

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 9, 2015

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:45 a.m., Lloyd J. Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN, Chairperson
MARNIQUE Y. HEATH, Vice Chairperson
JEFFREY HINKLE, Board Member
ROBERT MILLER, Zoning Commission Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LAWRENCE FERRIS, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR
BRANDICE ELLIOTT
STEPHEN MORDFIN
ANNE FOTHERGILL
ELISA VITALE

D.C. DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

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The transcript constitutes the minutes from the
Public Hearing held on June 9, 2015

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P R O C E E D I N G S

(9:45 a.m.)

1
2
3 CHAIRMAN JORDAN: All right. Let's call our first case,
4 19005, please.

5 MR. MOY: Yes, sir. All right. To the table, Applicants
6 to Application No. 19005. This is the application of Jason H.
7 Yoon. Mr. Chairman, this is a request for a special exception
8 from the number of parking spaces under 2108.2, and the
9 accessory parking space location requirements under 2116.7,
10 which was captioned and advertised.

11 CHAIRMAN JORDAN: All right. Thank you. Good morning.
12 Please introduce yourselves.

13 MS> YOON: My name is Hannah Yoon, and my husband couldn't
14 make it this morning. I'm the owner of 2345 MARTIN LUTHER KING
15 Avenue, S.E., Washington, D.C.

16 CHAIRMAN JORDAN: Very good. Thank you.

17 MR. WOODY: Good morning. My name is Derrick Woody. I'm
18 the CEO of DLW LLC Real Estate.

19 CHAIRMAN JORDAN: All right. I don't know where the Board
20 is on this. I don't particularly think --- I think there's
21 sufficient information in the file to grant the relief
22 requested. I don't know if the Board needs to hear anything
23 else from this Applicant.

24 Anyone? Mr. Miller? Anyone?

25 (No response)

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1 CHAIRMAN JORDAN: Okay. You say it's Woody?

2 MR. WOODY: Yes.

3 CHAIRMAN JORDAN: All right. At the present time, it
4 appears that the Board, that your filings are sufficient to
5 show the need for requested relief. You have sufficient support
6 from the various parties, the ANC, the Office of Planning, and
7 Department of Transportation, plus we understand the needed
8 relief and why it's necessary. Your documents filed support
9 that.

10 As we typically do, you have the right to present
11 something to the Board, if you think you need to, but we're
12 telling you at this point, we think we can proceed on and get
13 this done, certainly subject to anybody coming up and having
14 any opposition to it. Then you have the opportunity to rebut
15 that.

16 So is that the way you would like to proceed?

17 MR. WOODY: It is. We filed written testimony just in case
18 it was needed.

19 CHAIRMAN JORDAN: Okay. Then let's turn to the Office of
20 Planning and see if there's anything, in addition, we need to
21 add.

22 MR. GYOR: Good morning, Mr. Chairman, members of the
23 Board. Stephen Gyor with the Office of Planning. We support
24 the application and rest on the record. Thank you.

25 CHAIRMAN JORDAN: Very good. Board, any questions of

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1 Planning?

2 (No response)

3 CHAIRMAN JORDAN: Applicant, any questions of Planning?

4 MR. WOODY: No.

5 CHAIRMAN JORDAN: Anyone here from Department of

6 Transportation?

7 (No response)

8 CHAIRMAN JORDAN: We do have a letter of no objection from

9 Transportation.

10 Anyone here from ANC 8A? Anyone here form ANC 8A?

11 (No response)

12 CHAIRMAN JORDAN: We do have a letter of support from ANC

13 8A.

14 Is there anyone here wishing to speak in support of this
15 application? Anyone in support?

16 (No response)

17 CHAIRMAN JORDAN: Anyone in opposition? Anyone in

18 opposition?

19 (No response)

20 CHAIRMAN JORDAN: Then we'll close this hearing based

21 upon the record, and I would move that we grant the relief

22 requested in 19005.

23 BOARD MEMBER HINKLE: Second.

24 CHAIRMAN JORDAN: Motion made and seconded. Additional

25 discussions?

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1 (No response)

2 CHAIRMAN JORDAN: All those in favor, aye.

3 (Chorus of ayes)

4 CHAIRMAN JORDAN: Those opposed, nay.

5 The motion carries.

6 (Whereupon, the motion was duly carried)

7 CHAIRMAN JORDAN: Mr. Moy.

8 MR. MOY: Staff would record the vote as four to zero,
9 this on the motion of Chairman Jordan to approve the
10 application for the relief requested, second the motion, Mr.
11 Hinkle, also in support Vice-Chair Heath, and Mr. Miller. We
12 have a Board seat vacant. The motion carries, four to zero,
13 Mr. Chairman.

14 CHAIRMAN JORDAN: Very good. Summary order, please.

15 MR. MOY: Yes. Thank you.

16 CHAIRMAN JORDAN: Thank you.

17 MR. WOODY: Thank you.

18 MS. YOON: Thank you.

19 CHAIRMAN JORDAN: Zero six.

20 MR. MOY: Applicants to Application No. 19006. This is
21 the Application of the District of Columbia. This is special
22 exception relief, Mr. Chairman, at property 4130 Albemarle
23 Street, N.W.

24 CHAIRMAN JORDAN: Okay. Good morning.

25 (Everyone: Good morning)

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1 CHAIRMAN JORDAN: Please identify yourselves.

2 MS. HASSELMANN: Sure. I'm Sarah Hasselmann from the
3 Department --

4 CHAIRMAN JORDAN: Last name again.

5 MS. HASSELMANN: Hasselmann.

6 CHAIRMAN JORDAN: Is your mike on?

7 MS. HASSELMANN: No. Now it is. Sarah Hasselmann with the
8 Department of General Service.

9 MR. HOBBY: Bruce Hobby, project manager for Fanning
10 Howey Associates.

11 MS. CROW: Rebecca Crow, assistant project manager for
12 Tompkins Builders.

13 CHAIRMAN JORDAN: You said "Pro"?

14 MS. CROW: Project manager.

15 CHAIRMAN JORDAN: What's your last name again?

16 MS. CROW: Crow. C-r-o-w.

17 CHAIRMAN JORDAN: Crow.

18 MS. CROW: Yes.

19 CHAIRMAN JORDAN: Is that mike on? We got a little
20 feedback. Say something.

21 MS. CROW: Is that better?

22 CHAIRMAN JORDAN: Your mike may not be on. Push the
23 button.

24 MS. CROW: Oh, there we go.

25 CHAIRMAN JORDAN: See, there's a difference.

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1 MS. CROW: Sorry.

2 CHAIRMAN JORDAN: All right. Again, here is another case
3 similar to the last one, that I believe that there's sufficient
4 information. I don't know if the Board has any other issues
5 they need to hear from the Applicant. This would be one that
6 we can recommend to proceed on, unless there's something that
7 comes up that you need to rebut. Is that sufficient?

8 All right. So then let's go to the Office of Planning
9 and see if there's any additional information that needs to
10 be --

11 MS. FOTHERGILL: Good morning. For the record, I'm Anne
12 Fothergill with the D.C. Office of Planning. The Office of
13 Planning rests on the record in support of the application.

14 CHAIRMAN JORDAN: Any questions, Board, for Planning?

15 (No response)

16 CHAIRMAN JORDAN: Has the Applicant any questions of
17 Office of Planning?

18 PARTICIPANT: Not at this time.

19 MS. HASSELMANN: No.

20 CHAIRMAN JORDAN: All right. Thank you. Is anyone here
21 from DDOT on this particular matter? We do have a letter of
22 no objection from Department of Transportation for this case.

23 (No response)

24 CHAIRMAN JORDAN: Anyone here from ANC 3E? ANC 3E?

25 (No response)

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1 CHAIRMAN JORDAN: We do have a letter from ANC 3E on this
2 case, not opposing the application, although they weren't very
3 happy by the fact I think the unit was placed and then you asked
4 for permission, or something like that. But we do recognize,
5 the Board recognizes that, but they don't oppose the relief.

6 Is anyone here wishing to speak in support of the
7 application? Anyone in support?

8 (No response)

9 CHAIRMAN JORDAN: Anyone in opposition?

10 (No response)

11 CHAIRMAN JORDAN: We'll close the record on this matter,
12 and I would move that we grant the relief requested in 19006.

13 VICE CHAIRPERSON HEATH: Second.

14 CHAIRMAN JORDAN: Motion made and seconded. All those
15 in favor, aye.

16 (Chorus of ayes)

17 CHAIRMAN JORDAN: Those opposed, nay.

18 The motion carries.

19 (Whereupon, the motion duly carried)

20 CHAIRMAN JORDAN: Mr. Moy.

21 MR. MOY: Staff would record the vote as four to zero,
22 this on the motion of Chairman Jordan to approve the
23 application for the relief requested, second the motion,
24 Vice-Chair Heath, also in support Mr. Robert Miller and Mr.
25 Jeffrey Hinkle. Board seat vacant. The motion carries, four

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1 to zero, sir.

2 CHAIRMAN JORDAN: Summary, please.

3 MR. MOY: Thank you.

4 CHAIRMAN JORDAN: Thank you very much. Mr. Moy, can we
5 go zero two.

6 MR. MOY: Zero two. Parties to the Application No. 19002.
7 This is the Application of Rainbow Child Development Center,
8 special exception under 205, two zero five, at property 505
9 57th Street, N.E.

10 CHAIRMAN JORDAN: Good morning. Make sure your
11 microphone is on. All right. Identify yourself, please.

12 MS. HAMMOND: My name is Crystal Hammond. I'm the owner
13 of Rainbow Child Development Center.

14 MR. SULLIVAN: Good morning, Mr. Chairman and members of
15 the Board. My name is Martin Sullivan of the law firm of
16 Sullivan & Barros on behalf of the Applicant.

17 CHAIRMAN JORDAN: All right. I think there's a couple
18 preliminary. You requested a waiver of 3113 regarding the
19 notice, and I think it's been up since what? May 26th, with
20 the change, cause you amended from a special exception to some
21 variance relief, whether or not they're needed or not. But
22 that's correct?

23 MR. SULLIVAN: That's correct. We amended for parking
24 space relief and rear yard relief, and we did include that on
25 the notice poster, and we did include that. It is in the ANC

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1 resolution as well. I don't know if you've received that, by
2 the way. I have it. Okay. Thank you.

3 CHAIRMAN JORDAN: Got it? Okay. On the variance. Okay.
4 And so the posting actually was changed at least by May 26.
5 So it's been up.

6 MR. SULLIVAN: Yes. The posting originally went up with
7 the variance relief.

8 CHAIRMAN JORDAN: Oh, it did.

9 MR. SULLIVAN: Included; yes.

10 CHAIRMAN JORDAN: Okay. All right.

11 With that, then, unless someone on the Board objects,
12 then we would grant that request.

13 MR. SULLIVAN: Thank you.

14 CHAIRMAN JORDAN: Is there anything --- there are four
15 conditions that Office of Planning had recommended for this
16 case. One was the maximum number of children should be 72, and
17 staff of twelve. The hours of operation, from 9:00 to 6:00 p.m.,
18 Monday through Friday, and that you should replace the existing
19 six foot wood fence and to seek to close the existing curb cut.

20 Is that what your understanding and --

21 MR. SULLIVAN: Yes. I would use that, your language,
22 since we would be asking DDOT to do that. And possibly with
23 the fence too. I'm not sure if it's on --- it may be in public
24 space as well, so thank you.

25 CHAIRMAN JORDAN: All right. And if those are

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1 acceptable --- any questions, Board, we have of this Applicant?

2 MR. SULLIVAN: I'm sorry, Mr. Chairman. It should be 7:00
3 a.m. to 6:00 p.m.

4 CHAIRMAN JORDAN: What did I say?

5 MR. SULLIVAN: Not --- I think the report says 9:00 a.m.
6 I'm not sure what yours said, but my copy of --

7 CHAIRMAN JORDAN: We'll get that from Ms. Vitale when we
8 go over, make sure it's okay with them, but --

9 MR. SULLIVAN: Thank you.

10 CHAIRMAN JORDAN: All right. So Mr. Sullivan, you know
11 our procedure, we can proceed on if that's comfortable for you.

12 MR. SULLIVAN: Okay. We're happy to stand on the record.
13 Thank you.

14 CHAIRMAN JORDAN: Then let's turn to Office of Planning
15 and ask Ms. Vitale if there's anything --- well, what about
16 the 9:00 a.m., 7:00 a.m.

17 MS. VITALE: Sure. Good morning, Mr. Chair, members of
18 the Board. The 9:00 a.m. was based on information submitted
19 in the Applicant's information. So if 7:00 a.m. is the
20 appropriate start time, we do not have any issue with that.

21 CHAIRMAN JORDAN: Okay. Good. Thank you. Board, any
22 questions of planning?

23 Mr. Miller. Please.

24 MEMBER MILLER: Thank you, Mr. Chairman. So you, one of
25 your suggested conditions if the center, they should replace

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1 the six foot wooden fence that surrounds the center because
2 it's in disrepair, and so that it can adequately screen the
3 center from adjoining properties

4 Do you know if that's on public space, and are you just
5 suggesting that it be replaced with another wooden fence, or
6 type of fence, or you're not --- you don't care?

7 MS. VITALE: The condition regarding the fence was
8 actually the result of some preliminarily discussions with the
9 Applicant's representative and DDOT. In DDOT's memo, they did
10 indicate that the fence is over height, and would potentially
11 require public space approval.

12 I think the fence could be located, you know, where
13 appropriate, on the Applicant's property, and we don't, we
14 wouldn't specify, you know, the height or the materials. That
15 would certainly be up to the Applicant. But I do think it would
16 be appropriate to screen any play area on site.

17 MEMBER MILLER: Thank you.

18 CHAIRMAN JORDAN: Any additional questions, anyone?

19 (No response)

20 CHAIRMAN JORDAN: Does the Applicant have any questions?

21 MR. SULLIVAN: No. Thank you.

22 CHAIRMAN JORDAN: Anyone here from Department of
23 Transportation for this case?

24 (No response)

25 CHAIRMAN JORDAN: And we have a letter of no objection

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1 from the Department of Transportation, and we did
2 receive --- oh, excuse me. Anyone from ANC 7C? ANC 7C?

3 (No response)

4 CHAIRMAN JORDAN: We did receive a letter from 7C
5 supporting the requested relief.

6 Is anyone here wishing to testify in support of the
7 application? Anyone in support?

8 (No response)

9 CHAIRMAN JORDAN: Anyone in opposition? Anyone in
10 opposition?

11 (No response)

12 CHAIRMAN JORDAN: Then we will close the hearing, and
13 close the record in this matter, and I would move that we grant
14 the relief in 19002, with the conditions as I stated initially,
15 with the one alteration, is that from 9:00 a.m. it goes from
16 7:00 a.m. to 6:00 p.m.

17 Motion made and seconded. Additional discussion?

18 (No response)

19 CHAIRMAN JORDAN: All those in favor, aye.

20 (Chorus of ayes)

21 CHAIRMAN JORDAN: Those opposed, nay.

22 The motion carries.

23 (Whereupon, the motion duly carried)

24 CHAIRMAN JORDAN: Mr. Moy.

25 MR. MOY: Staff would record the vote as four to zero,

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1 this on the motion of Chairman Jordan to approve the
2 application with the amended relief, with four conditions as
3 modified, which includes the number of, the hours of operation.
4 Second the motion is Mr. Robert Miller, also in support,
5 Vice-Chair heath and Mr. Hinkle. Board seat vacant. Motion
6 carries, four to zero, Mr. Chairman.

7 CHAIRMAN JORDAN: Thank you. Summary.

8 MR. MOY: Yes, sir.

9 CHAIRMAN JORDAN: Very good. Thank you very much. Okay.
10 Then just take your pick, Mr. Moy. Just take your pick. Let's
11 go zero seven.

12 MR. MOY: All right. Back to the batting order here.
13 Application No. 19007. This is the application of Jonathan and
14 Jessica Leonard. This is, Mr. Chairman, as you recall, a
15 request, as advertised, for variances from the limitation on
16 number of stories and minimum lot area requirements, and lot
17 occupancy, at 18 T, T as in tango, Street, N.W.

18 CHAIRMAN JORDAN: Please introduce yourselves.

19 MS. BRAY: Good morning, Mr. Chairman and members of the
20 Board. My name is Kinley Bray with the law firm of Griffin,
21 Murphy, Moldenhauer & Wiggins, and I'll let the others at the
22 table introduce themselves, and if we could just have a couple
23 a seconds to load up our presentation, I'd appreciate it.

24 CHAIRMAN JORDAN: Okay.

25 MRS. LEONARD: Good morning. I'm Jessica Leonard.

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1 MR. LEONARD: Hello. My name is Jonathan Leonard.

2 MR. RIGUZZI: And I'm Andrew Riguzzi. I'm representing
3 the Leonards in their purchase. I work with DCRE Residential
4 as their real estate agent.

5 MS. MOLDENHAUER: Good morning, members of the Board.
6 Meredith Moldenhauer.

7 We're ready.

8 CHAIRMAN JORDAN: All right. I really need you to "drill
9 down." I think we understand what your request is, and what
10 your claim is, practical difficulties. I don't know if it's
11 necessarily sold us, but it's for you to do whatever you're
12 going to do.

13 MS. BRAY: Thank you. We'll attempt to be brief, but as
14 thorough as possible to answer your questions. Again, Kinley
15 Bray.

16 I just want to introduce this case and then I'm going
17 to turn it over to Jessica Leonard. We intend to show that the
18 unique condition in this property that is driving the need for
19 a variance is really related to the history of this property.

20 As you know from our pleadings in this case, the property
21 is tied up in a much broader investigation of the developer
22 of the property with whom the Leonards have no privity.

23 CHAIRMAN JORDAN: But aren't you here as the authorized
24 agent of the owner?

25 MS. BRAY: We are here as the authorized agent of the

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1 owner.

2 CHAIRMAN JORDAN: Okay.

3 MS. BRAY: The owner is Ed and Donna Naybor, and the
4 property developer is not the Naybors, but a woman named Insun
5 Hofgard, who is under investigation by the District of Columbia
6 for illegal construction practices throughout the city. And
7 the Leonards --

8 CHAIRMAN JORDAN: Let's go back. So in reading your
9 pleadings, you're saying that the owner didn't have the
10 property due to construction. Is that what you're saying?

11 MS. BRAY: Correct.

12 CHAIRMAN JORDAN: That the owner, without the owner's
13 knowledge, the property got constructed?

14 MS. BRAY: The owner was working with a developer and
15 I think Ms. Leonard can testify to the details of when that
16 developer was revealed to the Leonards, but the --

17 CHAIRMAN JORDAN: So how long has this property been in
18 this condition, to the owner's knowledge?

19 MS. BRAY: To the owner's knowledge. The property has
20 been marketed for sale since July of 2014.

21 CHAIRMAN JORDAN: That's not my question. How long has
22 the owner known that this property did not meet, didn't have
23 the proper requirements for this, for the build-out as it is?

24 MS. BRAY: Since February of 2015.

25 CHAIRMAN JORDAN: Just February 2015?

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1 MS. BRAY: that's right.

2 CHAIRMAN JORDAN: So they had the developer do this
3 development and just put the "head in the sand"?

4 MS. BRAY: It's our understanding that they were not
5 involved in the day-to-day operations, or construction, or
6 marketing of the property. They worked through an agent, and
7 the Leonards worked through their agent, and it was not until
8 February of 2015 that all parties, including the sellers,
9 including the developer, and the Leonards, and the agents, all
10 came to the table and discussed the actual issues with zoning,
11 and building code, and impediments to otherwise closing on the
12 property.

13 MS. MOLDENHAUER: If I can just add, there's multiple,
14 I guess, layers to this "onion," and unfortunately, no one
15 understood what was happening until they peeled and peeled and
16 peeled, and as more and more problems became apparent. As Ms.
17 Bray was just indicating, the Naybors own the property. They
18 are the actual individuals who were selling the property to
19 the Leonards.

20 CHAIRMAN JORDAN: The Naybors own the property?

21 THE WITNESS: They own the property.

22 CHAIRMAN JORDAN: So the owner is the Naybors. I see.

23 MS. MOLDENHAUER: Owner is the Naybors. I know it's
24 confusing. But we can call him Dr. Ed. And so they own the
25 property. They contracted, or they have --- we do not know what

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1 type of contractual relationship they have. They worked with
2 Enzen Hoffgard to develop the property. Enzen Hoffgard hired
3 a separate third-party contractor who did the work, and who
4 got the permits.

5 And so with all of those kind of iterations, that is
6 where --- and obviously, not until February did the Leonards
7 ever meet Ms. Hoffgard or sit down in a room. Typically, as
8 you know --

9 CHAIRMAN JORDAN: Excuse me. The owner is Leonard. Now
10 who's the owners?

11 MS. MOLDENHAUER: The owner is Edward and Donna Naybor.

12 CHAIRMAN JORDAN: Naybor. Yes. See, that's --

13 MS. MOLDENHAUER: That's confusing.

14 CHAIRMAN JORDAN: The Naybors own the property.

15 MS. MOLDENHAUER: The Naybors own the property.

16 CHAIRMAN JORDAN: But they're not the neighbor Naybors.

17 MS. BRAY: Correct.

18 MS. MOLDENHAUER: Not the neighbor Naybors. They're the
19 N-a-y-b-o-r-s.

20 CHAIRMAN JORDAN: Naybors own the property but they're
21 not the next-door neighbors. They're Naybor by name, not the
22 neighbor neighbors. Okay. I'm working with you.

23 MS. MOLDENHAUER: So we'll refer to them as the owners.

24 CHAIRMAN JORDAN: This is getting worse than when I read
25 the file and got lost. It's getting even worse as we sit here

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1 today. But go ahead.

2 MS. MOLDENHAUER: We can refer to him as Edward. I think
3 that might help.

4 CHAIRMAN JORDAN: That's okay. We're straight. Now we all
5 know that we're not talking about --- the neighbors who live
6 on either side of the property has no involvement.

7 MS. MOLDENHAUER: Correct.

8 CHAIRMAN JORDAN: Go it.

9 Now we can go forward.

10 MS. MOLDENHAUER: Okay. So as I mentioned, the history
11 is very interesting, has many, many facets that were not
12 immediately known to the Applicants in this case, who have been
13 authorized by the owners of the property to file this case,
14 and with that, we might as well just go ahead and get started,
15 so that you can hear Ms. Leonard --

16 CHAIRMAN JORDAN: But the work was taking place while the
17 Naybors owned the property?

18 MS. MOLDENHAUER: That's right. While the Naybors owned
19 the property --

20 CHAIRMAN JORDAN: So the Naybors did not acquire the
21 property with the illegal construction. The Naybors, through
22 one way or the other, the illegal construction took place under
23 the Naybors' ownership?

24 MS. MOLDENHAUER: Correct. That's right. Without their
25 specific knowledge or understanding.

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1 CHAIRMAN JORDAN: I got where you're pushing. I'm going
2 to what I need to hear. Okay. Got it.

3 MS. MOLDENHAUER: Okay. So as I mentioned, the Applicants
4 are Jonathan and Jessica Leonard. Andrew Riguzzi, their agent,
5 is to my right. He's here to testify.

6 The other party that hasn't been mentioned here is Kent
7 Fowler, who is the seller's real estate agent with whom all
8 of the communication between the Leonards and Mr. Riguzzi was
9 done. So you'll here references to Mr. Fowler, or to Kent, in
10 their testimony and I just want to clear up who all those
11 parties --

12 CHAIRMAN JORDAN: And who's Riguzzi? Who's that?

13 MS. MOLDENHAUER: The buyer's real estate agent. The
14 Leonards' real estate agent.

15 CHAIRMAN JORDAN: So all conversation between who and
16 who? Give me that again.

17 MS. MOLDENHAUER: Two real estate agents.

18 CHAIRMAN JORDAN: All right. Are we making this --

19 MS. MOLDENHAUER: I'm trying to make it easier for you
20 by explaining who the parties that are going to be referred
21 to are.

22 CHAIRMAN JORDAN: Okay. Go ahead; go ahead. Cause I don't
23 see -- all right. Go ahead; go ahead.

24 MS. MOLDENHAUER: Jessica, would you introduce yourself
25 for the record, please.

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1 MRS. LEONARD: Sure. Jessica Leonard. Essentially my
2 husband and I have lived in D.C. for the past nine years. We
3 owned a property in a large condominium unit in our building
4 in Penn Quarter, and we were looking for a larger home, and
5 fell in love with the Eckington neighborhood.

6 We looked at a unit in 18 T Street, that to our knowledge,
7 everything was complete with, there was just some minor punch
8 list items. So we went ahead and sold our unit, and went in
9 to a nonbonding reservation agreement on 18 T Street, Unit 2.

10 Upon --- we were supposed to be moving in in December,
11 doing a pre-settlement occupancy agreement, while we waited
12 on some condo docs to be approved.

13 MR. LEONARD: So --- apologies. As --- so as we were
14 waiting for the condo docs to be approved, as my wife mentioned,
15 we had entered in to that pre-settlement occupancy agreement.

16 Moving date was scheduled for December 10th. It then
17 became aware to us, on December 9th, the day before, that the
18 condo docs in fact were not approved. We were then advised
19 to acquire a storage unit, to where we would have to move all
20 of our furniture and household items in to a storage unit.

21 CHAIRMAN JORDAN: Closing took place in December.

22 MR. LEONARD: I'm sorry?

23 CHAIRMAN JORDAN: Closing. December?

24 MRS. LEONARD: It was supposed to be January 15th.

25 CHAIRMAN JORDAN: Closing was supposed to take place

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1 January 15th?

2 MRS. LEONARD: Correct. Then we were going to do a
3 pre-settlement occupancy beginning on December 10th.

4 So December 9th, we were notified that we could not move
5 in to the property, that we would be able to move our belongings
6 in, but the owners or the sellers were waiting for the
7 certificate of occupancy which had been delayed.

8 CHAIRMAN JORDAN: So you still haven't closed as set sit
9 here today?

10 MRS. LEONARD: We still have not closed. So we --

11 CHAIRMAN JORDAN: And you still are not occupying the
12 property.

13 MRS. LEONARD: All of our belongings are in the property
14 right now. We are living in a hotel right now. We've been told,
15 since December 10th, that literally, day by day, that there's
16 going to be --- at any moment, they're going to have the
17 certificate of occupancy, that we would be able to move in to
18 the property, that this was just some, you know, paperwork
19 delays.

20 It wasn't until the latter part of February that we were
21 notified by our agent, who had spoken with Kent Fowler, the
22 owner's agent, that the property had some zoning issues.

23 None of these issues we were aware of. We met with them
24 at the end of February, and we went through these issues to
25 get a better understanding of what the problem was. But we were

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1 told that --- we were told that if our --- if we hired counsel --

2 CHAIRMAN JORDAN: So none of this stuff came up in the
3 contract due diligence type of searching?

4 MRS. LEONARD: I mean not to my knowledge, but Andrew
5 might be able to speak more to that.

6 MS. BRAY: Maybe I can ask the question a different way.
7 Did the --- when you viewed the property for the first time --

8 CHAIRMAN JORDAN: That's not what I asked. I asked my
9 question. It doesn't have to be asked by you a different way.
10 I appreciate it, but I want to know --- this did not come up
11 in the due diligence that was conducted by your real estate
12 agent when you were going through the process on this property?
13 That was my question.

14 MR. LEONARD: Sorry. I can step in here. So correct. There
15 is, there's nothing in the lineage of the property from
16 contract to closing, that would indicate that there was a
17 problem in this case. There was --- the items that we, that
18 the seller needed to provide to the title company, they were
19 providing the missing pieces in that at the time, were the
20 register --- registration for the condo docs, the lot block
21 number, and the final C of O, and it's not uncommon for those
22 to come in last kind of portion of the contract.

23 CHAIRMAN JORDAN: What kind of property --- how many
24 units to this place?

25 MR. RIGUZZI: Two.

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1 CHAIRMAN JORDAN: Two units. Okay. Go ahead.

2 MS. BRAY: Ms. Leonard, when you first viewed the
3 property, was there any evidence of construction?

4 MRS. LEONARD: No. The only thing in the unit that we
5 looked at, that we put our contract on, was that the gas
6 fireplace had not been installed. The mantel was there. They
7 were just waiting on the hook-up. Other than that, it just
8 needed to be cleaned, and it was minor punch list items.

9 MS. BRAY: Thank you.

10 MRS. LEONARD: Okay. So we --- since then, we've been
11 living in a hotel. We've been waiting to hear back on, on how
12 we can get this issue taken care of. We were told that if we
13 hired counsel to file a BZA case, that we would be able to get
14 a temporary certificate of occupancy so that we could inhabit
15 the property, and we did that, and then we were told that we
16 still needed to file the application, which we did at the end
17 of March.

18 So since then, we've just been waiting to, to have this
19 be processed basically. And I guess just one other thing. That
20 in looking at the other units on the bloc, there's
21 nothing --- there's nothing that told, that showed us, that
22 would give us any indication that there was anything out of
23 the ordinary with this.

24 So that was I guess why we, you know, felt that
25 everything was kind of on the up and up, so --

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1 MS. BRAY: At this time, are you able to perform on the
2 contract?

3 MRS. LEONARD: No. Right --- I mean, we, right now, we,
4 we cannot --- we want to move forward but we have money tied
5 up in this property now with our, with our deposits, and this
6 is, this is the property we want, so --

7 CHAIRMAN JORDAN: Yes. But I read that in your pleadings,
8 which I didn't quite understand. If you have a whole title
9 issue, permission to use the property, how is your money cannot
10 be refunded, and how is that an issue that you would breach
11 the contract, as I read this, your pleadings, saying that they
12 would be in breach?

13 I'm not clearly understanding that.

14 Yes, please. Anybody. Somebody tell me something,
15 because I don't understand how you contract for a property that
16 you can no longer occupy unless --- and that --

17 MR. RIGUZZI: The contract they use is a standard new
18 construction contract. It makes it different than the GCAAR
19 contract, which is the realtor's contract that is drawn up.
20 In the builder's contract, they have a window of two years to
21 deliver the property to the, to the buyers.

22 MS. MOLDENHAUER: You said it's a new
23 construction. You meant that it's the type of contract that's
24 used for new construction but this is not a new construction
25 property.

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1 MR. RIGUZZI: Oh, correct; correct. I'm --- correct.

2 CHAIRMAN JORDAN: Cause I was getting thrown again. Okay.
3 Thank you. Thank you.

4 I'm sorry, Ms. Moldenhauer, cause I was getting --- I
5 was like how did this get to become new construction, and --

6 MS. MOLDENHAUER: It is a term of art that realtors use --

7 CHAIRMAN JORDAN: Got you; got you.

8 MS. MOLDENHAUER: --- in regard to the fact that it was
9 development where the developer controls the contract phase,
10 and so they say we don't have to close until we say we're ready
11 to close, until the property's ready to be finished, and that
12 it gives them two years to perform, if there are delays in
13 construction or delays in, in issues to, to cure those.

14 So Mr. Riguzzi, at this time are --- is there a remedy
15 for the buyers?

16 MR. RIGUZZI: The --- the --- is there a remedy for the
17 buyers? The --- the - - under the, under the contract, the
18 buyers can indeed, can sue the developer, but their only remedy
19 under the, in the contract, is to sue them for performance or
20 to sue them so that they can close on the property. They're
21 not given a remedy outside of that in the contract.

22 MS. MOLDENHAUER: And based on your understanding of the
23 impediments to performance, is there a way for the sellers to
24 perform right now?

25 MR. RIGUZZI: Not that I'm aware of. I mean, they would

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1 have to make the changes, get the plans --

2 CHAIRMAN JORDAN: Do you have the contract with you?

3 MR. RIGUZZI: I --- I have it on file.

4 CHAIRMAN JORDAN: I would like to see the contract,
5 because you guys are coming here with this hardship, cause
6 that's the only way that this may possible get by so far, and
7 I need to see all the stuff before we start bleeding hearts.
8 Okay? So we would like to see --

9 MS. MOLDENHAUER: Sure.

10 CHAIRMAN JORDAN: I mean I would. I don't know if anybody
11 else -- okay. Go ahead. Proceed.

12 MR. RIGUZZI: So sorry. I want to kind of lead in to my
13 portion of this, and give you a little bit of background about
14 myself. Again, I do probably about 40 or 50 transactions a year.
15 I've been practicing real estate for 10 years. I actually
16 specialize in condominium sales in the neighborhood, and in
17 surrounding neighborhoods.

18 This property is incredibly unique because of its
19 marathon of issues. In my history of real estate I've never
20 encountered a property with this amount of issues. When we
21 first engaged in this property, it was no different than any
22 other property that we'd walk in to. The property was
23 substantially complete, with, again, several punch list items
24 to be completed, but those are usually to be completed during
25 the inspection process.

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1 When we --- again, when we originally engaged in this,
2 in the, in the contract and in the nonbinding reservation, we
3 were told that we were just waiting on condo docs to be
4 approved, which again is not uncommon in this situation.

5 As we approached our contract date, we found out that
6 there were other issues that were only revealed to us at that
7 time.

8 Going through the contract, when we engaged in this, we
9 went through the very standard contracting process. We engaged
10 a title company to do research on it. We had a home inspector
11 come through and create a punch list items.

12 We were extremely thorough and diligent in our
13 proceedings with this condominium.

14 As we learned more about the, about the property through
15 the problems that became apparent to us, we realized that the
16 property --- the permits that had been obtained for the
17 property were for an interior renovation, but those permits
18 were obtained and approved through the permitting process.

19 So even though the project had added an additional
20 floor, and excavated the, the front portion of the property,
21 those plans got approved through the --- through DCRA. So all
22 the permits in the process were --- excuse me.

23 All the permits that were issued for the property were
24 done in the correct manner, so --

25 CHAIRMAN JORDAN: Was it the correct manner, or was it

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1 the fact that DCRA operated, that which had been disclosed to
2 them but there were things that had not been disclosed?

3 MR. RIGUZZI: Potentially.

4 CHAIRMAN JORDAN: Come on now. This is a very
5 straightforward question. It's your pleadings. Or somebody's
6 pleadings; right?

7 MR. RIGUZZI: Correct.

8 CHAIRMAN JORDAN: This is not the time to puff. I mean
9 you need --

10 MR. RIGUZZI: I understand.

11 CHAIRMAN JORDAN: Cause I'm asking real direct
12 questions, and the more you puff, the more I pick it up.

13 MR. RIGUZZI: I don't mean to puff. Again, I apologize
14 for that. I think that there was --- that the DCR --- the DCRA
15 issued the permits through the, through the interior
16 renovation only guidelines, I guess you'd call it, but it was
17 clear that a fourth story was being added, and that excavation
18 was happening.

19 So I understand that --- that they made the wrong filing,
20 but I feel like, through my experience, that this should have
21 been caught.

22 CHAIRMAN JORDAN: Okay. Next.

23 MR. RIGUZZI: In reference to the spiral staircase in the
24 back, you know, again, we realize that those were not part of
25 the plans, and they were probably added as an after-thought,

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1 but that substantially changes the value of the property to
2 my clients.

3 Without the, the spiral staircases on the back, my
4 clients would not be able to access their parking space very
5 readily. They'd have to walk out the back of the property, down
6 the street, down a essentially fairly poorly-lit alley, and
7 then enter their property from the front.

8 And to them, again, with the removal of the spiral
9 staircase, it would significantly diminish --- diminish the
10 value of this.

11 MS. MOLDENHAUER: What's your understanding of what
12 would have to be done in order to remedy the stories issue?

13 MR. RIGUZZI: I think there are two remedies there. One
14 would be taking down the stop story, and the second would be
15 backfilling in the front to, to change the elevation of the
16 first floor.

17 CHAIRMAN JORDAN: What's the remedy in just getting the
18 money back and getting another piece of property? What's the
19 problem with that?

20 MR. RIGUZZI: So first thing, per the contract, they're
21 not able to exit the contract until after the two year period.
22 So they would, they would --- they could potentially lose their
23 deposit. They've also made significant investments in the
24 property, anywhere from the --- from inspector's fees,
25 appraisal fees, title fees, contents insurance. I mean, their,

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1 their, again, their property has been there for several months.
2 They have to pay insurance. They've also, because the property
3 is vacant, they've had to have --

4 CHAIRMAN JORDAN: Well, the contents insurance would
5 have gone any place where they --- if they store at their place
6 or kept it at home. So we can't talk about that. But paying
7 for other fees and things arising out of this sale is something
8 that's potentially recoupable; isn't that correct?

9 MR. RIGUZZI: Not at this --- if --- those fees are not
10 recoupable. They're, they're specific to the property. So if
11 they were to engage in another property, they'd have to
12 re- layout the same fees for this.

13 CHAIRMAN JORDAN: Now the --- if the seller is going to
14 give them their money back; right? You're saying the seller ---

15 MR. RIGUZZI: If the seller does give them their money
16 back, which I'd be surprised at, but there are certain fees
17 that are specific here, that are to the property. For example,
18 an inspection fee.

19 When I --- when we, as buyers, hire an inspector to come
20 to the property --

21 CHAIRMAN JORDAN: Based upon a good faith effort of the
22 seller, who operated in good faith, saying I'm going to sell
23 you this property, and I'm selling you this property because
24 it meets everything that you think that it meets in my
25 representation to you. However, if those representations are

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1 not correct, then they would --- they have -- potentially for
2 the remedy of getting that money back, because they relied on
3 the good faith representation of the owner. Or the seller.
4 Right?

5 MR. RIGUZZI: I mean, correct. I'd have to reexamine the
6 contract and reexamine the argument. I under --- I understand
7 where you're going.

8 CHAIRMAN JORDAN: All right. Anyway, go ahead. This is
9 your, you guys' case. I'm just sitting here --

10 MR. RIGUZZI: Again, so my clients have made significant
11 investments. They've been in a hotel for --- since, since
12 December, which is unfortunate. We've done everything we
13 could, and have been as diligent as possible to, to get to this
14 point. The remedy that they're seeking here is just to live
15 in the property that they were originally advertised and given,
16 and it's at this point, per the contract, that's the only remedy
17 that's allowed.

18 MS. MOLDENHAUER: Can I ask you a question. Not conceding
19 the point but creating a hypothetical. If the Chair is correct
20 and there is an opportunity to take action against the seller,
21 would that be --- what would, in regards to the degrees of
22 practical difficulty, what would be more practically difficult
23 for the Applicant --- to pursue a long course of litigation,
24 or to seek relief under the authorization that this Board has
25 here?

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1 MR. RIGUZZI: So I mean the law --- I mean, again, a long,
2 drawn-out law suit would not help my clients at al. I mean,
3 they would - - we'd prefer to go to --- appear to the Board,
4 get an exception, and then have them move in to the property.

5 MS. BRAY: Is this, is the relief that's been requested
6 by the Leonards authorized by the, the sellers, is that the
7 only impediment to closing at this point? Or to getting a
8 certificate of occupancy, I should ask.

9 MR. RIGUZZI: Correct. I mean, it's, it's a domino
10 effect. Once, once this --- once this gets approved, then all
11 the other dominos can fall, so that they can move in to the
12 property.

13 MS. BRAY: And those other dominos being closing, or are
14 there other issues that need to be remedied?

15 MR. RIGUZZI: There are other issues that need to be
16 remedied. There are punch list items that need to, that need
17 to take place, and, and there's another issue with
18 the --- again, mostly punch list items.

19 MS. MOLDENHAUER: I'm sorry. I don't --- when DCRA
20 conducted an inspection in conjunction with the office's
21 overall investigation of Ms. Hoffgard, did they find code or
22 safety issues that were wrong with the property, that need to
23 be remedied?

24 MR. RIGUZZI: They found several issues that need to be
25 remedied. I'm not privy to what, what the --- those items were.

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1 MS. MOLDENHAUER: I can testify as being present at that,
2 at that meeting, that --- for the first time, for the parties
3 at this table, became aware --- this was in April --- that
4 there were in, in addition to the zoning requirements, there
5 were another, multiple degrees of fire, safety, life and health
6 code violations that need to be remedied.

7 So some of the factors here are also the practical
8 difficulty of remedying the most significant aspects of the
9 property, or the life, safety, fire code, health and safety
10 aspects, and then allowing the --- potentially seeking the
11 relief here from the practical difficulty and the burden
12 associated with possibly trying to remedy the rear spiral
13 stair, or remedy the front grading that was issued by DCRA.

14 CHAIRMAN JORDAN: So in this process, with those
15 violations, did the owner get cited by DCRA for these
16 violations?

17 MS. MOLDENHAUER: The property's current under a stop
18 work order.

19 CHAIRMAN JORDAN: And it went to the owner of the
20 property; correct?

21 MS. MOLDENHAUER: I have no --- I have no knowledge as
22 to who received that.

23 CHAIRMAN JORDAN: But typically, the owner's responsible
24 for --- would be the violator, the owner of the property. It's
25 not the contractor who does the work per se. If the house is

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1 not meeting code.

2 MS. BRAY: I don't know. I don't know that the District's
3 records even reflect who received the stop work order, but --

4 CHAIRMAN JORDAN: But it's to the property.

5 MS. BRAY: But there is a --- yes. There is a stop work
6 order on the property.

7 CHAIRMAN JORDAN: Which will reflect toward the
8 ownership.

9 MS. BRAY: Which creates a practical difficulty here.

10 CHAIRMAN JORDAN: And that since my many years ago,
11 being the director of DCRA, that would be the person
12 responsible, that we would hold, that we would pull in,
13 essentially, and then his argument is that, well, I was
14 defrauded in this construction process; right? That's his
15 argument. The owner. The Naybors --

16 MS. BRAY: The Naybors.

17 CHAIRMAN JORDAN: --- get defrauded in this
18 construction process, because we hired a bad developer, bad,
19 slash --- who hired a bad, slash, contractor, who hired --- you
20 know --- whatever. Correct? Is that the --

21 MS. MOLDENHAUER: That's --- that --- that's that the
22 multiple stages.

23 CHAIRMAN JORDAN: So becomes a whole line of train, of
24 trying to get relief from, as we move this thing through the
25 pecking order; right?

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1 But the last group on the pecking order, who is the
2 innocent victim here, are the, the Applicants; correct?

3 MS. BRAY: That's right.

4 Mr. Riguzzi, going back to the concept of due diligence,
5 in your experience --- I think you testified that it's very
6 common to get a certificate of occupancy or condo docs approved
7 at the --- at late in the stage of a, of a construction contract?

8 MR. RIGUZZI: Correct.

9 MS. BRAY: And was there any indication given to you, that
10 there was anything other than paperwork that needed to be
11 completed?

12 MR. RIGUZZI: No. I mean, every --- everything seemed to
13 be, seemed to be in order in terms of condition of the property,
14 what the due diligence, the title company, they had a check
15 there that met the requirements. The only thing that we were
16 waiting on at our first hurdle was the completed condo docs
17 from DCRA.

18 MS. MOLDENHAUER: Can I ask a question. If you were to
19 be on the property, would you have been able to know that behind
20 the siding, the wall was not fire rated? Or would your inspector
21 have been able to reveal that issue?

22 MR. RIGUZZI: That was part of our punch list items.

23 MS. MOLDENHAUER: And would they have been aware of, you
24 know, the glass that was not to code in regards to the fact
25 that it was too close to the ground, and without the proper

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1 glass?

2 MR. RIGUZZI: Correct. That was also a part of the punch
3 list items. So again, when we, when we review the property
4 there, from a new construction standpoint, there's no point
5 in which we review permits or zoning.

6 What we're looking for, and to finalize the transaction,
7 is the final C of O, and that's what the title company needs
8 to close on the property.

9 MS. BRAY: Is there anything apparent on the exterior of
10 the property, that indicates that it is illegal due to height
11 or stories?

12 MR. RIGUZZI: No. When we first approached the property,
13 to see it for the very first time, it looked almost identical
14 to six or seven other properties on the brock --- block, which
15 are also of the same construction, of the same look, and are
16 multi units.

17 MS. BRAY: Can you describe the photograph that's up on
18 the screen right now. There's actually two photographs. The
19 red arrow.

20 MR. RIGUZZI: The red, the red arrow indicates to the
21 property that my clients' are under contract for.

22 MS. BRAY: And is there, in fact, other than the excavated
23 basement area, is there in fact a full story added?

24 MR. RIGUZZI: Not that I can tell.

25 MS. BRAY: As compared to say the other --

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1 MR. RIGUZZI: No, it's, it's --- it's essentially
2 identical to the photo next to it, of the property that is next
3 to it.

4 MS. BRAY: Immediately next to it. And what about as
5 compared to the properties further up the block?

6 MR. RIGUZZI: It's the same. I'm not sure what
7 you're --- I'm sorry.

8 MS. BRAY: And so looking at this photograph, the
9 property, the subject property is 18 T Street. Moving left to
10 right, immediately adjacent would be 20 T Street.

11 MR. RIGUZZI: Correct.

12 MS. BRAY: 22 T Street. 24 T Street. And 26 T Street, which
13 is the blue photograph. How many stories does 26 T Street have?

14 MR. RIGUZZI: That's one story above.

15 MS. BRAY: One story above. Okay. And that is not in
16 similar condition --

17 MR. RIGUZZI: Correct.

18 MS. BRAY: --- as what exists on the property?

19 MR. RIGUZZI: Right.

20 MS. BRAY: And --

21 MR. RIGUZZI: Sorry. So let me --- I think to --- Ms.
22 Bray's point here is that when we looked at the property and
23 we observed it in, in line with other properties on the same
24 block, it was nearly identical. We saw other units that had
25 similar excavated fronts to them. We also saw other properties

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1 that were two units on the block. There, again, in just
2 approaching it, you would not know that there was a problem
3 with this, with this property.

4 It was only through this marathon of issues, that we
5 discovered it.

6 MS. BRAY: So unless the Board has any other questions,
7 I think I'd just like to very quickly walk through some
8 additional information that the Office of Planning asked us
9 to provide in their report.

10 Mr. Riguzzi just referred to the conditions along the
11 street. The Office of Planning also noted in its report that
12 the other properties, where there has been an excavation at
13 the basement level on the block, contain a fair amount of green
14 space.

15 There's a photograph of each of them here, 22, 24, and
16 26 T Street. The Applicants have worked with the sellers to
17 prepare a landscape plan which would mimic the condition at
18 22 T Street, just two properties up.

19 We did not have this done in time to submit with the
20 prehearing statement, but I do have hard copies that we can
21 submit. So we are proposing to minimize the concrete patio,
22 to install additional plantings on either side of that concrete
23 patio. And again this has no effect on the areas that are
24 immediately adjacent to the Leonards' unit, but does address
25 the sort of need for green space if this project is to remain

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1 in the current condition.

2 Again, we've discussed with contractors, and discussed
3 with --- and looked at other cases, and understand that the
4 costs, the exceptional financial burden, the practical
5 difficulty in this case is really driven by the cost of
6 remedying this, assuming this would be acceptable by the
7 Department of Consumer and Regulatory Affairs, the Zoning
8 Administrator. There'd be significant loss in removing the top
9 level, significant financial outlay in backfilling the lower
10 level, and of course the Leonards have already incurred
11 significant expense, a portion of which they may or may not
12 be able to recover from the sellers in the course of whatever
13 resolution is made to perform, or seek recovery under the
14 contract.

15 So we requested relief in these areas. We would ask that
16 the Board consider each of those separately. We noted in our
17 pleadings that the Board has granted similar relief in the
18 past, where there have been good-faith reliance by innocent
19 buyers on behalf of --

20 CHAIRMAN JORDAN: Well, we don't have an innocent buyer
21 here. We don't have a buyer, as in these other cases that you
22 cited, almost to a case. Unless I'm incorrect, those
23 people --- the people actually bought, closed, owned the
24 property.

25 MS. BRAY: that's right.

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1 CHAIRMAN JORDAN: They owned the property, had no other
2 recourse at the point the property was already purchased. Then
3 they find out later, some time later that this property was
4 code violation ridden, or zoning violation ridden.

5 And here we have a buyer who has learned of these issues
6 prior to taking ownership; correct?

7 MS. BRAY: Prior to taking ownership but contractually
8 obligated to perform on their contract, and their only remedy
9 from the sellers in this contract is specific performance on
10 the property.

11 CHAIRMAN JORDAN: Well, I don't know if that's correct
12 or not. We haven't seen the contract to verify that, and I'm --

13 MS. BRAY: Which we'll submit for the record.

14 CHAIRMAN JORDAN: I'm really going to find that
15 hard-pressed, for that argument. So I hear you. Then you have
16 another situation.

17 You had another situation, as you argued, the case and
18 you argued the law, in my opinion, solely my opinion, that you
19 are here because a question raises, whether or not a contract
20 purchaser in this way actually comes and has standing to bring
21 this matter, that contract purchaser has the standard to do
22 that based upon your own representations, and thank you for
23 the case. I think it was your Russell case or something --

24 MS. BRAY: Right.

25 CHAIRMAN JORDAN: --- that said they have as a contract

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1 purchaser, blah, blah, blah. But the same case says that they
2 actually come in, they stand in the shoes of the owner who has
3 granted them the authorization, and the agency. In that case,
4 then the authorization and the agency as being the owner, you
5 stand in the shoes of the owner who is actually the real
6 wrongdoer, although the owner has an argument on the back side,
7 that they were mistreated.

8 This is really a quagmire. I just want to
9 understand --- we understand the issues here. It's not as
10 straightforward as --- and trust me, we understand where you
11 are. I mean, there's some issues that we're going to have to
12 work through as a Board, because the precedence that these
13 things begin to serve, based upon what you just cited in all
14 your cases, is factually different, and on some other basis.

15 So I'm not --- I'm just --- what I've been sitting here
16 is trying to get you to where you need to be, because I hear
17 you. I understand where you are.

18 I'm just trying to say how do we do it, that we're not
19 blowing up the aspect of the law.

20 MS. MOLDENHAUER: And I complete --- and I appreciate
21 those comments. And one of the cases that we referenced, I don't
22 have the case number, the Board made the decision on, but we
23 can pull it, was a case in which a husband, a husband and wife
24 owned a property and developed it, and the husband was the one
25 who then did the illegal construction or the construction not

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1 to permit. And then she, after they ended up divorcing, but
2 was married to him during the time, and was the property owner
3 during the time, obtained the property through their divorce,
4 and wanted to then go and rent one of the units.

5 It was then determined that the property was not
6 properly permitted, and this Board granted that relief, and
7 I think that that is a parallel situation here, where while
8 yes, there is a relationship between the owner and the
9 Applicant here, but there also is a degree of, of "clean hands"
10 in regard to there's not a clear --

11 CHAIRMAN JORDAN: Like a innocent spouse is what you just
12 got through describing.

13 MS. MOLDENHAUER: Yes. And so this is an innocent owner
14 and an innocent buyer, because of the circumstances, the fact
15 that there are these multiple tiers of the contractor that
16 actually did the work, the permit expediter that filed this
17 as an interior renovation permit, the architect who identified
18 this, you know, with, you know, kind of misnomer zoning
19 statements on the permit application.

20 Then the developer, Enzen Hoffgard who is then, now
21 under investigation. And then now you get to the owner. And
22 so it seems that that's a parallel situation in regards to the
23 case the Board as --- as parallel, obviously not the same, but
24 we're trying to argue it's a parallel situation, that the Board
25 can find that this is a very unique situation that is not

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1 creating a precedent.

2 CHAIRMAN JORDAN: Yes. And what's the case? You can shoot
3 it to me later. Okay.

4 MS. MOLDENHAUER: I'll send it to you. I'm sorry.

5 CHAIRMAN JORDAN: Yes, cause I don't know if we're
6 closing the door on this today at all. So we need those things,
7 cause we need to see the contract. I mean, that's just my
8 thought. Anything else, Ms. Bray?

9 MS. BRAY: No. I think Meredith just covered most of what
10 I was about to cover. So I think with that --- one other just
11 point that's in the record. I know you're going to turn to see
12 whether the ANC is here, and we do have a letter from the ANC.

13 I would like to note that the Leonards and I personally
14 attended the ANC meeting on May the 19th, ANC 5E, at Trinity
15 University, and we were a little surprised at what was
16 subsequently submitted in to the record by the ANC, because
17 they referenced a prehearing statement that was submitted
18 after May 19th, and an email communication between myself and
19 the president of the Eckington Civic Association, Randy Nolan,
20 when we requested to appear before them, which also took place
21 after May 19th.

22 So I just want to note for the record, that the vote that
23 is described on the ANC report is correct, but the statement
24 that was submitted refers to things that took place outside
25 of the confines of the ANC's deliberation on this matter.

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1 CHAIRMAN JORDAN: But the ANC still voted to deny the
2 request.

3 MS. BRAY: That's right. Particularly based on issues
4 that we described in our prehearing statement, which were
5 related to the remedies available to the Leonards, not
6 necessarily the standards for variance relief.

7 CHAIRMAN JORDAN: Okay. Board, any questions? Additional
8 questions, anyone?

9 Yes. Please, Mr. Miller.

10 MEMBER MILLER: Thank you, Mr. Chairman. I'm sorry,
11 what you guys have had to go through. This sounds terrible.

12 But in terms of the financial hardship, which the
13 variance relief may rest on, could you just delineate, provide
14 for the record, after this hearing, the costs, the --- what
15 is the amount of the deposit, the cost of the hotel, the
16 inspection fees. If you're able to verbally give me an
17 approximation now, you can do that, or you can just provide
18 it for the --

19 CHAIRMAN JORDAN: Yes. Probably --- why don't you give
20 it to us, submit it with --

21 MEMBER MILLER: All of the financials. All the financial
22 hardship provisions. And on that --- not on that --- but it
23 may be related to that. In terms of the fire and safety code
24 violation, the punch list items as they're --- that's a big
25 punch list item --- who's going to be responsible for remedying

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1 those, and what's the cost of those?

2 I think I'd like to have some provision for the record,
3 what those punch list items are, particularly the fire safety
4 code, and who's going to be responsible, and what the cost is
5 of remedying it.

6 And I -- it's hard to believe you want to live in this
7 property.

8 CHAIRMAN JORDAN: Mr. Miller, can I just --- you know,
9 I think what you --

10 MEMBER MILLER: Within the representations, the
11 misrepresentations that have occurred along the way, and the
12 newspaper articles we've read about the shoddy construction.
13 You move in and then things fall down, fall down.

14 CHAIRMAN JORDAN: I think what you said was so great. Can
15 you just answer that question, right now? Who's responsible
16 for the punch list fix-ups, and stuff, that Mr. Miller just
17 talked about?

18 MR. RIGUZZI: Those are all in the burden of the seller.

19 CHAIRMAN JORDAN: Oh, okay; okay.

20 MEMBER MILLER: And they have two years under that
21 wonderful contract to deliver. Two years from the date of
22 December when they move --- when they were supposed to move
23 in. Two years from what date?

24 MR. RIGUZZI: Two years from the date of the contract,
25 which would be --- again, I'll have to look back at my

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1 notes --- but December.

2 MEMBER MILLER: That sounds like a terrible provision in
3 a buyer's contract.

4 MR. RIGUZZI: It's the --- it is the --- so the punch list
5 items do need to be remedied. Again, any life, safety issues
6 would need to be remedied before they move in, again, before
7 they achieve the C of O.

8 The other items that --- it can be something from a
9 drain, or an issue with a toilet handle, would be, would
10 hopefully be remedied before, or sometimes if they're not able
11 to be remedied before, they're remedied within a window of one
12 year afterwards.

13 MEMBER MILLER: You'll provide for the record what the
14 items are and what the cost will be to remedy them, and who
15 you expect will be performing them.

16 CHAIRMAN JORDAN: So you're saying other
17 non-government --- excuse me. You're saying other government
18 violations don't have to be remedied for the sale in your
19 contract?

20 MR. RIGUZZI: In the contract. So let's say you have a
21 problem with a broken kitchen cabinet --

22 CHAIRMAN JORDAN: I'm saying government requirement
23 violation, not that a cabinet is chipped, a refrigerator's not
24 working. That's not a government requirement. I'm talking --

25 MR. RIGUZZI: They would have to be completed before so --

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1 CHAIRMAN JORDAN: By the owner?

2 MR. RIGUZZI: Correct.

3 CHAIRMAN JORDAN: That's, that's --- okay. That's the
4 point and that --- sorry. Thank you, Mr. Miller. That was great.
5 Anybody else? Additional questions?

6 (No response)

7 CHAIRMAN JORDAN: Board?

8 (No response)

9 CHAIRMAN JORDAN: Okay. Can we go to Office of Planning,
10 Ms. Bray, and then come back to any rebuttal you may want to
11 do? Or are you good for your case in chief? Or what do you --

12 MS. BRAY: If I could just have one moment.

13 CHAIRMAN JORDAN: Sure.

14 (A recess was taken at 10:49 a.m. and resumed at 10:55
15 a.m.)

16 CHAIRMAN JORDAN: Have you had a chance to confer?

17 MS. BRAY: We have. Thank you very much Mr. Chairman, I
18 think at this point we are going to rest, but we are going to
19 request the opportunity to deliver to the Board, along with
20 the information that's been requested about additional
21 financial information, and the contract, the opportunity to
22 provide a written closing that addresses the issues.

23 CHAIRMAN JORDAN: Yes. But we're not finished with the
24 hearing yet.

25 MS. BRAY: No. I understand.

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1 CHAIRMAN JORDAN: You're kind a down the street from me.
2 But okay. I just want to make sure your case in chief, so --

3 MS. BRAY: Yes.

4 CHAIRMAN JORDAN: So then let's go to the Office of
5 Planning, and see if there's anything in addition you'd like
6 to add, or anything you heard today that makes you want to
7 change what you've already written.

8 MS. ELLIOTT: Thank you, Mr. Chairman. For the
9 record, I'm Brandice Elliott with the Office of Planning and
10 we are very sympathetic to the Leonards' case.

11 This is terrible. It's a horrible loop to be caught in.
12 But that being said, Office of Planning is not able to recommend
13 approval of this request.

14 I think part of the problem that we're having is getting
15 over that first hurdle of the variance test, which is a
16 practical difficulty, and typically, we try to relate that to
17 the physical properties of the lot, which there, as far as we're
18 able to tell, there aren't any unique characteristics that
19 could raise to the practical difficulty level for a variance,
20 for instance, the lot is the same size as other lots in the
21 square, similar dimensions. There aren't any odd topographical
22 issues present on the lot, besides the public space already
23 having been removed.

24 So for that reason, we're standing on the record with
25 the recommendation that we've made. We do acknowledge, for what

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1 it's worth, that the Leonards really, they had no, no knowledge
2 or participation in the construction that occurred. So there's
3 that.

4 But should the Board decide to go ahead and approve the
5 variances, we would recommend a condition related to the green
6 space in the front, as noted by Mrs. Bray, simply because we
7 think it's important to have that green space to maintain the
8 character of the block.

9 Every other lot on the street does have some sort of
10 public space or green space in front of it, and we think that
11 it would just help the continuity.

12 So with that, I'll leave it at that. I'm happy to answer
13 any questions you have.

14 CHAIRMAN JORDAN: Thank you. Board, any questions that
15 we have of Ms. Elliott?

16 (No response)

17 CHAIRMAN JORDAN: The Applicant. Any questions?

18 MS. BRAY: No. Thank you.

19 CHAIRMAN JORDAN: Thank you. Anyone here from DDOT on
20 this particular case? We do have a letter from Department of
21 Transportation in this file.

22 (No response)

23 CHAIRMAN JORDAN: We have a letter of no objection filed
24 by the Department of Transportation.

25 Anyone here from ANC 3E, is it? Yes. ANC 3E. Anyone from

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1 ANC 3E?

2 (No response)

3 CHAIRMAN JORDAN: We do have a letter form ANC 3E, which
4 recommends denial of the requested relief.

5 MEMBER MILLER: It's 5E. I think it's mislabeled in our
6 exhibits. But it's actually 5E.

7 CHAIRMAN JORDAN: Okay. 5E. Thank you.. ANC 5E. That is
8 not supportive of granting the relief for everything we've kind
9 a stated today, and some other things too.

10 Anyone here wishing to speak in support?

11 (No response)

12 CHAIRMAN JORDAN: Anyone here wanting to speak in
13 support?

14 (No response)

15 CHAIRMAN JORDAN: Anyone wishing to speak in opposition?
16 Anyone in opposition?

17 (No response)

18 CHAIRMAN JORDAN: Then we'll return back to the Applicant
19 for any rebuttal. Or simply already said, you're going to do
20 a submission. You understand what the Board is in need of from
21 you. One is we want to see the contract, the purchase contract.
22 We want to see a list of the other violations on the property.
23 We want comprehensive financials.

24 Anything else that I missed? Anyone?

25 (No response)

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1 CHAIRMAN JORDAN: Okay.

2 MS. BRAY: Thank you, Mr. Chairman, and members of the
3 Board, for hearing us today and for taking the time to go over
4 that list. We would like, in addition to those items, have the
5 opportunity to include a brief written closing as well, with
6 those documents. But with that, I think we'll rest. Thank you.

7 CHAIRMAN JORDAN: What the heck. Nothing else in this
8 record. No one. Doesn't mean that this record is open for people
9 to stop bombarding the record. When we do this, we end up
10 getting all kind a folks putting in anything. That means --- so
11 this record's closed upon just that information. Okay, Mr. Moy?

12 MR. MOY: Yes, sir. I hear you.

13 CHAIRMAN JORDAN: All right. So with this, we will close
14 this hearing and thank you very much.

15 MS. BRAY: A timeframe for submission and the
16 continuation.

17 CHAIRMAN JORDAN: Yes. Thank you. Thank you. You used to
18 have this chair. You know how it goes.

19 MS. BRAY: You're ready to go on to the next case.

20 CHAIRMAN JORDAN: Right. Especially this one. I mean, you
21 know, you're half crying, and then you're half looking at what
22 your other responsibilities are. Mr. Moy, when can we put
23 this --- it'll take you what? less than a week --

24 MS. BRAY: A week. Yes. Less than a week. So if we get --

25 CHAIRMAN JORDAN: Mr. Miller? The next day.

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1 MR. MOY: I don't have a listing for Mr. Miller.

2 MEMBER MILLER: I think I have --

3 CHAIRMAN JORDAN: Oh. You're going to be here next week.
4 He's coming back next week. Is that too soon? We're going to
5 try to do it next week. Put it on next week? What do you think?

6 MS. MOLDENHAUER: I think we can do that. We would just
7 ask, then, if we can file it by COB on Friday. Is that not enough
8 time? We have a hearing before the mayor's agent on Thursday,
9 so I don't want to --

10 CHAIRMAN JORDAN: Yes. Friday. Friday. Friday? Okay.
11 Good. All right. Very good. Thank you. I didn't ask. What's
12 our docket look like next Tuesday? I'm just putting things on
13 it and --- going to ask the man that controls. He's flipping
14 up two or three pages.

15 MR. MOY: I think one more's not going to make any
16 difference, Mr. Chairman.

17 CHAIRMAN JORDAN: Okay. We'll do it for next week, then.
18 All right. Thank you. Especially with the urgency and the need
19 of trying to help them out. Okay.

20 Let's do --- I don't know. No, I did that before and got
21 in trouble. Let's do 18967, because I just want to --- let's
22 do that one, cause I think we might have to send this one back.

23 MR. MOY: All right. Yes, sir. Applicants to the table
24 for Application No. 18967. Mr. Chairman, this is the
25 application of the Buddhist Congregational Church of America,

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1 advertised for special exception, under the overlay
2 requirements, 1553.2, at five, four, zero, one, 5401 16th
3 Street, N.W.

4 CHAIRMAN JORDAN: Okay. Not just opposition. ANC
5 certainly, but not just opposition. Please introduce
6 yourselves. Make sure your microphone is on. All right. And
7 you turned in your cards to the court reporter, and everybody's
8 sworn; right?

9 Push the button. You'll get a bright green light.

10 MR. DO: Good morning, Mr. Chairman and members of the
11 Board. My name is Qui Do.

12 I'm the authorized agent for the church, and next to me
13 are Mr. Long Vu and Mr. Bao Vu. They're representatives of the
14 church. And Ms. Phuc Dinh. She's a member of the church.

15 CHAIRMAN JORDAN: All right. Before we proceed, I've got
16 some real concerns about this property and the relationship
17 with the ANC, and the fact that we haven't had meetings. I
18 understand, I've read all the information going back and forth,
19 that they claim they've reached out, and the Applicant hasn't
20 been responsive to them.

21 I've read your response, saying that they reached out
22 to the wrong person, and so there's some disagreements, and
23 some misunderstandings as to where we were.

24 I'm thinking about carrying this case over, and not
25 hearing it today, to give the ANC, certainly --- the Applicant

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1 and the ANC require kind of conversation to find out where you
2 are. It's important for this Board to get feedback from the
3 ANC, and discussion about where you are, not just simply saying
4 we can never meet and each one saying we're missing each other.

5 I think it's just too important. It can't be just that
6 casual, trying to meet each other. But it has to happen. Plus
7 you've got some other issues with the community, that I would
8 represent, as best you can, you need to have conversations and
9 try to work those things out. But that's just my thought.

10 And if we do do that, I know we have some people who want
11 to testify from the public, that we would get on the record
12 so they don't have to come back, if they would like. But I'm
13 thinking about we would carry this over. I just want to find
14 out where the other Board members are on this.

15 Mr. Hinkle.

16 BOARD MEMBER HINKLE: Yes. Thank you. I tend to agree with
17 you. I think there's been a lack of true discussion, at least
18 from what I can tell on the record, in terms of communications
19 with the, and discussions with the community, and certainly
20 we have some letters in opposition, outlining some concerns,
21 and especially with, you know, lack of communication with the
22 ANC.

23 So I think that would be helpful to have on the record,
24 at least some additional conversations between the Applicant
25 and the ANC.

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1 CHAIRMAN JORDAN: Thank you. Anyone else?

2 (No response)

3 CHAIRMAN JORDAN: All right. So let's do this. Let's
4 carry this over. Well, let me --- I'm not going to set a date.
5 Well, let's get a date, and then I can find out if anyone wants
6 to speak for or against this. They have the opportunity to come
7 back if they want.

8 MR. MOY: yes, Mr. Chairman. Staff would suggest either
9 July 14th or July 21st, but --

10 CHAIRMAN JORDAN: Is that Mr. Miller's day?

11 MR. MOY: No, they're not, but I don't know when the next
12 ANC meeting will be, so --

13 CHAIRMAN JORDAN: Yes. I know. So yes, that's what I'm
14 saying, so --

15 MEMBER MILLER: I would go for the later date in July.

16 CHAIRMAN JORDAN: Yes. I would, as long as --- okay. The
17 24th, you say?

18 MR. MOY: Twenty --- well, I would say July 21st or July
19 28th. Certainly July 28th, hopefully --

20 CHAIRMAN JORDAN: 21st? Is that soon enough? We can
21 do --- so you're saying you don't want to do the 21st because --

22 MEMBER MILLER: We don't know if the ANC's going to be
23 able to meet.

24 MR. MOY: Yes. I don't in front of me when the ANC's going
25 to be meeting in July, unless the Applicants know.

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1 CHAIRMAN JORDAN: Yes. Okay. So --

2 MR. DO: I believe that it is the second --- I mean
3 the --- either Tuesday or Wednesday of the second week of the
4 month.

5 CHAIRMAN JORDAN: So they should possibly have the
6 opportunity to meet on the 14th or so, that second week of July.
7 So let's shoot it for the 21st. Okay? Let's do that.

8 So this matter's going to be continued to July 21st, and
9 it's imperative that you reach out, Mr. Do, and get in touch
10 with them, and vice-versa.

11 Now if there's anyone else wants to testify, you have
12 the opportunity to come back on the 21st or you can give us
13 your testimony now if you would like, if you don't think you're
14 going to make it back on the 21st. Whichever --

15 MR. DO: Well, you know, we are sure that we'll come back.

16 CHAIRMAN JORDAN: No. I'm talking about others in the
17 audience. There are other people here who want to speak, either
18 for or against.

19 MR. DO: Right.

20 CHAIRMAN JORDAN: You can submit it written.

21 (Simultaneous speaking)

22 Whichever way you want to handle. You'll get three
23 minutes now, or you can come back and get three minutes. Yes.
24 Please come forward, anyone who wants to provide for or
25 against, let's get it on the record now, so we don't burden

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1 them to have to come back.

2 So you'll have three minutes to provide your statement.

3 Okay. Give us your name and then you'll have three
4 minutes.

5 MS. SEK: My name is Lenore Sek, and I'm here with my
6 husband, Bernard Spriggs, today, because we live across the
7 alley, for 25 years, from the church, and I will just summarize.
8 I didn't know the procedure. I have a statement, but I'll
9 summarize it.

10 We oppose the exception for at least three reasons.
11 First of all, the church has shown no desire to be involved
12 with the community. They were supposed to reach out to the
13 neighbors. We live across the alley. We haven't heard a word
14 from anyone, and I don't believe the other owners have.

15 They let two months go by, with no contact, right after
16 they submitted their papers, and even then it was the ANC who
17 reached out to them. And by the way, I want to get it on the
18 record that our ANC representative, Joe Maloney, is excellent.
19 He really has worked hard on this issue, and we appreciate what
20 he's done.

21 So no community involvement. There is noise. Our house
22 backs on to the alley. They have activities in their parking
23 lot. They have amplified, loud music, not every week, but
24 often, and it is hard to take a nap in my bedroom when all of
25 that is going on.

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1 And I don't think they take it seriously, because in the
2 response, they didn't seem to really try to resolve that issue.

3 In addition, the worse problem is parking. For at least
4 a decade, if not more, I have had cars from the church parking
5 on my yard. I go over regularly. Sometimes I'm treated well,
6 sometimes with disrespect, and my next-door neighbor was told
7 he should just call the police because he couldn't get in to
8 his garage.

9 Another neighbor, an elderly 80-year-old woman went
10 out, and she was told "F You," and they didn't move. So this
11 is the kind of thing that is going on. And I don't believe
12 that there will not be an increase in people. This is a big
13 expansion. There will be more activity. There will be more
14 people, more cars, more traffic. We already have problems
15 with this large expansion. There will be more problems.

16 CHAIRMAN JORDAN: Board, anyone, any questions, Board.
17 Anyone?

18 (No response)

19 CHAIRMAN JORDAN: Okay. Would you like to ask Ms. Sek
20 anything?

21 MR. DO: Yes, Mr. Chairman.

22 CHAIRMAN JORDAN: I'm not asking for a rebuttal. Ask any
23 questions you would like to ask of the witness.

24 MR. DO: My question, mainly, that has been baffling me,
25 is that we try our best to reach out to the ANC.

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1 CHAIRMAN JORDAN: All right. Ask a question. You can ask
2 her a question. You can't make a statement. You can ask her
3 a question.

4 MR. DO: Okay. Well, I don't have any at this point.

5 CHAIRMAN JORDAN: Okay.

6 And you can always get back and do your other rebuttal
7 during the case in chief as we move forward. You had --- just
8 one person speaks for questions. You can give it to Mr. Do,
9 and ask him to ask the question, if you would like.

10 PARTICIPANT: Can I myself ask a question?

11 CHAIRMAN JORDAN: Go ahead. Ask the question; ask the
12 question.

13 PARTICIPANT: Probably you recognize me. I work as the
14 Buddhist at the church, and I remember one time we went over
15 there --- I hope I don't make a mistake. We do the no parking,
16 a sign for you, and put the chains in there, the yellow chains.
17 We tried the best that we can, so that prevent our member come
18 over --

19 CHAIRMAN JORDAN: You're asking her does she remember
20 that you did these things?

21 PARTICIPANT: Yes; yes. She said yes.

22 CHAIRMAN JORDAN: Okay. Now did you answer "yes"?

23 MS. SEK: I remember, and that was very much appreciated.
24 You came over. I provided the material, they put a chain across,
25 but very shortly thereafter, three children from the church

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1 came over, and broke the chain. I went over and I reported it.
2 I saw it. I saw what the children were wearing. No one came
3 back to me. Nobody apologized. The children didn't apologize.
4 No one offered to do the work again. So I appreciate what you
5 did, but it didn't end well.

6 CHAIRMAN JORDAN: All right. Any other questions you
7 would like to ask the Applicant?

8 MR. DO: No.

9 CHAIRMAN JORDAN: I mean the witness.

10 MR. DO: No.

11 CHAIRMAN JORDAN: All right. Thank you. Thank you very
12 much. Yes? You want to speak, and you have three minutes too.
13 Your name, please.

14 MR. RUBIO: Hi. My name is Pedro Rubio. I'm the president
15 of the 16th Street Heights Civic Association where the Buddhist
16 temple/church is located. We have about 400 houses in the
17 association, that are located in the surrounding area. I
18 received a lot of opposition. I've also submitted a letter to
19 the Board with the emails attached, of about six people who
20 oppose the expansion due to parking.

21 A lot of my --- a lot of my community members are also
22 concerned about the --- we believe we, we implement the overlay
23 to protect the neighborhood from things like this. So we want
24 to give --- we hope that you guys, A, will respect that, and
25 respect the overlay, and a lot of my neighbors are, are really

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1 concerned about this. They reached out to me. I submitted
2 the --- I submitted the emails attached. And as a org --- and
3 as a civic association, we, we passed the motion to oppose the,
4 the overlay --- to, to oppose the exception to this overlay.

5 CHAIRMAN JORDAN: Very good. Any questions, Board?

6 (No response)

7 CHAIRMAN JORDAN: Does the Applicant have any questions
8 you would like to ask

9 MR. DO: No, I don't, sir.

10 CHAIRMAN JORDAN: Thank you very much.

11 MR. RUBIO: I thank you.

12 CHAIRMAN JORDAN: All right. So we will carry this matter
13 over to --- what date is that again?

14 MR. MOY: July 21st, sir.

15 CHAIRMAN JORDAN: July 21st.

16 MR. DO: Okay.

17 CHAIRMAN JORDAN: July 21st. All right.

18 MR. DO: Okay.

19 CHAIRMAN JORDAN: So we'll see you then. Thank you very
20 much.

21 MR. DO: Thank you, Mr. Chairman. Thank you members of
22 the Board.

23 CHAIRMAN JORDAN: The record is closed. There's new
24 addition, other than maybe a letter from the ANC, or has to
25 be something in regards to the ANC meeting, either by the

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1 Applicant or the ANC. Otherwise, we're not going to flood the
2 record. Okay?

3 MR. DO: Thank you.

4 MS. SEK: Thank you.

5 CHAIRMAN JORDAN: All right. So that brings us to 18987,
6 Mr. Moy.

7 MR. MOY: That's correct. Applicants to Application No.
8 18987. This is the application of Pierce Investments, LLC, as
9 advertised, for multiple variance relief. This is property at
10 1124 Florida Avenue, N.E.

11 CHAIRMAN JORDAN: Okay. All right. Please identify
12 yourselves.

13 Ms. Moldenhauer Good morning, members of the Board and
14 Chairman Jordan. My name is Meredith Moldenhauer from the law
15 firm of Griffin Murphy Moldenhauer & Wiggins. I have here on
16 behalf of the Applicant for a case at 1124 to 1126 Florida
17 Avenue, and I will turn to my left.

18 MR. SEQUAR: My name is Habte Sequar. I'm the owner of
19 Pierce Investments, LLC.

20 MR. PICHON: Good morning. My name is Sean Pichon. I'm
21 with PGN Architects.

22 CHAIRMAN JORDAN: Okay. All right. This is one where the
23 Office of Planning has recommended against it. Did we get a
24 letter from ANC 5D? Do we know the status of that?

25 MS. Moldenhauer We have attended four SMD meetings, and

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1 are planning on attending this evening, their full ANC meeting.
2 Commissioner Buggs. We've worked with her, and a lot of the
3 changes, and evolutions, and ways this project has really
4 improved have been based on these multiple single-member
5 district community meetings, and at the last community
6 meeting, which was held this past Thursday evening,
7 Commissioner Buggs verbally informed me that she'd be
8 supporting the project at tonight's meeting.

9 And we've requested that, in our prehearing statement,
10 knowing the timing, that obviously that we'd leave the record
11 open for the ANC to supplement the record and provide that
12 information.

13 CHAIRMAN JORDAN: All right. So I think we have
14 the --- certainly, for your presentation, whichever you want
15 to do. However, there's been certainly a challenge toward the
16 practical difficulty argument, which we need to hear from you,
17 and why this particular height of this property, and the FAR
18 you request is necessary, certainly, by --

19 MS. MOLDENHAUER: Well, then we can jump in and kind a
20 get past some of the initial introduction aspects of the case,
21 and our presentation, and just jump in to --- I'll just turn
22 to this slide and ask Mr. Sequar to start his presentation,
23 focusing on those issues.

24 MR. SEQUAR: I would like to thank the Board for hearing
25 our case today. Like I said, my name is Habte Sequar. I'm a

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1 local developer, and I've been developing in Washington since
2 2002. We have developed several properties over the years,
3 mainly in Northwest area. Some of our recent developments
4 include the Lima around the U Street Corridor, the Aston on
5 14th and R, and Renaissance on Logan Circle. Currently, we have
6 completing a 49-unit condo project in Northeast near Gallaudet
7 University. All of our projects have been matter of right up
8 to this point.

9 This is the first time we are seeking zoning relief. This
10 has come due to the unit condition and challenge we are facing
11 with the subject property.

12 The property is a large and irregularly-shaped lot. It
13 has well-documented and extensive environmental remediation
14 requirements. Up to two months ago, the property was used as
15 an auto mechanic shop with a boarded-up rowhouse attached to
16 it.

17 The auto mechanic was situated right in the middle of
18 mainly residential block, with many cars occupying and parking
19 in the alley, as well as in front of the property, as you can
20 see in this slide.

21 The environmental condition presents a practical
22 difficulty for any owner to develop other --- for other uses.
23 We are seeking relief today in order to offset some of the unit
24 condition.

25 We have conducted Phase 1 and Phase 2 studies. Before

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1 it became an auto mechanic shop, the property was a fuel storage
2 facility with over 18 underground storage tanks with capacity
3 ranging from 550 to 25,000 gallons.

4 Based on the environmental studies, in addition to the
5 tremendous cost of cleaning up the site, it will take at least
6 two to three months to finish up the job.

7 The property was on the market for over two years, unable
8 to close, despite the market in the area, due to these
9 environmental conditions as the developers have to contend
10 with these issues.

11 In preparation for this hearing, we reached out to the
12 community seeking their support and feedback. We conducted
13 numerous meetings, and received very valuable feedbacks. Based
14 on this feedback, we have made multiple design change in order
15 to accommodate the community. The architect can elaborate
16 on this later.

17 It is my hope that the Board can see the tremendous
18 benefits this project can bring to the public by providing
19 badly-needed additional housing, by providing additional
20 neighborhood service retail, remediation of contaminated
21 property, elimination of nonconforming use. Also removing an
22 eyesore, which I believe the community and the neighborhood
23 would very much appreciate. Thank you very much.

24 MR. PICHON: Good morning, Board. Again, my name is Sean
25 Pichon with PGN Architects. As Mr. Sequar has mentioned, we

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1 worked extensively with the community, working our design from
2 its original plan of a more modern approach to the facade and
3 Florida Avenue rendering, we worked with the community to bring
4 the design more in line with what their concerns were.

5 From a design aesthetic, we've introduced a lot more
6 traditional Victorian details to the building. We've recessed
7 the building. This property --- you can go to the --- this
8 property has a property line that's out beyond the adjacent
9 building faces.

10 We hold the building back to align with the neighboring
11 properties. We've introduced numerous materialities, cornice
12 lines, brick facades, and a base that represents more of the
13 traditional historic character of the neighborhood. All this
14 was done in conjunction with the community outreach, to bring
15 us from a more modern approach to this, back to a more
16 traditional design motif.

17 We've also worked with the neighbors directly to either
18 side of the property. Emily, on the, I guess it's the east side
19 of the property. Originally, we had --- one of her major
20 concerns was having a large number of windows overlooking her
21 property.

22 We've worked with her to reduce the number of windows
23 that are looking out directly over her property. The windows
24 that you do see there are part of a court niche recess, so that's
25 a significant facade recess, back at least 20 to 30 feet from

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1 the property line.

2 We've also worked with Emily. Original, as you can see
3 in this diagram, the original --- the property
4 actually --- there is no building restriction line in here,
5 but the neighboring properties all are recessed, at least 10
6 feet beyond the property line on the front of the properties.

7 Obviously, any property that we would normally be
8 designing, we would design to the property line. In this case,
9 we've worked with the neighbors to maintain that building face
10 that's existing throughout the neighborhood. So we've pulled
11 our building back to align with the east side property, so as
12 not to create a significant jog in the urban streetscape.

13 We've also included bay projections, but those bay
14 projections are not your typical bay projections. Those are
15 all within the private property, within our property line.

16 Another key aspect of the design, iterations that have
17 happened over the community meetings, is we've heard from them
18 that they were very strongly supportive of having, not losing
19 all of their C-2-A commercial zone. So they've requested that
20 the developer provide, and we design, a retail space as part
21 of the ground floor of the building.

22 And so we've provided that. We've got a small commercial
23 space at the ground floor. Through that adding of the retail,
24 we've worked to increase the headroom height on that floor to
25 accommodate a traditional retail tenant in there.

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1 We're looking to provide a 13 foot floor-to-ceiling
2 ground floor to accommodate that ground floor retail.

3 We've also reduced the number of units from what was
4 originally proposed. We went from a 52-unit building to a
5 46-unit building. Again, I mentioned pulling the facade back
6 to align with the adjacent properties.

7 And we've also added some improvements on the rear of
8 the property, directly behind Emily's property to the east.
9 Where we once had a loading area, we've concealed that with
10 some landscaping, improved landscaping along that property
11 line. And this just gives you an overview of our typical floor
12 plate.

13 As I mentioned earlier, that we've designed a building
14 that has two courtyards on either side of this core that goes
15 down the middle, that allows us to get light in to units, front
16 and back.

17 So this is our typical floor plate as it goes up through
18 the building.

19 The cellar level plan is where we're providing our
20 parking. We're coming in off the alley, with the ramp down
21 to --- a speed ramp down to the lower level. We're providing
22 a total of 27 parking spaces above the 23 required. We're also
23 providing 19 bicycle spaces above the sixteen required for the
24 property.

25 This last slide shows the height of the building, and

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1 the relationship to the matter of right versus what we're, the
2 minor relief that we're asking for.

3 We are, based on our last iteration with Office of
4 Planning, we're working to work in a 13 foot ground floor retail
5 space. So this will be supplemented to the record. But our
6 overall building height will remain at 53 feet, six and a half
7 inches.

8 We're going to work to reduce the floor to floor to
9 accommodate the additional height at the ground floor level.

10 This slide here shows the current conditions of the
11 properties along Morse Street, N.E. Those properties are
12 approximately 140 feet deep. The actual houses, for the most
13 part, on those lots, are about 40 feet deep.

14 So there's, with the 20 foot alley, there's
15 approximately 120 feet from our rear property line to the back
16 of the properties along Morse Street.

17 MS. MOLDENHAUER: That concludes our presentation, but
18 I can, if the Board has some additional questions on practical
19 difficulty, I can turn back to the Applicant to provide some
20 more specific details on the remediation and the offset.

21 BOARD MEMBER HINKLE: So just a quick question. With the
22 modifications and plans that we've just reviewed, there's no
23 change in the amount of FAR relief you're requesting, or the
24 rear yard. I mean, those haven't changed at all?

25 MS. MOLDENHAUER: No. Those have not changed, The

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1 majority of comments from the community were about design,
2 materiality, and overall feel of the building, which we believe
3 we've addressed, and we had a very positive SMD meeting this
4 past week.

5 CHAIRMAN JORDAN: Let's go back to your matter-of-right
6 drawing, diagram.

7 MS. MOLDENHAUER: It was not a matter of right. It was,
8 I think --- you're saying this is the original design?

9 CHAIRMAN JORDAN: No. I thought you had one that said this
10 is matter of right, a comparison, what was matter of right.

11 MS. MOLDENHAUER: Oh, the height?

12 CHAIRMAN JORDAN: Yes. The height.

13 MR. PICHON: The red line indicates the 50 foot height
14 limit.

15 CHAIRMAN JORDAN: Do I have that same --- which slide is
16 that, cause I --

17 MS. MOLDENHAUER: It's slide 15.

18 MR. PICHON: Slide 15.

19 CHAIRMAN JORDAN: Fifteen? Okay.

20 MS. MOLDENHAUER: Like I said, ask the architect of the
21 project, the --- what creates the practical difficulty for
22 asking for this just three feet? Could you push the structure
23 down and create more of a cellar level on the first floor, and
24 then not have to request this relief?

25 Why is this design, and why are we asking for this

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1 relief?

2 MR. PICHON: Well, one, when you're introducing retail,
3 you want that to be at grade, for the most part. You can, in
4 certain situations, see a slightly-recessed retail level, but,
5 for the most part, those are at grade. So that sets our starting
6 point from the measuring of the height.

7 And not to mention the, as Mr. Sequar had referred to
8 earlier, the environmental conditions. So one of the
9 prerequisites to us designing this building was to minimize
10 the impact that we're disturbing the earth.

11 MS. MOLDENHAUER: Mr. Sequar, we have a letter in the
12 record from Apex, indicating the environmental remediation and
13 contamination aspects, and the impact on residential units.
14 If you can elaborate on that.

15 MR. SEQUAR: yes. The Apex recommended that we do not use
16 the cellar for residential use due to the fact that there might
17 be minor risks from the --- once the site is cleaned up, some
18 potential residual left --- environmental issue. So we are
19 using the cellar for underground parking as opposed to
20 residential use.

21 BOARD MEMBER HINKLE: If I could ask a question. So I
22 really appreciate not seeing a parking variance here, because
23 we see these, even up and down the street. But I'm trying to
24 understand the nexus between the additional FAR and the site,
25 and the site conditions. I mean, you are using the, this

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1 basement for parking, which is appropriate. But I don't quite
2 get the nexus between the environmental condition and the
3 request for additional FAR. I'm still struggling with that.

4 MR. SEQUAR: Yes. The cost --- this site has about 18
5 underground storage tanks, and the cost to clean up is about
6 one million dollars, between 900 to a million dollars to clean
7 up the site.

8 And the cost of --- in order to provide parking, to go
9 to a second level, would be astronomical, to say the least ,and
10 we do not normally --- typically you see --- you take benefit
11 by using cellar space and that doesn't count in to your FAR.

12 So just to mitigate, to offset some of that
13 environmental cost, we are asking for that additional FAR. It
14 is rather substantial cost, and that is a big difficulty.

15 MS. MOLDENHAUER: Would the degree of relief of the .6
16 FAR completely offset the financial burden and practical
17 difficulty associated with remedying the environmental
18 conditions that anyone would have to do at the site?

19 MR. SEQUAR: The cost versus the additional gain from the
20 FAR, it's basically between half to two-third. So it will go
21 and cover, to some extent, but it would not offset everything.
22 But it would be a tremendous help for the development of the
23 project.

24 MS. MOLDENHAUER: Would it be a help, or would it actually
25 offset and allow the project to move forward, or to the

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1 practical difficulty associated with the remediation?

2 MR. SEQUAR: It would help tremendously, but it would not
3 offset it completely.

4 CHAIRMAN JORDAN: So you're saying you pick up a value
5 of about a half-million dollars. Is that what I understand?

6 MR. SEQUAR: That would be between half to 600,000 or so.

7 CHAIRMAN JORDAN: Board, any other
8 questions? Mr. Miller.

9 MEMBER MILLER: If you were to have --- is that value of
10 the FAR, is that the value of the extra FAR plus the extra
11 height, basically, cause you --

12 MR. SEQUAR: That's correct.

13 MEMBER MILLER: So how many units are on that top floor?

14 MR. SEQUAR: Nine, sir. Nine units.

15 MEMBER MILLER: And the retail --- I appreciate that
16 you're providing the retail on the ground floor as the
17 community requested. But the floor to ceiling is only 10 and
18 a half feet?

19 MR. PICHON: No. We're going to supplement that to the
20 record. That was a request that came in just recently. So we're
21 going to adjust the ground floor to be a 13 foot floor to floor,
22 and take that out of the upper floor levels.

23 MR. SEQUAR: So basically floor to ceiling would be about
24 nine feet on the residential units.

25 MEMBER MILLER: I see. Okay. Thank you.

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1 MS. MOLDENHAUER: The same degree of height will still
2 be requested.

3 MEMBER MILLER: Okay. Thank you.

4 CHAIRMAN JORDAN: Anything else, Board, that we need to
5 hear? I mean, anything else, anything that you want to present?

6 MS. MOLDENHAUER: Well, we will provide a closing
7 statement. Thank you.

8 CHAIRMAN JORDAN: So let's turn to the Office of
9 Planning, please.

10 MR. MORDFIN: Good morning, Chairman, and members of the
11 Board. I'm Stephen Mordfin with the Office of Planning, and
12 the Office of Planning has recommended denial of the increase
13 in building height, the total floor area ratio and the
14 residential floor area ratio, cause they don't see that the
15 uniqueness of the property results in a practical difficulty
16 whereas they can't use the lot.

17 They are still able to develop this with a mixed-use
18 building with residential and commercial uses there, so are
19 able to develop the building with a basement level that can
20 be used for accessory uses that the building needs, such as
21 the parking, the utility, the bicycle storage.

22 And so that --- those are the reasons why the Office of
23 Planning has recommended against those area variances. As for
24 the rear yard, the Office of Planning does see uniqueness there
25 in aligning the building with the existing street face there

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1 along Florida Avenue, and by pushing it back, it does then
2 impact the rear yard, and therefore we find that there is a
3 uniqueness that results in a practical difficulty for the rear
4 yard.

5 Should the Board approve the other variances, we would
6 recommend approval of the rear yard variance. Thank you.

7 CHAIRMAN JORDAN: Did you consider the financial impact
8 of the mediation in your recommendation?

9 MR. MORDFIN: No. We did not.

10 CHAIRMAN JORDAN: All right. Any other questions, Board?

11 (No response)

12 CHAIRMAN JORDAN: All right. Applicant, questions of
13 planning?

14 MS. MOLDENHAUER: Your one point is that we're already
15 using --- you refer in your report to a cellar level. Isn't
16 it correct, it's not a cellar? It's actually a basement?

17 MR. MORDFIN: It's --- that depends how far below grade
18 it is.

19 MS. MOLDENHAUER: It's a hun --- there's no portion of
20 it which is above grade.

21 MR. MORDFIN: So then it would be a cellar. The basement
22 would be less than four feet.

23 MS. MOLDENHAUER: Obviously, surveying showed that
24 there's no --

25 CHAIRMAN JORDAN: I'm confused. Okay? Go ahead.

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1 MS. MOLDENHAUER: There's no residential use on that
2 lower level.

3 MR. MORDFIN: There's no residential use on that lower
4 level; correct.

5 MS. MOLDENHAUER: And there's no way that the way it's
6 currently designed could provide residential use.

7 MR. MORDFIN: Correct.

8 MS. MOLDENHAUER: That's all.

9 CHAIRMAN JORDAN: Great. Okay. Any other questions?
10 Anyone? Office of Planning.

11 (No response)

12 CHAIRMAN JORDAN: Then let's turn to Department of
13 Transportation.

14 MR. WISTROM: Good morning, Board chairman, and members
15 of the Board. Thank you. Ryan Wistrom with DDOT. And DDOT does
16 not have an objection to this variance, and thus we are happy
17 to rest on the record. However, we did want to be here,
18 available to answer any questions on this particular case,
19 should there be the desire for that. Thank you.

20 CHAIRMAN JORDAN: Thank you. Board, Department of
21 Transportation. Questions?

22 (No response)

23 CHAIRMAN JORDAN: Applicant, any questions?

24 MS. MOLDENHAUER: No questions.

25 CHAIRMAN JORDAN: We don't have an ANC 5D letter, and

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1 we've already had a report on its activities. Is anyone here
2 wishing to speak in support of the application? Anyone in
3 support?

4 (No response)

5 CHAIRMAN JORDAN: Anyone in opposition? Anyone in
6 opposition? Yes, please. Make sure your microphone's on. There
7 should be a bright glowing --- no. You've got to push the
8 button.

9 MS. RAMSEY: Okay. My name is Karen Ramsey. I live in the
10 Trinidad neighborhood. I'm coming in opposition, primarily
11 because the first meetings that were held about this project
12 were very contentious. Community members raised concerns about
13 parking, how the remediation would be handled, in terms of
14 having 100-year-old homes with a lot of significant work being
15 done to clean up the site.

16 There were many issues over the height, and why there
17 would need to be an additional three feet of height.

18 There has been a lack of good information coming. For
19 example, even the prehearing letter says that there are 44
20 units. This morning they say there are 46 units.

21 The community members asked about inclusionary zoning
22 units, or any affordable housing. All of those questions have
23 been rebuffed with: "We're not talking about that, you
24 must --- we will only talk about what needs a variance." Today
25 is the first that I've heard that there was an SMD meeting on

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1 Thursday of last week. It was not noticed with fliers. It was
2 not put on NextdoorTrinidad. It was not put on the neighborhood
3 listservs. It was not communicated to the neighborhood
4 association.

5 So I am curious to know who was at that meeting and how
6 those meetings are being conducted. But the meetings that I
7 have attended, there has been very strong opposition to
8 granting variances for height and floor area relief.

9 CHAIRMAN JORDAN: What meetings have you attended?

10 MS. RAMSEY: I have attended at least two SMD meetings,
11 specifically about the project.

12 CHAIRMAN JORDAN: Board, any other questions of this
13 witness? Ms. Ramsey.

14 (No response)

15 CHAIRMAN JORDAN: The Applicant. Questions?

16 MS. MOLDENHAUER: No questions.

17 CHAIRMAN JORDAN: Okay. We thank you for giving us your
18 input on this.

19 MS. RAMSEY: And just one additional note. I think that
20 this meeting should not have happened before the full ANC
21 meeting either.

22 CHAIRMAN JORDAN: Which meeting are you talking about?

23 MS. RAMSEY: The ANC has not met to discuss this project.
24 I'm assuming you're who they have as "Pearson" Developments
25 on the agenda for tonight. Cause they don't have Pierce

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1 Investments listed. That could be a typo.

2 CHAIRMAN JORDAN: Okay. All right. All right. So any
3 other questions, Board? Anything?

4 (No response)

5 CHAIRMAN JORDAN: Then let's turn back to the Applicant
6 for any rebuttal, or in closing.

7 MS. MOLDENHAUER: First, obviously, I'll address Ms.
8 Ramsey's comments. We do not contend that the first ANC
9 meetings, or SMD meetings, were not contentious. They had a
10 lot of comments, and they had a lot of different concerns.

11 This, on the left, was the original design that was
12 shown. There have been a substantial amount of changes, and
13 I think that that's one of the benefits that both the BZA, the
14 Zoning Commission, continually talk about. That while
15 obviously the process has to follow through the standards and
16 the legal requirements, but it also provides an opportunity
17 for developers to engross themselves in the community, talk
18 with the community. We have worked with Commissioner Buggs,
19 who is the SMD commissioner for this project. She has requested
20 to coordinate all of the SMD meetings. We have not been part
21 of --- we've only requested that she coordinate them.

22 She coordinates them. I do not know how she publicizes
23 them, but they are attended. We have typically anywhere from
24 five to 15 to 20 people at those various meetings.

25 We have had communication with both --- and I'm going

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1 to forget her last name --- but Emily, who lives in the building
2 directly to the right of the project, both David, who filed
3 a letter in this application, requesting some design changes,
4 and also another property owner, and again, having all these
5 other large group meetings to discuss.

6 And you can see the evolution of the design. As we've
7 set the building back on the corner, we've modified the
8 materials, reduced the number of units, and tried to address
9 a lot of those questions and concerns, change the fenestration,
10 and I think at the end of the day, separate and apart obviously
11 from the legal standard, and which we believe we satisfy,
12 provided a much more desired building, that I think the
13 community feels as though --- and that's not all of the
14 community, given, you know, Ms. Ramsey's comments. But we feel
15 a majority of the community feels that they support, that
16 they're behind, and that they've been involved in the process.

17 And obviously that, you know, I think is something to
18 commend the Applicant for. In that regard, you know, we are
19 sitting here today because we are asking for three areas of
20 relief. FAR, height, and rear yard. We believe that we do
21 satisfy the legal standard, the exceptional condition of the
22 environmental conditions of the property. This Board has, in
23 other cases, found that environmental-contaminated soil and
24 conditions obviously are something that must be dealt with,
25 and are an exceptional condition.

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1 Here, we've had testimony that that directly relates to
2 the practical difficulty of complying with the FAR, the height
3 that we've presented, and we don't believe that there would
4 be a substantial detriment to the public good.

5 There is no ability to provide a cellar. As Apex
6 indicated, they would not recommend providing any residential
7 uses below grade, whereas in a typical development, you would
8 be able to provide additional units that would not count
9 towards your FAR.

10 In addition to that, we'll talk about the specific
11 exceptional conditions that create practical difficulty.

12 The lot is obviously large, and is in a C-2-A zone.
13 Obviously, it's also, you know, adjacent to the R-2, which
14 created all these design changes and modifications, and
15 working with the community, for some of those reasons, the
16 property was on the market during probably one of the hottest
17 real estate markets of the last two years, and it could not
18 be sold.

19 We have letters in the record from both the seller and
20 the buyer's broker, indicating the delay, and the fact that
21 they've actually lost contracts because of the environmental
22 conditions.

23 You can even see in the record, one of the Phase 2s was
24 actually addressed to another developer because they dropped
25 out of the contract after they received that report.

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1 As Mr. Sequar testified, you know, there is required,
2 you know, removal of closed underground tanks. There would be
3 time and costly remediation, including excavation off site,
4 disposal of the hazardous soil, dewatering treatment,
5 installation of environmental control mitigations, and all of
6 these factors create a practical difficulty that Mr. Sequar
7 identified here today, which sums up to over a million dollars.

8 The requested relief directly has a nexus to the
9 requested FAR relief, which is then requesting an offset. We're
10 not saying that this is going to make the Applicant whole.

11 We have actually provided the fact that it's not, that
12 it's simply a minor offset to that practical difficulty regard
13 to the additional FAR.

14 The practical difficulty clearly is needed
15 with --- unless, without the Applicant providing, or complying
16 with the zoning requirements. The development obviously, no
17 matter what happens here would need to address these extensive
18 environmental conditions, and in order to bring the property
19 back to residential use, you know, that is what would be
20 required, and that is what -- the practical difficulty exists.

21 We just want to point out, this is an area variance case.
22 The Zoning Commission recently, and Office of Planning,
23 clarified the difference between an area variance and a zoning
24 variance, and they actually, in that report, said a variance
25 increase FAR should be treated as an area variance. The BZA

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1 has consistently treated these applications as use variances,
2 but OP and OAG believe that an area variance is more appropriate
3 because a use variance is only appropriate when an Applicant
4 seeks to establish a new, a use that is not permitted at all
5 within the zone district, as opposed to use that is permitted
6 but restricted, or conditions of some kind.

7 Here, an area variance is not a question of, Can nothing
8 else be done? It's simply a question, Is there a practical
9 difficulty? And is not a question of undue hardship. It's a
10 question of practical difficulty, and we believe, that based
11 on the financials provided by Mr. Sequar, we've satisfied that.

12 In addition to that, in a BZA case, Alley Oop LLC, which
13 was Case 18511, this Board found in that case, which was a
14 garage, and that it was a different, was an alley structure,
15 but it was a garage that had extensive environmental
16 conditions.

17 That they found that those environmental conditions of
18 contaminated oil, solvents, and chemicals, created a
19 practical --- actually, an undue hardship in that case, and
20 granted a use variance for office use, because they found that
21 providing residential in that lower level would not be
22 appropriate.

23 So there is other precedents, In other words, other
24 cases, obviously they all sit on their own, where the Board
25 has found the nexus between the cost and practical difficulty

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1 of remedying contaminated and environmentally-challenged
2 sites.

3 Here's just a list. I know sometime the Board
4 appreciates these. Sometimes, they find them to be less than
5 helpful. But just to provide this in regards to different
6 cases, over the years, that the Board has granted other degrees
7 of similar relief.

8 You know, there are varying levels of FAR relief the
9 Board does, obviously, as they know, have the authority to
10 grant FAR relief, and we find that this degree of relief
11 directly relates to the unique and practical difficulty of the
12 site.

13 I'll skip that. And then obviously the height relief,
14 as we have indicated, has --- we're only asking for 3.5 feet
15 in height. As we showed in the image, it's really not apparent
16 from the street. You know, if you were to develop this as a
17 matter of right, compared to the 3.5 feet, we don't believe
18 that it's going to change, and we also believe that the setbacks
19 that have now been provided actually enhance the design of the
20 project.

21 And again the process which one goes through to seek this
22 relief, we believe at the end of the day has improved the design
23 and improved the overall relief.

24 The setback for the rear yard, I won't go through this
25 in detail since Office of Planning does recommend support on

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1 the rear yard.

2 And we believe there's no detriment to the public good,
3 due to the benefits, and the fact that at the end of the day
4 the property is a C-2-A zone, and so, you know, we
5 have --- there's no limitation on the number of units that are
6 provided here.

7 We have the reduced number of units based on the
8 community input and discussion. We've provided the
9 residential, which is again another public benefit that we have
10 directly addressed from community comments and concerns, and
11 we feel as though we satisfy the three prongs of the test for
12 both the height, FAR, and rear yard relief.

13 CHAIRMAN JORDAN: Okay. Board, any other questions? Yes,
14 Mr. Miller.

15 MEMBER MILLER: Just one question, Mr. Chairman. Could
16 you address the inclusionary zoning question of Ms. Ramsey,
17 whether it applies or not and --

18 MS. MOLDENHAUER: It absolutely applies, and, you know,
19 I personally attended every one of the SMD meetings, and we
20 indicated that we would, and I don't know if --- maybe there
21 was a misunderstanding, but we will be satisfying IZ. We will
22 be writing the required number of IZ units for the project.
23 Obviously --

24 MEMBER MILLER: And what is that num
25 --- and what is --

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1 (Simultaneous speaking)

2 MEMBER MILLER: What is the required --- what is ----

3 MS. MOLDENHAUER: The number has changed, because we were
4 originally at 52 and now we're at 46. So if you'll bear with
5 me. My math --

6 MEMBER MILLER: 8 percent.

7 MR. SEQUAR: It would be about between four to five units.
8 About 8 percent is what the required amount is.

9 MEMBER MILLER: And is it at --- is it half and half?
10 Between 50 and --- 50 percent AMI and 80 percent AMI?

11 MR. SEQUAR: That's correct.

12 MEMBER MILLER: Half at 50 percent AMI and half at 80
13 percent AMI?

14 MR. SEQUAR: Yes. Correct.

15 Can I add something to what Ms. Ramsey and Meredith
16 mentioned, and that is basically on the first meeting, it was
17 a rather --- you know, there was opposition, and the most vocal
18 person was Emily and her --- which is the neighbor on the
19 right-hand side, which is 1128 Florida Avenue. And she is
20 completely satisfied with this design. We pushed the property
21 to make it in line with her property.

22 We also addressed --- there were some windows that were
23 overlooking on the first design, that were looking in to her
24 property. Those windows were removed in order to satisfy her
25 concerns.

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1 And there were parking issues, Ms. Ramsey just
2 mentioned, and those issues were some community members wanted
3 the entrance for the parking garage to be from the front as
4 opposed to from the alley.

5 That alley's a 20-foot-wide alley. Maybe DDOT can
6 comment on this. DDOT does not recommend a front entrance from
7 Florida Avenue, and I don't know, Mr. Wistrom perhaps could
8 verify that.

9 CHAIRMAN JORDAN: Just you do your thing.

10 MR. SEQUAR: All right. Okay. So that was one of the main
11 parking issue that was raised, and we cannot provide it from
12 the front. We provide access from the alley, and that alley
13 is a 20-foot-wide alley.

14 CHAIRMAN JORDAN: Any other questions, Board?

15 (No response)

16 CHAIRMAN JORDAN: All right then. So then we will close
17 this hearing. Do we need to leave the record open for --- want
18 the ANC report before we deliberate also? Okay. So we'll put
19 this over for decision, but we want to have the ANC report in
20 our record, is what I'm understanding from the Board.

21 So there's a meeting tonight. We should probably have
22 one by the end of this week; right?

23 MS. MOLDENHAUER: I would ask. I obviously have
24 no --- I'll be attending the meeting this evening, and I will
25 ask them, and let them know there's a deadline.

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1 CHAIRMAN JORDAN: So we can go to decision on this next
2 week. That's why we have Mr. Miller. We're giving him the "full
3 BZA docket."

4 BOARD MEMBER HINKLE: Mr. Chairman, they were going to,
5 or they offered to supplement the record with the revised
6 drawings and so on.

7 MS. MOLDENHAUER: Anything else that the Board needs to
8 see in regards to addressing --

9 CHAIRMAN JORDAN: So we have the revised drawings and the
10 ANC response. Then we'll put on --- for next week, and put this
11 on for decision. Okay. Very good. Thank you. This will conclude
12 this hearing. Thank you.

13 Is there any other business coming before the Board
14 today?

15 (No response)

16 CHAIRMAN JORDAN: All right. Then we're adjourned. Thank
17 you.

18 (Whereupon, at 11:55 a.m., the Public Meeting of the BZA
19 was adjourned.)

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