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GOVERNMENT OF THE DISTRICT OF COLUMBIA

Office of Zoning

Board of Zoning Adjustment

PUBLIC MEETING OF THE BOARD OF ZONING ADJUSTMENT

9:41 a.m. to 11:17 a.m.

Wednesday, November 5, 2014

441 4th Street, N.W.

Jerrily R. Kress Memorial Room

Second Floor Hearing Room, Suite 220 South

Washington, D.C. 20001

1 Board Members:

2 LLOYD J. JORDAN, Chair

3 MICHAEL G. TURNBULL

4 MARNIQUE HEATH

5

6 Office of Planning:

7 MAXINE BROWN-ROBERTS

8 KAREN THOMAS

9 MATT JESICK

10

11 Also Present:

12 CLIFFORD W. MOY, Secretary to the Board

13 RYAN WESTROM, DDOT

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

2 CHAIRPERSON JORDAN: All right. If we could
3 come to order, please.

4 Good morning. We're located at Jerrily R.
5 Kress Memorial Hearing Room at 441 4th Street, NW, and
6 today is November 5, 2014, and we're here for the meeting
7 of the Board of Zoning Adjustment.

8 I'm Lloyd Jordan, Chairperson. To my right is
9 Marnique Heath, a member of the board. To my left is
10 Michael Turnbull, member of the Zoning Commission,
11 sitting in today as a member of the Board of Zoning
12 Adjustment.

13 Today's hearing procedures and processes are
14 how -- well, the process of how we handle hearings, since
15 we're not going to do a meeting, and I'll come back to
16 that -- is contained in a document to the door to my
17 left, in the back. So if you're not familiar with how we
18 operate at the Board, please feel free to get the
19 document and read and understand how we process
20 applications.

21 Today's meeting is being recorded by a court
22 reporter who is seated to my right, and also being
23 webcast live, so, therefore, I'm going to ask you to
24 refrain from any disruptive noises here in the hearing
25 room today. So, that's to signal, make sure things are

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1 not beeping and turned off, and all that kind of stuff.

2 If you're going to present any testimony or
3 make any statement to the Board today, if you're going to
4 present any testimony or make any statement to the Board,
5 or read a letter to the Board, or anything of that
6 addressing the Board, I'm going to need you to do two
7 things. The first of which, I'm going to need you to
8 complete two witness cards per person. That's complete
9 two witness cards per person, and prior to you testifying
10 or presenting your statement to the Board, give those
11 cards to the court reporter. So, again, two witness
12 cards per person, give them to the court reporter prior
13 to testifying.

14 The second thing I'm going to need you to do is
15 to now rise and stand and take the oath, which will be
16 given by Mr. Moy, Secretary to the Board.

17 MR. MOY: Good morning. Do you solemnly swear
18 or affirm that the testimony you're about to give at this
19 proceeding is the truth, the whole truth, and nothing but
20 the truth?

21 [Witnesses sworn en masse.]

22 Ladies and gentlemen, you may consider yourself
23 under oath.

24 CHAIRMAN JORDAN: Mr. Moy, are there any
25 announcements?

1 First let me announce, we are sitting today as
2 a Board of three, so that means you've got to be 3-0 if
3 you want something approved. We have two Board members -
4 - one is very sick and the other has a family emergency
5 so they're not with us today.

6 Mr. Moy, any announcements, please?

7 MR. MOY: Yes. Thank you, Mr. Chairman, and
8 good morning. Mr. Chairman, members of the Board, for
9 the record, three cases. The first two cases that have
10 been postponed or rescheduled to December 2, 2014, are
11 cases 18852 of SB Urban, and 18853 of SB Urban. And the
12 only other announcement I have, Mr. Chairman, segueing on
13 your, on the attendance of Board members, the first
14 decision case, I don't believe that we would have a
15 quorum for that decision.

16 CHAIRMAN JORDAN: That would be correct, and I
17 know, also, that the Zoning Commission is looking at a
18 text amendment for maybe Thursday in regards to something
19 that might be applicable to this case, so we will not
20 hear, or we will not deliberate on 18685 today. In fact,
21 there was a vote of 2-2 and we needed Board Member Allen
22 to weigh in on this matter.

23 Let me see. What other preliminary matters.

24 APPLICATION NO. 18849

25 Let me have a representative from 18849 to come

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1 forward, please. 18849?

2 He almost entered the Holy Land.

3 [Laughter.]

4 CHAIRMAN JORDAN: You know, I pushed a button -
5 - too close -- and Security runs up. No, there really is
6 a button up here for that. It doesn't really happen to
7 me. It doesn't really happen for the Board of Zoning
8 Adjustment, but the Zoning Commission really has some
9 issues sometimes. You haven't seen it when Security is
10 actually in this room. We had one time. I think we had
11 one time that we had to do it. Yeah. I didn't know.
12 They didn't tell me that when I said okay.

13 Let me ask, would you identify yourselves,
14 please?

15 MR. FOWLKES: I'm V.W. Fowlkes. I'm agent for
16 the owner.

17 MR. CHOCHARIS: I'm Peter Choharis. I'm the
18 owner.

19 CHAIRMAN JORDAN: Okay. We don't have an
20 Affidavit of Posting. It's my understanding that you
21 just received, you just picked up the postings. Is that
22 correct?

23 MR. FOWLKES: We were, indeed, late in posting,
24 but we have submitted the Affidavit of Posting. We
25 uploaded it, I believe it was Monday, and I have it with

1 me, also copies.

2 CHAIRMAN JORDAN: How long was this posted?

3 MR. FOWLKES: We posted it Friday, midday.

4 CHAIRMAN JORDAN: Okay. Well, you know that
5 doesn't meet our requirements. Now, why wasn't it posted
6 before?

7 MR. FOWLKES: I was out of town, dealing with
8 family stuff, in a hospital, you know, so I was, it was
9 in --

10 CHAIRMAN JORDAN: Okay. But we're going to
11 remove this from the docket today. It doesn't meet the
12 requirements for posting, and it's important that the
13 neighborhood and community is aware of what, when people
14 are asking for relief.

15 MR. FOWLKES: Okay.

16 CHAIRMAN JORDAN: I haven't seen the filing,
17 Mr. Moy. Is there a request for waiver?

18 MR. MOY: The agent would know, but I don't
19 recall. I think he was told to file last Friday, a
20 waiver of the time requirement.

21 MR. FOWLKES: I have the waiver with me. I
22 maybe misunderstood it. I just spoke with Mr. Moy about
23 this. I wasn't sure. I wasn't sure how it worked, to be
24 honest, but I brought the waiver with me, in case you
25 need it.

1 CHAIRMAN JORDAN: Well, I'm just sorry. We're
2 not going to hear it, because it's a requirement of the
3 regulations that you post, and it's important that the
4 community and the neighborhood know, and have the
5 opportunity to weigh in and know what's going on, and so
6 it's a requirement. And I heard the reason, the basis.
7 Well, I don't find that a good basis, because you just
8 simply forgot. So I would not be open to waiving it. So
9 we're going to give you another hearing date.

10 MR. FOWLKES: May I just say, make one last
11 argument? I wonder if the Board would consider (a) the
12 fact that it was Halloween, which created a ton of street
13 traffic, and maybe more exposure. The other thing is --

14 CHAIRMAN JORDAN: Really?

15 MR. FOWLKES: Well, that's part of it.

16 CHAIRMAN JORDAN: Okay.

17 MR. FOWLKES: And the other thing was that we
18 have letters from neighbors as well as support from the
19 AANC.

20 CHAIRMAN JORDAN: Yeah, I'm going to move this.
21 Although you do have letters from neighbors, and I
22 appreciate it -- you really have -- but the issue is the
23 person who did not know. You know, the people that you
24 talked to, where they might be in letters that we have,
25 it may not be. I'd rather fall on the safe of being

1 safe, than do it any other way. Can we just put this on
2 a short window, Mr. Moy?

3 MR. MOY: Short window. Okay. Well --

4 CHAIRMAN JORDAN: So if they post it on Friday,
5 when is our first available date?

6 MR. MOY: All right. That would be, that would
7 be, here we go. That would be November 18th, sir.

8 CHAIRMAN JORDAN: Okay. Then we'll roll this
9 to November 18th. Thank you.

10 Then, Mr. Moy, let's call 18850, please.

11 APPLICATION NO. 18850

12 MR. MOY: Thank you, sir. That would be
13 Application Number 18850 of Parkmont School. Mr.
14 Chairman, this is, as advertised, a request for special
15 exception to allow a private school, under Section 206,
16 for 65 students and 12 staff, and a variance from the
17 off-street parking provisions.

18 [Pause.]

19 CHAIRMAN JORDAN: All right. Please identify
20 yourselves.

21 MR. YAVINSKY: Good morning. I'm William
22 Yavinsky, representing Parkmont School on behalf of Hogan
23 Lovells.

24 MR. McCLAIN: I'm Ron McClain. I'm the head of
25 the Parkmont School.

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1 CHAIRMAN JORDAN: All right. This is a matter
2 which has -- the relief that has been granted on this
3 since 1983, and periodically you're required by the
4 limitations and the orders to come back and do the
5 roadblock stop, to see, making sure you're in compliance,
6 and you're now before us to ask to remove those
7 conditions -- well, to renew your relief and to continue
8 it again, without limitation.

9 I think we're okay, in my estimation, in my
10 previous review of this file, that there wouldn't be any
11 reason for us not to continue to grant your request.
12 There are some issues or discussion about what the
13 conditions are. I know the ANC had, what is it, six
14 conditions, I think. Is that into the old conditions, in
15 addition to those conditions?

16 MR. YAVINSKY: Our understanding was that --
17 so, as you may have seen from the 1999 appl--, excuse me,
18 from the 2004 application to the current application, the
19 ANC for Parkmont School changed from ANC-4C to ANC-4A.
20 We had a typo on our initial application that continued
21 to identify 4C, so they did receive notice of the
22 application, and Parkmont representatives, including Mr.
23 McClain, did appear before the ANC and answered their
24 questions about the current practices of Parkmont, in
25 response to, some of which overlapped significantly with

1 the conditions in place.

2 Separately, Mr. McClain also appeared before a
3 meeting of ANC-4A, and, as you would see in the record,
4 they have likewise supported the application.

5 CHAIRMAN JORDAN: Okay. So let me get back to
6 my initial question. What are the conditions that -- I
7 have six conditions from the ANC, and that would be
8 Condition 1, prohibits students from eating lunch off-
9 site; Condition 2, require the students to monitor, to
10 school, to monitor students and student parking to ensure
11 compliance with the school policy; Condition 3, ensure
12 that the facility only be used for school-related
13 activities, which is already part of the previous order,
14 and that, I think, corrects the other issue we had.
15 Condition 4, requires that the landscaping be maintained
16 and that the paved area not be enlarged; and Condition 5,
17 require that the school notifies the community in advance
18 of major events; and, Condition 6, the school is to
19 monitor the trash collection. Correct?

20 And, from the previous order, I think we've
21 picked up, properly, what would have been, Number 1 from
22 that, I think we've corrected what I thought the order
23 should actually be, is that the school be used for
24 school-related activities. Two, that the Number of
25 students shall not exceed 65, and the Number of faculty

1 shall not exceed 8.

2 MR. McCLAIN: I think, in 2004, that was
3 expanded to 12.

4 CHAIRMAN JORDAN: To 12?

5 COMMISSIONER TURNBULL: Is your microphone on?

6 MR. McCLAIN: I can't tell.

7 CHAIRMAN JORDAN: Do we have that now? Well,
8 we'll check with OP on this.

9 MR. McCLAIN: That was part of our application
10 in 2004, to increase to 12, which we had discussed with
11 Ms. Brown-Roberts in the court of the OP's report.

12 CHAIRMAN JORDAN: The other, that landscaping
13 shall be in accordance with the site plan, 44-A, and that
14 three parking spaces shall be provided on the site, and
15 there should be no enlargement of the existing paved
16 area. Is that correct?

17 Let's do this. Ms. Brown-Roberts would you --
18 well, let's go to OP and ask.

19 MS. BROWN-ROBERTS: Thank you, Mr. Chairman,
20 and good morning to members of the Board. Maxine Brown-
21 Roberts. Unfortunately, I made a mistake in
22 recommendation Number 2, and it should read "the Number
23 of students shall not exceed 65 and the Number of faculty
24 shall not exceed 12," which was the order from 2004.

25 CHAIRMAN JORDAN: All right. And so, all

1 right. Then we're good. I don't think there's anything
2 that the Board needs to hear. I think your application
3 and the documents you already submitted will be
4 sufficient for the Board to grant relief, but you always
5 have the opportunity to say what you want to the Board,
6 and I always strongly recommend to people, if the Board
7 is already at the point where you need them to be, that
8 it's probably best that you not say anything, but you
9 can. But some people have backed themselves into
10 trouble.

11 So, this is your opportunity to waive your
12 ability to speak to the Board, and we can proceed on.

13 MR. McCLAIN: We just want to thank --

14 CHAIRMAN JORDAN: Take Door Number 1. Thank
15 you.

16 [Laughter.]

17 MR. McCLAIN: Thank you.

18 CHAIRMAN JORDAN: Okay. Then let's turn back
19 to -- does the Board have any questions? Okay. Let's
20 turn to Office of Planning and see if there's anything in
21 addition that Ms. Brown-Roberts wants to add.

22 MS. BROWN-ROBERTS: No. Nothing additional,
23 Mr. Chairman.

24 CHAIRMAN JORDAN: Then, anyone here from Office
25 of Department of Transportation?

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1 MR. WESTROM: Good morning, Board. Glad to be
2 here.

3 CHAIRMAN JORDAN: Glad to see you here.

4 MR. WESTROM: Thank you. Ryan Westrom with
5 DDOT, and we would just add that we would like to
6 continue to encourage non-automobile usage in this
7 location. We did identify a couple of TDM measures that
8 we continue to push that front, operations that obviously
9 are effective, and we look forward to seeing them
10 continue.

11 CHAIRMAN JORDAN: Okay. Any questions? Well,
12 the only recommendation I see from DDOT is there are the
13 four bike racks. Is that correct?

14 MR. WESTROM: Correct. We suggested four bike
15 racks, and then also eligibility for employees, through a
16 modest --

17 CHAIRMAN JORDAN: You had the conversation with
18 the Applicant on it?

19 MR. WESTROM: We have not discussed it
20 directly.

21 MR. McCLAIN: We did talk to somebody about
22 DDOT. We were delighted to learn about the pre-tax
23 benefit of programs, so we've started the process of
24 signing up for that, and we've bike parking, both outside
25 and inside, for the last 5 or 6 years. That was a

1 helpful conversation for us.

2 CHAIRMAN JORDAN: Thank you. Is there anyone
3 here from ANC-4C? We do have a letter of support from
4 ANC-4C, which I read the conditions, as they've had
5 discussions with the school. Is anyone here wishing to
6 speak in support? Anyone speaking in support? We do
7 have three letters in support from adjacent neighbors.

8 Anyone wishing to speak in opposition? Anyone
9 in opposition? Then we will turn back to close this
10 hearing and move into deliberations. I would move that
11 we grant the request of relief, for an unlimited term on
12 the relief for this project, with the conditions as we've
13 discussed earlier, to be placed into the order. That
14 would be my motion.

15 COMMISSIONER HEATH: Second.

16 CHAIRMAN JORDAN: Motion made and seconded.
17 Any further discussion? All those in favor, aye.

18 [Multiple ayes.]

19 CHAIRMAN JORDAN: Those opposed, nay. The
20 motion carries, Mr. Moy.

21 MR. MOY: The staff would record the vote as 3-
22 0, on the motion of Chairman Jordan to approve the
23 application for an unlimited term, with conditions as the
24 board cited. Second the motion, Ms. Heath. It also had
25 the support of Mr. Turnbull, and we have two members not

1 present with us today. The motion carries, Mr. Chairman.

2 CHAIRMAN JORDAN: Okay. Summary Order, please?

3 MR. MOY: Thank you.

4 CHAIRMAN JORDAN: Then let's do 851.

5 APPEAL NO. 18851

6 MR. MOY: The next application before the Board is Appeal
7 Number 18851 of James Hill, Amir Afkhami -- I hope I
8 pronounced that name correctly -- and Robert Uth. This
9 is an appeal appealing the decision by DCRA to allow
10 construction of a deck. That property is 1636 T Street,
11 NW.

12 CHAIRMAN JORDAN: Okay. Please identify
13 yourselves.

14 MR. TRUITT: My name is Stephen Truitt. I
15 represent the Appellant here.

16 CHAIRMAN JORDAN: Okay.

17 MR. POSTULKA: John Postulka, Assistant General
18 Counsel for DCRA, and I know Mr. Sullivan is here,
19 representing the property owner as well, but I don't see
20 him in the room right now.

21 CHAIRMAN JORDAN: That's okay. Anyway, Mr.
22 Truitt, there's been a motion to dismiss this appeal.
23 I'm sure you're aware of it. And after reviewing the
24 file, I'm inclined to grant the Motion to Dismiss, for
25 several reasons. One, this is something that's been

1 before us at least two or three different times on the
2 same issue. The Board has already ruled on it. I think
3 there's a matter that's already pending at the Court of
4 Appeals, if I'm not mistaken. So I'm going to give you
5 the opportunity to respond, to let me know why you think
6 this should not be dismissed.

7 MR. TRUITT: Thank you. Your Honor, this is a
8 protective appeal. It was filed by the same parties that
9 were also parties to 18725, where the Board granted the
10 variances, upon which this building permit explicitly
11 relies in issue and site, in issuing it. So the issues
12 are tied together.

13 The Board has not yet, however, issued its
14 final resolution in the case of 18725. It has voted to
15 deny a Motion for Reconsideration and Rehearing but has
16 not entered a final order. So, it is too soon for us, at
17 this point in time, to appeal and bring to the Court of
18 Appeals our claims of error in this Board's ruling in
19 that case.

20 Meanwhile, the building permit has been issued.
21 It draws into question, and relies upon the very same --

22 CHAIRMAN JORDAN: Excuse me one second.

23 MR. TRUITT: Yes.

24 CHAIRMAN JORDAN: Okay. Go ahead. I'm sorry.
25 Please.

1 MR. TRUITT: It relies upon the very same order
2 that is at issue. When we go to the Court of Appeals, we
3 want to have everything that's relevant before them.
4 Now, if you dismiss today, what we will then have to do
5 is take an appeal from that before the underlying
6 decision has been --

7 CHAIRMAN JORDAN: I thought the Board issued an
8 order in this case. Did we not?

9 MR. TRUITT: I have received no order.

10 CHAIRMAN JORDAN: I don't know where you are.
11 I'm being informed that these orders are out, and when I
12 reviewed the record, I thought that both orders were out.
13 No? One's missing? What's missing?

14 MR. POSTULKA: The order denying the Motion for
15 Reconsideration hasn't been issued yet.

16 CHAIRMAN JORDAN: Okay. All right.

17 MR. TRUITT: That's the crux of the problem
18 here.

19 CHAIRMAN JORDAN: We've already heard, through
20 reconsideration. We've already ruled from the bench.
21 You just have not gotten it.

22 MR. TRUITT: And so I can't appeal that order
23 in 18725. If I had the order, I would have done so, and
24 the legality of your order would be at issue. If you
25 grant the motion that has been filed for here, you will

1 be saying we dismiss the case. We will then have to take
2 an appeal from that before the underlying order in 18725
3 is available to be appealed.

4 So our suggestion, in both the prehearing
5 statement -- and we've been pretty up front about it in
6 our appeal itself -- was that you simply hold up this
7 matter until you issue your ruling in 18725 --

8 CHAIRMAN JORDAN: Hold up what matter? Hold
9 what up?

10 MR. TRUITT: Hold up this appeal, and make no
11 decision in it until you have made the decision,
12 finalizing your resolution in 18725, i.e., issue a
13 written decision denying our motion for reconsideration.

14 The idea here is simply to get everything up to
15 the Court of Appeals at once.

16 CHAIRMAN JORDAN: Absolutely. Mr. Postulka?

17 MR. POSTULKA: This case is duplicative of the
18 prior case and the Board already granted the Request of
19 Relief in that case. It just doesn't seem to make sense
20 to me to keep this case open unless they want to
21 introduce new evidence, and then it would be an improper
22 Motion for Reconsideration. It would be untimely, it
23 would be a successive motion, so this case seems improper
24 to me.

25 CHAIRMAN JORDAN: Mr. Sullivan?

1 MR. SULLIVAN: Thank you. Marty Sullivan from
2 Sullivan and Sullivan & Barros, on behalf of the property
3 owner. One doesn't have anything to do with the other.
4 I think you have filed an appeal saying that there's an
5 error by the Zoning Administrator, in issuing a building
6 permit, which was issued, and if he has concerns about
7 the economy or the efficiency of the Court of Appeals
8 listening to an appeal, he can ask the Court of Appeals
9 to join the cases if he wants. It sounds like, from what
10 he's saying, that he actually doesn't have any violation
11 of the regulations to cite. He's asking for some
12 procedure relief that's not available here.

13 MR. TRUITT: The building permit itself cites
14 your decision in 18725, which is why we have taken this
15 action.

16 CHAIRMAN JORDAN: I understand your position
17 clearly, and so we're going to dismiss this appeal, and
18 let me give you the basis of that. We've already ruled,
19 and it's just -- we've already ruled, and you asked us to
20 rule again on what we've already ruled on, which we're
21 not going to do. You have that opportunity to go to the
22 Court of Appeals at the proper time for the Court of
23 Appeals, and, however, when an applicant actually takes
24 action and they know that there's a controversy still
25 pending, if they do something and the matter can be

1 appealed or not appealed, they do that at their own risk.

2 So you have all the ability to still seek
3 whatever remedy you want from the Court of Appeals, and
4 if they agree with you, then the Applicant is going to
5 have to do whatever the Applicant has to do, or the Court
6 of Appeals order. If they send it back to us on remand,
7 then we will deal with it, but as we sit here today, this
8 is done at the Board of Zoning Adjustment. Is that good
9 with the Board?

10 MR. SULLIVAN: Mr. Chairman, can I have -- I
11 just wanted to expand on -- he's filed -- he has
12 attempted to imply some violations, in general. It's a
13 fishing expedition of sorts. I don't know if he was
14 going to talk about it here or not. But I would also
15 request that the Board expand their decision to dismiss
16 on the basis that he has failed to state -- just for
17 purposes of avoid a remand, to expand the decision a
18 little bit, and dismiss for failure to state a claim, if
19 that makes sense.

20 CHAIRMAN JORDAN: We got this, Mr. Sullivan.

21 MR. SULLIVAN: I got you. Thank you.

22 CHAIRMAN JORDAN: Thank you. All right. So we
23 don't meet the requirements for appeal. This is actually
24 a back door for reconsideration over and over again.
25 There's no basis being raised of an error by the Zoning

1 Administrator, which is sufficient to allow for this
2 appeal to go forward. And so that's where we are, and so
3 my motion would be that we dismiss this appeal.

4 COMMISSIONER TURNBULL: Second.

5 CHAIRMAN JORDAN: Motion made and seconded.
6 Any discussion? All those in favor, aye?

7 [Multiple ayes.]

8 CHAIRMAN JORDAN: Those opposed, nay. The
9 motion carries. Mr. Moy?

10 MR. MOY: The staff would record the vote as 3-
11 0. This was on the motion of Chairman Jordan to grant
12 the Motion to Dismiss. Seconding the motion, Mr.
13 Turnbull, all supporting, Ms. Heath. Two members not
14 present. Motion carries, sir.

15 CHAIRMAN JORDAN: Very good. Thank you.
16 Summary order? No, no summary order. Full order. No
17 summary on that one.

18 APPLICATION NO. 18708

19 CHAIRMAN JORDAN: Mr. Sullivan, do you want to
20 give me an update on 18708?

21 MR. SULLIVAN: We've made a lot of progress in
22 the last half hour.

23 CHAIRMAN JORDAN: A lot of half hour, from last
24 week. Give me a week. We have this done.

25 MR. SULLIVAN: Well, we've made a lot of

1 progress in the past week, but at this point, Ms.
2 Moldenhauer is typing the language up, and we believe
3 that we're going to have an agreement with the opposition
4 parties.

5 CHAIRMAN JORDAN: Okay. So you can stand down
6 and I'll do another case and see where you are.

7 MR. SULLIVAN: Thank you.

8 CHAIRMAN JORDAN: Thank you, Mr. Sullivan.
9 18847, please.

10 APPEAL NO. 18847

11 MR. MOY: Application Number 18847 of the
12 Warrenton Group. Mr. Chairman, this is a request for
13 variance relief from the off-street parking requirements
14 under 2101.1, to construct a new, six-story, mixed-use
15 building. This is the caption as publicly noticed.

16 CHAIRMAN JORDAN: All right. Please identify
17 yourselves.

18 MR. FREEMAN: Good morning, Chairman. My name
19 is Kyrus Freeman. I'm a partner with the law firm of
20 Holland & Knight, on behalf of the Applicant. We'll
21 start from the left and work our way down.

22 MR. WILLIAMS: Warren Williams, a partner at
23 the Warrenton Group.

24 MR. CHARLES: Reuben Charles, also a partner
25 with the Warrenton Group.

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1 MS. BLUM: Jessica Bloomfield with Holland &
2 Knight.

3 MR. HARESIGN: David Haresign with Bonstra
4 Haresign Architects.

5 MR. ARNOLD: Jeremy Arnold with Bonstra
6 Haresign Architects.

7 MS. WHITE: Nicole White, Symmetra Design.

8 CHAIRMAN JORDAN: Okay. Is there anyone here
9 from ANC-1A? Is there anyone here from ANC-1A? Okay.
10 The ANC-1A had voted 6-2 to be in opposition to this
11 relief.

12 I've reviewed the application and all the
13 supporting documents, and I really don't think there's
14 any questions that I have about this matter. I believe
15 that, in my eyes, it can go forward as submitted. Office
16 of Planning is in support. Department of Transportation
17 is in support, and certainly there are some conditions
18 here.

19 The ANC actually does reference that the
20 property has a unique situation or circumstances in that
21 there is a practical difficulty, but it's the issue of
22 parking that bothers them. I wanted to see if they were
23 here so we can get further input from the ANC, but
24 they're not here, and I guess they're standing on their
25 letter, and which we certainly would give their letter

1 great weight.

2 But it doesn't allow us the opportunity to have
3 questions of them, for us to delve deeper into their
4 concern, especially since I'm kind of confused about how
5 they reached their decision, when they certainly support
6 everything else that you're asking for, and admit that
7 you meet the standard. I guess they said if you don't
8 meet the standard regarding the impact on the community
9 and the neighborhood, I think that's the way we would
10 interpret that.

11 Mr. Moy, what is this?

12 MR. MOY: This is the handout from the
13 Applicant, in print, of the TDM measures. I'm hoping
14 it's what you already have, but they'll have to clarify
15 that.

16 CHAIRMAN JORDAN: All right. That's what I
17 need to find out. The Board may have some other
18 questions they want to ask, but I also want to come back
19 and drill down on these conditions. Does the Board have
20 any questions, otherwise? Do you want to ask them about
21 the roof?

22 COMMISSIONER TURNBULL: No. I guess, I think,
23 what we need to do is go through the parking measures and
24 clearly, for the record, go through and make sure that
25 we're all in sync. I had just one architectural issue --

1 CHAIRMAN JORDAN: Okay. Then we might as well
2 just --

3 COMMISSIONER TURNBULL: -- to Mr. -- I just
4 thought that the embellishment on the roof was a little
5 bit more than an embellishment. It's like 50 percent of
6 the roof. They're not asking for relief on that, but
7 it's just a little bit of stretch, but it's up there.
8 But I think we need to go through the --

9 CHAIRMAN JORDAN: Traffic demand.

10 COMMISSIONER TURNBULL: -- traffic demand. Go
11 through it, make sure that, for the record, we've covered
12 everything, and how far in sync or out of sync we are
13 with what the ANC is looking at.

14 CHAIRMAN JORDAN: Okay. So let's do this. Mr.
15 Freeman, let me go to Office of Planning and see if there
16 is anything in addition. Then we're going to come back
17 and have a discussion about the conditions. But if we
18 can turn to Office of Planning and see if there's
19 anything in addition to their report, or whatever they
20 want to do.

21 MS. THOMAS: Good morning, Mr. Chairman. Karen
22 Thomas with the Office of Planning. We do not have
23 anything further to add. Thank you.

24 CHAIRMAN JORDAN: Turning to the Department of
25 Transportation.

1 MR. WESTROM: Thank you. Good morning, and
2 like Office of Planning, there is not much additional to
3 add. I would note, however, that we do applaud the
4 Applicant in their willingness to work with us on TDM
5 measures. There was further coordination, even as we
6 followed this mission of our report, in terms of -- and
7 you can see by the extensive list that they have prepared
8 here, as a result of that.

9 CHAIRMAN JORDAN: So this list does include
10 your recommendation that was in your report?

11 MR. WESTROM: It appears so, yes.

12 CHAIRMAN JORDAN: Does this --

13 MR. FREEMAN: Yes, Mr. Chairman.

14 CHAIRMAN JORDAN: Okay. All right. Does the
15 Board have any questions, of either the Office of
16 Planning or the Department of Transportation? Does the
17 Applicant have any questions?

18 MR. FREEMAN: No, Mr. Chairman.

19 CHAIRMAN JORDAN: I asked earlier was anyone
20 here from ANC-1A. We know ANC-1A voted 6-2 in
21 opposition, and they have concerns about the parking
22 impact, and then questions about the residential parking
23 system issues. So the Board has read the ANC-1A's
24 submission and certainly gives great weight, and we'll
25 ask questions about that, making sure that we believe

1 that they're sufficient, or reduce impact upon the
2 community regarding relief requested.

3 Is there anyone here wishing to speak in
4 support of this application? All right. I see a hand
5 popping up from someone. Let me ask again -- anyone in
6 support? Anyone in opposition? I think there's a hand
7 saying, "I'm in opposition." Come forward, please. Do
8 we have room for you at the table? If not, we need to
9 make room. Yeah, okay, there's room.

10 Good morning. Could you identify yourself,
11 please?

12 MR. HEDRICK: My name is Marcus Hedrick. I'm
13 the President of the Parkview United Neighborhood
14 Coalition, and I'm here to represent that organization.

15 CHAIRMAN JORDAN: Okay. Parkview Neighborhood
16 Association. Okay. Let me give you 5 minutes. You have
17 5 minutes. You don't have to use all 5, but you have 5
18 minutes to address the Board on this issue.

19 MR. HEDRICK: Okay. I'll try and keep it
20 fairly brief. I submitted a letter. I'm new to the
21 electronic application system, so I think I made a
22 mistake, so you're just getting that today. I'll be as
23 brief as I can.

24 Parkview United Neighborhood Coalition is a
25 nonprofit civic association that operates in northern

1 Parkview and southern Petworth, so we're really centered
2 right around this building site. We have a Number of
3 members who live on the 700 block of Princeton. That's
4 the residential street that will be on the corner for
5 this property.

6 We met on October 1st for our regularly
7 scheduled monthly meeting, to discuss this project. The
8 developer was kind enough to attend several neighborhood
9 meetings before that, so our members had an opportunity
10 to really engage with them. Nevertheless, the
11 organization voted unanimously to oppose this variance,
12 because of our concern with the parking and whether the
13 proposed mitigations would be sufficient to eliminate the
14 harm to the public interest.

15 I don't know exactly what was in the DDOT
16 report, but I can speak to some of the sort of unique
17 elements of that block that the neighbors were concerned
18 with. There is a popular church directly across the
19 street, which is regularly attended by folks from
20 throughout the D.C. area, and unlike a lot of churches in
21 the area, we have a pretty good relationship with the
22 folks at that church. They're very respectful about
23 parking, but, nevertheless, they take up a fair Number of
24 parking spots when they're meeting.

25 There's also a summer basketball tournament

1 that brings in a lot of visitors from around the D.C.
2 area during the summer, which also places a stress on the
3 parking for the blocks right around the Parkview Park,
4 which doesn't have any parking of its own. The church
5 across the street also doesn't have any parking. So any
6 time people visit those attractions, they're looking for
7 on-street parking.

8 You're well aware that development is
9 increasing density in the area, so our members are very
10 concerned about not just in the next year or two what the
11 parking situation will be, but what the situation will be
12 10 years from now, and the mitigation proposals that we
13 heard prior to our October 1 meeting did not seem
14 sufficient in term or in scope. The Bikeshare option,
15 while attractive, to supplement folks so that they'll use
16 it, the Bikeshare rack that we actually have is almost
17 always fully in use, so giving people a subsidy won't
18 really increase the Number of bicycles being used,
19 because they're already maxed out.

20 The suggested using a car-share service and
21 designating spots for that, but there's already a car-
22 share slots on Otis and Georgia, one block away. And we,
23 as the ANC also was concerned, we're concerned with how
24 enforcement would be implemented on ensuring that
25 residents don't enter the RPP system. Under D.C.

1 statute, every resident would want his right to apply for
2 an RPP system.

3 There may be some contract language between the
4 owner and the residents saying they won't enter the RPP,
5 but that really only protects the owner and the
6 residents. Contracts aren't good for protecting the
7 community or third parties. We wouldn't have any way of
8 enforcing that contract, and I don't think the BZA is
9 really interested in monitoring a building to make sure
10 no one is applying for parking when they said they
11 wouldn't.

12 So those are our main concerns. We do
13 appreciate the Warrenton Group's willingness to reach out
14 to the community, provide us with enough notice that we
15 could actually discuss this at a meeting, but, at the end
16 of the day, we had serious concerns about whether the
17 mitigation techniques would eliminate the harm of
18 removing 14 parking spaces that would be there if they
19 didn't apply for the variance.

20 And so, the only thing I want to point out is
21 my membership did not vote or discuss the final
22 mitigation techniques, because those were completed after
23 our meeting, and by our by-laws, we can't change our
24 organization's position unless we have another meeting,
25 which won't be until tonight. So our membership has not

1 had a discussion of the full host of final, amended
2 provisions.

3 CHAIRMAN JORDAN: Okay. I appreciate it. And
4 I think what I get the gist, also, from your
5 presentation, as well as reading the ANC's letter, is not
6 understanding how the restrictions on residential parking
7 permit process has gone. In fact, the Board has gone
8 back and forth with DMV and the Department of
9 Transportation. I think we have a handle on it. So
10 there is the ability to place the restrictions within the
11 D.C. system, but that means that the person -- it doesn't
12 stop a person from parking their car anyway, but they'd
13 certainly be subjected to getting tickets, et cetera, if
14 they do so.

15 So I just wanted to provide that to you, and
16 we're pretty clear on the legalities of the Applicant
17 having the ability to make that request.

18 One of the other things that we require to
19 happen is that these restrictions be placed by covenant
20 around with the property so that it does remain. But,
21 again, the fallacy in it all is that if people still get
22 their cars that may not meet the parking permit
23 requirement, then they're subjecting themselves to
24 getting ticketed, et cetera.

25 I don't want to go out on a limb and say we're

1 relatively comfortable with that, but we've been drilling
2 down on this, and drilling down on this. In fact, we had
3 a joint meeting of the Department of Motor Vehicles and
4 the Department of Transportation to get the two of them
5 together, making sure that we all were on the same page
6 with how this will actually operate.

7 So, I know that your association as well as the
8 ANC may not be that comfortable and understand how that
9 works, because we weren't either, until we had this
10 meeting to understand how it flows.

11 Board, any questions? Yes.

12 COMMISSIONER TURNBULL: I just have a comment.
13 I know the Applicant's counsel, legal counsel, has
14 developed the same --

15 CHAIRMAN JORDAN: Are you questioning the
16 witness?

17 COMMISSIONER TURNBULL: No. I'm just making a
18 comment, in general, on what you had just commented on,
19 that when you talk about the covenants and all that,
20 there has been another thing before the Zoning Commission
21 with similar language, and you are right, that they are
22 enforceable. But it's not a zoning issue. It becomes a
23 covenant that runs with the building. And so, as I say,
24 the Applicant's general counsel has put together
25 language, and I'm assuming that in the order, this same

1 language is going to be repeated. So I think it's one of
2 the best things that we can do, is to encourage that.

3 CHAIRMAN JORDAN: You know, I think, though,
4 Mr. Hendrick --

5 MR. HEDRICK: Hedrick.

6 CHAIRMAN JORDAN: -- Hedrick raised a good
7 concern, Mr. Freeman, and it's something I know we have
8 not addressed, as a Board. Where is the third party's
9 ability to seek the enforcement of the covenant? And I
10 think that's a very, very legitimate question. Even
11 though you're making all these things by lease, et
12 cetera, you might want to provide, in the covenant, that
13 community folks or whoever have the right to enforce that
14 covenant, because it comes down to like a contract. I
15 don't know, but I think it's a legitimate question that
16 he raises, because we have not considered that.

17 Yes, please, Mr. Freeman.

18 MR. FREEMAN: So, as in every BZA case, these
19 would become conditions of our order, and in any
20 condition, a person in the public can go to the Office of
21 Zoning and file an enforcement action, to the extent that
22 they think we violate any of these conditions. So it's
23 the same as, there's a cap on the Number of students. An
24 individual in the public can go to the Office of Zoning
25 and file an enforcement action.

1 CHAIRMAN JORDAN: Yeah, that's true. Thank you
2 for the correction. You're absolutely right.

3 All right. Thank you. Appreciate it. Anyone
4 else wishing to speak in opposition? Anyone else in
5 opposition?

6 Let's turn back to the Applicant.

7 COMMISSIONER TURNBULL: Mr. Chair, I just had
8 one question for the Applicant, and going back to the
9 site plans -- and I'm looking at A-6, which do show some
10 existing curb cuts, and I'm just questioning what the
11 status is of those. Are they to be filled in or --

12 MR. FREEMAN: With respect to the existing curb
13 cuts, DDOT takes the position that a change of ownership
14 or the change of use requires a closure of those curb
15 cuts, so that's part of the public space process.

16 COMMISSIONER TURNBULL: The plans just don't
17 show that they would be removed.

18 MR. FREEMAN: Yes, sir.

19 COMMISSIONER TURNBULL: Okay.

20 CHAIRMAN JORDAN: Let's take a moment to drill
21 down on the TDM measures, unless there are any other
22 questions. So, Number 1, you have the Applicant shall --
23 and I'm going to use this as the most updated, the one
24 that was submitted today.

25 MR. FREEMAN: So this is, yes, sir. And this

1 is just to be clear. What we did is, when we were at the
2 ANC we had TDM measures. We heard their concerns. We
3 heard DDOT's concerns. So we kind of incorporated those
4 and synthesized them all into this document.

5 CHAIRMAN JORDAN: So, for the record, what
6 exhibit Number is this?

7 MR. MOY: Just a second, sir. This would be
8 Exhibit Number 36.

9 CHAIRMAN JORDAN: Exhibit Number 36. For this
10 one, for identification purposes, for the record, and
11 that's the proposed Transportation Demand Measures. So,
12 Number 1, we have the Applicant shall include in his
13 residential lease a provision that prohibits tenants from
14 obtaining an RPP for the property from the District of
15 Columbia Motor Vehicles, under penalty of these lease
16 terminations. Okay. To me, that's okay. Number 2, the
17 Applicant shall obtain written authorization from each
18 tenant, either through a lease provision or another
19 written document, that allows the DMV to release to the
20 Applicant any and all records of that tenant requesting
21 or receiving the RPP.

22 It should be a requirement. This should say it
23 should be a requirement of the lease, right. It should
24 be a requirement, though, in the lease, that they're
25 required to give you this authorization. Do you follow

1 me, Mr. Freeman?

2 MR. FREEMAN: Yes.

3 CHAIRMAN JORDAN: I know you're trying to say
4 that, but I don't think it says it clearly. Just make
5 sure we tighten that one up.

6 Number 3, the Applicant shall monitor tenant's
7 compliance with the RPP lease restrictions by requesting
8 from the DMV, every 6 months, or any other record of
9 residential tenants requesting or receiving RPP for the
10 subject priority, and shall provide handily to the ANC-
11 1A, and we're going to add the Parkview United
12 Neighborhood Association, Neighborhood Coalition, so that
13 they also get a list of any violations.

14 Now, saying that also begs back another
15 question from me, Board, and Mr. Freeman. If these
16 properties go condo, what -- we need a provision so that
17 you have the same ability, the homeowners' association
18 has the same provisions to call it a violation of the by-
19 laws if a homeowner subsequently goes and does this, too.
20 So we need a provision for that.

21 MR. FREEMAN: It might be an expansion of
22 Provision 5.

23 CHAIRMAN JORDAN: Yeah. I was going to get to
24 5. Oh, well, 5? Yeah. Well, put that down as a note.
25 I would like to see it in there, but I want to talk about

1 something else in regards to homeowners, that I don't see
2 here.

3 So, where was I? Number 4? Number 4, the
4 Applicant shall record a covenant against a property
5 among the land records of the District of Columbia,
6 prohibiting any lessee or owner of the property from
7 obtaining RPP.

8 Five, if the building is developed as a condo,
9 the Applicant shall include the condo by-laws public
10 offering the RPP prohibition. Where is my note? I'm
11 just trying to see if I have it in the right place or if
12 I need to move it. Okay.

13 Okay, so also let's add to Number 5 what we
14 just talked about, that the homeowners' association
15 should also have -- that the owners are required to give
16 something for the homeowners' association to verify
17 whether or not they violated the RPP.

18 MR. FREEMAN: So, essentially, 2.

19 CHAIRMAN JORDAN: Similar to 2, yeah. Number
20 6, for the first 10 years that the building is open, the
21 Applicant shall offer a choice of either an annual
22 Capital Bikeshare membership or an annual Carshare
23 membership for each new tenant -- for each new tenant,
24 not each new apartment unit. Each new tenant. The
25 apartment unit is only going to be one time that it's

1 new. However, the tenants are going to change, for each
2 new tenant.

3 If the lease duration is shorter than 1 year,
4 the membership shall be reduced accordingly. If the
5 building is developed as a condo, the Applicant shall
6 offer each new purchaser of a unit -- not the Applicant.
7 I have the Applicant or HOA, the homeowners' association.
8 So it would be the Applicant or the homeowners'
9 association. Because, actually, the Applicant goes away
10 in the condo situation, once the condo docks are filled
11 and the first resident or second resident -- until they
12 get the majority. The Applicant and the HOA shall
13 provide each new purchaser of a unit the choice of either
14 annual Capital Bikeshare membership or annual Carshare
15 membership. Follow me? Okay.

16 The Applicant shall provide a one-time
17 incentive, up to five bicycle helmets -- okay --
18 distributed for residents. The Applicant shall provide -
19 - now, this is something I want the Board to look at -- a
20 \$10 Smartcard? I mean, I know we're really hurting you
21 here, but a \$10 Smartcard? That's like, what, not even a
22 day's travel. Is that right?

23 [Laughter.]

24 CHAIRMAN JORDAN: I mean, honestly. Isn't that
25 right?

1 MR. FREEMAN: So the thinking -- and not to
2 speak for DDOT -- but the thinking for the amount was
3 just to kind of put something on there. For some folks,
4 the hassle is actually getting a Smartcard, not putting
5 the money on it. So the thinking was just to put
6 something on there, in order to allow for a person to
7 have a card, and then they could reload it, as necessary.
8 That is what I understood as the thinking for it, for the
9 amount, and the inclusion of that provision.

10 MR. WESTROM: And I can speak to that a little
11 bit. It is something that we've discussed internally.
12 You know, how can we encourage the use of transit, and
13 can you? Are people just going to do it anyway? Perhaps
14 we've gone back and forth, in terms of the effectiveness,
15 but we believe that the effectiveness is better than
16 zero. And the discussion was exactly as Mr. Freeman was
17 noting, that some people, if they have not ever ridden
18 the Metro before, may perceive the difficulty of actually
19 getting a SmarTrip card as more problematic than loading
20 it with some amount, and whether it's \$10 or \$100, maybe
21 it doesn't matter that much. But if you actually have
22 the card, you're liable to at least go try the system,
23 and getting somebody to try the system, who may not have
24 otherwise, is the goal. What they do after that is, of
25 course, to be determined.

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1 CHAIRMAN JORDAN: Yeah, but we really want to
2 get them hooked.

3 MR. WESTROM: That's right.

4 CHAIRMAN JORDAN: Because you're here before us
5 for relief, and we have to measure the effect upon the
6 relief that you're asking us for, with the community.
7 And this is the time you're going to get the hook,
8 because after that, that's a hook. And we have to
9 protect the community. As you know, the ANC has raised
10 the issue, and the Parkview Neighborhood has raised the
11 issue, and it's something that is very real. Some of our
12 other board members really would be really drilling you
13 down on this particular issue. I think we're okay.

14 So a couple of things with that one. I'm going
15 to say that should be a \$50 Smartcard, if that's not out
16 of line with the Board's thinking? Okay. And that the
17 language also gets changed, for each new lease or sale of
18 the unit. See, the problem is, a lot of these we talk
19 about initially, these folks go away but the community is
20 still there and still be suffering, so that's the change
21 I would like to have.

22 MR. FREEMAN: My only concern is when we, when
23 the Applicant is developing and selling the units, it's
24 easy them him to do that. Once you have an HOA --

25 CHAIRMAN JORDAN: It's going to be internal.

1 MR. FREEMAN: And turnover.

2 CHAIRMAN JORDAN: Well, I think you can handle
3 it by the Declaration and Requirements for the By-Laws.
4 Now, you don't have to do it; then we don't do the
5 relief.

6 MR. FREEMAN: Well, we will do it.

7 [Laughter.]

8 CHAIRMAN JORDAN: I just want to make sure
9 we're on the same page. It's your option.

10 MR. FREEMAN: What exactly is the language you
11 want us to have in there?

12 CHAIRMAN JORDAN: The Applicant shall provide a
13 \$50 Smartcard for each new lease and each new unit, each
14 new owner, the Applicant or the HOA. Then Number 9 stays
15 intact. Number 10 stays intact. Number 11, that's
16 really nice, a bicycle repair facility. Number 12, the
17 Applicant shall post all TDM commitments online. The
18 Applicant shall also provide each -- what do you mean, a
19 link? I don't understand what you mean, the link.

20 MR. FREEMAN: It's just additional information,
21 a link to access those websites.

22 CHAIRMAN JORDAN: Oh. That's just like fluff.
23 Okay. You say that sounds good. We can do that. Not an
24 issue, right? And then Number 13 shall stay intact.
25 Does the Board or anybody else have anything with these?

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1 COMMISSIONER TURNBULL: No. I think you've
2 covered it. I just had one other item which was
3 mentioned. We didn't really talk about it, and the
4 Department of Transportation, we never really got into
5 it, which was the loading, off-site, I mean, street-side
6 loading. Although the report by the Department of
7 Transportation talks about a loading management plan, and
8 gets into that, is there a designated area right now? Is
9 it near the trash? I'm just curious as to where we stand
10 on that. Is it simply a truck's going to double-park? I
11 mean, you've got your regulations at the Department of
12 Transportation. So, what are you looking at for the
13 Applicant, going forward? I mean, how do we finalize
14 this for the order, as far as what's to be included?

15 MR. WESTROM: Thank you. I appreciate you
16 bringing that up. It was a topic on a case last week, as
17 well. Loading is a concern for the DOT. It's handled as
18 part of the public space permitting process. Where it
19 might affect the variance at issue, certainly it's an
20 issue. Currently, in this case, we did not believe that
21 the loading considerations affect the variance requested.
22 We would anticipate that this will be handled as part of
23 the public space permitting process, in coordination with
24 the Applicant. Our understanding is that, indeed, they
25 are planning to have on-street loading, for instance, for

1 the trash adjacent to that trash facility.

2 As part of our coordination in that public
3 space permitting time, we will need to identify a
4 specific on-street zone for that, and that will be
5 something that they will be required to do in order to
6 obtain their permits for the building, at that point, at
7 that juncture in the development.

8 COMMISSIONER TURNBULL: Okay, because there's
9 also a retail component to the building, and then there's
10 the residential aspect, with moving in, moving out.

11 MR. WESTROM: There certainly will be
12 significant loading operations, similar to a lot of these
13 multiuse buildings, and, again, I do really appreciate
14 the observation. And it's something that I believe the
15 Applicant is fully aware of and they are anticipating
16 preparation of a loading management plan accordingly,
17 which will identify the curbside zones very specifically,
18 as well as the hours of operation.

19 COMMISSIONER TURNBULL: I was going to say, the
20 curbside zone is painted, or it's got a sign, and it's
21 got hours listed.

22 MR. WESTROM: Correct, and those hours have yet
23 to be determined, of course, and we do have a mechanism
24 in place whereby it will be signed as a loading zone, if
25 appropriate, and that will be exactly the case here.

1 COMMISSIONER TURNBULL: Would it be a no-
2 parking area, or would parking be allowed in those off
3 times?

4 MR. WESTROM: Again, a good question. It
5 depends on the type of loading zone that is put in, but
6 it could have parking during certain portions of the day,
7 and then another portion of the day be restricted for
8 loading only.

9 COMMISSIONER TURNBULL: Okay. All right.
10 Thank you.

11 CHAIRMAN JORDAN: Good, thank you. Board, any
12 other questions? Yes.

13 COMMISSIONER HEATH: One quick question. You
14 mentioned that these TDM measures were developed as a
15 result of conversations with ANC. Have they seen what
16 these --

17 MR. FREEMAN: Well, we have not gone back to
18 the ANC. We took some of their questions and tried to
19 incorporate them, for example. There was a question
20 about how do you restrict condo owners from the RPP, so
21 we added Number 5, to say it's going to be in the by-
22 laws, the public offering statement, the purchase
23 agreement, and the deed. So we took some of what we
24 heard from them and incorporated those comments into kind
25 of this iteration that are TDM measures.

1 COMMISSIONER HEATH: So you feel like you've
2 addressed their issues?

3 MR. FREEMAN: To the extent that their question
4 is related to impact of the TDM measures, I think our TDM
5 measures address those comments.

6 COMMISSIONER HEATH: Okay. All right.

7 CHAIRMAN JORDAN: Anything else?

8 MR. WESTROM: I do have one more thing, if I
9 might add. I did note a difference between the TDM
10 measures proposed in your initial submission and this
11 one, in one element, and this is on item Number 6.
12 Previously, you had been discussing a Bikeshare and a
13 Carshare, and it has been changed to "or" a Carshare.
14 The DOT's perspective would be that we prefer an "and,"
15 but we would leave that to discussion between the Board
16 and the Applicant.

17 CHAIRMAN JORDAN: We normally do "or"s. Okay.
18 So, is there anything else you want to present to the
19 Board?

20 MR. FREEMAN: No. That concludes our
21 presentation.

22 CHAIRMAN JORDAN: Okay. Then I believe we can
23 bring this hearing to a close, and I would move that we
24 grant the relief requested. Well, let me say this. I
25 think we've properly done a good job in mitigating any

1 impact on the community, and certainly we understand the
2 ANC's concern, although the ANC letter in support
3 recognizes that this property is unique and has some
4 practical difficulties. But they had some concern about
5 the parking, the impact on parking, as well as the
6 Parkview United Neighborhood Coalition.

7 But I think we've actually -- the issue that
8 was raised by both groups was really not understanding
9 how residential parking permit restrictions can operate,
10 and I believe that with the transportation demand
11 measures, that we have provided sufficient changes, as
12 we've amended them here, that would further reduce any
13 impact upon the community.

14 And, so, with that, then I would move that we
15 grant the relief requested with the amended
16 Transportation Demand Management measures.

17 COMMISSIONER HEATH: Second.

18 CHAIRMAN JORDAN: As contained in Exhibit 36.
19 Motion made and seconded. Any further discussion? All
20 those in favor of the motion, aye.

21 [Multiple ayes.]

22 CHAIRMAN JORDAN: Those opposed, nay. The
23 motion carries. Mr. Moy?

24 MR. MOY: Staff would record the vote as 3-0,
25 this on the motion of Chairman Jordan to approve the

1 application for the relief requested, along with the
2 amended TDM measures under new Exhibit 36. Seconding the
3 motion, Ms. Health. Also in support, Mr. Turnbull. Two
4 members not present. Motion carries, sir.

5 CHAIRMAN JORDAN: Very good. Now, let's do a
6 hybrid summary order. I would like to discuss the ANC's
7 issue and then how we resolved it. I'm going to ask Mr.
8 Freeman to do two things. I'm going to ask you, one, to
9 present a clean-up version on Exhibit 33, as we have
10 amended, then I'm going to ask you to prepare the hybrid
11 order and submit it, the proposed hybrid order.

12 MR. FREEMAN: Yes, sir.

13 CHAIRMAN JORDAN: And what I want in that is
14 certainly, as we do in our summary orders, but I want a
15 little discussion about the ANC and the parking concern,
16 and how we addressed it here. Okay?

17 All right. With that, that will be the order.
18 Thank you.

19 Board, take 5 minutes.

20 [Break taken from 10:44 to 10:55 a.m.]

21 CHAIRMAN JORDAN: All right. Mr. Moy, do you
22 want to call it.

23 APPLICATION NO. 18708

24 MR. MOY: Yes, sir. Thank you, Mr. Chairman.
25 We're back on the record with Application Number 18708.

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1 This is an application of Amir Motlagh, and, let's see.
2 Here we go. I'm sorry. I was looking at my notes. This
3 application was previously captioned for relief from
4 theoretical requirements under 2516, and I believe it was
5 amended to include variance from 2516.5, and I think
6 2516.6(d), and I'm hoping the applicant can clarify that
7 for the record for me.

8 CHAIRMAN JORDAN: Okay. Please identify
9 yourselves.

10 MS. MODENHAUER: I'm Meridith Moldenhauer from
11 the law firm of Griffin, Murphy, Moldenhauer & Wiggins,
12 on behalf of the collective parties in opposition.

13 MR. JACOBSON: Ed Jacobson.

14 MR. SULLIVAN: Marty Sullivan, on behalf of the
15 applicant, Mr. Motlagh.

16 MR. SHARIFI: I'm Sean Sharifi. I'm the
17 grandson of the Applicant, Amir Motlagh.

18 MR. MOTLAGH: Amir Motlagh, the owner of the
19 lot and Applicant.

20 CHAIRMAN JORDAN: Okay. I understand that we
21 had several persons seeking party status, which we
22 granted and we requested, that the Applicant and the
23 party status -- well, the party status group is
24 consolidated to one, being represented by Ms.
25 Moldenhauer. So I understand you've had conversations on

1 this, and you've tendered to the board what is
2 represented as -- I don't know exhibit Number this is
3 going to be, but it's Agreement Regarding Case Number
4 18708 Before the Board of Zoning Adjustment, dated --
5 it's hot and fresh off the press -- November 5, 2014. Is
6 that correct?

7 MS. MOLDENHAUER: Yes, that is correct.

8 MR. SULLIVAN: Yes.

9 CHAIRMAN JORDAN: And by the basis of this,
10 that the party status is being withdrawn by the party
11 status seekers, for lack of a better word.

12 MS. MOLDENHAUER: Yes. My clients are
13 withdrawing their party status in conjunction with the
14 terms and agreements set forth in that settlement
15 agreement.

16 CHAIRMAN JORDAN: Okay. I'm going to ask you
17 to stay at the table so we can -- are you feeling okay?

18 MS. MOLDENHAUER: I --

19 CHAIRMAN JORDAN: Got a little cold.

20 MS. MOLDENHAUER: I've got the flu again, but
21 sorry.

22 CHAIRMAN JORDAN: You and Board member Allen
23 are hanging out, or something, because that's what she
24 sounds just like. Why don't you stay, just because I
25 want to go through this.

1 MS. MOLDENHAUER: Absolutely.

2 CHAIRMAN JORDAN: And let me do a couple of
3 things, Mr. Sullivan, if I may. I want to take a little
4 bit of a step out of order, because I wanted to see where
5 the Office of Planning is, because they initially had
6 some reservations and concerns, and I don't know if
7 you've addressed it, and see if Mr. Jesick can help us
8 with that.

9 MR. JESICK: Good morning, Mr. Chairman and
10 members of the Board. My name is Matt Jesick. Just to
11 give the Board the latest update, I will refer to our
12 October 21, 2014, supplemental report, where we had an
13 updated list of comments at the back of that memo. So
14 I'll just go through the ones that have been addressed or
15 are still outstanding.

16 Number 2, I believe, has been addressed. The
17 Applicant has submitted an updated grading plan, I
18 believe, to the record. Number 3, which talks about the
19 erosion sediment control plan, I'm not sure if the
20 Applicant has submitted the detailed specifications to
21 the record or not, but that would be an easy item for
22 them to address.

23 Number 7, we were hoping that the Applicant and
24 the HOA could discuss ways on this very large site, that
25 the house could be relocated in order to preserve the 47-

1 inch diameter tulip poplar tree. I don't believe that
2 those discussions have happened. We would hope that
3 there would be at least some examination of that
4 possibility, to preserve that tree, which provides a lot
5 of environmental benefits to the site.

6 The tree preservation plan, the Applicant has
7 prepared a tree preservation plan. If that has not been
8 submitted to the record, it should be submitted to the
9 record. And we believe the Applicant has addressed
10 Number 9, the designs for the roof runoff and the
11 infiltration trench. And then, Number 13, the applicant
12 has also addressed, they've clarified, at least for the
13 Office of Planning, that the infiltration trench will
14 handle some of the upland runoff coming overland, into
15 the property.

16 Now, OP does recommend adoption of the
17 Applicant's proffered conditions. I believe there were
18 about a dozen or so conditions proffered earlier in the
19 process, and we also recommend one other condition, which
20 I think is also embodied in the latest agreement between
21 the parties, that DDOE approve the design of the
22 infiltration trench.

23 So that's where we stand, and I'd be happy to
24 take any questions.

25 CHAIRMAN JORDAN: I do. Thank you very much,

1 Mr. Jesick. From your report, you do agree that the
2 property has exception situation and practical
3 difficulty, correct?

4 MR. JESICK: Yes, we do.

5 CHAIRMAN JORDAN: And I think -- but I see you
6 have a recommendation of denying the request for relief.
7 Is that right? For the variance relief? Oh, for a
8 special exception relief.

9 MR. JESICK: Yes. We don't have any objection
10 to the variances that have been requested or the
11 flexibility under 2516.6, which is dealing with the width
12 of the street or driveway, and the turning area. Just
13 based on those issues which I just ran through, we
14 couldn't quite recommend approval of the special
15 exception, under 2516, but we hope that those items can
16 be addressed or have already been addressed.

17 CHAIRMAN JORDAN: All right. And your concern
18 is Number 7 and Number -- what was the other one? Number
19 2, was it?

20 MR. JESICK: Number 3, I just wasn't sure if
21 that had been submitted to the record or not. It's the
22 details of the erosion sediment control plan.

23 CHAIRMAN JORDAN: So I'm going to ask Mr.
24 Sullivan to respond to those concerns, please.

25 MR. SULLIVAN: Thank you. The details of the

1 erosion sediment and control plan, they're in the record,
2 but I think what Mr. Jesick wanted was a larger-print
3 version of that, and we haven't submitted that to the
4 record yet, but we can do that. I'll just enlarge the
5 print. The tree preservation plan, I do have a tree
6 preservation plan that we can submit to the record.

7 CHAIRMAN JORDAN: Has Mr. Jesick seen that?

8 MR. JESICK: Yes. I indicated that we were
9 fine with that item.

10 CHAIRMAN JORDAN: Okay.

11 COMMISSIONER TURNBULL: But is Number 7
12 included in that, the 47-inch poplar? Is that showing it
13 going, or what?

14 MR. JESICK: It's shown as being removed.

15 MR. SULLIVAN: I'll have the applicant address
16 that at the end. And, to clarify, for what it's worth,
17 they're saying they cannot recommend approval but they're
18 not recommending denial of the special exception.

19 CHAIRMAN JORDAN: I'm asking you to close the
20 editorial. I'm asking for some pointed stuff so we can
21 move this forward.

22 MR. SULLIVAN: Okay. And I'll have the
23 Applicant talk about the situation with the poplar tree.

24 CHAIRMAN JORDAN: Yes, please.

25 MR. SHARIFI: Regarding the tree that Mr.

1 Jesick is talking about, it was, previously, in the
2 original 1978 plan, and again in the '93 plan, the tree
3 was planned to be removed, and the house that we are
4 building, we propose to build in accordance with all of
5 the HOA requirements and approvals, is to build the exact
6 same house that was originally approved in 1978.

7 CHAIRMAN JORDAN: Let me stop you. This Type-6
8 house, is that what we already have in our plan? No,
9 it's another house.

10 MR. SULLIVAN: Regarding that, we will have to
11 submit a new plan. It's a reduced footprint and it's
12 scaled a few feet back from the front, so there is now
13 some frontage, street frontage, and a smaller footprint.
14 The only copy of that, apparently, is with the former
15 opposition party, that we're going to make a copy today
16 and we can submit that.

17 CHAIRMAN JORDAN: Yeah. We just wanted that
18 for the record.

19 COMMISSIONER TURNBULL: So what's shown in
20 Exhibit 10, it would be outdated? It needs to be
21 revised?

22 MR. SULLIVAN: That's correct.

23 COMMISSIONER TURNBULL: Okay.

24 CHAIRMAN JORDAN: Please. I'm sorry.

25 MR. SHARIFI: Yes. So, we hired an arborist,

1 and the arborist examined the lot, and explained that
2 building that house on that location would be too close
3 to the poplar, that it could not, therefore, be saved.
4 The tree survey that's in the record, that we've
5 submitted, shows 27 trees in the building area. There
6 are more trees outside of the building area but there's
7 27 within our building area. Fifteen will be removed,
8 and we worked with the arborist to make a plan for
9 planting new trees, and he made a plan that we submitted
10 to plan 13 new trees, once the house is completed. He
11 explained to plant more would actually be detrimental to
12 the health of all of the trees.

13 CHAIRMAN JORDAN: So it's a net three, right?
14 Three trees?

15 MR. SHARIFI: It would be a net two. We would
16 remove 15 and plant 13.

17 COMMISSIONER TURNBULL: Are these large-scale
18 trees?

19 MR. SHARIFI: No. There's 27 trees on the site
20 plan. We would remove 15 of those 27 trees, and after
21 the house is built, we would plant 13 new trees, and
22 that's per the arborist's plan. He said that if we were
23 to plant more than that, it would actually be detrimental
24 to the health of the trees.

25 CHAIRMAN JORDAN: Now, the size, I think Mr.

1 Turnbull was asking for?

2 COMMISSIONER TURNBULL: I mean, I assume the
3 HOA has looked at your tree preservation and they're okay
4 with the size of trees, scale of trees?

5 MR. SULLIVAN: I can't speak for them, but if
6 it's in the record, then it's in the record.

7 COMMISSIONER TURNBULL: Look, what size trees
8 are going back? When they mature, are these going to be
9 large? Are they crepe myrtle-type trees?

10 MR. SULLIVAN: I think the idea would be the
11 optimal size, considering the health of the existing
12 trees and the new trees. So I think it might be subject
13 to that, and that's part of the arborist's plan.

14 COMMISSIONER TURNBULL: Okay. I guess we don't
15 want you to overbuild, but we don't you to make it look
16 skimpy, either. I mean, it has to look like the lot
17 should be in keeping with the neighborhood.

18 CHAIRMAN JORDAN: Let me ask, Mr. Jesick, does
19 the Office of Planning have any expert or a statement in
20 regards to whether or not that report is accurate, or
21 anything like that.

22 MR. JESICK: We discussed this with the Urban
23 Forestry Administration at DDOT and they were very
24 familiar with Mr. Pitchford, the arborist, and they've
25 worked with him in the past and they seem very

1 comfortable with his work.

2 CHAIRMAN JORDAN: Thank you. That's very
3 helpful for us. What other issues did we have? Did we
4 have other issues? That's about it. Okay. I'm losing
5 where I am today.

6 Okay. So do we have this tree plan in the
7 record? Do we have this in the record?

8 MR. SULLIVAN: What I just submitted?

9 CHAIRMAN JORDAN: Yes.

10 MR. SULLIVAN: I don't believe so. This is
11 new. Some parts of it may be in the record, but the tree
12 save plan narrative --

13 CHAIRMAN JORDAN: Okay. So, for the record, it
14 will be Exhibit 63?

15 MR. MOY: Correct, 63.

16 CHAIRMAN JORDAN: And that is entitled the Tree
17 Save Plan by Pitchford Associates.

18 Okay. Is there anything else you want to
19 present to us, Mr. Sullivan? I think now, in light of
20 these agreements and having this discussion about the
21 trees and the discussion with the Office of Planning, I
22 think we're in a better position to move forward. Is
23 there anything else you want to bring before the Board on
24 this?

25 MR. SULLIVAN: No. Not at this time. Thank

1 you.

2 CHAIRMAN JORDAN: Board, any additional
3 questions? Okay. Certainly, we want to incorporate
4 Exhibit 62 and 63 in the record as being part of this
5 order. If we get to that point, we'll make it part of
6 the record and order.

7 All right. Then let's turn to Office of
8 Planning and see if there's anything in addition. Mr.
9 Jesick, I know we took it out of order, but we appreciate
10 it.

11 MR. JESICK: No. I don't think we have
12 anything in addition to what we've already stated, and
13 stand by our report. Thank you.

14 CHAIRMAN JORDAN: So you're not supporting a
15 special exception, even though we know that there's
16 expert issues here?

17 MR. JESICK: I appreciate what the Applicant
18 said about building in conformance with the original
19 approved plan. There's been a key change, though, since
20 the original approval, and that is the lot which was also
21 part of the original Foxhall Crescents, further up the
22 hill, adjacent to Foxhall Road, is no longer part of the
23 development. Therefore, the easement going up the hill
24 is no longer necessary. So we felt that that freed up
25 additional room on the lot, where the applicant could

1 look at other locations. Granted, the HOA would have to
2 vacate the easement. We were just looking for that
3 discussion to take place, in order to preserve the tree.

4 So that's why I stand by our report. Thank
5 you.

6 CHAIRMAN JORDAN: Okay. Board, any questions
7 of Office of Planning? Applicant?

8 MR. SULLIVAN: No, Mr. Chairman.

9 CHAIRMAN JORDAN: Anyone here from Department
10 of Transportation? We have a letter. I've got to catch
11 up with myself. I haven't looked at this in a minute.
12 Department of Transportation recommended what on this?
13 Mr. Sullivan, Department of Transportation?

14 MR. SULLIVAN: I believe they've issued a
15 report that said they had no objections to it.

16 CHAIRMAN JORDAN: I don't think in my file I
17 had a report. Do we have an DDOT report?

18 MR. SULLIVAN: Unless it was just the Office of
19 Planning?

20 CHAIRMAN JORDAN: A DDOT report -- do we have
21 one? Number 30? Okay. All right. DDOT has no
22 objection, on a short report.

23 Anyone here from ANC-3D? We do have a report
24 from ANC-3D as saying -- it's kind of staying neutral in
25 this regard.

1 Anyone here wishing to speak in support?
2 Anyone in support? Anyone in opposition? Anyone in
3 opposition?

4 Then we will turn back to the Applicant, Mr.
5 Sullivan.

6 MR. SULLIVAN: Thank you, Mr. Chairman. We
7 have nothing else to add, however I would ask for a
8 summary order, if at all possible, including the
9 conditions that we have agreed to and talked about today,
10 and, of course, we still need to submit the Exhibit A
11 site plan to the Board.

12 CHAIRMAN JORDAN: Board, any other question to
13 the Applicant? Okay, then we will close this hearing.

14 I think we have seen -- well, one, I want to
15 say again, for the record, I really appreciate the
16 lawyers and the parties and the neighbors all for working
17 on this. This is very important that you just get along,
18 and that we try to work these things out, and that's why
19 the Board asks people to go huddle, because we've seen
20 that it actually works, and to resolve these matters
21 prior to us doing it. And it's just important for the
22 community and the neighborhood that everybody does,
23 indeed, with no joke, get along.

24 The Office of Planning has some objections to,
25 still maintains their objections to the special

1 exception, but I think the record has shown that there's
2 been adequate preparation and work on their issue by the
3 Applicant in seeking professional evaluation of the
4 property by a respected arborist, and that there is a
5 mitigating plan to the tree issue raised by the Office of
6 Planning, as well as the fact that the arborist has
7 indicated that the larger tree would have some
8 difficulties, and more trees other than what's already
9 been offered here would be detrimental to the site. And
10 the other concern of the Office of Planning, I think, has
11 been addressed by the Applicant here .

12 And, so, although we give great weight to the
13 Office of Planning, I think their issues that have been
14 raised have been properly addressed by the Applicant.
15 So, with that, I would move that we grant the relief
16 requested as modified, amended, and to include Exhibits
17 62 and 63, and that the Applicant also be required to
18 provide a new plan showing that it's, the plans are
19 consistent with the settlement agreement that's been
20 reached in this matter. So that would be my motion, and
21 the conditions that we've already talked about.

22 COMMISSIONER HEATH: Second.

23 CHAIRMAN JORDAN: Motion made and seconded.
24 Further discussion? All those in favor of the motion,
25 aye.

1 [Multiple ayes.]

2 CHAIRMAN JORDAN: Those opposed, nay. Mr. Moy.

3 MR. MOY: Staff would record the vote as 3-0.

4 This is on the motion of Chairman Jordan to approve the
5 application with the amended relief request. Seconding
6 the motion, Ms. Heath. Also in support, Mr. Turnbull.
7 Two members not present. Motion carries, sir.

8 CHAIRMAN JORDAN: I want a summary order, a
9 hybrid order. I want a summary hybrid with the
10 discussion of Office of Planning's concern, and I'm going
11 to ask Mr. Sullivan to prepare that order.

12 MR. SULLIVAN: Okay.

13 CHAIRMAN JORDAN: So it's a summary but address
14 the Office of Planning and how the Board has made a
15 finding in that regard. Okay?

16 So, with that we are, conclude this hearing,
17 and we really thank everyone for doing it, and take care
18 of yourself.

19 MR. SHARIFI: Thank you very much.

20 CHAIRMAN JORDAN: Mr. Moy, is there any other
21 business coming before the Board?

22 MR. MOY: Just a closing remark on Application
23 Number 18605, of Pollinger. I didn't give you a date.
24 Given Zoning Commission, who move very efficiently, I
25 would suggest that we set this decision for December

1 16th.

2 CHAIRMAN JORDAN: Okay. All right. Then, if
3 there's no other business -- Board, no other business? --
4 then we're adjourned.

5 [Whereupon, at 11:17 a.m., the Public Meeting
6 of the Zoning Commission was adjourned.]

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