And in that sense, the issue of timeliness is intertwined with the substance of the case. If the Board finds that this is an unlawful use, then the C of O should be revoked at any time. That's what the case law says. If the Board found that it was a lawful use, then the timeliness argument might have some sway.

But the Court of Appeals has ruled that, and this is a quote, AIssuance of a C of O shall not be construed as an approval of a violation of the provisions of the applicable zoning regulations.@ That's Borgoni.

And then in another statement from

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the case, Curie, AIf the C of O were construed to authorize such a use without the required special exception, it would have been invalid and subject to revocation as having been issued in error.@ This C of O was issued in error. It relates to an unlawful, illegal use, and it is in violation every day that it continues.

CHAIRPERSON JORDAN: Were those cases on timeliness, or was it an overall act of the Board that took action once it found that it was illegal? Was the issue raised in those on timeliness?

MR. SULLIVAN: No. The issue goes to the -- it doesn't go to timeliness. The issue goes to the effect of a C of O. In effect, they're saying a C of O is not a document that makes an illegal use legal.

So, in that sense, once we request and point that out of the Zoning Administrator, he has now made the decision not to revoke what he knows to be an unlawful

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use, which is -- it's obviously an unlawful use.

CHAIRPERSON JORDAN: Okay.
Resolve that with Baskin, then.

MR. SULLIVAN: Baskin relates to area variance relief. It's the 900-foot rule, so --

CHAIRPERSON JORDAN: Wasn't Baskin directly dealing with the timeliness issue?

MR. SULLIVAN: It was. Yes.

CHAIRPERSON JORDAN: So the case you just -- the two cases you just cited, resolve that with Baskin for me. That was directly on point for timing.

MR. SULLIVAN: Because this relates to an illegal use that is ongoing. Baskin related to construction work that was an area violation of the zoning regulations. It was not a use violation.

CHAIRPERSON JORDAN: Was the issue -- was not the issue before the court the issue regarding the timeliness of the appeal?

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MR. SULLIVAN: Yes. But the point in that was, when is the starting point?

CHAIRPERSON JORDAN: Absolutely.

MR. SULLIVAN: In this case, the starting point is when the Zoning Administrator has failed to revoke an unlawfully issued C of O.

CHAIRPERSON JORDAN: In the two cases that you cited, was the issue there the timeliness of when the clock started running? Or was it overall seeing --

MR. SULLIVAN: No, it=s overall. It=s saying that they have the ability to revoke the C of O. And so that=s what makes the May 16, 2014, letter the applicable date, because that=s the date on which the Zoning Administrator made the determination that AI=m not going to revoke this C of O, even though it=s an unlawful use.@ It=s an 88 child-student -- child development center in the R-1 zone.

It also goes to the impact of this

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use, and how obviously unlawful it is.

Now, in his brief he said it would be an absurd result to be able to appeal this at any time, but it=s not. It=s a one-time shot, because if we appeal this and the Board determines that it=s an unlawful use, then the C of O should have been revoked and that decision was made in error, the decision to not revoke it.

If the Board decides on the substance that this is a lawful use, well, then, there can be no more appeal. So either way there can only be one challenge of the use of the C of O.

CHAIRPERSON JORDAN: So under your scenario that upon -- until the time that a potential appellant makes a request for another decision, that the Board then has the right and determination to revoke whatever action by the Zoning Administrator.

So let=s say we have a building that has been constructed. It=s been up, oh,

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a number of years. And so now -- and the applicant comes in and makes a request to challenge the decision of the building permit or the C of O, and the Zoning Administrator disagrees, and so an appeal is filed.

So this building has been up, operating, and so at any point a person can come in and challenge. Is that what you're offering the Board, Mr. Sullivan?

MR. SULLIVAN: The Court of Appeals has made a clear delineation between -
-

CHAIRPERSON JORDAN: Absolutely.

MR. SULLIVAN: -- a building --

CHAIRPERSON JORDAN: So they should have known --

MR. SULLIVAN: -- and a use. And the use -- and this is an existing building. This use was not created as a result of building a building. But they have made a clear delineation that a use is something that is much more impactful and much more important

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than an area violation.

And while an area violation comes and goes, it=s made -- the violation takes place on the date that that building is built.

The use violation continues forever and can be revoked at any time. And so his failure to revoke it, notifying us on May 16th of that decision, is what we are appealing. That=s the date we=re going from.

Now, we do -- I can go into the argument about an unsophisticated appellant as well, not knowing -- there was a public school use there before, which was permitted, and then it was converted into a child development center use. They didn=t know until they hired local counsel, but -- that it was completely not permitted to have a child development center here.

CHAIRPERSON JORDAN: I think you need to make whatever argument you need to make.

MR. SULLIVAN: On the second

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point, on the point of the dormers, the dormitory use, whatever it is, the multitude of young adults that live in this building, there is no C of O for that use. There is no date.

So that date has to be -- the appeal is definitely timely on that point, and that date is May 16th as well.

But can the Board say that this use is now permitted forever, even though it's illegal? We know there's an unlawful use out there. After all the land use battles that have taken place over child development centers and private schools in the District, you can put up an 88-child child development center and it go on forever.

Can they increase it to 250 students? Is there any restriction at all? And we're not asking that it be revoked immediately. We're asking that they go through the special exception process that every other child development center use has

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had to go through.

CHAIRPERSON JORDAN: All right. Is there anything else you want to present to the Board? Let me ask, was the building permit and -- for Ms. -- is it Ms. Foucher?

MS. BOUCHER: Boucher.

CHAIRPERSON JORDAN: Boucher or Voucher?

MS. BOUCHER: Boucher with a B.

CHAIRPERSON JORDAN: Boucher, okay. Do you have knowledge of, was this property posted with the building permit and C of O? Do you have any knowledge of that?

MS. BOUCHER: No, it was not.

CHAIRPERSON JORDAN: It was not?

MS. BOUCHER: Not.

CHAIRPERSON JORDAN: In 2011?

MS. BOUCHER: No. We actually had police try to help us mitigate some of this. There was a playground built next to our house without permits, and the -- when we saw this being constructed, we called the police, as

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there is no permits, no one is explaining to us what=s going on.

My mother is private practice. She=s a psychiatrist. It=s right next to this playground. We have lived there for 25 years, and we=re thinking, oh my goodness, they=re putting a playground right next to our house. How is this going to impact us?

And the officer, on two different occasions, had overseen communications with the pastor, with the head of the preschool, and with the individual who built the playground, the head of Genops Construction. And they told us that they had permits, and that the police officer negotiated that they were supposed to give us these permits. They weren=t posted anywhere. They said that part of this would be that they would -- we actually tried to solve everything with --

CHAIRPERSON JORDAN: So you weren=t -- were you given the permits then?

MS. BOUCHER: No. We were never

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given the permits. They were never posted, not by the door where the child care center is, and not by where they built the playground on public space.

CHAIRPERSON JORDAN: Did you contact DCRA to inquire about the permits?

MS. BOUCHER: Yes.

CHAIRPERSON JORDAN: And?

MS. BOUCHER: And we were told that within the week someone would be out, and that=s when we hired -- within that week we hired attorneys.

CHAIRPERSON JORDAN: When was this?

MS. BOUCHER: This was -- the playground has been there for almost two -- whenever the playground was built was the first time that it was impacting us more so than it ever had before.

CHAIRPERSON JORDAN: I=m talking about the building which houses the child development center.

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MS. BOUCHER: 2011.

CHAIRPERSON JORDAN: Okay. And is that the same -- the playground came about the same time?

MS. BOUCHER: I believe the playground came later than that.

CHAIRPERSON JORDAN: Okay. And coming back to the child development center building itself --

MS. BOUCHER: There was nothing posted on the doors. There has never been a permit in any window or door.

CHAIRPERSON JORDAN: Okay. You went to the facility yourself and --

MS. BOUCHER: Yes.

CHAIRPERSON JORDAN: Okay.

MS. BOUCHER: I used to go to the church with my friends growing up.

CHAIRPERSON JORDAN: Okay. In 2011?

MS. BOUCHER: Uh-huh.

CHAIRPERSON JORDAN: Mr. Sullivan,

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anything else you need to --

MR. SULLIVAN: Yes. I would like to -- Ms. Boucher has testimony prepared that=s less than five minutes, and a lot of it relates to some of the issues that you might be considering on timeliness.

CHAIRPERSON JORDAN: Got it. Thank you. Any cross-examination you would like to ask?

MR. POSTULKA: Yes. When were you first aware that a child development center was being operated in the church?

MS. BOUCHER: You mean -- okay. Walking my dog, when I started seeing children appearing at the building.

MR. POSTULKA: How long ago was that?

MS. BOUCHER: A couple of years ago.

MR. POSTULKA: Okay. No further questions.

CHAIRPERSON JORDAN: When you

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learned a couple of years ago, what, if anything, did you do?

MS. BOUCHER: We -- well, we inquired about it. We've actually been supporters of Dave Owens and the church with all of the charter schools that he has had consistently, while the neighborhood has been opposed to the charter schools for various reasons. And we have always supported -- I'm a teacher. I always support education. We love children. My mom is a child psychiatrist.

But this is the -- when this switch happened -- it's not a charter school; it's a daycare center. When it originally started, it was very small and didn't impact us.

CHAIRPERSON JORDAN: So a couple of years ago you knew of the child development center. What did you do?

MS. BOUCHER: Well, what I'm -- a couple of years ago -- we're thinking about it

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this way. It=s 2011. My parents are both senior citizens.

CHAIRPERSON JORDAN: But you knew about the child development center two --

MS. BOUCHER: I don=t know what to do as a 24-year-old individual. It wasn=t until all of this started happening that I learned about your Board, I learned about some of the case law, I learned about how to go about a process to try to help my family obtain some semblance of privacy and normalcy in our own home.

CHAIRPERSON JORDAN: Yeah. I understand that, and I certainly have sympathy for that. But everybody -- and I don=t agree with it, because I have had some cases myself which it was alleged that, you know, people had an affirmative duty to understand the law, and blah, blah, blah, blah, and there are some exceptions to that. But I=m just saying generally what the standard is, and I just need to know the facts of when you knew, and

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what have you.

And so you knew in 2011, but you didn't know what to do at that point. You said something about --

MS. BOUCHER: Well, there was no reason for us to think that it would be any different than any of the other charter schools. We -- there is, you know, so much -- kids are kids. They play, they have fun. There's -- we want the church to be able to function and -- as they would, however monetary income they need, which is -- we have always been supporters of them.

And it wasn't -- again, it wasn't until this impacted us greatly that it became a bigger issue. So I don't -- I can't say, AHere is the time that this -- this is the day that I walked over and I saw this happen,@ because I don't -- I can't tell you the exact date.

I can tell you that I have made many lasting friendships with people from the

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charter school that was run next door. I --

CHAIRPERSON JORDAN: Let me ask you, when did you -- when did you first obtain a lawyer?

MS. BOUCHER: Over -- is it a year ago now? It=s --

MR. SULLIVAN: I was retained in May of 2014 after --

CHAIRPERSON JORDAN: Yeah, I understand. But she --

MR. SULLIVAN: -- after the letter.

CHAIRPERSON JORDAN: -- testified that she retained a lawyer.

MR. SULLIVAN: She had retained a lawyer in 2013, a Bethesda lawyer in 2013. I think that=s -- if I might add in, that=s a critical part of this, that there was no -- it was not -- no use, and then all of a sudden the use. It appeared to be a continuation, and they wouldn=t have known until I told them, that there is not a continuation that=s

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permitted.

CHAIRPERSON JORDAN: Yeah. I understand all that. I'm just trying to get the facts as we go through this on this particular, very key issue on this case. And so, as you know, Aknew@ and Ashould have known@ and the ability to -- whether or not you raise it, and when you raise it, is very important in this case. So we need to drill down on the facts of what that is as we decide how to move forward.

Is there any additional cross-examination you want to make?

MR. POSTULKA: No.

CHAIRPERSON JORDAN: Okay. We'll make a determination as to whether or not this is timely. Let's proceed on and hear the -- yes, I'm sorry, the ANC. Yeah, you do have -- make sure your mic is on.

MR. SILVEIRA: If at some point in time the ANC --

CHAIRPERSON JORDAN: Yes.

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MR. SILVEIRA: -- which I represent could have the chance to do so, whenever you're ready.

CHAIRPERSON JORDAN: Why don't you -- if you have something to say about this particular issue on timeliness, and then we will move on to the regular hearing. But do you want to talk about the things we have talked about right now? Or do you want to wait? Because we're going to go through the regular --

MR. SILVEIRA: It's so technical that I'm not sure, but --

CHAIRPERSON JORDAN: Okay. I'll tell you what, let's go through the regular process on the hearing, and we'll allow you to weigh in on both issues whenever you get the opportunity.

All right. Mr. Sullivan, how much time do you need?

MR. SULLIVAN: I need about five minutes or so for my argument. It's not that

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detailed, and you have it, and we'll have about five minutes of testimony.

CHAIRPERSON JORDAN: Okay. So it's 10 total. Okay. Good. So let's set the clock at 10.

MR. SULLIVAN: And I think we'll start with Ms. Boucher's testimony.

CHAIRPERSON JORDAN: Sure. Thank you.

MS. BOUCHER: My name is Maureen Boucher. I live at 3843 Massachusetts Avenue, Northwest, with my parents, Dr. Joan Kinland and Colonel Leo Boucher.

I want to thank the Board for hearing this appeal. This has been an incredibly trying time for me and my parents, and I feel like at last we have come to the place where somebody in the District will listen.

My family has lived in this house since 1989 when I was three years old, and we never had an issue with the church property

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bordering us to the north until the current property owner took over. The current property owner is leasing out a space to this CDC, and for some other extensive dormitory use that I don't fully understand, and both uses have turned our lives upside down.

The disturbance from the CDC, dormitory, and apparent residential use is seven days a week, 12 to 16 hours per day, or more. Our house is only 10 feet away from the church's building wall of windows, always open, except for the ones that are boarded up that emit a tremendous amount of noise all day, from schoolchildren and from the dormers.

Our second floor windows are almost even with the church's windows next door. Because of this, there are often people looking over into our home and our bedrooms that border the side of the house. Additionally, two of those rooms have their lights on 24 hours a day, and the light from the rooms is very bright. Because of this,

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I=ve had to install blinds on 11 windows in our home to try to obtain some sense of privacy.

My mother is a psychiatrist and her private practice is at the lowest level of our home, which abuts the playground just 10 feet away. She has lost patients because of privacy issues, as well as due to the lack of a peaceful environment in which to communicate with her clients as a direct result of the CDC and dormitory use next door.

This is my parents= primary source of income, which continues to decline. My 81-year-old father, Colonel Leo Paul Boucher, Jr., who served 30 years in the U.S. Army, a Purple Heart/Silver Star recipient, is impacted the most by the dormers and the CDC noise. As he is homebound, he hears the children screaming constantly during the day, and the dormers at night. He hears yelling all the time.

The screams permeate all aspects

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of his life. He wakes up in the middle of the night and is worried and upset because he believes he is continuing to hear the children. There are always people coming and going, and their rooms look over our property.

I feel very uncomfortable in my own backyard as every time I'm outside in the pool or sitting with friends in the backyard I look up at the windows of the church and people are looking at me, sometimes it=s children, sometimes it=s young adults, sometimes there are older people staring at me.

When all this started, my parents and I knew nothing about land law use. And it wasn=t until we hired local zoning counsel that we discovered that the CDC use was completely illegal. I=ve learned a lot since then. I have learned that every other CDC that exists in the R-1 zone has come to this Board for a special exception approval, even

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if they have 10 kids, let alone 88.

I have learned that it's illegal to use or build structures in public space without permission from the city, and yet this property owner in the very midst of this controversy, after standing up at the ANC meeting and telling the ANC that he would only do what he had permission to do, went on to construct a playground on District property for use by children without approval or oversight by the city.

I learned that this Board has been a Godsend to residents that live near CDCs, and through many contentious cases this Board has forged solutions that balance needs of CDCs with the concerns of neighbors. I learned that in this case this Board was simply passed over by some clerical error, and so this Board never had the opportunity to administer the special exception process for this property. And the property owner has taken every advantage of that clerical error.

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CHAIRPERSON JORDAN: What clerical error? What do you mean by Acclerical error@?

MR. SULLIVAN: Issuance of the C of O.

MS. BOUCHER: Without a special exception.

CHAIRPERSON JORDAN: Okay. Go ahead.

MS. BOUCHER: In order to run a child care facility. And shown zero regard for neighbors here.

Okay. I think the dumpster photos in our handout are probably the most accurate indication of what this property owner thinks of our neighbors. That and the playground built with full knowledge that it was not permitted.

I learned that whether or not this use was legal or not is not even a close call, and I note that DCRA hasn=t even attempted to defend the position and is merely abdicating its role in this by refusing to revoke the

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unlawful C of O, and arguing that we didn't bring the appeal in time, and, therefore, the illegal use will continue forever.

The property owner is ultimately responsible for its compliance with the District's laws, and it was the District that made the mistake of issuing the C of O in the first place. Of the three parties involved, we're the only ones that had no part in establishing this illegal use, and we should not have to pay such a heavy price for the errors of DCRA or what I'll call willful ignorance of the property owner.

I also learned with some help from our zoning counsel that there are D.C. Court of Appeals cases that say a C of O that purports to authorize an illegal use can be revoked at any time. We asked DCRA to do that, and it refused, and that's why we appealed.

We're not demanding that the CDC use stop forever. We just want this CDC to go

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through the same process that every other CDC in the R-1 zone has had to go through.

The dormitory use we do not believe is permitted in any event, and it should stop.

We ask the Board to correct this unfortunate situation and require the CDC to go through the special exception process in order to establish the conditions necessary to give us back some semblance of peace and privacy. At this time, we have neither.

So we ask for your help and thank you again for your hearing this appeal.

CHAIRPERSON JORDAN: All right. Thank you. Any cross-examination?

MR. POSTULKA: No.

CHAIRPERSON JORDAN: Okay. Mr. Sullivan?

MR. SULLIVAN: Yes. Thank you, Mr. Chairman. I would just like to go over the legal argument on this child development center. I don't think there is really any

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confusion here that this is not permitted as a matter of right.

The statement of DCRA, the first statement that they filed, talked an awful lot about the church use and the church mission. To make it clear, the fact that this is a church has nothing to do with the -- whether or not a child development center is permitted. It is not until the R-4 zone that a child development center is permitted in a church building as a matter of right.

In the R-1 zone, it makes no difference. It doesn't matter. This is not a use that is related to the church. They rent it out for use by the child development center.

It appears from the May 16, 2014, letter from the Zoning Administrator that their argument, at least back then -- I don't know what it is now -- is that the child development center is not a change of use from the public school use, which is permitted as a

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matter of right. That can't possibly be true, because they are two separate uses. They are both separately defined in the zoning regulations. One is permitted; one is not permitted.

And also, as I laid out in my brief, Section 3203.8 provides that uses on the C of O are designated by use classifications established in the zoning regulations. So they are separate use classifications. They are not the same use. So they can't possibly be permitted.

If that were true, I think the Board will recall they recently had a special exception hearing for the Jewish Primary Day School on 16th Street, their second campus. And that happened to be a building that was currently being used by the exact same charter school that was in the Embassy Church.

So if this is the case, then Jewish Primary Day School doesn't need to follow any of the conditions in the order,

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because now they are a matter of right, and they didn't need to have a special exception approval. That has never been the case.

There is no precedent for it. And, in fact, DCRA hasn't even defended it in their statement, defended the substance of this. So maybe they will stipulate as to that and just rely on the timeliness argument.

Regarding the issue of the dormitory use, it appears that DCRA is saying that if you're a church, you can do whatever you want, and there is no limits, because -- which can't possibly be true. There is two special exception categories that apply to religious uses in the R-1 zone. One is for a clerical residence, which this might be. There are residents here that are here for extended periods of a year or more. And there are certainly more than 15 residents that live there.

So if a clerical residence of 15 or more people needs a special exception

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approval, why doesn't this?

There is also a special exception for church programs. Why is there a special exception for church programs related to a church and they have specific requirements, if any use that you want to have related to the church is permitted?

This is a use -- and they have two different rationales for this. In the letter on May 16, 2014, the Zoning Administrator said, AWell, they only use 10 percent of the building,@ which is impossible and we can present testimony that they actually have -- they use the residence area 10 feet away from the appellant=s house. And they use the outdoor area, as you can see in the photos.

So they=re not restricted to a little classroom space, this group. They live on the property, and they are throughout the property. They use 100 percent of the property. So it can=t be a 10 percent accessory use.

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They dropped that argument in their brief and said -- essentially went with the church program, that it=s accessory, just because the church has the use, then they can do it. And for the reasons I stated before, we don=t think that=s possibly.

Regarding having families live in the church, this is not permitted unless it is the family of the pastor. That=s clear from the zoning regulations. So we don=t know if there=s more than one family. We know there=s a family that lives there, not the pastor=s family, so they are using it for that use as well.

Now, obviously, that use isn=t as impactful as the other two uses, but it is, nonetheless, another use without a C of O and without legal right to exist.

That=s all I have. Thank you.

CHAIRPERSON JORDAN: All right.

Thank you.

Yes? Ten minutes.

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MR. POSTULKA: Unfortunately, I think it may be longer because the pastor will need to testify about the facts of the church, because the argument is that this is allowed as vital to the church=s mission, so I think we need to go into some background about what the church=s mission is, what services it provides, which might take a little longer than 10 minutes.

CHAIRPERSON JORDAN: I think we already -- we have that. If he just affirms what you=ve submitted in your document about the church=s mission, I don=t think we necessarily have to have that, any long, drawn-out conversation about it.

MR. POSTULKA: Sure.

CHAIRPERSON JORDAN: So you can do that simply by him acknowledging that he has read your submission, what those things are, that they are actual to the best of his knowledge, and we could --

MR. POSTULKA: Okay. Yes. Then,

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should I just ask right now?

CHAIRPERSON JORDAN: You can get to the crux of what you need to present to the Board.

MR. POSTULKA: Sure. Okay. All right. So the first witness I'll call is Pastor Dave Owens. And for the record, just state your name and occupation.

PASTOR OWENS: David Owens, pastor, Embassy Church.

MR. POSTULKA: And have you read the prehearing statement filed by DCRA in this case?

PASTOR OWENS: Yes, I have.

MR. POSTULKA: And you're familiar with the facts as stated in there, specifically regarding the operations of the Youth With A Mission Program, as well as the use of the apartment on the premises and the church's missions as stated in the statement?

PASTOR OWENS: Yes, sir.

MR. POSTULKA: And do you agree

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with everything that=s stated in the statement?

PASTOR OWENS: Yes, I do.

MR. POSTULKA: Anything that you would like to add regarding the church=s mission or those other -- Youth With A Mission Program or the apartment use?

PASTOR OWENS: Related to mission or to activity, or both?

MR. POSTULKA: Any one of the three.

PASTOR OWENS: Okay. Yeah. What has been presented to you in writing is an accurate description of who we are and what we do. As it relates to the preschool, as it relates to our ministry as a whole, and as it relates to our relationship with Youth With A Mission, and how that ties in together with our vision statement, with our purpose statement, that is a fulfillment of who we are.

And particularly to some of the

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things about caring for those who are spiritually materially poor, caring -- preparing Christ-like leaders for our church, city, and world, this is really hoof and woof to who we are as a congregation. And so the record -- I think the record is stated.

CHAIRPERSON JORDAN: Are people charged rent or anything that they have to -- on the church properties, these people who have been identified?

PASTOR OWENS: There is a stipulated amount that people are contributing. There is no lease document or anything like that. It=s just an agreement.

CHAIRPERSON JORDAN: What do you mean by Astipulated amount@?

PASTOR OWENS: I think it=s a \$15 a day that everyone contributes that is going to be staying there. There might be a group that will stay there for three months.

CHAIRPERSON JORDAN: And who are these groups?

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PASTOR OWENS: They are students that come from our church, from other D.C. area churches, and then from churches across the U.S.

CHAIRPERSON JORDAN: To do what?

PASTOR OWENS: To be trained in ministry and to experience ministry.

CHAIRPERSON JORDAN: So you train there in your facility.

PASTOR OWENS: We do. We have opportunities there to be trained in prayer and worship and communication of their faith with others in a Godly way, what we believe is a Godly way. And then they have ministry opportunities that they have all throughout our area and throughout the city.

I could go into all of that, because there are some special activities that are going on right now as well. But they will come in for -- some will come in just for a couple of weeks, but others will come in up to three months.

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CHAIRPERSON JORDAN: And they are sent to you -- how do they come to you?

PASTOR OWENS: Through Youth With A Mission, there is a network that is national and international. Youth With A Mission is all over the world. And so we have a fraternal relationship with them that is longstanding, and then this more immediate, really, expression of that by doing ministry directly, and then having the housing and all of that that we do out of our building.

So they will come for three months. In the mornings, they have classroom training; in the afternoon or evening, they will be out involved in ministry of some sort.

There is prayer that goes on in the building.

Right now, there is a tent at the White House Ellipse, and they are operating that tent. This is the third year in a row, and it's a worship tent. And churches from the area come together and worship, and they facilitate that whole process.

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So those are the kind of things that they do.

MR. POSTULKA: The \$15 a day -- I'm sorry.

CHAIRPERSON JORDAN: Ms. Cohen has a question.

ZC VICE CHAIR COHEN: So maybe you can tell me what this setting of fires and peeping in other people's windows have to do with carrying out their mission work.

PASTOR OWENS: I'm doing my best to -- through this process to find ourselves back in good relations with our neighbors. So there are some things to the testimony that was given that I'm not going to respond to, because we have some very serious differences between us on these things.

So I won't respond to that, but I will respond to these --

ZC VICE CHAIR COHEN: I think you should respond.

CHAIRPERSON JORDAN: No. I -- let

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me get back in control. I think there has been an allegation and I think we have not made a finding of the Board that someone has actually done it. And so I think the question is, do you know, are these things going on?

PASTOR OWENS: No. I=d like to respond to these pictures. Yes.

CHAIRPERSON JORDAN: I think that=s what Ms. Cohen is trying to get to as -
-

PASTOR OWENS: I=m saying some other statements about, you know, connection to our church and, you know, attendance, attending our church recently, whether or not some of those things -- I just don=t know about those things. But -- so we=ll have to work on our relationship, obviously.

But this -- there was a grilling that was going on right outside of our church building. I inquired of the people that were doing it that they were using lighter fluid. I gave them instruction right afterwards that

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they move -- any grilling that they do be moved around to the front of our building where we grill out on a Sunday afternoon after a church service.

And so although those grills have remained where they are, they haven't been used for months where they were used there. So the police were called on that occasion and on other occasions as well, and the police have told us we are within our right to do what we do as far as, you know, grilling out.

There's nothing that we're doing that's illegal.

The trash was a problem during the construction phase. I think anybody that would go by our property now -- we were actually fined for this, you know, quite honestly. I think we paid a \$300 fine for this.

But I think if anyone were to go by our property on a regular basis, they would find -- we have trash picked up three times a

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week by a company that we are in contract with, and so our trash is I think pretty well taken care of with that.

So that is the only way I can respond to the pictures that you have seen.

ZC VICE CHAIR COHEN: Would you also respond to the fact that I see the playground is in an area that looks pretty green. Could you have chosen a different site to locate that instead of 10 feet from the house next door?

PASTOR OWENS: Yes. I believe so, but I'm not sure yet. This has been a long, drawn-out process that we have -- we are still waiting, frankly, for an answer on that question as to what we -- what our other options are.

I appreciate so much of Maureen Boucher=s comments. We have, as neighbors, been a very good relationship over the years.

And when the charter schools were there, there was concern among several of our

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neighbors. Our ANC had meetings in our building to address those concerns.

Colonel Boucher, Dr. Kinland, were the most vocal supporters, in my memory, okay, of the charter school board being there. I think Maureen vocalized as well on occasion, maybe not in those exact settings. So we have always felt their support for that.

In the last meetings that we had about the charter schools, the question was asked, what are your future plans? And at that time, we expressed that our future plans were to go in the direction of a preschool. And so after we met what we thought were the concerns of the neighbors for the charter school, we were heartened to know that they were all in favor, after the traffic study was done and the traffic was diverted as it was, all of them, at least from my memory, expressed at that time that they were very much in support of a preschool.

The issue, as you can probably

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tell from the testimony, came when the playground was constructed next to their property. And I just want to say this is going to be on public record, and so I think it=s really the best opportunity for me to say this.

We can -- our understanding is is that the preschool needs a playground, that they can=t be somewhere else with a playground. They need to have a playground. Now, that=s our understanding.

If that=s the case, we are open to another place on the property. The challenge has been that we understood that that was the only part of our property -- we have this circle out in front of us called Hamilton Circle that nobody knows is even a circle, because the building has been there for -- our building has been there for 47 years. It has been -- you know, it has been our church, I have been there 13 years as pastor. My understanding is that that is all city

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property, Hamilton Circle, but we have cared for it for 47 years.

So our understanding originally was that the only part of our property that was on our land mostly, except for the place where the sidewalk was, we understood, was in that area where the playground was constructed.

If -- we are going through a process with DDOT now. If, at the end of that process, DDOT -- we recommended one location.

They told us that there are utilities there that come in from the city, so that we can't relocate the playground there. But I will -- I just want to go on record that I believe what has been communicated to us is that this is the main issue.

And so we are very willing, at our expense, between the church and the school, to remove the playground from where it is and to place it in another location. And we have also talked about -- the original thought we

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had was to plant trees that grow to six feet that would be a buffer between the playground and their property.

But because the playground is so close to their property, that wasn't something that they were, you know, wanting us to do. So --

CHAIRPERSON JORDAN: Let me get us back on track, because we really --

PASTOR OWENS: Yeah.

CHAIRPERSON JORDAN: -- this is a hearing on the appeal on -- is this a proper use.

PASTOR OWENS: Okay.

CHAIRPERSON JORDAN: And that=s where we are. It=s not before us on whether or not we=re going to grant a special exception or any other type of variance or use, and you -- really, having that description about how the plan is going to be operated, and we=re not at that point as to saying that whatever can be operated there.

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PASTOR OWENS: Okay.

CHAIRPERSON JORDAN: So, and we are kind of running a little bit on. We'll give you another -- Mr. Moy, let's give them another five minutes, please.

MR. POSTULKA: Thank you. So getting back on track, the Youth With A Mission Program, am I correct that it's a nationwide program, not just within your church?

PASTOR OWENS: Correct.

MR. POSTULKA: And as far as you know, is the program operated similarly at other churches nationwide, whereby missionary students stay on church properties?

PASTOR OWENS: Yes.

MR. POSTULKA: And in your opinion, the youth would --

PASTOR OWENS: Not always on church properties, but often. There are sometimes a separate building, but often on church properties. It's standard.

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MR. POSTULKA: And the \$15 a day, that includes meals?

PASTOR OWENS: Yes, that includes meals.

MR. POSTULKA: In your opinion, is the church=s participation in the Youth With A Missionary Program necessary to the church=s mission?

PASTOR OWENS: Yes.

MR. POSTULKA: And the exhibits -- the prehearing statement had as an exhibit a drawing of the church. Are you familiar with that drawing?

PASTOR OWENS: Yes, I am.

MR. POSTULKA: And that drawing shows the 38,000 square foot building. Approximately how much of that building is made up of the chapel and sanctuary?

PASTOR OWENS: Well, the majority of the building. I=m not really good at the numbers exactly, but the sanctuary seats about 800 people; the chapel about 300. And then we

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have a balcony in the sanctuary, so those are predominant. And then, where the preschool is are five large classrooms total, an office area, and about -- there=s four main bathrooms with several toilets and several sinks.

And so --

CHAIRPERSON JORDAN: So what are you trying to get to?

PASTOR OWENS: And then, plus our offices and the --

MR. POSTULKA: So the Youth With A Missionary students do not reside in any of those sections.

PASTOR OWENS: Correct.

MR. POSTULKA: They reside in a separate part of the church.

PASTOR OWENS: Correct.

MR. POSTULKA: In some dorm rooms with a kitchen, a lounge area, and some shower facilities.

PASTOR OWENS: Yes.

MR. POSTULKA: Okay. So, still,

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the majority of the building is made up of other uses, not --

PASTOR OWENS: The overwhelming majority for sure, yes.

MR. POSTULKA: And the apartment that is on the premises, who resides in that apartment?

PASTOR OWENS: There are two staff couples. Both of them are pastors. They are ministers. They are on staff with Youth With A Mission. It=s a two-bedroom apartment. One couple lives in one bedroom; the other couple live in the other bedroom.

And then they share their common space, which is a living room, dining room, and kitchen. And that apartment has been in use since 1967 in the uses that we -- similar to this where we have always had somebody that was on staff at the church that was serving the needs of the church that were inhabiting that space. And in this case, it=s the staff for Youth With A Mission.

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MR. POSTULKA: Okay. Thank you.
No further questions for the pastor.

CHAIRPERSON JORDAN: Mr. Sullivan?

MR. SULLIVAN: Yes. Thank you.

CHAIRPERSON JORDAN: Cross-examination?

MR. SULLIVAN: Yes. Pastor Owens, you mentioned that you would be willing to move the playground. Did Ms. Kinland provide to you \$3,800 for the strict -- for the express purpose of moving the playground?

PASTOR OWENS: The answer to that is yes, but technically no, and let me explain what I mean by that.

MR. SULLIVAN: Did you cash the check?

PASTOR OWENS: No.

MR. SULLIVAN: Did the child development center cash the check?

PASTOR OWENS: Yes. What I understand is they did.

MR. SULLIVAN: So the money was

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provided.

MR. POSTULKA: Can the pastor answer the question?

CHAIRPERSON JORDAN: Come on now. You've been here enough. Let him answer the question. He was still continuing --

MR. SULLIVAN: It was just --

CHAIRPERSON JORDAN: Let me manage this hearing, too. He was answering the question. He had not finished, and you went to something else. So I would like for you to let him finish the answer. The question was, Were you given the money? He said, Yes, but. Now, Pastor Owens, could you finish your sentence, please?

PASTOR OWENS: I was away. I can't remember where. I got a call that the police were at the building with a contractor who was putting the playground there, and the preschool director. What I understood, that there was an agreement there for the removal of the playground from where it was to another

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location.

CHAIRPERSON JORDAN: Get to the money issue.

PASTOR OWENS: Yeah. And the money issue, there was a check that was written. It was given to the contractor, and the contractor cashed that check. As soon as I heard about this, I said to the contractor, AI don=t -- we don=t even have permission yet to remove that playground.@ We don=t need to be receiving any money for that, even if it=s well-intentioned. And so the check was returned.

CHAIRPERSON JORDAN: Was money given to the church or given to the --

PASTOR OWENS: It was not given to the church.

CHAIRPERSON JORDAN: And had you had conversations with the appellant to receive money to move --

PASTOR OWENS: No. I had no idea about this transaction. And then, after I

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said --

CHAIRPERSON JORDAN: I=m good.

PASTOR OWENS: -- it needs to be returned, it was returned.

CHAIRPERSON JORDAN: I=m good.

Now, Mr. Sullivan, you --

MR. SULLIVAN: Okay. So you said you wouldn=t move the playground because you had no permission to remove the playground, but you constructed the playground when you had no permission to construct the playground.

Is that correct?

PASTOR OWENS: Well, my -- I believed that I had -- I mean, I had a permit to move the playground. I mean, that=s what I saw with my eyes, that we had a permit to do that.

MR. SULLIVAN: Okay. You don=t have that -- you don=t happen to have that with you, do you?

PASTOR OWENS: Not on my person, no.

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MR. SULLIVAN: You said that the neighbors' concerns were met and they supported your change of use to a child development center. Do you have any letters or any other evidence that this actually happened? That there was neighborhood support for your change of use?

PASTOR OWENS: Letters, no, but it was -- if I'm requested, I'll be happy to do some research and get that, because those were public meetings with our ANC, not Victor who was there at the time, but a former ANC. So I'd be happy, if there is any record of that, but also through anybody else's testimony who was there.

But, again, I did say that that was my memory, so I'm going best from my memory.

MR. SULLIVAN: How many people actually live on this property?

PASTOR OWENS: I'm doing some mental math. It is right around 30, but I'd

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have to get back to you with the exact number.

MR. SULLIVAN: And you said there are two families unrelated to your family that live on the property, is that correct?

PASTOR OWENS: There are three families total. There are two families in the apartment. The one that I was asked about, and the third family are dorm parents that are right there with the students where they stay.

And the purpose of them, of course, being there is as instructors and facilitators of the different ministries.

CHAIRPERSON JORDAN: So we're just talking about 38 people.

PASTOR OWENS: Yeah.

CHAIRPERSON JORDAN: All right. If that's the question, let's answer it. Let's move on.

MR. SULLIVAN: So how many of them pay rent? Do the families pay rent, the three families?

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PASTOR OWENS: I mean, technically, in our mind -- I'm sorry if I don't know how to answer that in the way that it would be understood best by those of you who are schooled in many other ways than I am.

We don't consider anybody paying rent. We don't have a lease agreement with them.

CHAIRPERSON JORDAN: How many people -- how many of these 38 people --

PASTOR OWENS: All of the people pay \$15 a day.

CHAIRPERSON JORDAN: Okay.

MR. SULLIVAN: Do you know what happened to the \$3,800 that was provided to the child development center, to the church, to move the playground?

CHAIRPERSON JORDAN: I believe his testimony said it was given back. Is that correct?

PASTOR OWENS: My understanding is it was given back. I followed up on that several times to hear that that was the case.

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If that=s not the case, I=d like to know that and --

MR. SULLIVAN: Okay. Do you know how long it took to return that money?

PASTOR OWENS: No. I=m not sure.

MR. SULLIVAN: You made -- I believe you testified that the youth missionaries were restricted to a certain portion of the property, is that correct?

PASTOR OWENS: I don=t understand the question.

MR. SULLIVAN: The Zoning Administrator has proffered that they are limited and restricted to 10 percent of the property. Would you agree with that statement?

PASTOR OWENS: I mean, I think -- I think so. I mean, that=s -- I looked at what my building administrator, my building manager put together, and I saw the areas that were used and I saw the configuration of that, what that turned out to be for numbers. And

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it seemed to me that that=s 10 percent of the
--

MR. SULLIVAN: So these 30 people that live there full-time are restricted and cannot extend beyond the 3,800 square feet of this 38,000 square foot building? Are they permitted outside?

PASTOR OWENS: Yeah. I think -- I mean, they come and go through hallways, public access areas.

CHAIRPERSON JORDAN: They have full range of the property. They can go anywhere they want to go in the building.

PASTOR OWENS: Except for --

CHAIRPERSON JORDAN: That=s the question I believe --

PASTOR OWENS: Except for the preschool area, they don=t inhabit the sanctuary, they don=t inhabit the chapel.

CHAIRPERSON JORDAN: But they can go in there.

PASTOR OWENS: Except on occasion

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for special -- for special --

CHAIRPERSON JORDAN: Can they go into those areas if they want to? If I --

PASTOR OWENS: Not the playground and not the church offices. So those -- I mean, not the preschool and not the church offices.

CHAIRPERSON JORDAN: Okay.

MR. SULLIVAN: Do they pray in the sanctuary?

PASTOR OWENS: On occasion, yes. As we all do, yes. They're a part of our congregation. Keep that in mind.

MR. SULLIVAN: And the sanctuary is a large part of the building --

PASTOR OWENS: Yeah. I would --

MR. SULLIVAN: -- I would say.

CHAIRPERSON JORDAN: I guess we already understand where we are with that, Mr. Sullivan. He is saying that they actually have free rein of the property except for two areas, which he mentioned.

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MR. SULLIVAN: I have no further cross-examination questions.

CHAIRPERSON JORDAN: Any redirect?

MR. POSTULKA: No.

CHAIRPERSON JORDAN: Okay. Do you want to -- have you got any wrap-up you want to do? We give you three minutes for wrap-up.

MR. POSTULKA: Yes, I would. The only two issues I'm going to address are the Youth With A Mission Program and the apartment. And the reality is, when a church is involved, there are considerations that go beyond just what happens when a normal property owner is involved.

There is the constitution, there are religious freedom acts, and when a church states that a use is necessary to its religious freedom and its religious practice, there is very little that the government can do to second guess that use. And as a result, this Board has specifically stated in the Pilgrim Baptist Church case that if a use is

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necessary to a church=s mission, it is allowed as part of the church use.

The pastor has testified that the Youth With A Mission Program is necessary to its mission as a church. As a result, the Zoning Administrator concluded that that use is allowed as part of the church use. Following up on that, the apartment, the people who reside in that apartment, are the leaders of the Youth With A Mission Program.

Since the Youth With A Mission students are on the property at all times, it is also necessary for those leaders to be on the property at all times to oversee the Youth With A Mission Program. Therefore, this is also allowed as part of the church use.

That=s DCRA=s position, and that=s all I have for the Board.

Thank you.

CHAIRPERSON JORDAN: Let=s turn to ANC. Mr. -- I=m sorry. Is it --

MR. SILVEIRA: Victor Silveira.

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Yeah.

CHAIRPERSON JORDAN: All right. Please, you have 10 minutes to present to the Board.

MR. SILVEIRA: Yes. This matter or these matters, because there seem to be many, came to our attention sometime during the last year. And at the ANC we have noticed that there is a significant amount of unusual behavior around the Embassy Church, and an unusual amount of residents as well.

And when you put so many people there -- and I don't know because I have heard different numbers about the residents -- if I'm not mistaken, when I met with Pastor Owens earlier this year, you said anywhere between 30 and 50 because sometimes they were not exactly there, 30 and 50, and I have heard as high as 80 from the neighbors, but I don't know and I have no way of corroborating that number.

But when you put so many people

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together, you have issues of behavior that impact the neighborhood and the services that they receive from the city. For example, in the cases of the pictures that we saw there from the barbeque, that was not so much a barbeque; it appears to be more of a bonfire, which rattled the neighbors so far, and also reports of rock and roll at 1:00 a.m., and so forth.

So the behavior issue triggered many other questions, and those questions percolated to the ANC. And I did a search in our records back to 2001, and I could not find a record of us at the ANC-3C having a hearing.

CHAIRPERSON JORDAN: Mr. Silveira, let me ask you a question, because I don't have it in my record. You are a member ANC?

MR. SILVEIRA: 3C07.

CHAIRPERSON JORDAN: Okay. And what position do you hold with the ANC?

MR. SILVEIRA: Right now I am the single-member Commissioner for 3C07.

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CHAIRPERSON JORDAN: Okay. And you were voted to represent the ANC here? Selected?

MR. SILVEIRA: Yes, sir.

CHAIRPERSON JORDAN: I just want to make sure, because we didn't receive the normal notification, who was representing the ANC. So I just wanted to make sure --

MR. SILVEIRA: I can send it to you right now, sir, just to clarify that. We have --

CHAIRPERSON JORDAN: No. Your word is good enough. Go ahead.

MR. SILVEIRA: Oh. But we have it in writing, ANC-3C Resolution 2014.

CHAIRPERSON JORDAN: Yeah. I have that, but not their -- their designee.

MR. SILVEIRA: At the very bottom, ABe it further resolved that the ANC-3C Chair, the ANC 3C-07 Commissioner,@ which is myself -
-

CHAIRPERSON JORDAN: Okay. Got

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it. Okay.

MR. SILVEIRA: -- Aor their
designees are authorized to@ --

CHAIRPERSON JORDAN: Got it.

MR. SILVEIRA: -- Arepresent the
Commission on this matter.@

CHAIRPERSON JORDAN: All right.
Thank you. Appreciate it.

MR. SILVEIRA: It=s okay?

CHAIRPERSON JORDAN: Uh-huh.

MR. SILVEIRA: Okay. So you have
received a copy of this resolution? Fabulous.

So to go back, all this prompted a
search to find out additional resolutions and
documentations within our ANC. I could not
find any. So if there is one, maybe it was
misplaced. And I would love to get a copy.

But as far as I know, the
activities started last year. And it=s just a
matter of the two issues -- to have more than
-- the two issues regarding the children
development center. We believe that -- either

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to have a special exception or variance, they should have come for public review before the ANC, and same thing for the religious residents above a certain number of residents.

And not being an expert, you guys know more about this than I, but I felt that we never had the chance to provide comment, and that=s what prompted us to review at a public hearing and issue this resolution which is before you now supporting the appeal. And if you have any other questions, I am here to answer. But this is the -- this is what we have done at the ANC, and the resolution is -- this is the text. So I don=t need to read it again, unless you wish me to do so.

CHAIRPERSON JORDAN: No, no, no. We can read it and have read it.

MR. SILVEIRA: Maybe I can just end my testimony and answer your questions. I am here to answer questions of both sides and to say that the ANC looks forward to working with both sides in the future and to try to

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achieve some good karma in the neighborhood.

CHAIRPERSON JORDAN: Very good.
Thank you. Thank you.

Mr. Sullivan, any rebuttal or
closing? Three minutes.

MR. SULLIVAN: I would ask the
Chairman that -- we have three minutes for Ms.
Boucher to rebut. There was a lot of
testimony put on there, a lot that she would -
- has an issue with. And then I'd like a
short closing.

CHAIRPERSON JORDAN: Five minutes,
please, and then a short closing.

MS. BOUCHER: Pastor Owens
mentioned that -- we were talking about the
\$3,800 that was exchanged. That was with the
head of Genops Construction, with the head of
the preschool, with a police officer who was
also -- two police officers who were there, so
that's also on record, which I'm happy to get
a copy for you.

And one, two, three -- Mr. Owens

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was actually on the phone with us there and spoke with the police officer as we wrote a check, because they said in order to handle this, that if we wrote this check out for \$3,800, that they would move the playground. And they took that, they cashed it, they had the check for over a year in their position -- possession with that money.

So that -- he was aware that that was the purpose of the money. It was to the construction company that he had hired, Genops, to build that playground. There was never a permit issued for it. It wasn't until we hired attorneys that they issued a replacement for a permit in kind for a fence on public space, but there had never been a fence there prior to that.

So there still has yet to be any paperwork, anything showing that there was a permit for that.

Mr. Owens did come into our home and said could we resolve this. This was

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prior to us giving him the \$3,800, and he said -- we said, AWell, we don=t want it next to our home.@ And the head of the preschool and us both agreed that we would all want the playground on the other side, so that the children would have it right next to their entrance. The preschool did not want it where it is right now.

And Mr. Owens came and said to us in our living room, AI don=t want the playground in front of our church,@ at which point he got upset and he left. And since then, there was no discussion, there has been no attempt at communicating about the playground in a constructive way, despite the fact that we=ve tried to have ANC representatives and Mr. Michael Fabricant -- I can=t remember his title -- help us initiate these conversations.

The other thing is, the church residents do actually go in the preschool areas. In one of the photos that you have, I

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have two parents, the head of Genops Construction, and the three children that belong to one of the family members that live in one of these areas that Mr. Owens was saying on the playground. And those are people that live in the church and are part of the group with the mission.

The other thing was, when there were charter schools at the school, the charter schools very much were concerned about making sure that they were communicating with the neighbors. And, for example, when Washington Latin Public Charter School destroyed our bushes because they used them as soccer goals, kids have fun. A bush is a great soccer goal. They -- it was -- you know, it was an accident. So they said, you know, We'll replace them. We're so sorry. We'll make sure that the kids don't use that side for their soccer.@

They moved -- and after that, they never played on that area. We didn't even ask

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them to replace the bushes because kids are kids. But with this group, even though we have tried to communicate through the school, through Pastor Owens, there hasn't been any resolution to this.

So, I don't know what else they said.

MR. SULLIVAN: Does the trash situation continue?

MS. BOUCHER: The trash situation continues. I have thousands of photos of -- so many so that -- of residents, of trash. I mean, I have even seen residents having food fights in the alley, and of people from the day care sitting in front of our house on our property just out of sight of the day care with six little kids strapped into a stroller.

And the most recent one was last week. I provided photos for you. They were sitting on our fence with the kids strapped in for an hour and 28 minutes.

So they are constantly parking

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around the neighborhood with these poor little children strapped in.

I=m sorry. That was off topic.

MR. SULLIVAN: The people -- the youth missionaries that invade your privacy from the wall of windows, are those windows open all the time?

MS. BOUCHER: They=re open all the time, and they don=t shut all the way. And they overlook our pool in our backyard. So if I=m in my bathing suit, seeing people look over at me is very uncomfortable for a number of reasons, but especially they=re -- a lot of them are young twenties, they=re my age. So -
-

MR. SULLIVAN: Thank you. I=d like to do a short closing.

CHAIRPERSON JORDAN: Two minutes max.

MR. SULLIVAN: Okay. I=ll talk fast. First of all, the Pilgrim case mentioned by DCRA --

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CHAIRPERSON JORDAN: Just try to tighten up what came up in this hearing.

MR. SULLIVAN: -- it has a limit.

The Pilgrim case that Mr. Postulka mentions talks about administrative staff of a church.

It doesn't talk about 38 people renting space in a building, and a child development center renting space for 88 kids, we think, and 40 staff.

At any rate, it's irrelevant in relation to the child development center. The fact that this is a church does not change the fact that a child development center is not permitted here. If that were the case, then throw out the R-4 provision that says you can have a child development center in an existing church building, and then there's no rules then.

So the constitutional law that he is talking about does not say that if you're a church and your pastor says that the program is necessary, then you can't touch it. It

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doesn't say that.

Regarding the youth missionary program, it sounds an awful lot like a church program to me, and that requires special exception pursuant to Section 216. I don't know how you could separate it from that, if it's that, and I would say it would be a tough special exception case with what we've heard today.

Regarding the families that we have discovered -- first it was two, now it's three families that live there -- the Zoning Administrator's letter of May 16th uses the rationale that they are in compliance because they only have one family and it's the pastor's family. And it goes on to say that that's permitted, implying that nothing else is permitted. So even by his letter, those three families aren't permitted there, which they're not. It's -- now we're -- it's multi-family use now. It's -- apartment house use is not permitted in the R-1.

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That=s all I have. Thank you.

CHAIRPERSON JORDAN: We=re going to take a brief five-minute break and come back and let you close, and close from ANC. (Whereupon, the above-entitled matter went off the record at 11:34 a.m. and resumed at 11:40 a.m.)

CHAIRPERSON JORDAN: Okay. So let=s get back to where we are.

Where are we? We=re back to having -- Mr. Postulka, we need you to do a two-minute closing, please.

MR. POSTULKA: And it will be quicker than that. I would just direct the Board=s attention to a case that is cited in my brief, Footnote 8, Western Presbyterian Church v. Board of Zoning Adjustment of the District of Columbia, and in that case the District told the church that it couldn=t use its property for a food pantry. And the food pantry went to Federal Court and sued the District and was successful in getting --

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being able to operate the food pantry on the property, and the church said -- or the court said, AOnce the zoning authorities of a city permit the construction of a church in a particular locality, the city must refrain, absent extraordinary circumstances, from in any way prohibiting what religious functions the church may conduct.@

Thank you.

CHAIRPERSON JORDAN: All right. Does the ANC -- anything else you want to say to us? You have a minute to do it.

MR. SILVEIRA: Yes, sir. Thank you. At the ANC, we feel that the proper process here, we never received proper notice, and we were never given a chance to have a proper hearing. And, therefore, the process was incomplete and flawed. And we reviewed this in depth, as much as we could, and we encourage the BZA to grant the appeal.

CHAIRPERSON JORDAN: All right. Thank you.

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MR. SILVEIRA: So thank you.

CHAIRPERSON JORDAN: Appreciate it. Mr. Moy, let's have a hearing date on this, a decision date on this. I think there are some matters that we need to get briefed on as -- legally regarding some issues on this case. Before I think this Board will be able to properly make a decision, I think factually we might be able to, but I think there are some legal issues certainly that I know I'm not clear on, and I would be very guarded about us stepping out and making a decision today on this without getting properly briefed. Is that okay?

MR. MOY: Mr. Chairman, are you requiring any additional information for the Board?

CHAIRPERSON JORDAN: No. No, no, no. We've been informationed enough on this one I think.

MR. MOY: All right.

CHAIRPERSON JORDAN: We've been

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briefed enough on this one. I think it=s internal -- we need to do our own homework on a couple of things.

MR. MOY: All right. In that regard, then, I think that with the --

CHAIRPERSON JORDAN: Unless the Board -- there=s something the Board needs to have. I=m sorry. I apologize, Board. Anything else you want to see from any of these people, anything of the applicant or -- the appellant or the appellees? Anything? Okay.

MR. MOY: Well, in that event, Mr. Chairman, staff would suggest as early as Wednesday, November 5th, or Tuesday, November 11th. We can do either of those two.

CHAIRPERSON JORDAN: Did you say Wednesday?

MR. MOY: Well, Election Day is the 4th, so we=d move to the next day.

CHAIRPERSON JORDAN: Isn=t that something?

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MR. MOY: Okay. Well, in that case -- well, let=s -- then I would suggest Wednesday, November 5th, unless you believe that=s too early.

CHAIRPERSON JORDAN: What was the other date?

MR. MOY: Would be November 18th.

CHAIRPERSON JORDAN: And what was wrong with the 18th?

MR. MOY: Nothing.

CHAIRPERSON JORDAN: Okay.

MR. MOY: A little bit more time, if you --

CHAIRPERSON JORDAN: What does our docket look like?

MR. MOY: For the 18th? It=s pretty heavy.

CHAIRPERSON JORDAN: All right. When is Ms. Cohen with us again?

MR. MOY: Neither of those dates.

CHAIRPERSON JORDAN: Okay. All right. We=re going to do the 18th. We=ll do

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the 18th, and then we can -- because I think there are some problems with the 24th.

MR. MOY: All right. Very good. So that would be Tuesday, November 18th.

CHAIRPERSON JORDAN: All right. Thank you. Thank you, all. So on for decision on November 18th.

All right. Board, we have two more cases, which are -- I think are going to require hearings. So how do you want to proceed? I've got one vote for keep going, yes, two votes, three votes for keep going, and one roll of the eye. Okay. So that's one, two, three keep going, one roll the eye -- I don't know how that fits in there, but -- let's see where we are.

Okay. Then, we'll keep going. We'll see where we are. Okay. 18837, Mr. Moy?

MR. MOY: All right. Next application before the Board is Application Number 18837 of Karl B and Julie C. Moeller.

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Mr. Chairman, this is a request for variances from 2507.1 and 2507.2 as advertised.

CHAIRPERSON JORDAN: All right. Would you identify yourselves, please?

MR. MOELLER: My name is Karl Moeller. I'm the owner of the property, and also live across the alley at 426 11th Street, Southeast, inside the square where this is located.

CHAIRPERSON JORDAN: Okay.

MR. DEMIAN: I'm Ziad Elias Demian, architect, Demian\Wilbur\Architects.

MR. BROWN: Patrick Brown from Greenstein DeLorme & Luchs, counsel for the applicant, and with me is my colleague, Kate Olson, also from Greenstein DeLorme & Luchs.

CHAIRPERSON JORDAN: Okay. All right. We understand this is a matter where you are seeking -- what are you seeking here? Use variance. Okay. A use variance.

All right. I've got a concern with this case right off, which is giving me

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some big concerns. This is a use variance, and you're claiming the undue hardship is due to financials, is that correct?

MR. BROWN: Among other aspects of it, yes.

CHAIRPERSON JORDAN: Okay. Because I haven't seen any financials.

MR. BROWN: Mr. Moeller, as part of his presentation, has a spreadsheet.

CHAIRPERSON JORDAN: Is that right? Okay. He has a spreadsheet.

MR. BROWN: And it has been presented to the Board.

CHAIRPERSON JORDAN: The Board is not accepting it. These documents -- they are supposed to be in front of the Board days before these hearings, so that the Board has the opportunity to read them, interpret them, and analyze them. And it's patently unfair to give -- the rules are the rules and you are very aware of that, Mr. Brown.

MR. BROWN: Yes, I am.

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CHAIRPERSON JORDAN: Okay. And what is the reason why it could not be presented to the Board prior to today?

MR. BROWN: Well, and I think we are talking about not that the information wasn't provided. We're providing it in a different format, in more detail. But it was certainly provided in the context of the prehearing statement. And I think if you allow us to --

CHAIRPERSON JORDAN: Do you mean the conclusions that were made in the prehearing statement?

MR. BROWN: Pardon?

CHAIRPERSON JORDAN: The conclusions of the prehearing statement. But you're submitting a document to the Board at this point.

MR. BROWN: Well, we're presenting a PowerPoint presentation, which presents information that was provided in the original application and the prehearing statement.

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Just for the Board=s convenience, we have taken the information -- some of the financial information that is provided in the prehearing statement and provided it in an organized format.

I=m not so sure we are dropping a whole lot of information on the Board that=s new. I have --

CHAIRPERSON JORDAN: Let me ask, has Office of Planning seen this, these calculations of financials, prior to today?

MR. JESICK: No, I haven=t, Mr. Chair.

CHAIRPERSON JORDAN: Okay. I don=t know how the Board wants to proceed with it. Let me see what the documents are, please, Mr. Moy. Let me -- just let me

MR. MOELLER: Mr. Jordan, if I may? So most of the materials that I=m presenting today are photographs of the building, explanations, and --

CHAIRPERSON JORDAN: Let me see

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the -- let me see what we have here.

MR. MOELLER: There were financials included in the written statement, but these are more detailed.

CHAIRPERSON JORDAN: Yeah. Let=s see where we are.

MR. BROWN: Could you reference which page the --

MR. MOELLER: It=s about midway through. The page is blue. It looks like this.

CHAIRPERSON JORDAN: Midway through? All right. I=m thinking it is what it is. Let=s move forward. How do you want to -- we can move forward or whatever you want to do is good with me.

I just -- you know, it just troubles me to some extent that we don=t get documents that we know, as a regular basis, should come to the Board beforehand, because we really spend time going through these things so we can analyze them, understand

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what=s going on, and not be rushed to look at them. So we can ask intelligent questions. That=s the overall purpose.

We have a duty to the public to make sure that we are doing the best we can on their behalf and not be rushed in looking at these things. That=s why it=s a rule for this Board. You know, we=ve talked about it. We=ve talked about it many times, about getting things last minute, especially where we don=t have the opportunity to really peruse these documents and we might miss something. And these issues are too important to the community, especially a use variance -- come on, this is a use variance. This is really changing the dynamics of what is allowable use in an area.

So that=s just my opinion, but I=m certainly -- whatever the Board wants to do is -- it would be different if it wasn=t turning on financials, but, you know, I guess we can take it for what it=s worth and then decide to

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keep it open if we want at the end, Board, whichever you feel. Is that -- all right.

So let=s go ahead. But I=m telling you, Mr. Brown, let=s -- please let=s not do this again, because it=s very, very important that we get these documents up front.

MR. BROWN: Understood. Mr. Chairman, and before I turn it over to Mr. Moeller and the architect, I want to point to the zoning relief. And the application was filed based on a rather substantial amount of time and effort dealing with the Zoning Administrator himself; a zoning determination letter, which I can provide; and dialogue directly involving the Office of Planning. And the relief that was applied for was the end result of that process, was the original application.

The Office of Planning, in their report, raised just last week suggestions of additional zoning relief required for the case

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that fall into the categories of another use variance and several area variances.

That is not based -- so we be clear, that is not based on any change in the plan from when the application was first filed or, quite frankly, when the matter was first considered by the Zoning Administrator as part of the planning process. It is really the result of a different interpretation by the Office of Planning.

I disagree with that, but I don't think we need to resolve that disagreement today. I think the case we are making -- again, the project hasn't changed; just a suggestion by the Office of Planning that additional relief for the same project is required.

CHAIRPERSON JORDAN: Are you talking about the rear yard relief and the parking relief?

MR. BROWN: The parking relief, the rear yard relief, the lot occupancy, and

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what I consider a duplicative matter that there is additional use variance converting to residential, whereas we've asked for a use variance to convert to a flat, which is just a form of residential. And we have had plenty of cases in the past where the Board has said that, you know, that kind of duplicative zoning relief or lesser included zoning relief is unnecessary.

CHAIRPERSON JORDAN: So am I understanding that you are asking the -- you are going to amend -- you are amending your requested relief?

MR. BROWN: Well, we are prepared to do that. We disagree with it, but I think, to be honest, it doesn't make -- at the end of the day, it's not going to make a lot of difference because we've got both use and area variances, and we meet the standard for the more difficult use variance.

So I don't think this case turns on the relief requested. It turns on the more

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difficult use variance standard, which we are going to meet. And I think the ANC has supported the project. There no opposition that I'm aware of, and in fact, as we can point out and have pointed out previously, in this square there is enormous support for the project, which is indicative of part of the variance test.

So we are ready to move forward.
If the Board leaves the record --

CHAIRPERSON JORDAN: The Office of Planning is in opposition to this.

MR. BROWN: Well, and that's fine.
I don't think their opposition to the application is based on the additional zoning relief. Their opposition exists to the application regardless of the zoning relief. I don't want to speak for Mr. Jesick, but I don't -- and it might be helpful, Mr. Jordan, you've indicated perhaps the need to leave the record open.

I have spoken to the Zoning

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Administrator about the disconnect or discrepancy between his view of the case and the Office of Planning=s. He has not made, you know, a follow-up determination, but we can ask him to do so. We are prepared to accept that.

Again, I don=t think this case in which you are going to hear today is at all influenced by the zoning relief. The rear yard is what the rear yard is or it isn=t, and whether we satisfy the variance test.

CHAIRPERSON JORDAN: All right. So you said that to mean that -- we need to know what you -- what relief you are seeking.

MR. BROWN: Well, we are prepared to go forward and --

CHAIRPERSON JORDAN: I=m asking you, Mr. Brown, not what you=re prepared to do. I need to know specifically what relief are you asking this Board to grant.

MR. BROWN: We will accept the recommendations/suggestions of the Office of

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Planning to be inclusive for all of these items. I'm willing to accept that. I'm not going to --

CHAIRPERSON JORDAN: You are the one making the request to the Board for relief.

MR. BROWN: Yes.

CHAIRPERSON JORDAN: So I'm asking you --

MR. BROWN: We're willing --

CHAIRPERSON JORDAN: -- let's be specific. Let's go through this. What relief are you requesting from the Board?

MR. BROWN: As we originally requested, the application was a variance from 2507.1. We also requested a variance from 2507.2. The Office of Planning has suggested additional relief under 2507.3; and on Section 403, lot occupancy; 404, rear yard; and 2120.6 for parking. We are prepared to proceed on --

CHAIRPERSON JORDAN: Okay.

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MR. BROWN: -- all six items.

CHAIRPERSON JORDAN: All right.

MR. JESICK: Mr. Chairman?

CHAIRPERSON JORDAN: Yes.

MR. JESICK: Mr. Brown misspoke regarding the parking relief. We are suggesting relief pursuant to Section 2101.

CHAIRPERSON JORDAN: 2101, yes. That=s what I wrote down. Okay.

MR. JESICK: That=s fine.

CHAIRPERSON JORDAN: All right.

MR. BROWN: Agreed.

CHAIRPERSON JORDAN: Proceed.

MR. BROWN: Okay. And I think based on that -- and, again, they both -- a collection of use and area variances, so that the standards applied are the same and we=re prepared to move forward on that.

I would like to introduce Mr. Moeller and let him proceed with his presentation.

MR. MOELLER: So thank you for

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your time, and I appreciate the opportunity to be here today. I just want to run through quickly some slides. The building that you see on the front cover has been in the back alley behind my home where I have lived for 15 years with my wife and three children.

The building was almost never used. I had never seen the garage doors or the doors open or the door open into it until May 2nd of 2013 when the owner was outside rummaging around. He's an elderly man. And said hello to him and in the midst of that conversation he told me that he was looking to sell the building, that it caused him stress, he lived an hour and a half away in Southern Maryland. Every time it snowed he came up to make sure it was still standing.

And I told him, first of all, he should just call me and I'd look out my window, but, second of all, maybe I'd be interested in purchasing it from him.

As you can see in this second

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page, I live at the house on 11th Street, 426 11th Street, with my family, and the property in question is directly behind -- sorry, I guess the red box doesn't show it. This is my house here, and the property is here.

MR. BROWN: Mr. Chairman, would it help to dim the lights?

CHAIRPERSON JORDAN: We can, if you'd --

MR. BROWN: Only if it's necessary.

CHAIRPERSON JORDAN: We've got the hard copy, so we're good.

MR. BROWN: Okay.

MR. MOELLER: Well, one of the things I'd like to point out also to the Office of Planning is that I have talked to staff at the Office of Planning since March of 2013, long before I ever purchased this property. I knew Amanda Molsen when she was at Historic Preservation. I called her on the phone and talked to her about it. She is

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actually -- when she was still on staff, came out and looked at the property with me.

She introduced me to Francis, who was the Capitol Hill staff person for HP for a period of time. I talked to Steve Calcott at one point about the property before purchasing it. Amanda Molsen put me in touch with Matt LeGrant, who I exchanged email conversations with before purchasing the property.

And I took into consideration the past cases, including the three past cases from the three existing residential alley dwellings that currently exist in Walker Court. This was actually owned by one of the same owners who developed the other two -- two of the other buildings. This one here in the center, closest to my structure, was actually a one-story garage and storage facility before the Office of Zoning approved its use variance for the 15-foot-wide alley and for residential property.

After conversations with the

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Office of Planning and with Matt LeGrant, I decided to purchase the building. Here is a timeline. It takes up two -- four full pages of all my conversations with the city. I would like to draw your attention to the fact that I had a PDRM with Matt LeGrant, and then almost a year later, when I thought that I was finally ready to appear before this Board, I went and gladly met the excellent staff member, Mr. Nero, who I am sad to hear retired, but he advised me that I -- the letter that I was issued by Mr. LeGrant was not as clear as he would like it to be, and so on December -- sorry, January 23rd, I did not submit my application and began meeting again with the Office of Planning to further clarify which variances I needed.

In February, I met with Mr. Lawson and Paul Goldstein of the Office of Planning to clarify which variances I would need. And then, if you turn to the third page, I was informed that I should really get

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clarification from Mr. LeGrant of the variances I would need. That took from February 14th when I asked for further clarification until March when I was told that there were only two variances that I would need to proceed with this case.

Those two variances were the ones on top that you see. I will also point out that on all of those emails over that course of about two, two and a half months, the Office of Planning, Lawson, McMillan, Paul Goldstein, and Ms. Beaton, as well as Mr. LeGrant, were all a party to those emails, and the final determination that I only needed these two pieces of variance was conclusive, so far as everyone on the email was concerned.

During this whole process, I continued to talk to neighbors and secure the signatures of support from 40-plus people on the square for this project. I had completed the plans that Mr. Demian produced for us, and met multiple times, again, with city officials

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and emails and whatnot, meetings and so on.

I want to just quickly walk you through the property and the back alley. Again, these are the three buildings that already exist in Walker Court that are residences. This is the building I mentioned earlier that was once a one-story garage. The other two are also residences, and this one is a split use -- it has two units in it -- that=s cater-corner to the building I purchased last year.

This is the view of the building from the south, and this wall along the side, which is clear in your picture at your desk, is just plywood. These doors to the storage areas are rotting, and I=ll get to that in a moment. But it=s important to point out the structure of the building -- I couldn=t get this pointer to do it accurately, but there are brick walls on this building that the Historic Preservation staff, in their visit to the building, told me they would like us to

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try to save. And rather than demolish them, they hoped that I would try to save them.

And I have, as Ziad will show you, tried to do that in my final plans. I happen to like the beautiful brick and the historic nature of Capitol Hill, and I want to be one of the people to preserve it.

The view of the building from down the alley is the next sheet, as well as a picture of what exists, if you can call it, this is any sort of a yard. The building has a bit of a problem, and I would strongly disagree with the Office of Planning in requiring some sort of a rear yard, because the building, as it exists today, takes up almost 100 percent of the existing property, and I can't knock it down to make it not do that.

Go on to show the easement on the south -- sorry, east side of the building. This is a picture of a sidewalk that runs, if you could call it that, along the back side of

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the building, easement that is for the residents of 429 12th Street, which you can see closest to you, 431 12th Street, and 433 12th Street, to take out trash and access the alley through that easement.

When I bought the building, it was in an absolutely deplorable state. The next slide is a picture of the crack that is above the old loading dock door that=s on the alleyway. As you can see, the brickwork is completely cracked above a wooden header that is no longer supporting it because the wood has gone soft and the brick is collapsing into the alley.

You can see daylight above the brickwork, and the next slide is some of the work I have done to try and shore up that building or that part of the building to keep it from falling over while I work on plans to restore it.

The inside of the building is just in as bad shape. There are three pictures

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here, one of the masonry falling out from a rotten window on the next slide, a view of a typical wall in the building that has gaps of air light, air and light coming through it, and it=s just plywood on two by fours holding the rotten wood in place.

It was also full of tile. The gentleman who owned it before had used it for 20-plus years as storage. And as part of the deal I get to deal with donating that to somebody. If you need tile, let me know.

The roof -- actually, I skipped -- if you look, there is a cinderblock wall here that divides the two storage bays, and that=s actually problematic because it=s holding up the ceiling. Whoever renovated this last put the ceiling joists across the longest berth of the building, so any renovation to this wall would mean the collapse of the ceiling, which is already leaking and in a terrible state anyway as you can see from the next slide, which is the water damage and the fact that

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some of the ceiling joists are being held up in that center photo just by chunks of wood.

There is also a squirrel=s nest in the center photo, and daylight coming through where rats and other vermin have been entering the building. That is a picture of the same corner from outside, and you can see there=s plant life growing out of the building at, you know, shoulder level. I finally managed to kill the plant growing out of the foundation on the next slide, but it has to be torn out.

There is rotten wood everywhere. All of the woodwork on the building is completely rotten. The doors you could kick your foot through if you wanted to.

And then, of course, the brickwork has not been repointed in I don=t know how long. Every -- basically, every wall on the building looks like these next pictures, and they=re loose teeth. Basically, you could pull any one of these bricks out with a little

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-- with very little effort.

This is another shot of the rotten wooden structure that used to hold a sliding garage door that covered the northern loading dock, and that=s one of the inspirations for the design that we=re working on, Ziad. But you can see the bricks are missing and falling out of the structure again.

I have done quite a bit to try and secure the building. In addition to securing the brickwork, I have torn all the overgrown ivy off of it, trying to get it ready for its next life. I have packed up, again, all of the tile -- on the next slide -- to get it ready for getting out of there.

And this is a view I think that really captures the beauty of the building. It is taken from the upper porch of a neighbor at 433 12th Street. You can see my house, a window on my home. That=s my daughter=s bedroom looking out the back, and our neighbors along 11th Street. This is the

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upper door of our neighbor who often leaves his door open and looks out at the alley, and a window here of another neighbor in another carriage house who looks out into the backyard here. All of those people have said they support this proposal and would like to see us go forward.

I want to talk a little bit about the hardship test, the financial difficulties.

I'm sorry. Before I do that, this is a bit of the support and the letter of support from the 40-plus neighbors on the alley.

Just some of the issues, and I'm sure we'll find more as we go deeper into this, and this is in the written statement that we submitted to you some time ago. The roof, no matter how high it gets, needs to be replaced. Water supply does not exist in the structure at this time. There is no sewer in the structure at this time.

The electrical service seems to have caught on fire according to one

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electrician I brought out to take a look at it and it was turned off. They are repointing the brickwork, fixing all of the walls, insulating them, repairing and upgrading the damaged slab floor, which actually in the two sections is at two different elevations by about a foot. And so the entire floor not only needs to be jackhammered out and installed with a vapor barrier but needs to be leveled so that it's actually the same elevation across the entire structure.

The eastern brick and cinderblock wall, as I showed you, is about to fall over. Want to repair the exterior and interior walls and upgrade new windows and doors, obviously.

And this is estimates that, as I mentioned, again, some of these are written in the testimony that I provided to you, but the current zoning rules state that I could only use this for an artist's studio, could not have a bed, could not have a bathroom or a

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kitchen are, in my mind, prohibitive.

I bought this after doing an extensive amount of research, after talking extensively with the Office of Planning, with Zoning, and other city officials. I considered changes that were pending with the zoning rules, and decided to risk, if you will call it that, trying to get this variance from you all, with the understanding that if I were limited in taking a historic structure that can=t be bulldozed and renovating it, adding water, sewer, and all the other expenses that it is going to take to fix the roof, fix the floor, fix the brickwork, fix the woodwork, install new windows, add water and sewer, add electrical, and just then start from there with new construction, that the costs are incredibly prohibitive, and I would never find a wealthy enough artist to move in to recoup any of my costs, if I could find an artist at all. I=m not sure I could do that either.

I=m hopeful that this body will

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allow, as they have done with the other three alley properties, the variance for the 30-foot wide alley. I also hope that you would see it to be not problematic to allow two units, and the reason I hope to have that variance is that I could build a single-family home here, theoretically, just put it up and sell it. But I am not looking to do that. I am not a flipper. I am a resident of this square. I want to continue to live in my home and have extra space for my grandparents to visit.

My wife and I are both independent contractors. We both work from home. My office is cramped in my house with three kids and three bedrooms, and I would love to have an office to go to, somewhere for my in-laws to come and visit, my parents to come and visit where they're not spending \$1,000 for every time they come on hotels, and, you know, other uses for my family in the downstairs.

And then, to be able to recoup some of the costs of this renovation, I=m

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hoping to add a rental unit on the upstairs, legal rental unit, not, you know, a shady deal where I say I'm building a single-family house but then I keep a room or a couple rooms to myself and find a secret doorway or somewhere else for someone else.

So that is how I got here today. Those are the issues I wanted to raise. And I do have copies of the email exchange between the Zoning Administrator, myself, and the Office of Planning where they did unequivocally state I only needed two variances. I was actually a little upset last week when I got the letter from Matt Jesick, whose name I have never heard before today, despite all my conversations with the city, with this finding that added four new things to something after over a year and a half of talking to the city. Very frustrating to me.

MR. BROWN: Mr. Jordan, and perhaps for the record we could submit that email exchange as well as the Zoning

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Administrator=s letter, just to fill the record.

CHAIRPERSON JORDAN: That=s fine.
It=s your case. You can --

MR. MOELLER: One last comment on the comment here. So the Office of Planning has sent this letter saying that one of the variances we need is parking. And in that email exchange between myself, the Office of Planning, and Matt LeGrant, and our architect, we clarified that parking could be waived with a variance. The Office of Planning, Historic Preservation, issued me that variance, and so to my mind that was off the record; we had taken care of that.

And then suddenly it=s back, so that never-ending circle of confusion just is frustrating to me.

CHAIRPERSON JORDAN: Who gave you a variance?

MR. BROWN: The property is a historic resource, which would entitle him to

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a waiver of the parking requirement.

MR. MOELLER: Which was issued by the Office of Planning weeks ago.

CHAIRPERSON JORDAN: No. I thought you said somebody gave you a variance.

MR. MOELLER: Yeah. I=m sorry. I=m not a lawyer --

CHAIRPERSON JORDAN: Okay.

MR. MOELLER: -- as you can tell.

CHAIRPERSON JORDAN: All right. Just --

MR. BROWN: You can only get variances one place, Mr. Jordan.

CHAIRPERSON JORDAN: That=s right. And it stops at this Board.

MR. BROWN: Yes.

CHAIRPERSON JORDAN: We just wanted to know, did we miss something. Not really, but we just thought we=d throw that in. Okay.

MR. BROWN: And if I could -- and I think you touched upon it -- but if you

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could just quickly -- the structure is now, one, you're under a responsibility to maintain it and be sure that it doesn't further deteriorate. Is that correct?

MR. MOELLER: Yeah. I think -- I bought this knowing that it needed a lot of work, but I was confident that we could bring it back to -- restore it into good standing in the neighborhood. I have been tired of looking at this beat-up old property in the back alley. There is a lot of crime in our back alley.

One of the parts of the letter, if you had a chance to read to it, that the 40-plus folks signed off on was that there is crime in this section of our alley particularly, because there is nobody back there. And, you know, we would like to have a resident back there who can help keep an eye on the alley area.

In terms of maintaining it, yes, I mean, I would like to -- you know, I did not

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cause this building to collapse over the last 40 years. I have taken on somebody else's problem, and I'm trying to fix it. But I take that responsibility very seriously.

MR. BROWN: And currently, in its current condition, you would not be able to use that for any permitted purpose -- storage, parking, or any other use, is that correct?

MR. MOELLER: Yes. If someone parked their car in there, the northern wall really I think could fall and collapse the roof on their car. They also would have a hard time getting in and out of the doors in there. Storage would be a problem. The roof leaks, and there is just a number of other problems with the building. It needs a major investment of -- a major, major investment to be able to use it for anything.

MR. BROWN: Thank you. Any questions, or can we --

CHAIRPERSON JORDAN: No. Go ahead. It's your case. We're just --

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ZC VICE CHAIR COHEN: I have a quick question.

CHAIRPERSON JORDAN: Yes, please. Go ahead.

ZC VICE CHAIR COHEN: Thank you, Mr. Chairman. A real quick question. What will the total square footage be after renovation? And can you break it down by use? I don=t recall --

MR. MOELLER: Sure.

ZC VICE CHAIR COHEN: -- the numbers.

MR. MOELLER: The total square footage of the property is 1,300 give or take.

I think it=s 1,380 square feet. The total current square footage of structure is about 1,100 square footage of building. So in the plans that Ziad will walk you through, we are only using basically for structure the existing footprint, so it will be a total of over 2,000 square feet of livable space. The downstairs will be my home office and a guest

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apartment for my parents and whatnot, my wife=s home office. And then the upstairs would be a two-bedroom apartment of about 1,200 square feet -- 1,100 square feet.

ZC VICE CHAIR COHEN: And so the office and the small apartment is 800 square feet?

MR. DEMIAN: It will be 1,100 per floor.

ZC VICE CHAIR COHEN: Oh, it=s 1,100 per floor?

MR. DEMIAN: Right.

ZC VICE CHAIR COHEN: Okay.

MR. DEMIAN: And it=s the existing footprint, so we will maintain the footprint.

MR. BROWN: If there aren=t any further immediate questions, I=d like to offer the architect, Mr. Ziad Demian, as an expert witness. He has appeared -- his resume is part of our prehearing submission as one of the exhibits. He has also testified on several occasions before this Board, and he is

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licensed in the District of Columbia, among other jurisdictions. So I=d like to offer him as an expert witness in architecture.

CHAIRPERSON JORDAN: Yes. Unless the Board has any objections, he is acceptable.

ZC VICE CHAIR COHEN: Yeah. I just have a question, though. I didn=t notice on your resume that you had any LEED certification.

MR. DEMIAN: I personally don=t. I=m not LEED certified -- accredited, but my - - I have a lot of staff in the office who are LEED accredited.

ZC VICE CHAIR COHEN: Okay. Thank you.

MR. BROWN: If that=s accepted, then we=ll allow him to move forward.

CHAIRPERSON JORDAN: Yes. I already said that. I thought I did.

MR. DEMIAN: Again, Ziad Elias Demian with Demian\Wilbur\Architects. We are

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also located on Capitol Hill, so we are very familiar with this area as well.

As mentioned, this is just an overview of the block, and in the middle of that circle is the property in question. And this is from property -- showing the actual lot.

A few aerial shots, also shows Mr. Moeller=s location in the red box and with the X, located the storage area that we=d like to convert to residential.

Just another shot, just to give you an idea about the massing of the lot and how things are together, coming together, and the relationship to the streets around it. I take it by now you are familiar with the property.

This shows the existing plan, if we can say that. It shows the two bays where the two garage door is located that were used by storage, and the smaller structure that we use for smaller storage as well. And this is

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the proposed plan. It shows -- well, let me step back a little bit.

Like Mr. Moeller suggested, we -- from the beginning he was working with the Historic Preservation staff, and we wanted to make sure that continues. So we had another meeting. We met with Historic Preservation staff, and we have determined that the -- the brick wall -- there are visible bricks walls -- have historic values, and that need to -- they need to be preserved. And this is what we did.

So what you see in the plans are the front brick wall is preserved and the rear wall is also preserved. And then the middle brick wall we thought has historic value, so we have almost like a Z-shape of walls that definitely are going to be preserved, and they -- also the rear brick wall as well. But that was not of interest to the Historic Preservation staff, because it's not visible.

And it shows here that -- how the

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apartment will be used or the structure will be used. You will see this is a home office/bedroom area suite, and then you have a living area with a kitchen and a bathroom. And then we have an external stair that will take the other residents -- will take you up to the second floor to the two-bedroom apartment dwelling.

And we have the stair continue up to the roof, so you can service stuff and maintain the mechanical equipment and have a little rooftop there, so people can actually have a space to be outdoors without being in the alley.

CHAIRPERSON JORDAN: I think we're -- unless we have specific questions about the design, I think -- we have looked at it. The Board may have some questions about design issues. Does the Board have questions about design issues? Yes?

ZC VICE CHAIR COHEN: No. Actually, I have no questions. I just think

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that it=s a very well, efficient design.

MR. DEMIAN: This is the elevation, again, like Mr. Moeller mentioned -
-

CHAIRPERSON JORDAN: We=re really okay on the design issue.

MR. BROWN: Can we ask just -- and I --

CHAIRPERSON JORDAN: The design issues are going to the ability to how to pay for it, and if that makes it not financially fit or meet your undue hardship, then we=re -- I think that will be appropriate.

MR. BROWN: If I could -- if I could ask him to -- recognizing your guidance, I would like him to drill down on a couple of very specific issues that I think are important.

CHAIRPERSON JORDAN: Okay. Yeah. Whatever supports your -- whatever hits the need to meet your variance test, because that=s where you are. I mean, I don=t think

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we're questioning design or whatever. We're at the very fundamental part of the whole discussion.

MR. BROWN: And if I could, Ziad, ask you to indicate the window design and how that has been sensitive to the adjoining properties. Also, the setback on the roof to -- again, to provide buffering, and then also there are -- as part of your package there, sun studies or shadow studies, which show almost no impact throughout. So I think those are important points to make.

And once you've done that, then we'll follow up briefly.

MR. DEMIAN: Okay. I'll go very quickly since design is not an issue in this case. Just to show that we kind of -- we work with the Historic Preservation staff to make sure that the design is compatible, consistent in scale, proportion, and material.

And with that, we have a letter of support from the Historic Preservation staff

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that they are in support of this project.

And what Mr. Brown is referring to is the request by the ANC to show the impact of the building from 12th Street, so these are the two slides showing the before and after. So this points to what you would see from 12th Street, into the alley, and this is -- the next slide will show the -- a close-up of that pointing to where the structure is. It is the same height as all the other two-story dwellings, so there's not any -- there is no extra height for that, just two typical dwelling -- two-story structure height.

This slide shows the -- in response to the request by one of the ANC members, that we've set back the parapet in the back and put planters, set it back further. So if somebody is standing up on the roof terrace will not be -- have a direct view into the backyard of the adjacent neighbors.

So we have kind of satisfied all the requests by the ANC in order to get it

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approved. And this is the sun study. There was also another request done by the ANC to demonstrate that there was no hardship, light and air issue, and we have identified one area in the solstice where the shadow --

CHAIRPERSON JORDAN: I really think this case comes down to you meeting the requirements of Step 1 and 2. I haven't seen anything that says it's going to be contrary in Step 3 and 4. Well, Step 3 in regards to use. And the zoning regulations -- violating the zoning regulations is an issue, but not the impact upon the community in that regard.

MR. BROWN: Well, again, we're just trying to -- and I think, Mr. Chairman, there is a relationship across all three prongs of the test here that --

CHAIRPERSON JORDAN: Okay.

MR. BROWN: -- hopefully we can pull together. One last question, Mr. Demian. The existing historically contributing structure, it can't be demolished, correct?

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MR. DEMIAN: Correct. It cannot be torn down.

CHAIRPERSON JORDAN: Can that structure be rehabilitated?

MR. DEMIAN: Well, that=s what we=re trying to do -- rehabilitate it.

CHAIRPERSON JORDAN: I mean, because I was looking at the letters you have submitted from the Zoning Administrator, and he said you could do, as a matter of right, the restoration of the property. But that=s not what you=re asking us for. You=re asking us for some additional uses for this property.

So I was a bit confused in regards to what you=ve previously said, that the Zoning Administrator said there really was no issue, so then you went and purchased it.

MR. MOELLER: As I understand it, the zoning regulations say the first issue that we had was the 30-foot alley width, and so that -- you know, it=s a 15-wide alley.

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Can we get relief from that, so that we can have a residence in the back alley.

The glitch is that the code says that that residence can be a single-family residence, and Mr. LeGrant determined --

CHAIRPERSON JORDAN: and it can be, right?

MR. MOELLER: And it can be, yeah.

CHAIRPERSON JORDAN: As a matter of right.

MR. MOELLER: As a matter of right. So --

CHAIRPERSON JORDAN: And why aren't you making a single-family residence?

MR. MOELLER: As I mentioned earlier, I --

CHAIRPERSON JORDAN: You can do it, but you chose not to.

MR. MOELLER: I am asking to be able to have two units, which isn't that different, really.

CHAIRPERSON JORDAN: I'm saying --

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the question was, it can a single --

MR. MOELLER: Yes.

CHAIRPERSON JORDAN: It could be.

MR. MOELLER: And so I'm not interested in flipping this property and selling it again next week to somebody else and say, AOh, I built this thing and I want to flip it.@

CHAIRPERSON JORDAN: You just desire not to have a single-family residence. You want to have additional space for family members and --

MR. MOELLER: An office.

CHAIRPERSON JORDAN: -- an office, and then if some --

MR. MOELLER: To play cello.

CHAIRPERSON JORDAN: -- try to make some money, not a lot of money.

MR. MOELLER: Make some money back. Yes, that=s right. Right. So that=s the -- you know, the issue that I was told is it -- because it can be a single-family house,

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it does not say that it can also be a two-unit dwelling. So we need to get permission, basically, to have two units instead of a single-family house. To me, it seems like a small issue.

But because it doesn't say in the code that you can't also use it for a two-family residence -- I mean, the other thing someone -- Mr. Nero actually said to me at one point, if you were a 2,000 square foot house around the corner on 12th Street, you could divide your house into two units and rent out one-half of your house and use the other half of your house for yourself.

But because it's in an alley, you can build a 2,000 square foot, 2,200 square foot building, but the code says it has to be a single-family house. And I'm asking the city of Washington, D.C., could I please make this a two-unit, 2,200 square foot building, because that's what I want to use as half of that for my family.

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CHAIRPERSON JORDAN: Now, when you say Aoffice,@ your office use is not for -- your office use is for your internal family use.

MR. MOELLER: I have a home office. I work as a consultant.

MR. BROWN: I mean, clarity, we=re talking about a flat. Oh, I=m sorry. We=re talking about a flat, one unit below, one above.

CHAIRPERSON JORDAN: Right.

MR. BROWN: That he would choose to have a home office in one of the flats, which is perfectly legal.

CHAIRPERSON JORDAN: Right.

MR. BROWN: As we all have home offices in our houses.

CHAIRPERSON JORDAN: That=s right. Okay. That -- I=m trying to get that understanding. That=s where it was.

MR. MOELLER: So, in theory, I could build -- just to be clear, I could build

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a single-family house and use half of it for myself and rent out the other half, but it would just take one person to come and say, AHey, that=s not a legal use of an alley property,@ and I would have to, you know, not do that anymore.

MR. BROWN: If I could go back to the --

CHAIRPERSON JORDAN: Give me one second, please.

(Pause)

All right. Go ahead. I=m sorry.

MR. BROWN: If I could just follow up my question to Mr. Demian. The building is a historic structure. And as a result of that, you have indicated that it couldn=t be demolished.

MR. DEMIAN: Correct.

MR. BROWN: And then, as a result of that historic nature, and that it cannot be demolished, are there additional challenges, expenses, difficulties, first in restoring the

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existing structure?

MR. DEMIAN: Yes. That=s always the case. We spend a lot of money with renovation, bracing, stabilization, that has to be done first before you do anything else.

So it=s always the case renovation costs a lot more from ground up construction.

MR. BROWN: And that would be true, renovating the existing one-story structure, as well as what=s being proposed here?

MR. DEMIAN: Yes. Regardless. The structures deemed significant in value, historic value, are all in very bad shape. So they all have to be completely restored and rehabilitated.

MR. BROWN: And one last question. The proposed two-story structure is comparable to the other two-story alley dwellings or alley structures in Walker Court.

MR. DEMIAN: Yes, it is.

MR. BROWN: And at least one of

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those structures is multiple uses. They have two separate uses occurring in the --

MR. DEMIAN: I think that=s a question for Karl and --

MR. MOELLER: Yeah. The largest of the three structures is -- has an apartment upstairs and then a separate unit downstairs.

MR. BROWN: And at least one of those structures was approved by the BZA.

MR. MOELLER: I believe all three of them were. And to the building=s size, I mean, that=s another issue. I mean, this building is not a little, you know, 600 square foot structure in the back of somebody=s house that they want to turn into an extra bedroom.

This is 1,100 square feet on 1,300 square feet of land that is its own separate plot of land in the city.

And I have done an analysis of what I paid per square foot, and it is -- it was very, very reasonable. The previous owner, when he sold it to me said, AI never

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did anything with it, because I was afraid the city would say no.@ And I -- that was a possibility, but even with the low price per square foot that I paid, I still have a huge expense to buy that much land and then make it into something that is usable and renovate the existing land that is there, add plumbing, add water, sewer, et cetera.

The costs are just going to be incredibly high for something that I could then only use as a studio or something like that. Even if it just was a single-story building, it would be --

CHAIRPERSON JORDAN: What is that cost?

MR. MOELLER: That=s the two top sections of this together, so it would be about \$250,000, and this is --

CHAIRPERSON JORDAN: To do an artist=s studio?

MR. MOELLER: To just renovate the building into a single-family -- single-floor

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artist=s studio would be upwards of that. This is a pretty conservative estimate, because the -- all of the renovation work that has to happen to the brickwork.

I mean, the plumbing has to come through from the alley directly underneath the wall that=s about to fall over. So I have to take that wall down, redo all the footings across the entire brick structure, rebuild all the footings underground, to shore up the structure, bring in the water and sewer, and then rebuild that wall, all -- and the, you know, scheduling, timing of contractors and whatnot. It=s going to be a very complicated and expensive project, beginning to end.

MR. BROWN: And you=re starting with your land cost of -- highlight that figure, please.

MR. MOELLER: Yeah. Yeah. The purchase price of \$117,500 was just to buy the property, and that runs to about \$90 per square foot, which I only found one other

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property on Capitol Hill that was sold at that low price, and it was not three blocks from two different Metro stops.

The value of the land itself just drove up the price to just purchase it, and so now with that investment, plus any costs, I mean, I can't put -- I couldn't offer anyone to store anything in it right now. I'd be worried about liability if the building fell down on them or their equipment was stolen because someone kicked their way through the rotten wooden wall. I mean, it is just not up to snuff to be used as anything right now.

And so it needs tens of thousands of dollars just to put electricity in there, it needs over 100,000 for water, sewer, renovations of the walls, a new roof. The roof leaks and has huge puddles on it.

MR. DEMIAN: May I add one little thing? Just as an architect, we can describe it in --

CHAIRPERSON JORDAN: You're

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talking about what you have here in the financials.

MR. DEMIAN: Correct. Yeah, it=s about the financial. It=s -- a rule of thumb for a project this size, it would be at least \$200 a square foot. With the stabilization effort and bringing the utility, you=re going to add at least \$50 -- additional \$50 a square foot. So by the time this is all done, we are much north of half a million dollars on top of the purchase price.

So all that to say this is just rule of thumb. Everybody knows how much things cost. I just want to bring that out, very current historic figures of all the projects that we are involved in.

CHAIRPERSON JORDAN: But what I see here is the cost estimate for the property to be renovated in the way that you wish as a flat, with the office space. That=s not what this is?

MR. MOELLER: No. So there=s

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three phases. The first phase is just the purchase phase. That=s --

CHAIRPERSON JORDAN: Oh. I understand what you have here.

MR. MOELLER: The second --

CHAIRPERSON JORDAN: I=m talking about your cost -- the total cost of renovation. The total document that we have here is what you=re presenting to the Board as a cost of what?

MR. MOELLER: I=m sorry. I misunderstood your question.

CHAIRPERSON JORDAN: Part 1, Part 2, and Part 3 added together is the cost of what? What is that --

MR. MOELLER: That would be the full project that we=re proposing.

CHAIRPERSON JORDAN: How much are you proposing?

MR. MOELLER: Yes. But if you --

CHAIRPERSON JORDAN: The actual --

MR. MOELLER: But if you stop at

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Phase 2, that=s --

CHAIRPERSON JORDAN: I didn=t say that.

MR. MOELLER: No, no. I understand. I=m just answering your earlier question of what would it cost to just stop at one level.

CHAIRPERSON JORDAN: Who said that?

MR. MOELLER: I thought you asked me what an artist=s studio --

CHAIRPERSON JORDAN: No, I didn=t. Well, I=m asking you, where are the financials on an artist=s studio? Where are the financials?

MR. MOELLER: Phase 2 plus Phase 1. And that=s a conservative estimate.

CHAIRPERSON JORDAN: Really? You=re telling me that, except for the architect fee, it=s the same cost? Am I missing -- what am I missing? Or the \$180,000 addition, is the total -- am I -- do you

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understand what I'm saying? Phase 1 plus Phase 2 is the artist's studio. That's what I'm hearing you say. That's the cost. It would cost you 134- plus 120,000 and some change, so \$254,546 to do an artist's studio. That's what you're saying.

MR. MOELLER: That's my estimate, and I'm pretty sure I've missed some things. And this is after talking to -- getting quotes from --

CHAIRPERSON JORDAN: And to do the flat it costs \$454,546.

MR. MOELLER: To add the second story.

CHAIRPERSON JORDAN: Yes. That includes -- that makes your project the flat with the office and --

MR. MOELLER: Yes.

CHAIRPERSON JORDAN: Okay.

MR. MOELLER: Yes.

CHAIRPERSON JORDAN: What am I missing here? Because I'm really not there.

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ZC VICE CHAIR COHEN: Mr.
Chairman?

CHAIRPERSON JORDAN: Yes.

ZC VICE CHAIR COHEN: Actually,
and my experience is rather a few years back,
but I don't think these amounts are
extraordinary. I mean, I think that they are
conservative.

CHAIRPERSON JORDAN: But that's
not my point or my issue or my question. I'm
trying to separate here because it's a
responsibility for the applicant to show that
it can't have any other use within what is
allowed in this zone and the proper manner for
zoning. I have not seen that set out, so I'm
asking the question so I can get to that
point.

ZC VICE CHAIR COHEN: I guess -- I
don't want to argue on their behalf, but maybe
we should go to the Office of Planning and
hear why certain other properties of similar -

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CHAIRPERSON JORDAN: That=s really -- whatever they -- each project stands on their own bottom. So we=re just dealing with this project. So --

MR. MOELLER: If I could clarify -

CHAIRPERSON JORDAN: And I think that=s part of the problem that the Office of Planning has had -- has with this particular submission and why they are recommending against it. We have not seen any other comparables. would that be correct, Mr. Jesick? I mean, we haven=t -- I haven=t seen it in this package. I don=t know what you=ve gotten subsequently.

MR. JESICK: Thank you, Mr. Chairman. For the record, my name is Matt Jesick. This is the first time we=ve seen any numbers. Not that we really do financial analyses, but, yes, the applicant did not make that case, that there is a financial difficulty.

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CHAIRPERSON JORDAN: And so what we're asking to set out the differences, ask to the other allowable uses that can happen in this property, that has not been presented to the Board, even as we sit here. So I asked the question, what's the financials on the artist's studio? And, well, I should ask about a garage operation, but -- and so that was my question, Ms. Cohen, trying to pull out where you are.

He's telling me that, well, inherent in these numbers are our artist's studio, so I was trying to get him to say what is the artist's studio cost.

MR. MOELLER: So if I could try and clarify what my family would like to do. So --

CHAIRPERSON JORDAN: We understand what your family would like to do.

MR. MOELLER: So I would not --

CHAIRPERSON JORDAN: We are trying to -- we need to find out what you can do

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within the zoning regulations. That=s -- Mr. Brown, do you understand what I=m asking?

MR. BROWN: I understand. I understand. If I could -- and I think if you looked at -- Mr. Moeller, you=re -- we have discussed this. It=s in the prehearing statement and you=re -- if you look at the purchase, Phase 1, and Phase 2, which would be the minimum required to pursue an artist=s studio.

MR. MOELLER: Just to get it standing back up again and habitable, yes.

MR. BROWN: That=s right.

MR. MOELLER: Without a kitchen, bath, you know, bedroom, et cetera.

MR. BROWN: If you could discuss -
- and that cost is Phase 1 and Phase 2 combined, which is about \$254,000. Is that correct?

MR. MOELLER: Yeah, about that.

MR. BROWN: And --

MR. MOELLER: And, again,

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conservatively.

MR. BROWN: -- based on that number, or put that in the context -- \$254,000 to what you could expect from rental from an artist=s studio or a sale of an artist=s studio.

CHAIRPERSON JORDAN: And do you have those numbers? Do you have those numbers, Mr. Brown?

MR. BROWN: I think we could provide some. I think he has some --

CHAIRPERSON JORDAN: That=s my whole problem from the word Ago@ from this hearing. That the information that we need to operate upon has not been presented to us, it=s not contained in these documents for us to get there within the bounds of what the law requires this Board to do. That=s -- and I think that=s the same question Office of Planning has raised throughout its report. That=s what I=m understanding, and that=s what we need. We need those comparables.

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MR. BROWN: Mr. Chairman, if I could refer you to the prehearing statement, and I=m -- and there is discussion there about --

CHAIRPERSON JORDAN: I see some -- I see some conclusions. There is nothing financially set forth of why you cannot operate this property within the bounds, and it=s -- of the zoning regulations for other uses. It=s not there. I=ve gone -- you know, I went -- in fact, I asked the question, you know, earlier, and I thought -- but it=s not there.

And so I really -- and it=s -- well, we can continue. The issue is not generally the architectural issue. We understand the dilapidated state of this building. Your argument for your undue hardship is that it=s a financial undue hardship. That=s what I=ve heard you say.

We can=t -- I mean, we have to be fair to everybody across the board, hold the

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standard to everybody, even if we like the project, which, you know, I like the project.

That=s not -- but it=s not for us to lift it for you. Right? So that=s kind of where we - - and I think OP has said that from day one in their report. And I don=t want to put words in Mr. Jesick=s mouth, but is that kind of where you are with the project?

MR. JESICK: Well, I think I could sum up by saying we certain agree that the property is in an exceptional state of disrepair. I=m sure it would cost lots of money to make it habitable. But is -- they haven=t -- the applicant has not shown the nexus between that and the undue hardship or practical difficulty in our opinion, so that=s where we fall short.

CHAIRPERSON JORDAN: And what do you mean by, AThey have not shown that,@ what would you like to see?

MR. JESICK: Why does the exceptional cost mean that a flat is the only

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use that is permitted or viable on the property?

CHAIRPERSON JORDAN: Well, the other -- or doing something else within the zoning regulations is not financially feasible.

MR. JESICK: Yes. That=s another way of saying it.

MR. MOELLER: So I could look at this property as an investment, short-term investment, buy a garage, storage, dump in the back alley. I get permission from you all to access it through a 15-foot wide alley, and I build a single-family home. Basically, take this design and build a single-family home, and sell it to someone else.

CHAIRPERSON JORDAN: I understand all of that.

MR. MOELLER: Which is --

CHAIRPERSON JORDAN: I understand all of that.

MR. MOELLER: -- what I am asking

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for is permission from the city to make two units, so that I can continue to use one of them.

CHAIRPERSON JORDAN: And we want to get you there, but you=ve got to help us get you there by bringing to this Board what we need.

MR. MOELLER: If I do that, I do not have the ability to sell the entire structure when it=s complete and when the renovation is finished.

MR. BROWN: Well, and I don=t think -- Mr. Chairman, if I could interject. Perhaps this is a discussion that would be better had in a post-hearing submission, because these numbers do exist, and try to put them in --

CHAIRPERSON JORDAN: Okay.

MR. BROWN: -- the context of --

CHAIRPERSON JORDAN: We=re going to continue this hearing for 30 days -- it=s not going to be a new hearing -- because the

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Board needs to have the proper time and the ability to look at the information, to ask questions, as well as Office of Planning. Okay? And so that=s where I was initially with this thing, but I thought we were going to get there and we have not gotten there.

And it=s not that we don=t support your project, and I don=t want to talk out of school. I don=t find it to be, you know, devastating to the neighborhood. But we have to have a proper record as to allowing you the relief you want. That=s all we=ve been asking for. Okay? And so --

VICE CHAIRMAN ALLEN: I would just -- if -- since we=re telling you our concerns, or at least some of them, I really do have difficulty with the impairing the intent and integrity of the zoning regs, especially regarding 2507.3.

The whole density of the alley issue, I mean, those are really concerns for me and always are. So I -- to me, that also

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needs to really be addressed.

CHAIRPERSON JORDAN: And I think you need to get sufficient information, meet again with Mr. Jesick, and find out what they need, get the documents to Office of Planning, to this Board, so we can go through it. Maybe Office of Planning would change where they are regarding this particular project, but we have to get -- you have to give us all the tools to get you there. We can't just leapfrog, because we have to hold everybody to the same standard.

You know, and maybe some of your other neighbors, when they -- they might have gotten -- I don't know if they got zoning relief or not. Maybe those projects are illegal. I don't know. Maybe when they -- if they did come for zoning relief, they did bring all of the things and dotted all of their I=s and crossed their T=s. That is what is required. Okay?

So, yes, Ms. Cohen.

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ZC VICE CHAIR COHEN: I just want to add one thing. Habitat for Humanity can use your tiles.

MR. MOELLER: Okay. Do they come and pick them up?

CHAIRPERSON JORDAN: Okay.

ZC VICE CHAIR COHEN: They might.

CHAIRPERSON JORDAN: Mr. Moy, I think we are going to need at least 30 days. If you get the information to -- because I don't know how long it's going to take -- I guess you can get it in about a week or so, redo some numbers, and some other things, right? Get it to Office of Planning and get it over to us. I'd say 30 days should be safe -- is safe.

MR. BROWN: That would give -- give us two weeks.

CHAIRPERSON JORDAN: Is that enough time? I don't want to rush you. I was just trying to keep it as fast -- as tight as you --

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MR. BROWN: We want to keep this moving.

CHAIRPERSON JORDAN: Right. I didn't want to give you -- but it's more important that you have enough -- and that Office of Planning has enough time to process it.

MR. BROWN: Are you okay with that?

MR. JESICK: Can you repeat the timeline again? I'm sorry.

CHAIRPERSON JORDAN: Well, we said if we continue it for 30 days. They would get you the information within two weeks. The applicant, give you -- do you think you have time -- I know you've got other stuff -- tons of other stuff going on.

MR. JESICK: That would be cutting it close, but we could probably turn it around.

CHAIRPERSON JORDAN: Okay. So let's maybe look at six weeks. Is that okay?

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I don=t know what the schedule is like, Mr. Moy.

MR. MOY: What we have --

CHAIRPERSON JORDAN: And I=m not trying to cram it like we --

MR. MOY: No, no. I=m not at all.

The two dates that are possible -- the earliest would be November 18th, which is a Tuesday, and because of the holidays --

CHAIRPERSON JORDAN: No.

MR. MOY: -- we=re into December 2nd.

MR. MOY: We=ve got a problem on the 24th, because I think two of us might not be here, but Ms. Cohen will be here, which it=s important for her to be here.

ZC VICE CHAIR COHEN: Am I hear on the 24th?

CHAIRPERSON JORDAN: I thought you said the 21st.

ZC VICE CHAIR COHEN: No, no, no. I=m not here on --

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CHAIRPERSON JORDAN: Oh,
December 9th. There=s the date, December 9th.
That=s the date.

MR. MOY: That would work.

CHAIRPERSON JORDAN: That works?
Thank you.

MR. MOY: December 9.

CHAIRPERSON JORDAN: That gives us
all some time, but please give Office of
Planning at least, what, three weeks you think
you need, Mr. Jesick, in advance to get the
information and process it and have
conversations with them? I don=t think, you
know -- I mean, well, there are some other
potential issues, but you=ve got to lift it up
for us. Okay?

MR. MOY: Did you want to set the
deadline for submissions? This is a continued
hearing, so --

CHAIRPERSON JORDAN: Yes. As long
as we get it within a week before that, the
hearing, but Office of Planning needs to get

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it at least three weeks in advance. Okay?
Mr. Brown?

MR. BROWN: That would be
November 18th at the latest to get it to OP.

CHAIRPERSON JORDAN: Yeah.
Whatever that -- okay?

MR. MOELLER: Thank you.

CHAIRPERSON JORDAN: We just can't
cut those corners. All right. Thank you.
Appreciate it.

All right. Let's call our next
case and I -- let's see, what --

(Pause)

Five minutes. Five minutes.

(Whereupon, the above-entitled matter went off
the record at 12:54 p.m. and resumed at 1:00
p.m.)

CHAIRPERSON JORDAN: Okay. Let's
go on the record so we can kind of move this
thing along.

All right. If you want to call
the case, Mr. Moy.

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MR. MOY: Yes, sir. The next, and I believe last, application for the day is Application Number 18838. This is the application of 2737 Sherman Avenue, Northwest, LLC, and Gwendolyn Rucker.

Mr. Chairman, this is a request for variance from the use provisions under 330.4 to allow a restaurant at 2737 Sherman Avenue, Northwest.

CHAIRPERSON JORDAN: All right. Thank you.

Good afternoon. Please identify yourselves.

MR. GETANEH: My name is Kaleabe Getaneh.

CHAIRPERSON JORDAN: Make sure your microphone is on, please, and stay closer then. Yeah.

MR. GETANEH: My name is Kaleabe Getaneh.

MR. JAHANBEEN: He=s a member of the 2737 Sherman Avenue, Northwest, LLC. My

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name is Sam Jahanbeen.

CHAIRPERSON JORDAN: Is that the owner?

MR. JAHANBEEN: No. Leasor, lessor.

CHAIRPERSON JORDAN: Okay. And you are?

MR. JAHANBEEN: I=m the managing member of that LLC.

MS. RUCKER: My name is Gwendolyn Rucker.

CHAIRPERSON JORDAN: Who are you?

MR. JAHANBEEN: Oh. I said Sam Jahanbeen, managing member.

CHAIRPERSON JORDAN: Are those mics on?

MR. JAHANBEEN: Is that better?

CHAIRPERSON JORDAN: Yeah.

MR. JAHANBEEN: Oh, yeah. There it is. Okay. My name is Sam Jahanbeen. I=m managing member of 2737 Sherman Avenue, LLC. We are leasing the property from the owner.

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This is Gwendolyn Rucker.

MS. RUCKER: Gwendolyn Rucker,
owner.

CHAIRPERSON JORDAN: Okay. All
right. Let=s do this a little different,
because I think we may not be that far away.
Let=s turn to Office of Planning. I mean,
because we have a recommendation supporting
this from the Office of Planning, except for
the second floor. Then, there are some
questions here about the conditions, but I=d
rather deal with -- I didn=t see -- let=s go
to Office of Planning, because I didn=t see
the basis of reason why they weren=t
supporting this second floor. So let=s do
that, please.

MS. RAPPOLT: All right. Megan
Rappolt, for the record, from the Office of
Planning. The main reason for not supporting
the second floor has to do primarily with
allowing a restaurant use on the second floor
would increase the nonconformity in the

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building that already exists. So it=s basically taking the nonconforming use and expanding it throughout the entire building.

CHAIRPERSON JORDAN: But we already have nonconforming on the first floor.

MS. RAPPOLT: Correct.

CHAIRPERSON JORDAN: And so what=s the impact of the nonconformity on the second floor?

MS. RAPPOLT: I think it=s just expanding that, and I think there is some direction in the comp plan that it=s probably not necessarily something that should be done regularly.

CHAIRPERSON JORDAN: What=s the impact of having this on the second floor?

MS. RAPPOLT: It would be essentially converting a residential structure, or at least in an R-4 district to a commercial building.

CHAIRPERSON JORDAN: Okay. But the building already had grocery store use,

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correct?

MS. RAPPOLT: On the first floor, correct.

CHAIRPERSON JORDAN: Okay. I understand that. So have you had -- any measurable impact on the second floor it would have, any measurable impact on the second floor? Mr. Lawson?

MR. LAWSON: Joel Lawson with the Office of Planning. Our concern was more I guess the last part of the test, the integrity of the zoning regulations. The R-4 is a residential zone. It is not uncommon to have commercial uses on the ground floor of a residential -- in a residential zone. It's less common for the entire building to be converted, but we were looking forward to hearing a bit more from the applicant about the existing conditions on the second floor.

It was not entirely clear to us how the second floor had been used in the past. It may be that the applicant is able to

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make that case for the practical difficulty for using the second floor for residential use. That would clearly be our preference because that is consistent -- more consistent with the zoning regulations. But if the case can be made, then we would be willing to take another look at our recommendation.

CHAIRPERSON JORDAN: All right. So there is your issue. So tell us about the second floor. Why do you need to use the second floor? What was the previous use of the second floor?

MR. JAHANBEEN: The prior tenant - - and Mrs. Rucker could probably attest to this better than I can -- used this entire building primarily as storage, from the basement on up. We don't know at what point it was not used and when it was last used for residents.

CHAIRPERSON JORDAN: When was it a grocery store?

MS. RUCKER: It's been about five

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years or so ago it was a grocery store. After that, we had another renter come in, and he only wanted to use it for storage.

CHAIRPERSON JORDAN: Okay. But the grocery store -- what part of the building did the grocery store --

MS. RUCKER: It was the bottom level that was used for grocery store, and upstairs they never did use it. It never was rented out for a resident. It was, you know, a possibility for that to happen, but we never, you know, felt the need to have it rented out. So only the bottom portion.

CHAIRPERSON JORDAN: So the second floor can be a residence?

MS. RUCKER: Well, part of that not having it as a residence upstairs was a condition. You know, it was --

CHAIRPERSON JORDAN: Why was that?

MS. RUCKER: It was dilapidated, you know, it was not in the condition where you would rent it out. It would require, you

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know, go in and rehab it or --

CHAIRPERSON JORDAN: Well, how much -- what do you mean? How much rehab?

MS. RUCKER: From the steps all the way to the end of the building for that section.

CHAIRPERSON JORDAN: Well, tell me the kind of things. Do you have to replace the floor? Do you have to replace --

MS. RUCKER: Oh, yes, it's an old building. It was built in 1910, so it was an old building, and I don't think anyone had ever lived upstairs.

CHAIRPERSON JORDAN: Anyone ever, @ what do you mean?

MS. RUCKER: Well, to -- I've owned the property for the last 10 years, and my mother and father owned it, you know, much longer than that. And it -- to our knowledge, it has never had a renter upstairs.

CHAIRPERSON JORDAN: So in 30 years, there has never been a second floor?

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MS. RUCKER: Nope. There never has. It has always been the store at the bottom.

MR. JAHANBEEN: And, Mr. Jordan, since we've occupied the property -- well, not occupied it but took over with the lease, we've done some cleanup. And because of just the vacancy of the property over the past five years, there was significant leaking through the windows and the roof, which had further dilapidated the upstairs condition.

CHAIRPERSON JORDAN: Is there plumbing upstairs for a residence?

MR. JAHANBEEN: There's a rough-in for just some piping, but there is no shower, toilet, or sink. But there is almost what's equivalent to a washroom or a mudroom, with no fixtures in there. And this is really just a fixture for a sink and a toilet, not a shower.

MS. RUCKER: And no kitchen.

MR. JAHANBEEN: No kitchen.

CHAIRPERSON JORDAN: And do you

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have an estimate of cost to do -- to use the second floor if you're going to convert the cost -- I mean, going to convert it to a residence?

MR. JAHANBEEN: So that was one of the difficulties in finding a contractor that wants to put the time in developing an estimate to do a job that we are essentially not going to do.

Our goal -- because the building was originally constructed for commercial -- for retail use prior to the zoning centers being established, we have always felt that it was somewhat self-evident that it is naturally a commercial structure and easier and less expensive than -- to continue to use it as a commercial structure than to convert it to something that it was not originally built for.

CHAIRPERSON JORDAN: And what was my question? Because we went like down the street and around the block.

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MR. JAHANBEEN: So no.

CHAIRPERSON JORDAN: Ah. I thought you were leaving me on the cliffhanger. I was like, here it is.

MR. JAHANBEEN: I gave you the reason before I gave you the answer.

CHAIRPERSON JORDAN: So you don't have any estimate.

MR. JAHANBEEN: No, we don't have a formal estimate together.

CHAIRPERSON JORDAN: In fact, what is it costing to convert the first floor?

MR. JAHANBEEN: Not much. Everything is already in existence, the bathrooms, most of it is just cosmetic renovations, paint, resurface the floors, install our essentially furniture and some of our aesthetics.

CHAIRPERSON JORDAN: And why are you claiming that this is an undue hardship for you to operate the whole building as residential?

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MR. JAHANBEEN: To -- I'm sorry.
Can you repeat that?

CHAIRPERSON JORDAN: What is the undue hardship for using a whole building as residential?

MR. JAHANBEEN: The entire -- this structure has no semblance of a residential layout from the exterior on to the interior. The cost of it is far more prohibitive than --

CHAIRPERSON JORDAN: What's the cost?

MR. JAHANBEEN: We don't have a --

CHAIRPERSON JORDAN: Then we're going to continue this hearing. This is missing the financials and things to support it. We have to -- you heard the last case. We actually have --

MR. JAHANBEEN: No, we understand.

CHAIRPERSON JORDAN: -- the document. We want to do this in a good nature. When we went through this -- I mean, when I went through it, I was like, okay, I

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see here where you're trying to go, but there is no financials, there is nothing in this record that supports an undue hardship. We know the building might be in bad condition, but we actually have to have something to put our teeth on. We heard what -- you were here. You've been here all day, so you --

MR. JAHANBEEN: We understand.

CHAIRPERSON JORDAN: You've been here all day, but we have to have it. And Office of Planning has to have it, and you've really got to hump with them to show why you can't use this second floor for residential. And they want to see those numbers and information also. Am I correct?

MR. LAWSON: I would say that our concern was actually, to be honest, less the financials, because we understand that this building is going to be going through a major renovation, whether it goes to residential or commercial.

CHAIRPERSON JORDAN: Okay.

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MR. LAWSON: From our standpoint, we were more concerned about the physical nature of the building, whether access could reasonably be provided to the second floor. We have certainly accepted that the ground floor is really not conducive to good residential use.

CHAIRPERSON JORDAN: We can accept that in your expert opinion for the first floor. Do you need more for the second floor?

MR. LAWSON: I think we have heard additional information today about the lack of facilities on the second floor. I think that was very helpful.

MR. JAHANBEEN: And we have provided a layout that showed that in the -- supplemental layout that showed the --

CHAIRPERSON JORDAN: Well, the alternative to having those documents, basically we can rely on the expertise of Office of Planning and the -- certainly the great weight that we give them based upon the

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characteristics and understanding, that we can do that, if that=s where they are -- we here where they are on the first floor. Where are you on the second floor now?

MR. LAWSON: Office of Planning doesn=t normally ask questions. That=s why I would say that we=re -- we=ve heard some really good information today already. The other issue that sometimes applicants will address in terms of the use of the second floor is the accessibility.

We have seen other examples where the second floor simply can=t reasonably be made accessible to a residential unit, and that=s why it makes more sense for it to be all one use within the building.

CHAIRPERSON JORDAN: So how accessible is the second floor?

MR. JAHANBEEN: The second floor does -- there is an access next to the main entrance. I believe it should be outlined in the drawings. But on the first floor you=ll

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notice the main entrance to the right there is a second door, so essentially you are coming in right next to the front entrance of the restaurant. There is another door that will you directly upstairs.

CHAIRPERSON JORDAN: Okay. Code compliant?

MR. JAHANBEEN: I=m not sure actually. There is a stairwell. It=s an old stairwell. It would have to be refurbished and recased. Structurally, it=s sturdy, but I=m not sure how -- if the actual steps meet code requirements.

CHAIRPERSON JORDAN: Yeah. Okay. We know that the first floor is very dilapidated. It is going to require extensive renovation, and it=s not conducive for residential use. And I think we -- and like I said, we can accept that.

Second floor, I don=t know if we=re there yet. We don=t have plans for the second floor?

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MR. JAHANBEEN: The proposed plans just call for -- and there is -- they are labeled.

CHAIRPERSON JORDAN: Are they there for second floor? Have you got plans for a second floor?

MR. JAHANBEEN: We intend on not really changing anything other than establishing some seating.

CHAIRPERSON JORDAN: But does the floor need to be supported in any shape, form, or fashion?

MR. JAHANBEEN: No. There is -- it=s just like I said, it=s an open space with the equivalent of a small washroom.

VICE CHAIRMAN ALLEN: I=m sorry. I thought that -- Mrs. Owner, I apologize, I didn=t get your name -- that you said that it -- the second floor as well would need substantial work, just because it hasn=t been utilized until -- so many years. So --

MS. RUCKER: It never was --

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conducive for residential environment. You know, it=s an open space. As Sam has already said --

VICE CHAIRMAN ALLEN: Let me just -- let me be clear, though, about my question.

MS. RUCKER: Okay.

VICE CHAIRMAN ALLEN: So the applicant is suggesting that -- or the co-applicant is suggesting that it would not need additional work to add tables and chairs, but what I thought I heard you say earlier is -- maybe both of you -- is that the whole area, and especially the second floor, needed work.

MR. JAHANBEEN: I think she is regarding that to make it residential it would need a lot of work. For commercial, because it=s wide open, it just needs a -- just a cleanup and resurfacing of the floors.

CHAIRPERSON JORDAN: There=s no plumbing requirement, et cetera. Is that what you=re saying?

MR. JAHANBEEN: No. We don=t have

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any intended need to put on, because there are restrooms downstairs. And they are commercial restrooms, meaning no showers.

VICE CHAIRMAN ALLEN: All right.

CHAIRPERSON JORDAN: And no kitchen.

MR. JAHANBEEN: No kitchen, no.

MS. RUCKER: Not upstairs.

MR. JAHANBEEN: Not upstairs. No gas lines or anything.

CHAIRPERSON JORDAN: Ms. Cohen?

ZC VICE CHAIR COHEN: I had a similar question, actually, that was already asked, so --

CHAIRPERSON JORDAN: Thank you.

ZC VICE CHAIR COHEN: -- thank you.

CHAIRPERSON JORDAN: All right. I would just really hate to call this back in.

MS. RUCKER: I would really hate for you to, too, Chairman Jordan, only from this perspective. Only from this perspective

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-- I drove in today from Chicago, and --

CHAIRPERSON JORDAN: Oh, really.

MS. RUCKER: Yes. And it would --

CHAIRPERSON JORDAN: What part of Chicago?

MS. RUCKER: Right outside of Chicago. Evanston, Illinois, where Northwestern University is.

CHAIRPERSON JORDAN: So up north. Okay.

MS. RUCKER: Well, I'm sorry I'm not southside. But I am from D.C., though.

CHAIRPERSON JORDAN: No. I used to live at 115th and Bishop.

MS. RUCKER: Okay.

CHAIRPERSON JORDAN: Born, bred, and raised there. So --

MS. RUCKER: Oh, are you?

CHAIRPERSON JORDAN: So let's do this. Let's turn back to Office of Planning and see where you are.

VICE CHAIRMAN ALLEN: I think with

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the information that we heard from the owner, and the applicant that I -- Planning does not oppose the second floor.

CHAIRPERSON JORDAN: It=s such a small project.

VICE CHAIRMAN ALLEN: Yeah. It=s pretty small.

MR. JAHANBEEN: Thank you.

MR. LAWSON: And, sorry, just to add to that, we would also note that of course the ANC has indicated support, the neighborhood -- the neighbors have indicated support which gives us, frankly, a lot of comfort with a use like this as well.

CHAIRPERSON JORDAN: Okay. And DDOT has provided some -- has said no objection, but has two kind of conditions, which we can come back to. We do have a letter from ANC-1B. Is there anybody else here from ANC-1B? ANC-1B has voted eight to zero in support of this application.

Is there anyone here wishing to

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speaking in support of the application? We do have letters from several neighbors and others around the area and community groups, and the Georgia Avenue Community Development Association, in support.

Anyone here wishing to speak in opposition? Anyone here wishing to speak in opposition?

All right. Then, let's do this. Conditions -- you executed an agreement with the ANC, correct?

MR. JAHANBEEN: Yeah. We had a settlement agreement regarding our ABC. We originally submitted it through the Design Committee without any issues, and then we subsequently came back through Ms. Rappolt's recommendation that we go through the ABC Subcommittee and we coordinate with them on a settlement agreement on operation of hours and trash collection.

CHAIRPERSON JORDAN: And Department of Transportation had some

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conditions?

MR. JAHANBEEN: I don't know of all the details. Ms. Rappolt was relaying those sorts, but I think the major concern was over trash collection and trash pickup, which we agreed to store trash inside the structure, and only have it come out on the moment of pickup.

CHAIRPERSON JORDAN: Maybe I missed -- maybe I'm wrong. Maybe it wasn't DDOT on this one. Maybe DDOT was on another -- okay. Okay.

So, then, the conditions that have been offered by Office of Planning and which are essentially -- and the ANC offered some which we cannot do, and some which kind of are all the same that Office of Planning already had put forth before us, and you already have an executed agreement with the Office of --

MR. JAHANBEEN: Correct.

CHAIRPERSON JORDAN: I mean, with the ANC, so that would stand on its own merit.

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But we have here, AThe refuse shall not be stored or collected within the building. It shall be collected between the hours of 10:00 a.m. and 3:00 p.m. Rodent and pest control measures shall be implemented. No trash shall be stored in public space. Loading/delivery shall take place once a month during the hours of 9:00 a.m. to 5:00 p.m.@ You can really get along with delivery?

MR. JAHANBEEN: It=s a small operation.

CHAIRPERSON JORDAN: Okay. The indoor hours of operation shall be limited to 10:00 a.m. to 1:00 p.m., Sunday through Wednesday; Thursday through Saturday, 10:00 a.m. to 2:00 a.m. Outdoor café seating shall -- hours of operation are limited to 10:00 a.m. to 11:00 p.m. every day and are ultimately subject to D.C.=s public space review process.

Removal of tables and chairs from outdoor areas, AApplicant shall move outdoor

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furniture inside and make it otherwise inaccessible when the establishment is closed.

The applicant shall maintain security cameras and perimeter alarms on the interior of the building. The applicant shall maintain exterior areas immediately in front of the building.@

And is that it? Nope. Okay.
AApplicant shall not place sign or posters in more than 25 percent of its windows and shall not stack merchandise in front of the windows, so as to obstruct the visibility inside the establishment. The windows shall be kept clean on a regular basis, and the applicant shall maintain the property in reasonable condition that does not distract from adjacent residential community and shall expeditiously remove paint and other graffiti on its immediate -- on the premises.@

Right? Is that it? You=re agreeing to all of that?

MR. JAHANBEEN: Yep.

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CHAIRPERSON JORDAN: Did I miss anything, anybody?

Okay. Board, any other questions on this?

ZC VICE CHAIR COHEN: What=s the name of the restaurant?

MR. JAHANBEEN: The Hilltop. It=s named after the Howard University paper.

CHAIRPERSON JORDAN: Okay. All righty, then. So with that, then I would move that we grant the relief requested, first and second floor, with the conditions provided as I read them.

ZC VICE CHAIR COHEN: Second.

CHAIRPERSON JORDAN: Ah, there we go. Motion made and second. Further discussion? All those in favor of the motion, aye.

(Chorus of ayes.)

Those opposed, nay. The motion carries.

MS. RUCKER: Thank you.

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MR. JAHANBEEN: Thank you.

CHAIRPERSON JORDAN: Mr. Moy?

MR. JAHANBEEN: Thank you very much.

CHAIRPERSON JORDAN: Wait a minute. Wait a minute. Mr. Moy has to do his thing.

MR. MOY: Staff would record the vote as five to zero, this on the motion of Chairman Jordan to approve the application for the relief requested for the first and second floors, with conditions as cited by the Board.

Seconding the motion, Ms. Cohen; also in support, Ms. Heath, Vice Chair Allen, and Mr. Hinkle.

MS. RUCKER: Thank you.

CHAIRPERSON JORDAN: Summary order, please.

MR. MOY: Thank you, sir.

CHAIRPERSON JORDAN: And I think that we are -- any other business coming before the Board today?

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MR. MOY: Not from the staff, sir.

CHAIRPERSON JORDAN: Okay. Then,
we are adjourned. Thanks, everybody.

(Whereupon, the above-entitled matter went off
the record at 1:21 p.m.)

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