GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY

JULY 13, 2010

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The Regular Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Meridith H. Moldenhauer, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:
MERIDITH H. MOLDENHAUER, Chairperson
SHANE L. DETTMAN, Vice Chairman (NCPC)
NICOLE SORG, Member
ZONING COMMISSION MEMBERS PRESENT:
ANTHONY J. HOOD, Chairman
PETER MAY, Commissioner (NPS)
OFFICE OF ZONING STAFF PRESENT:
CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist
D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
LORI MONROE, ESQ.

The transcript constitutes the minutes from the Public Meeting held on July 13, 2010.

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9:48 a.m.

BZA CHAIR MOLDENHAUER: This meeting will please come to order. Good morning, ladies and gentlemen. This is the July 13th, 2010 public meeting of the Board of Zoning Adjustments for the District of Columbia.

My name is Meridith Moldenhauer, chairperson. Joining me today is are Vice-Chair Shane Dettman, representative of the National Planning Commission. To his right, Peter May, representative of the Zoning Commission. And to my left, Nicole Sorg, mayoral appointee.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door.

We do not take any public testimony at our meetings unless the Board asks someone to come forward.

Please be advised that this

proceeding is being recorded by a court reporter and is also being webcast live. Accordingly, we must ask you to refrain from any disturbing noise or actions in the hearing room. Please turn off all beepers or cell phones.

Mr. Secretary, are there any preliminary matters?

MR. MOY: Yes, Madam Chair, but staff would suggest that the Board address those preliminary matters on a case-by-case basis.

BZA CHAIR MOLDENHAUER: Thank you. Also, I'll be changing the agenda around a little bit, so I'll just announce the order that we'll be going through the cases. We'll be taking Sheila Cox' case first, then Central Union Mission, then Keita and then Stephen Bruce as the last decision case for the morning.

So, if we can then call the first case?

MR. MOY: Yes, thank you. Good morning, Madam Chair, Members of the Board.

The first of four cases for decision, as you said, is Application No. 18074. This is of Shirley H. Cox, pursuant to 11 DCMR 3104.1, for a special exception to establish a child development center. This is for 18 children, three staff. On June 22nd the application was amended to 15 children under the section 205 in the R-2 District at premises at 3008 K Street, Southeast, Square 5482, Lot 8.

Again, on June 22nd, 2010 the Board completed public testimony, closed the record and scheduled its decision on July 13th, 2010.

The Board requested additional information to supplement the record from the applicant, ANC 7A, the Office of the State Superintendent of Education and kept the record open for responses, especially from Deborah Lake Hinkle who had party status.

In your case folders, Madam Chair, are three filings. The first is from OSSE, a letter dated July 6th, 2010, identified as Exhibit 29. The second filing is from the applicant dated July 7th, 2010, filed into the record July 8th, identified as Exhibit 30. And finally, this morning, today, July 13th, the office received a filing from Ms. Deborah Lake Hinkle and would be identified as Exhibit 31 for the Board's consideration.

The Board is to act on the merits of the special exception request to establish a child development center for 15 children and three staff under section 205.

That completes the staff's briefing, Madam Chair.

BZA CHAIR MOLDENHAUER: This case is before us, but at the initial hearing we had specifically provided that the record was going to remain open for certain documents. And I had specifically stated to the applicant, and there was actually a dialogue

about how those documents were going to be served on party status members. There was a discussion about hand delivering those. My understanding is that those documents had not been served on the party status individuals, Ms. Hinkle and Ms. Walker.

And so based on that, I'm going to instruct the applicant to ensure that those documents get served. We have a document dated July 7th, which was received in our office on July 8th from the applicant, that that letter along with the additional exhibits from OSSE, get served on the party status individuals, Ms. Hinkle and Ms. Walker, by no later than this Friday the 16th. I will then provide the party status applicant an opportunity to respond to that by the 23rd, which is Friday the 23rd. We then will reconvene the decision of this case until Tuesday, July 27th. And that will conclude our review of this case at this time.

MR. MOY: Very good. Thank you,

Madam Chair.

The next application would be Application No. 18078 of PMDP-GA. LLC on behalf of Central Union Mission, pursuant to 11 DCMR 3104.1 and 3103.2. This is for a variance from the height requirements under section 770, a variance from the parking requirements under subsection 2101.1, a variance from the loading requirements under subsection 2201.1, a special exception to permit the development of a property in excess of 12,000 square feet with the Georgia Avenue Commercial Overlay under subsection 1330.19(b), a special exception from the design guidelines of the Overlay under subsection 1330.2, and finally, a special exception from the roof structure requirements under subsection 411.11, to construct a new 83-unit apartment building with ground floor retail in the GA (Georgia Avenue Overlay)/C-3-A District at premises 3506 Georgia Avenue, Northwest, 3510 Georgia Avenue, Northwest,

3512 Georgia Avenue, Northwest, and 714 Newton Place, Northwest. This is in Square 2829, Lots 825, 826, 830 and 831.

As the Board will recall, on June 22nd, 2010 the Board completed public testimony, closed the record and scheduled its decision on July 13th. The Board did not request any supplemental information for the record. The Board is to act on the merits of the multiple variance and special exception requests.

And that completes the staff's briefing, Madam Chair.

BZA CHAIR MOLDENHAUER: Thank you very much, Mr. Moy.

At this time what we'll do is, to begin our deliberation, I'll turn to Mr. May to address some of the initial issues in regards to the relief that's being sought.

COMMISSIONER MAY: Okay. For this case, there are six different variances or special exceptions that are being sought.

The overall merit of the project seems to be rather clear, being an all-affordable housing project. And working with a constrained site, you know, it's ordinary in shape, but it's tight given the density that is allowed and given the difficulties of trying to configure things like parking and so on within the structure. And so, the variances are driven by trying to achieve that density for this, I think, worthy purpose and not being able to fit everything in quite exactly. And I think that the applicant is trying to make the case that trying to build out this project to the allowable density and to meet the laudable goals of affordable housing, it's necessary to have some relief from certain requirements. It would be practically difficult to try to meet all of the requirements.

I'll go through these one-by-one. I won't have a lot to say on the particulars, but the first is area variance for the

increase in building height from 70 to 73 feet, four inches. That's one that I think is an easy hurdle to clear again because of the constrained site and the allowable density, the inclusionary zoning, additional FAR and so on, and it makes sense to be able to try to accommodate that. And it really has only a nominal effect on the surrounding area.

The area variance to reduce the number of off-street parking from 42 spaces to 29 spaces, I think this is probably the biggest issue of the project and it is the one where the ANC specifically flagged an issue. They otherwise have very strong support for the project. But they are concerned about the fact that it provides less parking than is required by the Zoning Regulations. This did not seem to trouble the Department of Transportation who believes that reducing the number of parking spaces is actually a benefit to the project.

On a side note, I would take

significant exception with the report that we received from DDoT which applauds the reduction from 42 spaces to 29 spaces. As far as I'm concerned, DDoT's position, when they come to the Zoning Commission, is to speak on whether a particular project meets the zoning requirements with regard to parking, and where it does not, why it is okay. And instead, they are in effect actively advocating for a policy that's contrary to what the Zoning Regulations state.

And I hope DDoT is paying attention to this, or someone forwards the transcript to them, or something like that. It is not their job to come here and try to make policy about parking. That is the job of the Zoning Commission and the Zoning Commission is actively taking that up right now. When they come here, they should be speaking to what the Zoning Regulations say and why a project is okay is not okay because of the extent to which it varies from those

regulations.

That having been said, the fact that they did address some of those concerns, they did explain why they think it is okay. I think the Office of Planning also stated that. And the Board studied this issue or considered this in the hearing and I think got a reasonable explanation for the complications of trying to accommodate the additional 13 spaces with the building. And I don't believe that there is some easy fix to this or some way to change the plan of the building that would allow them to easily get to the required number of spaces, and I do see that there is a practical difficulty there.

Next area variance is to reduce the size of the loading berth from 55 feet to 30 feet and the size of the loading platform from 200 square feet to 100 square feet and to eliminate the requirement for one delivery space. I think all of those make sense given the use of the building and the constraints,

the difficulty that that would pose on the building if they would try to accommodate all of those loading requirements.

There are two special exceptions that relate more specifically to I think the Georgia Overlay District design requirements and then there's an exception to permit the construction on a building on a lot of 12,000 square feet or more in area. I think that the test has been met in both of those cases. This is one of those circumstances I think where the intention of the Zoning Regulations are not being significantly undermined by allowing this project to go forward.

The special exception with regard to the permitting a roof structure of varying heights, this is the one case where I think that the applicant did not make a case that a roof structure of varying heights is somehow necessary or dictated by either the nature of the site or some other constraint on the project overall. They simply said that they

think it's better to have a roof structure of varying heights.

And, you know, I guess maybe I'm running through these things and adding a little bit more of my opinion about where they stand, but that's the summary of the issues as I see them and would be happy to have further discussion.

BZA CHAIR MOLDENHAUER: Thank you very much, Mr. May.

I think that you really have identified two of the more poignant issues here in this case; one, which is the off-street parking variance; and the other one is the roof structures. So, I'll open up the floor. If there any other issues that people or Members feel are important, we can discuss those. We'll open up the floor for any additional discussion on those elements.

VICE CHAIRMAN DETTMAN: Thank you, Madam Chair. I have nothing much to add. I'm in full agreement with Mr. May's summary of

the case, as well as what appears to be his position on all of the areas of relief. And I'm looking at OP's report and I'm in support of the areas of relief identified as Nos. 1 through 5 on the first page of their report, and don't think that the applicant quite made the case for the special exception under 411.11 for the uniform height of the roof structures.

Just in terms of the overall variance test, I think while it's a rather large site; it's above 18,500 square feet, it's fairly narrow, which puts constraints on the layout of the building and where the apartment units can be located and the arrangement of the corridors, which drives the height variance. And then of course, below grade is creating a practical difficulty for the parking and the loading.

For the roof structure special exception, I don't think that they made the case simply because under 411.11 it states

that wherein practicable because of an operating difficulty, size of the building lot or other conditions related to the building or surrounding area that would make full compliance unduly restrictive, costly or unreasonable.

And I think just looking at the prehearing statement at page 18 the applicant states that to create a uniform height for both the elevator to override and the rest of the roof structure would result in an unnecessarily large penthouse. And so, they don't really tie it to the standard that needs to be met under 411.

They go on to say that the relief would not adversely effect the neighboring property, which I'm sure is true, but nonetheless the roof structure provisions exist for a specific purpose. And you can find that purpose under 411.1, which says the purpose of these regulations is to exercise a reasonable degree of architectural control

upon roof structures. And one of them is uniform height, consistent materials and whatnot, and, you know, a certain standard needs to be met in order to deviate from those certain design criteria.

So, I think it's more of a personal preference rather than some kind of specific characteristic of the size of the building, the lot or what have you that's driving the applicant's desire for such relief.

BZA CHAIR MOLDENHAUER: Thank you very much, Mr. Dettman. I think that really points out the issue in regards to the standard that we have to evaluate the case on and potentially a lack of evidence that we have to be able to satisfy the special exception standard.

Ms. Sorg, do you have any additional deliberation discussions?

MEMBER SORG: Thank you, Madam Chair. I don't have very much to add either.

I agree almost entirely with Mr. Dettman and Mr. May, and I think also with their leanings with regard to the parking issue. I'm also swayed in this case by the project's, you know, close location to Metro and some of the other things that we heard in testimony and the earlier filings regarding, you know, Zipcars and their availability and some of the other things that the applicant is doing.

With regard to the roof structures, although I agree with Mr. Dettman that the applicant sort of skips over the reasoning in the prehearing statement, I think OP goes a little further in their report to point out a little bit more clearly, although not entirely, you know, that the reasoning perhaps behind this is, you know, that the 14-foot, four-inch screen wall that would make the roof structure of a uniform height would affect the surrounding area by being more visible to more of the neighborhood. And this case we're also granting an increased building

height and things like that. So, I think you can see that as somewhat coming under -- or I can see that as somewhat coming under the regulation here.

But that's all that I have to add.

BZA CHAIR MOLDENHAUER: I think that the points that have been made are very clear. In regards to the roof structures and the last comments that were made, I think that even though there were comments made by OP, I don't think that the applicant adequately addressed them during the hearing to satisfy the requirements and the elements that we have to evaluate that on.

In regards to the parking, I think, you know, there was testimony that in order to add additional parking it would cost an additional $60,000 per parking space and that in order to go down a second level. And as been already mentioned by other Board Members, the fact that this is an all-affordable housing project and that the site

constraint creates challenges in order for them try to meet all of their goals and satisfy other zoning requirements that, you know, I think that they have met the burden there in regard in parking.

But I will definitely echo Mr. May's comments in regards to DDoT's comments in their report that they were really unfounded in regards to the analysis that we're looking for from that agency in order to give us factual support rather than potentially, you know, policy desires in order for us to be able to use those reports to really help us evaluate these standards.

That being said, I'd also just like to add for the record that we have reviewed some letters of support in our file, including Exhibit No. 23 which comes from the owner of 649 Park Road, Northwest, who encourages his project and wishes to support it.

We also have our Exhibit No. 31

from Councilmember Graham which actually specifically talks about the parking and states that this limited zoning relief should be supported and he's confident that 29 parking spaces that are being provided will satisfy the needs generated by the project.

In addition to that, we have our Exhibit No. 30 which is another letter of support from the Executive Office of the Mayor, Office of Deputy Mayor for Planning and Economic Development, which again relays the encouragement of the project and the support that's being requested.

We then have the ANC letter which has already been referenced in regards to some of their concerns, but it is a letter of recommendation with conditions that have been addressed.

Then I believe we have one last letter, which is our Exhibit No. 26 which is a letter of concern in regards to the parking issue and addresses those issues from the

Prasada Condominium on 739 Newton Place. And we heard obviously some of their concerns about the parking, but I think from the record that we have and the challenges of the applicant I think that they have met the burden in regards to that.

Is there any further deliberation on this case?

(No audible response.)

BZA CHAIR MOLDENHAUER: Seeing none, I'll see if there's a motion, or a question.

COMMISSIONER MAY: Chairman, no, no question. I'm prepared to make a motion.

BZA CHAIR MOLDENHAUER: Fabulous. Thank you, Mr. May.

COMMISSIONER MAY: I would like to move approval of the area variance to permit an increase in building height from 70 to 73 feet, area variance pursuant to 2101.1 to reduce the number of off-street parking spaces from 42 spaces to 29, area variance pursuant

to 2201.2 to reduce the size of the loading berth from 55 feet to 30 feet and the size of the loading platform from 200 feet to 100 feet, and to eliminate the requirement for one delivery space, a special exception pursuant to 1330.1(b) to permit construction of a building on a lot 12,000 square feet or more in area, a special exception pursuant to 1330 to permit two exceptions from the design requirements for the Georgia Avenue Overlay District. And then I would further include in that motion disapproval of the special exception pursuant to 41.11 to permit a roof structure of varying heights.

BZA CHAIR MOLDENHAUER: A motion has been made. Is there a second?

VICE CHAIRMAN DETTMAN: Second.

BZA CHAIR MOLDENHAUER: Motion's been made and seconded. All those in favor say aye? Aye.

VICE CHAIRMAN DETTMAN: Aye.

COMMISSIONER MAY: Aye.

MEMBER SORG: Aye.

BZA CHAIR MOLDENHAUER: Mr. Moy?

MR. MOY: Yes, Madam Chair. Staff would record the vote as four to zero to one. This is on the motion of Mr. May for approval of the requested variance and special exception relief except for, or rather denial of the special exception for the roof structure requirements under subsection 411.11. In support of the motion, Mr. Dettman. Seconded, rather. And also in support of the motion, Ms. Moldenhauer and Ms. Sorg. No other Board Members participating. Again, the total vote is four to zero to one. And staff would suggest that a full order be written on this, Madam Chair.

BZA CHAIR MOLDENHAUER: Yes, thank you very much. Whenever you're ready, we can call the next case.

MR. MOY: That case would be Application No. 18065 of Shomarka Keita, pursuant to 11 DCMR 3104.1, for a special

exception to allow a second story rear addition to an existing one-family row dwelling under section 223, not meeting the lot occupancy (section 403), court (section 406), rear yard (section 404), and nonconforming structure (subsection 2001.3), requirements, in the R-4 District at premises 1925 2nd Street, Northwest, Square 3114, Lot 83.

On June 8th the Board completed public testimony, closed the record and scheduled its decision on July 13th. The Board allowed the record to remain open for a resolution or a letter from ANC 5C.

In the Board's case folder there were three filings into the record. First, there's no filing from ANC 5C. The three preliminary filings, preliminary matter filings I should say, the first two are filings from Mr. Keita, Exhibits 53 and 54. The third filing is a letter from party opposition Kathleen Randreed identified as

Exhibit 55. This was filed into the record yesterday, July 12th, Madam Chair. This filing also includes a request from the party opposition that the Board delay its decision.

The Board is to act on the preliminary matters and then to act on the merits of the section 223 special exception relief, not meeting lot occupancy and open court requirements as advertised in the public notice.

And that complete staff's briefing, Madam Chair.

BZA CHAIR MOLDENHAUER: Thank you very much, Mr. Moy.

Then what we'll do is I'll first address the preliminary matters of additional evidence that has been presented that was submitted after the record had been closed. And what we have I believe two documents that were added and then one potential motion. The two letters from the applicant, one letter of support and another letter, as we indicated at

the end of the case the letters are not admitted after the close of the hearing, and so I would recommend not to permit those into the record unless any Board Members have any differing opinion.

(No audible response.)

BZA CHAIR MOLDENHAUER: Seeing none, then we will not permit those letters into the record.

The next document is a motion from the party status individuals, Ms. Walker and Ms. Randreed. And this is a motion requesting that we postpone the decision based on an investigation that is being conducted by Councilmember Bowser. And in reviewing this I think that there are some potential issues that obviously the party status is bringing up, however I don't believe that any of them actually have bearing on the elements in which we have to determine this case.

In addition to that, it would be unduly prejudicial to postpone a case until

the conclusion of an investigation when we have no specific understanding of any time frame in which that investigation would either commence or be completed. Stating that, I think that we will move forward in the decision of this case and deny the motion from party status Ms. Randreed and Ms. Walker to postpone the decision.

That being said, I'll turn to Mr. Dettman to start us off on the deliberation.

VICE CHAIRMAN DETTMAN: Thank you, Madam Chair. I think this is a fairly straightforward case, though it has opposition, it has a party in opposition. We have letters in the record expressing their adverse views on the proposed addition. We also have quite a few letters in the record expressing support for the project and it is a fairly small project. It's an application for a two-story rear addition to an existing row dwelling, which in a sense it's basically replacing an existing one-story porch,

utilizing the same footprint as the old porch, but essentially putting on a second story. The addition extends from the rear of the original building a distance of about, according to the plat, 5.17 feet and then it's about 102 feet in width across the property.

During the hearing and in the filings by the party opposition there was some mention about whether or not this addition was being constructed according to approved permits and whether or not there's unclean hands on behalf of the applicant. And, you know, that is not an uncommon argument before the BZA and what the BZA has typically responded as saying is that the Board looks at this very narrowly under section 223. And whether or not it's being constructed according to plans, whether or not it was constructed prior to getting BZA approval, that falls under the jurisdiction of another entity.

And so, going into our narrow

focus under 223, our zoning analysis, I'm in support of the application. The areas of relief that were advertised versus the areas of relief that I think should be denoted in our vote for the project I think is a little bit different. The areas of relief under 223 should be lot occupancy. The proposed lot occupancy is going to 68.3 percent, whereas a matter of right 60 percent is permitted. And under 223 the applicant can go to a maximum lot occupancy of 70 percent. There is a need for relief from section 406 for the open court and then two other areas which are lot area and lot width.

The requirement under the regs is for 18-foot width and 1,800 square feet of lot area. The subject property is approximately 15 foot in width and approximately 1,200 square feet in area. All of those four areas of relief are subsumed under section 223.

So very quickly, with respect to the impact of the proposed addition on the

light and air available to neighboring properties, I think that given the small size, and especially the small distance that the additional actually extends back towards the rear of the property, I don't see any potential for the addition having a substantially adverse effect, which is the standard that needs to be met, a substantially adverse effect on neighboring properties.

Further, under 223 with respect to the privacy of use and enjoyment of neighboring properties, I think that the placement of the windows on the second floor will prevent any kind of undue impact on the privacy of use and enjoyment of neighboring properties and I think that standard has been met.

And finally, as I've already noted, under 223 an applicant can reach a maximum lot occupancy of 70 percent. What's being proposed is 68.3 percent.

So, I think in general the

applicant has met its burden under 223 and I'm in support of the special exception.

BZA CHAIR MOLDENHAUER: Thank you very much, Mr. Dettman. I think that that was a very thorough analysis of both the applicant's application and the party status individuals' opposition, and then also the standards. I am definitely in agreement with you and I think that this is a situation where 223 has a lower standard of requirement and scrutiny that we have to give to these types of cases and I think that based on that the applicant has satisfied it.

Is there any further deliberation?

MEMBER SORG: No, I have nothing further. I think both of you said it.

BZA CHAIR MOLDENHAUER: Thank you. Then if there's no further deliberation, is there a motion?

VICE CHAIRMAN DETTMAN: I move for approval of Application No. 18065 for a special exception under section 223 for four

areas of relief; that being, open court, lot width, lot area and rear yard at 1925 2nd Street, Northwest.

BZA CHAIR MOLDENHAUER: A motion's been made. Is there a second? I'll second.

Motion's been made and seconded. All those in favor say aye? Aye.

VICE CHAIRMAN DETTMAN: Aye.

MEMBER SORG: Aye.

BZA CHAIR MOLDENHAUER: Mr. Moy, if you could read back the vote?

MR. MOY: Yes, Madam Chair. Staff would record the vote as three to zero to two. This is on the motion of the Vice-Chair, Mr. Dettman to approve the application for special exception relief under 223, not meeting the lot width, lot area, open court and rear yard. Seconded the motion, the Chair, Ms. Moldenhauer. In support of motion, Ms. Sorg. We have Mr. Schlater not present, not voting and no other Board Member participating. Again, the final vote three to zero to two.

BZA CHAIR MOLDENHAUER: Thank you very much.

MR. MOY: The next and last case for decision by the Board, Madam Chair, is the Appellant's Motion for Reconsideration of Appeal No. 17966-A of Stephen Bruce, pursuant to Section 3126 of the Zoning Regulation. The original application was pursuant to 11 DCMR 3100 and 3101, from a determination of the Office of the Zoning Administrator, Department of Consumer and Regulatory Affairs, to allow the conversion of a nonconforming one-family detached dwelling by adding an apartment within the garage in the R-1-A District at premises 2709 31st Street, Northwest, Square 2125, Lot 815.

On June 22nd, 2010, the Board convened its special public meeting. After deliberation, the Board postponed its decision and rescheduled it to July 13th.

Other than that, the Board is to act on the merits of the motion pursuant to

Section 3126.6. And that completes the staff's briefing, Madam Chair.

BZA CHAIR MOLDENHAUER: Thank you very much.

I believe the preliminary issue that we have also here is that the Motion for Reconsideration was late and I believe that the Board is in agreement that we'll waive that requirement seeing that the individual has provided sufficient evidence to show good cause in absence of prejudice to the parties seeing that the mail appears to have been delivered to the wrong address by having the last two digits of his address reversed.

That being said, we can now move onto the merits of the case. I believe before we get started I'd like to have each Board Member who's read the record in this case and will be participating in this decision identify that.

VICE CHAIRMAN DETTMAN: Madam Chair, as required under Section 3126.8,

though I didn't participate in the original hearing, I have read the record and reviewed the transcript for this case.

BZA CHAIR MOLDENHAUER: Thank you.

MEMBER SORG: Thank you, Madam Chair. I also have read the record and can participate in this case.

BZA CHAIR MOLDENHAUER: Thank you very much. And I appreciate both of you reading the record and allowing us to go forward on the decision.

This case is before us for a Motion for Reconsideration and there has been an argument by the appellant in regards to us reviewing additional permits that were issued such as the March 18th permit and to reconsider our prior decision.

In this case I don't believe that the applicant has met its burden in regards to providing us any new additional evidence in which we would have new facts to consider in the prior case. I think that the March 18th

permit, while potentially providing new information, doesn't really provide us with any new evidence because it's the same type of situations we had in the initial case seeing that it may have been a permit issued at a later date but it was not the permit at issue and which gave rise to the claims in which the appellant was challenging the work.

And, you know, as stated in the prior decision, we have to look to the permit which gave notice to the neighbors of potential zoning issues rather than subsequent permits which may -- factually in this scenario may be a subsequent permit and other cases may provide substantive issues which would give rise. But in this situation, factually subsequent permits did not give rise to new zoning issues and were simply ministerial changes in the design or in the work that was being performed. And thus, it would not be new evidence for us to reconsider this case.

That is my brief analysis and I'll open up the floor for further deliberation.

VICE CHAIRMAN DETTMAN: Madam Chair, I agree with your analysis. I think that given the standards for rehearing or reconsideration I don't think that the appellant has submitted any new information or adequately showed that the Board erred in its original decision.

ZC CHAIR HOOD: Madam Chair, I would just echo what I've heard from you and Board Member Dettman. I don't think anything new is here from our original decision other than the issuance of a new drawing and I don't think that changes the case and the facts in which we made our decision upon.

BZA CHAIR MOLDENHAUER: Thank you very much. Any further deliberation?

MEMBER SORG: I have nothing further, I also agree with the analysis that you've made.

BZA CHAIR MOLDENHAUER: Okay.

Thank you. Then what I'll do is I'll put forth a motion to deny the motion for reconsideration. Is there a second?

ZC CHAIR HOOD: Second.

BZA CHAIR MOLDENHAUER: Motion's been made and seconded. All those in favor say aye? Aye.

VICE CHAIRMAN DETTMAN: Aye.

COMMISSIONER MAY: Aye.

MEMBER SORG: Aye.

ZC CHAIR HOOD: Aye.

MR. MOY: Staff would record the vote as four to zero to one. This is on the motion of the Chair, Ms. Moldenhauer, to deny the Motion for Reconsideration. Seconded by Mr. Hood, Chair of the Zoning Commission. Also in support of the motion, Mr. Dettman and Ms. Sorg. And we have no other Board Member participating. So again, the final vote is four to zero to one.

BZA CHAIR MOLDENHAUER: Thank you very much, Mr. Moy. I believe that concludes

our public meeting?

MR. MOY: Yes.

BZA CHAIR MOLDENHAUER: We'll then enter into the morning hearing.

(Whereupon, the meeting was adjourned at 10:29 a.m.)