

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JULY 13, 2010

+ + + + +

The Regular Public Hearing
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 DETTMAN, Vice Chairman (NCPC)
NICOLE SORG, Member

ZONING COMMISSION MEMBER PRESENT:
ANTHONY J. HOOD, Chairman

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.
MARY NAGELHOUT

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN

KAREN THOMAS

PAUL GOLDSTEIN

MAXINE BROWN-ROBERTS

ARTHUR JACKSON

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

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

10:29 a.m.

BZA CHAIR MOLDENHAUER: This hearing will please come to order.

Good morning, ladies and gentlemen. This is the July 13th, 2010 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Meridith Moldenhauer, Chairperson. Joining me today is Vice-Chair Shane Dettman, representative of the National Capital Planning Commission. To his right is Anthony Hood, Chairman and representative of the Zoning Commission. To my left is Nicole Sorg, mayoral appointee.

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

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

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1 any disturbing noise or actions in the hearing
2 room.

3 When presenting information to the
4 Board, please turn on and speak into the
5 microphone first stating your name and home
6 address. When you are finished speaking,
7 please turn your microphone off so that your
8 microphone is no longer picking up sounds or
9 background noise.

10 All persons planning to testify
11 either in favor or in opposition are to fill
12 out two witness cards. These cards are
13 located to my left on the table near the door
14 and on the witness tables. Upon coming
15 forward to speak to the Board, please give
16 both cards to the reporter sitting to my
17 right.

18 The order of procedure for special
19 exceptions and variances are as follows: (1)
20 Statement and witnesses of the applicant; (2)
21 Government reports, including Office of
22 Planning and Department of Public Works; (3)

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1 reports of the Advisory Neighborhood
2 Commission, the ANC; (4) parties or persons in
3 support; (5) parties or persons in opposition;
4 and (6) closing remarks of the applicant.

5 Pursuant to sections 3117.4 and
6 3117.5, the following time constraints will be
7 maintained. The applicant/appellant, persons
8 and parties, except an ANC in support,
9 including all witnesses are given 60 minutes
10 collectively. Appellees, persons and parties,
11 except an ANC in opposition, including
12 witnesses are given 60 minutes collectively.
13 Individuals are given three minutes. These
14 time restraints do not include cross-
15 examinations and/or questions from the Board.
16 Cross-examination of witnesses is permitted by
17 the applicant or parties.

18 The ANC within which the property
19 is located is automatically a party in a
20 special exception or variance case. Nothing
21 prohibits the Board from placing reasonable
22 restrictions on cross-examination, including

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1 time limits, and limitations on the scope of
2 cross-examination.

3 The record will be closed at the
4 conclusion of each case except for any
5 specific materials requested by the Board.
6 The Board and the staff will specify at the
7 end of the hearing exactly what is expected
8 and the date when the person must submit those
9 document to the Office of Zoning. After the
10 record is closed no other information will be
11 accepted by the Board.

12 The Sunshine Act requires that the
13 public hearing on each case be held in the
14 open before the public. The Board may,
15 consistent with its Rules of Procedure and the
16 Sunshine Act, enter into executive session
17 during or after a public hearing on a case for
18 purposes of reviewing the record or
19 deliberating on the case.

20 The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance of

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1 impropriety or to the contrary, the Board
2 requests that persons present not engage the
3 members of the Board in conversation.

4 Please turn off all beepers and
5 cell phones at this time as not to disrupt
6 these proceedings.

7 The Board will now consider any
8 preliminary matters. Preliminary matters are
9 those that relate to whether a case will or
10 should be heard today such as requests for
11 postponement, continuance or withdrawal, or
12 whether the proper and adequate notice of the
13 hearing has been given.

14 If you are not prepared to go
15 forward with a case today, or you believe that
16 the Board should not proceed, now is the time
17 to raise such a matter.

18 Mr. Secretary, are there
19 preliminary matters?

20 MR. MOY: Not for the morning
21 session, Madam Chair.

22 BZA CHAIR MOLDENHAUER: Thank you.

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1 Then all individuals wishing to testify,
2 please stand and take the oath. Ms. Bailey
3 will administer the oath.

4 MS. BAILEY: Would you please
5 raise your right hand?

6 (Whereupon, the witnesses were
7 sworn.)

8 MS. BAILEY: Thank you.

9 BZA CHAIR MOLDENHAUER: Thank you.

10 We can call the first case of the morning.

11 MS. BAILEY: Madam Chair, thank
12 you and good morning to everyone.

13 BZA CHAIR MOLDENHAUER: Good
14 morning.

15 MS. BAILEY: The first case is
16 Application 18080. It's the application of
17 Edward and Sheila Weidenfeld and it's pursuant
18 to 11 DCMR 3104.1, for a special exception
19 to allow an addition to an existing one-family
20 semi-detached dwelling under section 223, not
21 meeting the lot occupancy (section 403), rear
22 yard (section 404), and nonconforming

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1 structure (subsection 2001.3). The property
2 is zoned R-1-B. It's located at 3059 Q
3 Street, Northwest, Square 1282, Lot 259.

4 BZA CHAIR MOLDENHAUER: Thank you
5 very much, Ms. Bailey.

6 Those individuals in this case and
7 the applicants please come forward, and you
8 can take a seat at the table in front of us
9 and we'll begin the introductions.

10 MR. du POINT: Good morning. My
11 name is Stephen du Pont. I'm the architect
12 for this project and I represent Edward and
13 Sheila Weidenfeld.

14 BZA CHAIR MOLDENHAUER: Thank you
15 very much, Mr. du Pont. I believe that this
16 record is actually quite full and I think that
17 I will indicate to you that there may not be
18 a need for a full presentation. If you
19 choose, you can rest on the record and we can
20 move forward.

21 MR. du POINT: Well, if the
22 decision would be favorable, that would be

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1 fine with me.

2 BZA CHAIR MOLDENHAUER: Obviously,
3 I can't tell you what the decision will be,
4 but I do believe that it is a full record.

5 MR. du POINT: Thank you.

6 BZA CHAIR MOLDENHAUER: Okay.
7 Then at this time we'll turn to the Office of
8 Planning for their report.

9 MS. THOMAS: Good morning, Madam
10 Chair, Members of the Board. The Office of
11 Planning is recommending approval of the
12 special exception request under 223. We
13 believe it meets the light and air
14 requirements and privacy issues. There's no
15 adverse effect with respect to this project
16 and we recommend approval. Thank you.

17 BZA CHAIR MOLDENHAUER: Thank you
18 very much, and I think the Office of
19 Planning's report was very thorough.

20 At this time are there any persons
21 or individuals in support or in opposition of
22 this case?

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1 (No audible response.)

2 BZA CHAIR MOLDENHAUER: Seeing
3 none, is anybody present in the audience from
4 ANC 2E?

5 (No audible response.)

6 BZA CHAIR MOLDENHAUER: Seeing no
7 one, I will reference that we have our Exhibit
8 No. 24, which is a letter from ANC 2E which
9 indicates that they had a public meeting held
10 on June 28th, 2010. It was a duly-noticed
11 meeting and a quorum was present and that they
12 voted to approve a resolution, which was that
13 they had no objections to the relief that was
14 requested by this application.

15 At this point in time we'll turn
16 back to the applicant. Mr. du Pont, is there
17 any closing remarks that you would like to
18 provide?

19 MR. du POINT: Nothing specific.
20 I'd be happy to answer any questions.

21 BZA CHAIR MOLDENHAUER: Do Board
22 Members have any specific questions regarding

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1 this project?

2 (No audible response.)

3 BZA CHAIR MOLDENHAUER: Seeing
4 none, then I appreciate you coming down and I
5 thank you.

6 I think we can then move into
7 deliberation on this case, and I will start us
8 off.

9 This is application No. 18080,
10 which is for special exception relief under
11 223 to construct an addition to an existing
12 single-family home semi-detached dwelling at
13 3059 Q Street, including a second-story
14 addition above the garage which would be
15 connected to the residence via an enclosed
16 walkway to the home's second floor.

17 The Office of Planning has
18 provided an adequate report. Actually I will
19 incorporate that to the record. And it
20 provides that the applicant is actually
21 seeking very minimal relief even under 223,
22 only a .7 percent increase on the permitted

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1 lot occupancy. And also, the rear yard is
2 required 25 feet and they're requesting a
3 15.33 percent proposal. So, the side yard,
4 they're requesting an eight-foot relief in
5 that regard. But in general, the applicant
6 has satisfied all the requirements of 223 and
7 I see no issue with approving it.

8 Is there any further deliberation
9 from Board Members?

10 (No audible response.)

11 BZA CHAIR MOLDENHAUER: Seeing
12 none, then I will submit a motion to approve
13 application No. 18080 for special exception
14 relief to allow an addition to an existing
15 single-family dwelling under 223 where it does
16 not meet lot occupancy under section 403, rear
17 yard under 404, and nonconforming structure
18 under 2001.3 and I would recommend approval of
19 that application.

20 Motion has been made. Is there a
21 second?

22 MEMBER SORG: Second.

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1 BZA CHAIR MOLDENHAUER: The
2 motion's been made and seconded. All those in
3 favor, say aye? Aye.

4 VICE CHAIRMAN DETTMAN: Aye.

5 MEMBER SORG: Aye.

6 ZC CHAIR HOOD: Aye.

7 MR. du POINT: Thank you very
8 much.

9 BZA CHAIR MOLDENHAUER: Thank you.
10 Seeing that there is no opposition to this
11 case, I would recommend that this be a summary
12 order.

13 MR. MOY: Yes, thank you, Madam
14 Chair. The staff would record the vote as
15 four to zero to one. This is on the motion of
16 the Chair to approve the special exception
17 relief. Seconded by Ms. Sorg. Also in
18 support of the motion Mr. Dettman and Mr.
19 Anthony Hood. And summary order.

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

22 Thank you.

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1 MR. du POINT: Thank you.

2 MS. BAILEY: Madam Chair, would
3 you like for me to call the next case?

4 BZA CHAIR MOLDENHAUER: Yes,
5 please.

6 MS. BAILEY: It's Application
7 18082. It's the application of Angie and
8 Scott Truesdale and it's pursuant to 11 DCMR
9 3103.2, for a variance from the lot
10 occupancy requirements under section 403, a
11 variance from the rear yard requirements under
12 section 404, and a variance from the
13 nonconforming structure provisions under
14 subsection 2001.3, to allow a rear deck
15 addition serving a one-family row dwelling.
16 The property is zoned R-04. It's located at
17 1019 Florida Avenue, Northeast, Square 956,
18 Lot 39.

19 Is the applicant here for Case
20 18082? Please have a seat at the table.

21 BZA CHAIR MOLDENHAUER: Good
22 morning. How are you both doing? If you can

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1 turn on your microphones and introduce
2 yourselves for the record, please?

3 MS. TRUESDALE: I am Angie
4 Truesdale.

5 MR. TRUESDALE: And I'm Scott
6 Truesdale.

7 BZA CHAIR MOLDENHAUER: Can you
8 provide your home address for the record,
9 please?

10 MS. TRUESDALE: 1019 Florida
11 Avenue, Northeast.

12 BZA CHAIR MOLDENHAUER: At this
13 point in time you both can present your case
14 in regard to the relief that is being sought.
15 And especially if you guys want to address
16 some of the issues in the Office of Planning
17 report, and this is an opportunity for both of
18 you to present your case.

19 MS. TRUESDALE: Thank you for this
20 opportunity. We purchased the house in
21 November of last year. At the time it was in
22 its current form, occupying about 78 percent

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1 of the lot. It was one of three we were
2 considering at the time and the other two had
3 very lovely rear decks off the back of the
4 dwelling. And so, it was with great surprise
5 when we started down this road several months
6 ago when we found out that it was a difficult
7 process to add such a rear deck.

8 We chose the home because we love
9 the community, we love the diversity. We're
10 on the cusp of Capitol Hill and Trinidad. And
11 if you're familiar with that area, it's one
12 that's very diverse and growing and undergoing
13 a lot of changes and a really unique community
14 currently.

15 Simply what we want is a deck. We
16 lack a lot of public green space in proximity
17 to our home. We are expecting our first child
18 and we seek some recreational area for our
19 family and our neighbors. You'll notice that
20 we have the support of our immediate neighbors
21 in our application package.

22 And so, and to go into the Office

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1 of Planning's report, I think a lot of the
2 technical issues are approached with a very
3 technical eye except for uniqueness. I think
4 that we do meet the standard for lot
5 uniqueness.

6 Our lot is, By our own
7 estimations, living in that community,
8 extremely shallow in depth compared to the
9 surrounding lots, especially when you look at
10 not just the immediately bordering lots, but
11 the entire square. I believe it's 956. Even
12 lots that on paper look like they have the
13 same square footage as ours, they have -- the
14 K Street lots for example have very large
15 front yards which may technically be city
16 property, but are individually gated and
17 usable for those homeowners for recreational
18 space. Florida Avenue has not such
19 opportunity.

20 Many of the lots on 10th and 11th
21 Street in Square 956 have at least twice the
22 depth of our lot where they can park two cars

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1 back-to-back in tandem and still have
2 recreational space.

3 In terms of the Florida Avenue
4 lots, some of them aren't even occupied. The
5 ones that have smaller yards than ours have
6 side yards, again which technically may be
7 city property, but are gated and available for
8 individual use and used as such.

9 I think we're unique in that
10 there's only a handful of homeowners on
11 Florida Avenue. Several are rental properties
12 and I don't think that in a rental property
13 circumstance that you're looking at long-term
14 usability for family recreational purposes
15 and such.

16 We do currently use the existing
17 rear space as a parking pad. I would argue
18 that it is necessary in our area. The D.C.
19 crime maps show that personal property crime,
20 auto theft, is very high in our area and
21 continues to be so.

22 Beyond that, I would argue that

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1 our property does not have street parking in
2 front of -- Florida Avenue only allows parking
3 for the church across the street on Sunday
4 morning whereas the neighboring properties in
5 Square 956 on 10th, 11th and K Streets all do
6 have street parking at their disposal should
7 they want to take the risk with their personal
8 property in that manner.

9 So, those are really the standards
10 that we used in property uniqueness, and I do
11 believe, my husband and I believe that we meet
12 that standard.

13 BZA CHAIR MOLDENHAUER: Thank you.
14 Are there any questions from Board Members to
15 the applicant?

16 (No audible response.)

17 BZA CHAIR MOLDENHAUER: Seeing none
18 at this time, what we'll do is -- is there any
19 additional information that you'd like to
20 present at this point in time? There's also
21 an opportunity at the conclusion.

22 MR. TRUESDALE: I think we're fine

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1 for now.

2 BZA CHAIR MOLDENHAUER: Okay.
3 We'll turn to the Office of Planning for their
4 report.

5 ZC CHAIR HOOD: Madam Chair, can I
6 just ask a quick question?

7 BZA CHAIR MOLDENHAUER: Oh, yes,
8 please, Mr. Hood.

9 ZC CHAIR HOOD: Ms. Truesdale, you
10 mentioned that your property is unique. And
11 I'm looking at Exhibit No. 5. Next door, just
12 tell me, what's different between your yard
13 and what's next door?

14 MS. TRUESDALE: Well, the
15 immediate next door -- one thing I didn't say
16 is there's a lot of existing decks in our
17 neighborhood. Apparently, they're illegal
18 construction. Our immediate next door
19 neighbors do have a deck extension on the rear
20 of their house. So, what's unique from ours
21 at this point is we don't have that deck.
22 Their kitchen goes out to our existing porch

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1 landing, so they do occupy the same lot
2 occupancy that we do in addition to a small
3 deck for recreational purposes. They have a
4 grill and a picnic table out there currently.
5 So, that's our immediate next door neighbor,
6 the Martinezes.

7 ZC CHAIR HOOD: And you have some
8 of that on both sides, right?

9 MS. TRUESDALE: We do.

10 ZC CHAIR HOOD: I don't want to
11 talk about the illegal. I want to applaud you
12 for coming down and doing things the right
13 way. But, let's talk about the other side
14 that doesn't have any. What's different? I'm
15 trying to figure out what's different in your
16 yard and your neighbor's yard, not the one
17 with the deck. We're not going to talk --

18 MS. TRUESDALE: Okay. With the
19 Tates.

20 ZC CHAIR HOOD: Yes.

21 MS. TRUESDALE: Other than needs
22 and usage of the yard, nothing.

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1 ZC CHAIR HOOD: So, nothing is
2 different?

3 MS. TRUESDALE: Right.

4 ZC CHAIR HOOD: And for the most
5 part, would you say that's the issue in the
6 community, I mean on that stretch where houses
7 are? Now, I'm not talking about the ones
8 who've done illegal construction and all that.

9 MS. TRUESDALE: Right. Right,
10 right.

11 ZC CHAIR HOOD: I'm talking about
12 just those yards that are the same. They're
13 pretty much the same, aren't they? Nothing's
14 really unique?

15 MR. TRUESDALE: No, respectfully
16 submitted. If you look here at the back plan
17 of the yards, a lot of the yards --

18 BZA CHAIR MOLDENHAUER: Can I just
19 interrupt you? Can you actually identify what
20 exhibit you're looking at just to provide --

21 MS. TRUESDALE: Ours aren't
22 labeled the way yours are in terms of exhibit

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1 numbers.

2 BZA CHAIR MOLDENHAUER: If you
3 could just pick it up and show, I can then --

4 MS. TRUESDALE: Actually, we're
5 using the Office of Planning's map.

6 BZA CHAIR MOLDENHAUER: Thank you.

7 MS. TRUESDALE: Which is page 2 of
8 the OP report.

9 ZC CHAIR HOOD: You have a nice
10 color copy. I noticed that. Does anybody
11 else have a color copy?

12 BZA CHAIR MOLDENHAUER: I have a
13 color copy, too.

14 ZC CHAIR HOOD: Okay.

15 MR. TRUESDALE: Well, the point I
16 wanted to make was as far as the yard status
17 is concerned, there's a public alley back
18 there. And essentially what it does it groups
19 all the yards more or less together. So,
20 you'll see some of the houses on the end don't
21 have much of a yard at all, so there's no set
22 standard of what actually constitutes a yard.

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1 Some are larger, some are smaller, some are
2 big, some are -- for example, as you get into
3 the corner closer to our house, non-existent.

4 MS. TRUESDALE: There is no real
5 standard, I think is our point. There may be
6 four or five properties on Florida Avenue that
7 have a similar yard to us, but the majority do
8 not. And so, I would argue that every house
9 on Square 956 is a unique property in terms of
10 lot size and shape.

11 ZC CHAIR HOOD: Okay. Thank you,
12 both.

13 BZA CHAIR MOLDENHAUER: Thank you.
14 For the record, I think that the color copy
15 does provide an illustration of the alleys
16 where a black and white copy does not. So, I
17 want to make that distinction on the record so
18 that it's clear that we're talking about a
19 color copy so you can see the alley versus the
20 rear yard in a different color.

21 MS. TRUESDALE: I would agree.
22 That yellow shady part is the rear yard more

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1 or less, so I think that it would be
2 difficult.

3 BZA CHAIR MOLDENHAUER: Thank you.
4 Mr. Hood, do you have any additional questions
5 for the applicant?

6 ZC CHAIR HOOD: I was just going
7 to ask Mr. Mordfin how come I didn't get a
8 color copy, but that's okay.

9 BZA CHAIR MOLDENHAUER: Well,
10 we'll turn to him right now actually for his
11 Office of Planning report and we can ask him
12 I think some other questions as well.

13 MR. MORDFIN: Good morning, I'm
14 Stephen Mordfin with the Office of Planning.

15 And this subject application is
16 not in conformance with the granting of area
17 variances because it is not unique. It is
18 similar in size and width to adjoining
19 properties and is developed as a row house
20 similar to surrounding properties. It is
21 equal in size or larger than 70 percent of
22 lots within the square, therefore we do not

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1 find the property to be unique. And as there
2 is no uniqueness, there can be no practical
3 difficulty that results out of the uniqueness.

4 The granting of variances would
5 negatively impact the integrity of the zone
6 plan. The existing development of a lot
7 exceeds the lot occupancy permitted and fails
8 to provide the minimum required rear yard.
9 The proposal would substantially increase the
10 lot occupancy to 96 percent and reduce the
11 rear yard to only two-and-a-half feet.

12 Section 2001.3 permits additions
13 that do not violate the applicable lot
14 occupancy intended to prevent the over
15 building of residential lots. Therefore, the
16 Office of Planning finds the request for
17 relief from lot occupancy and rear yard to be
18 contrary to the intent of the Zoning
19 Regulations.

20 The granting of variances would
21 also have a negative impact on the public
22 good. The impact of 96 percent lot occupancy

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1 and a two-and-a-half-foot rear yard would
2 almost totally eliminate any open space behind
3 the dwelling. With no uniqueness or practical
4 difficulty, these variances have the potential
5 to fill in the central portion of the square
6 with structures resulting in the crowding of
7 the alley and the elimination of the moderate
8 density feel the R-4 is otherwise intended to
9 provide. Therefore, the Office of Planning
10 recommends denial of the application. Thank
11 you.

12 BZA CHAIR MOLDENHAUER: Thank you
13 very much.

14 Does the applicant have any
15 questions for the Office of Planning?

16 MS. TRUESDALE: I do. In your
17 report were you able -- do you have the
18 freedom to consider the portions of the lots
19 such as those on K Street and 10th and 11th
20 that may not technically belong to the
21 homeowner but are usable for their purposes
22 and fenced as part of their property when you

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1 come with that, or our lot is larger than 70
2 percent?

3 MR. MORDFIN: Well, the 70 percent
4 doesn't include the area, the public space
5 area in front of those houses on K Street.
6 But when we do uniqueness, what we do, we look
7 at the properties that are on either side to
8 see is this property unique from the ones
9 around it? And in this case, the property
10 seems to very similar to the ones on either
11 side with similar structures, similar lot with
12 similar lot size and therefore we do not find
13 it unique.

14 MS. TRUESDALE: But when we
15 discussed this on the phone, you actually
16 directed me to the entire square, to 956.

17 MR. MORDFIN: Yes, I did look at
18 the entire square to see what was different.
19 I agree that there are lots on K Street that
20 have those front yards, but that's what -- may
21 be a quarter of the lots within the square.
22 So, the majority of the lots don't have those

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1 large front yards within that square.

2 MS. TRUESDALE: And looking at the
3 map though, do you see that 10th and 11th,
4 even the houses that have twice the rear yard
5 that our house does, they also have some bit
6 of front yard as well? Because, I mean, those
7 people fence that area and also put tables and
8 chairs out there for recreational space in
9 addition. So, even though it's substantially
10 smaller than the K Street lots, they do have
11 more front yard, usable front yard space than
12 the Florida Avenue homes do.

13 MR. MORDFIN: That's true. Some
14 of them do have small front yards and some of
15 those with the small front yards also have
16 almost no rear yards on 11th on the south
17 side, on 11th Street towards K. And then none
18 of the properties on Florida Avenue, which is
19 where you're located, do have any front yards.
20 They're are all similar that they're built up
21 to the sidewalk.

22 MS. TRUESDALE: Thank you.

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1 BZA CHAIR MOLDENHAUER: Do Board
2 Members have any questions for the Office of
3 Planning?

4 Actually I have a couple and then
5 I believe Mr. Dettman has some as well.

6 Looking at this it seems like
7 there's maybe two potential ways that you can
8 look at the relief that's requested. I know
9 that this is a self-certified request
10 application, but is there a way that this can
11 be looked at as a carport with a deck, and
12 obviously then just having to apply the
13 standards of relief from the rear yard
14 requirement? Did you look at the application
15 potentially that way?

16 MR. MORDFIN: I didn't look at the
17 application that way. It wasn't filed that
18 way. We looked at it as it's still one
19 structure. It's connected to the house. The
20 whole thing would be one structure. It's not
21 a separate building. And it's also more than
22 four feet off the ground so it contributes to

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1 the lot occupancy of the entire thing. I
2 didn't think to look at it that way, but also
3 I don't know that it applies that way as a
4 carport.

5 BZA CHAIR MOLDENHAUER: But
6 wouldn't it be a lower standard as a carport?

7 MR. MORDFIN: I'd have to look
8 that up to see what standards apply to a
9 carport as opposed to a deck. There is a
10 section that addresses carports within the
11 Zoning Regulations.

12 BZA CHAIR MOLDENHAUER: Well, I
13 may look at that right now while you answer
14 some other questions, but then let me ask one
15 other question.

16 Looking at the OP map and looking
17 at the applicant's property, it seems though,
18 at least in the block; and I know obviously
19 the square is much larger, but the units and
20 the properties next door to it, almost all of
21 them have doglegs, which would provide a
22 little more space. This property doesn't have

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1 a dogleg. And is that something that you
2 would look at in regard to uniqueness?

3 MR. MORDFIN: That would make the
4 property different. Looking at the rear of
5 the property --

6 BZA CHAIR MOLDENHAUER: It appears
7 that almost all of the properties within 10th,
8 11th, K and Florida -- when you look at that
9 section of properties, almost all of them
10 except for maybe four all have doglegs.

11 MR. MORDFIN: I was under the
12 impression this one did. I don't know if my
13 line --

14 BZA CHAIR MOLDENHAUER: This one
15 does not, I believe.

16 MR. MORDFIN: I would have to
17 ask --

18 BZA CHAIR MOLDENHAUER: If you
19 look at the survey, our Exhibit No. 2, I don't
20 believe it has a dogleg.

21 MS. TRUESDALE: If I may, we do
22 have a dogleg.

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1 BZA CHAIR MOLDENHAUER: You do?
2 Okay. It's hard to see.

3 MS. TRUESDALE: Yes, but we were
4 told for these purposes it also didn't count
5 as part of our usable property.

6 BZA CHAIR MOLDENHAUER: Okay.

7 MS. TRUESDALE: So, it was not
8 factored into the percentage of lot occupancy.

9 BZA CHAIR MOLDENHAUER: Okay.
10 Well, I was looking at it more matter of
11 uniqueness. But, okay.

12 I believe Mr. Dettman has some
13 questions for the Office of Planning as well.

14 VICE CHAIRMAN DETTMAN: Thank you.
15 Mr. Mordfin, I don't necessarily have any
16 issue with the way you've applied the variance
17 test in this case and the outcome of that
18 variance analysis. But I was just wondering,
19 it seems that the Office of Planning takes a
20 very strict approach when looking at lot
21 occupancy variances. It's common that the
22 Office of Planning supports 223s up to 70

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1 percent, but I can't remember the last time
2 the Office of Planning supported a variance
3 for lot occupancy above 70 percent in an R-4.
4 And it's quite often that the Office of
5 Planning, as a rationale for recommending
6 denial, they refer back to 2001.3. "And you
7 do that in your report here on page 3 where it
8 says OP notes the guidance found in 2001. You
9 quote the provisions and then you onto say
10 that 2001. 3 only allows additions which do
11 not violate lot occupancy and that the
12 provision is intended to prevent excessive
13 development on existing lots and to preserve
14 residential yards.

15 And I guess my question is, isn't
16 that the intent of the overall Zoning
17 Regulations and not just this provision?

18 MR. MORDFIN: Yes, the intent of
19 the zoning, I agree, is to control the use of
20 land and control how much development there is
21 on a lot. And then this provision, it just
22 reinforces that. If you get the variances to

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1 the lot occupancy and to the rear yard, I
2 think then you would get the variance to
3 2001.3 because then you've been granted the
4 relief and you're not in violation of those.
5 But in this case because it's 96 percent and
6 the rear yard is only two-and-a-half feet, I
7 think that what happens then it's very
8 difficult to show that you're not violating
9 the lot occupancy and rear yard provisions.
10 There's nothing unusual about the way the lot
11 is shaped that if you build onto the house it
12 causes some unusual situation that wouldn't
13 otherwise occur in a rectangular lot. And
14 generally the bulk regulations are designed
15 around a lot that is typically rectangular
16 such as the subject property.

17 VICE CHAIRMAN DETTMAN: Okay. So,
18 in approaching the Zoning Regulations, I mean,
19 the Office of Planning -- 2001.3 essentially
20 exists to allow homeowners of nonconforming
21 properties to do something as a matter of
22 right. And if they can't do that, then 223

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1 kicks in. And if they can't do 223, then
2 you're kicked into a variance. Is that --
3 okay.

4 MR. MORDFIN: Yes.

5 VICE CHAIRMAN DETTMAN: I wanted
6 to ask, assuming that it is exceptional for
7 the reasons that the homeowner or the
8 applicant stated; so that's, you know, renter
9 versus homeowner, the K Street front yards,
10 crime and safety, the lack of street parking
11 and, according to Exhibit No. 24, the
12 properties on 10th have substantially deeper
13 rear yards and additional usable space, could
14 you see this application meeting the practical
15 difficulty standard?

16 MR. MORDFIN: Well, if this
17 property were unique, then the practical
18 difficulty would be that they don't have
19 sufficient room in order to actually use the
20 rear yard as they intended to. But because
21 the uniqueness standard applies to the
22 properties that are around it and the

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1 properties that are around it are similar,
2 then this property isn't unique. It's hard to
3 put the second test ahead of the first test,
4 because if you didn't meet the first one,
5 there is nothing to discuss. What is the
6 uniqueness that you're talking about with the
7 second one?

8 VICE CHAIRMAN DETTMAN: No, I
9 understand that. I was just wondering if
10 whether or not you could see -- again,
11 assuming that any of these reasons that were
12 put forth by the applicant, if it does qualify
13 as an exceptional property, do any of these
14 exceptional characteristics give rise to a
15 practical difficulty, make it practically
16 difficult for the homeowner to meet the
17 regulations?

18 MR. MORDFIN: But in this case
19 also, the property does have a rear yard. The
20 applicant is able to use it for off-street
21 parking. There is a porch on the rear of the
22 property with steps down into the rear yard.

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1 There isn't a rear yard in this case that
2 can't be used for anything. It does have a
3 usable rear yard. Maybe not for all of the
4 purposes that the applicant would like to put
5 it to, but does have a usable rear yard.

6 VICE CHAIRMAN DETTMAN: Okay.

7 Thank you.

8 BZA CHAIR MOLDENHAUER: Any
9 further questions from Board Members?

10 (No audible response.)

11 BZA CHAIR MOLDENHAUER: At this
12 point in time I thank very much the Office of
13 Planning for their report.

14 We'll then turn to any persons or
15 parties in support or in opposition to this
16 case. If I see somebody indicating that they
17 have -- are present, please come forward.

18 Hi, how are you doing? If you can
19 turn on your microphone and state your name
20 and home address for the record?

21 COMMISSIONER MARSHALL: Good
22 morning, everyone. I'm ANC Commissioner

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1 Raphael Marshall. I live at 826 10th Street,
2 Northeast, Washington, D.C.

3 BZA CHAIR MOLDENHAUER: Thank you
4 very much. And, sir, are you here today in
5 your official capacity? Yes, you are. I'm
6 sorry. I'm just looking at the report that we
7 have, which is Exhibit No. 23 from the ANC 6A.
8 Indicates that you would be presenting on
9 behalf of the ANC.

10 COMMISSIONER MARSHALL: That is
11 correct.

12 BZA CHAIR MOLDENHAUER: Thank you
13 very much. And I will turn it back over you
14 to provide the testimony for the ANC.

15 COMMISSIONER MARSHALL: Thank you
16 so much. I've been the ANC commissioner for
17 6A-01 for six years now. And I have seen my
18 single member district go through a dramatic
19 transformation and in part to residents like
20 the Truesdales moving into my community and I
21 support this project. I think that it does my
22 community and that block a world of a good.

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1 With the deck on the back it
2 eliminates crime in the alley. There is no
3 negative impact to the community. I heard
4 someone say that it changes the integrity of
5 the community. Actually, if you walk down
6 Florida Avenue and down 10th Street, you can
7 barely see into the alley. So, unless you're
8 actually going into the alley, you can't see
9 the structures. So, it doesn't change the
10 aesthetics or the integrity of what was
11 planned for my community.

12 BZA CHAIR MOLDENHAUER: Thank you
13 very much. I really appreciate your
14 perspective and if you can also just confirm
15 that the ANC met on a specific date and -- no,
16 you don't know?

17 COMMISSIONER MARSHALL: We met on
18 the date -- I don't remember the exact date.

19 BZA CHAIR MOLDENHAUER: I can
20 provide that for you. Sorry. We have our
21 Exhibit No. 23 which indicates that the full
22 ANC met on April 9th, 2010 at a duly-noted

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1 meeting in which a quorum was present and met
2 to support the application. And I really
3 appreciate you coming down and providing that
4 information.

5 Are there any questions from Board
6 Members for the ANC?

7 ZC CHAIR HOOD: Commissioner
8 Marshall, when I look at the vote; and I know
9 you know -- I know the prevalence that I
10 prevail, but I'm looking at the vote and I
11 listen to your comments, and the vote was four
12 to three. That was a close vote. When you
13 talk about integrity and character of
14 neighborhoods along with what the Office of
15 Planning saying, when I look at four to three,
16 that's a close vote.

17 COMMISSIONER MARSHALL: It is.
18 Let me address that. The majority of the
19 commissioners live on the south side, the
20 Capitol Hill side of H Street, where you don't
21 have the situations that I have on the north
22 side. So, a lot of them have not even come

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1 into my neighborhood and they only go by what
2 the gentleman here was stating, the technical
3 stuff. And actually one of the commissioners
4 is on our committee, our Zoning Commission,
5 and he has not come into my community. He
6 only goes by the technical stuff.

7 ZC CHAIR HOOD: Okay. All right.
8 Okay. Thank you.

9 COMMISSIONER MARSHALL: Yes.

10 BZA CHAIR MOLDENHAUER: I
11 appreciate you providing that explanation.
12 And I thank you, Mr. Hood, for pointing out
13 that issue.

14 At this point in time I appreciate
15 your testimony.

16 Are there any additional members
17 in the audience in support or in opposition?

18 (No audible response.)

19 BZA CHAIR MOLDENHAUER: Seeing
20 none, then what we'll do is we'll turn back to
21 the applicant. But before we provide any
22 closing remarks, I'll turn to the Board

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1 Members to see if there's any additional
2 questions for the applicants.

3 VICE CHAIRMAN DETTMAN: I just
4 have one further question, and it's the same
5 one that I just asked the Office of Planning.
6 Assuming that the property is exceptional, the
7 second part of the test that the Board has to
8 apply is that exceptional condition, whether
9 it be one or a collection of exceptional
10 circumstances. These exceptional
11 circumstances create a practical difficulty
12 for you if we were to strictly apply the
13 Zoning Regulations, and so I guess if you
14 could give me an answer to that question.
15 Like if we were to find it to be exceptional,
16 what's the practical difficulty?

17 MS. TRUESDALE: I would say that
18 the practical difficulty is that for
19 homeowners to not be able to secure their
20 personal property and their residence, which
21 is what we currently do by parking on site and
22 having a gated parking site, and have

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1 recreational use of the property definitely
2 poses a practical difficulty and it
3 discourages home ownership in the District.

4 VICE CHAIRMAN DETTMAN: Are those
5 practical difficulties that are specific to
6 you? Those are just basically a result of
7 other factors outside of your specific
8 property.

9 MS. TRUESDALE: Other factors
10 being the lack of public space and park lands
11 in our community?

12 VICE CHAIRMAN DETTMAN: That's
13 right, and safety concerns. I mean, we've had
14 cases where safety considerations were
15 presented to us as exceptional circumstances
16 and in the past the Board has found that
17 safety considerations can't be taken into
18 account as an exceptional condition because
19 they apply to all of the properties in that
20 same area. So, again, going back to the
21 practical difficulty and the lack or
22 recreation space, I mean, in your opinion,

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1 what is appropriate recreation space? Is it
2 96 percent lot occupancy? Does it have to be
3 96 percent lot occupancy?

4 MS. TRUESDALE: Well, I mean, if
5 the Board were to find that less lot occupancy
6 was more appropriate, I think we'd be willing
7 to have that conversation. But at some point
8 the lot is very small and it takes a certain
9 amount of square footage for the stairs going
10 up to the deck. At some point it's not worth
11 it. So, you know, I think we'd be willing to
12 talk about the 96 percent, but there's not a
13 lot of wiggle room there for it to be a
14 productive use of space.

15 But beyond that, I think that a
16 lot of the neighborhoods, Capitol Hill
17 included and even parts of Trinidad, do have
18 lots of park space. You have Lincoln Park,
19 you have meridian Park. There's a lot of park
20 space for children and families to gather and
21 be together. Raphael actually works at
22 Sherwood and Sherwood's really the only thing

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1 we have, but it's not a public park space.
2 It's a community center.

3 So, I think that in terms of our
4 property and the uniqueness of our property,
5 as Commissioner Marshall said, we're unique in
6 that community right now in that we're part of
7 a younger group of people who are moving into
8 this community and will be needing
9 recreational space for families. The other
10 resident that doesn't have the deck is 90
11 years old and on oxygen. And we've lived
12 there since November and we've seen her once
13 when we went into her house. She doesn't have
14 the same needs that our house does, even
15 though she's our immediate neighbor. We've
16 always asked that this application be
17 considered in terms of the overall community
18 and what's going on in 6A-01 right now. It's
19 a really vital time for 6A-01.

20 BZA CHAIR MOLDENHAUER: Let me
21 just chime in here and provide an opportunity.
22 Obviously as you're here as homeowners. A lot

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1 of times applicants come forward with either
2 an architect advising them on the procedures,
3 or an attorney. And I just want to make sure
4 I don't want you to be prejudiced by not
5 having that kind of understanding of the
6 process.

7 I mean, we are an agency body or a
8 board which has regulations we have to uphold.
9 And one of the things is that we have to look
10 at the uniqueness of a property. We can't
11 look at the uniqueness of an owner. So,
12 whether you are coming forward as an elderly
13 individual or yourselves, we can't consider
14 those individual aspects of an owner. Because
15 any relief that we provide will continue on
16 through the chain of title and any subsequent
17 owners that are on the property. So, we have
18 to look at the uniqueness of the property and
19 then how that uniqueness of the property
20 specifically relates to the undue hardship of
21 trying to apply the standard.

22 And so, maybe by writing some

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1 additional information to that degree, can you
2 provide maybe some additional information that
3 would indicate -- and I think that maybe if
4 you can expound upon the issue of the fact
5 that you need a certain rise to have the
6 staircase in that regard that may help us
7 understand the application.

8 MS. TRUESDALE: Sure. The
9 architect that we're working with, if you look
10 at the plans for the deck itself; and again,
11 I don't have things listed as an exhibit the
12 way that you do, but it's this document.

13 BZA CHAIR MOLDENHAUER: That is
14 our Exhibit No. 8, and I believe you're
15 looking at -- I believe the applicant just
16 help up the last page of our Exhibit No. 8.
17 No, I don't believe actually we have that
18 page.

19 MS. TRUESDALE: It was definitely
20 part of the original submission package.

21 BZA CHAIR MOLDENHAUER: Mr.
22 Dettman's shaking his head, so we will just

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1 have to keep digging to see if we can find it.

2 VICE CHAIRMAN DETTMAN: Oh, I
3 thought she was holding this up.

4 BZA CHAIR MOLDENHAUER: Oh, yes.
5 No, I don't believe we have that page. Our
6 Exhibit No. 8 includes a diagram of the deck
7 that his hand drawn.

8 MS. TRUESDALE: Well, that will
9 work.

10 BZA CHAIR MOLDENHAUER: Okay.

11 MS. TRUESDALE: So, even in that
12 drawing you can see that the stairs going up
13 to the deck from the existing porch take a
14 significant portion of the overall plan. We
15 could certainly scale back from the rear of
16 the property, but to some extent that -- you
17 know, it's drawn to scale, but we're talking
18 about a very small area to begin with. And
19 so, I believe it was almost 30 square feet of
20 stairwells that have to go up to get up over
21 the car.

22 BZA CHAIR MOLDENHAUER: I mean, I

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1 just have another question. I mean, 96
2 percent is extraordinary relief that's being
3 requested. And did you ever consider either
4 demo-ing the existing deck or doing something
5 else to try to I guess provide some sort of
6 compromise between the, you know, exceptional
7 level of relief that you're getting and
8 potentially how you could then try to
9 accommodate the Zoning Regulations in a more
10 maybe modest way in regards to your addition
11 or in regards to trying to obtain recreation
12 space?

13 MS. TRUESDALE: Absolutely. And
14 that was certainly something we posed to the
15 two architects that drew up plans for this
16 project. Our rear entry into our kitchen is
17 a second-story entry, so you already -- the
18 porch that's there is really the landing for
19 the existing stairs that go up from the
20 carport. And so, that existing porch has to
21 be there. There has to be something there or
22 you can't get into the house. What we've done

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1 to try to maximize and adhere is to take the
2 stairs directly off of the existing structure.
3 And my understanding is it is the only way
4 that it will work because you do need that
5 landing there to get into the home.

6 BZA CHAIR MOLDENHAUER: Thank you.
7 That has provided us additional information.

8 Do any other Board Members have
9 any questions?

10 COMMISSIONER MAY: Madam Chair,
11 you had mentioned earlier on and I was going
12 down that line with you about looking at the
13 carport issue. Is that still open?

14 BZA CHAIR MOLDENHAUER: It is. I
15 mean, obviously the applicant would have to
16 modify their application. I did look at it.
17 It's 2000.1, and they would have to look at
18 the issue.

19 I'll explain this to you. There
20 are two different ways. One you're asking for
21 a rear deck. And the other option would be to
22 provide something called a carport. It would

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1 have to be separated and detached from the
2 home, and there are separate standards for
3 that. Those standards are in 2300, which talk
4 about private garages and carports. You would
5 have to look with your architect and talk to
6 OP, but there would be a potential issue. And
7 I can't obviously identify this right now, but
8 there's an issue about having to have at least
9 12 feet from the center portion of the alley
10 line to where the structure would start. So,
11 that would potentially -- you'd have to maybe
12 seek a relief in that regard because I don't
13 know where the current carport exists. And
14 the alley is only, I believe, 10 feet long,
15 but it's also an angled alley. So, I think
16 that that would be -- there's a specific
17 formula for measuring angled alleys and where
18 the alleys changes in diameter. So, that
19 would create some additional challenges where
20 you'd have to look with your architect about
21 that.

22 But, you know, obviously this is a

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1 certified application. We can't recommend
2 changes, but we may be able to leave the
3 record open at the conclusion of this hearing
4 for the applicant to review options and
5 present additional records, you know, and
6 we'll provide some specific time frames for
7 additional information.

8 ZC CHAIR HOOD: And also let me
9 just add, I know some years ago -- and maybe
10 Mr. Mordfin can help me with this. Some years
11 ago Office of Planning, when they presented
12 cases in this situation where you have
13 families trying to retain residents in the
14 District, allowing them more ability to be
15 able to build and do exactly what Ms.
16 Truesdale has mentioned, it was never put into
17 the Zoning Regs. I'm not sure where that was,
18 but I know there was an initiative by the
19 prior administration of making sure that
20 residents are able to do some expansions in
21 their home. And I'm not sure where we were
22 with that, but I know that was a discussion

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1 here on BZA some years back.

2 Mr. Mordfin, I don't know if we
3 could kick the dust off of it and see exactly
4 what happened. I think the Chairperson's
5 going to give the applicant a little
6 opportunity to be able to look at that. And
7 I think that would be well-advised. And
8 maybe, Mr. Mordfin, you can pick up that old
9 discussion about allowing people to expand who
10 have young kids in these neighborhoods such as
11 this one. I think this is an ideal area. And
12 I can't remember what we did with one of these
13 cases previously, but I know this reminds me
14 of that.

15 So, thank you, Madam Chair.

16 BZA CHAIR MOLDENHAUER: Thank you
17 very much.

18 At this point in time we would
19 turn to the applicant for closing remarks.
20 Will the applicant be seeking any additional
21 time to extend this hearing to look into the
22 matters, these issues?

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1 MS. TRUESDALE: I think that we
2 would like for it -- it sounds like we'd need
3 the same number of variances and exceptions
4 that we currently would even if we attempted
5 to use it as a carport, it sounded like, with
6 the rear alley and all and the difficulties of
7 the angle. I don't know that we would fare
8 any differently.

9 Is what Mr. Hood was talking
10 about, is that something that would apply to
11 us? I'm confused where that would interplay
12 with this process.

13 BZA CHAIR MOLDENHAUER: I think
14 Mr. Hood was saying that it may apply to you
15 and that he was indicating that you may want
16 to work with Mr. Mordfin on pursuing
17 additional information. So, I guess my
18 question to you is, you know, are you seeking
19 an extension to another date to provide any
20 more time to review your case?

21 MS. TRUESDALE: I would like some
22 additional time to work with the Office of

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1 Planning.

2 BZA CHAIR MOLDENHAUER: Okay.

3 Then what we will do is, based on the request
4 of the applicant for an extension, we'll look
5 at our calendar and we will provide you with
6 some additional time to work with the Office
7 of Planning. And if you determine to modify
8 your application in any way, then we'd come
9 back and reevaluate that at a later date.

10 We are in recess in August, so
11 what I will do is -- Mr. Moy, what are some of
12 the first dates that we have available for
13 September?

14 MR. MOY: Depending on all the
15 parties schedule including Office of Planning,
16 I think the first opportunity could be the
17 afternoon of September the 14th at the
18 earliest, as well as the afternoon of
19 September 21st. And then I would think if
20 those two dates don't work, then I'm looking
21 at October. We do have an appeal case the
22 entire afternoon on September the 28th.

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1 MS. TRUESDALE: If I could, we're
2 getting very close to my delivery date in
3 October. If we could keep it at September
4 that would be helpful.

5 BZA CHAIR MOLDENHAUER: We don't
6 want to have to be dealing with that, yes, in
7 the hearing room.

8 What I would recommend, is there
9 any way that we could push this into the
10 morning of the 14th?

11 MR. MOY: That would work.

12 BZA CHAIR MOLDENHAUER: That would
13 work? Okay. Why don't we have this as the
14 last case on the morning of the 14th? And I
15 believe that Mr. Hood, he probably will not be
16 present at that --

17 ZC CHAIR HOOD: I'll submit a
18 proxy.

19 BZA CHAIR MOLDENHAUER: Okay.
20 Thank you. Seeing that that is Election Day.

21 Let's see here. If we have the
22 14th, I would request that any additional

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1 documentation from the applicant be submitted
2 by July 30th. And then if the Office of
3 Planning has any additional reports based on
4 the applicant's submission, that the Office of
5 Planning gets any additional supplemental
6 reports into us by the 9th. Is that possible?

7 MR. MORDFIN: Yes, by the 9th of
8 August?

9 BZA CHAIR MOLDENHAUER: September
10 9th.

11 MR. MORDFIN: Oh, by September
12 9th? Okay. Because I thought you said
13 applicant by --

14 BZA CHAIR MOLDENHAUER: I'm sorry.
15 August. August 30th. Yes, I was incorrect in
16 that statement. I apologize. So, the
17 applicant has until August 30th. And then the
18 Office of Planning would have until September
19 9th to provide any supplemental reports.

20 Thank you very much.

21 MS. TRUESDALE: Thank you.

22 BZA CHAIR MOLDENHAUER: Will we

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1 call the last case for this morning, please?

2 MS. BAILEY: Madam Chair, that's
3 the application of Church of the Pilgrims and
4 the number is 18079. It's pursuant to 11 DCMR
5 3104.1, FOR A special exception for a child
6 development center; that's 48 children and 10
7 staff, under section 205. The property is
8 zoned R-3. It's located at 2201 P Street,
9 Northwest, Square 2510, Lot 827.

10 If I'm not mistaken, the number of
11 staff was revised. Yes, the number of staff
12 that the applicant is proposing is 12.

13 BZA CHAIR MOLDENHAUER: Yes? Oh,
14 yes, can he applicants please provide the
15 court reporter with your witness cards? And
16 then once the applicant is back seated, we'll
17 have the parties at the table introduce
18 themselves.

19 MR. FORD: Vincent Ford with Ford
20 & Associates.

21 MR. CLAY: James Claim, director
22 of School for Friends.

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1 BZA CHAIR MOLDENHAUER: Thank you
2 very much. Before you begin I believe that
3 there are some preliminary matters by Board
4 Members.

5 MEMBER SORG: I just have one
6 preliminary matter. I wanted to state for the
7 record that I actually attended School for
8 Friends many, many years ago and am
9 acquainted, although not for a long time, with
10 the applicant. And while I feel that I can
11 deliberate and judge this case in an unbiased
12 way, if any other Board Members disagree, I'm
13 happy to go away also.

14 BZA CHAIR MOLDENHAUER: Thank you
15 very much. We appreciate full disclosure.
16 And I don't see any issues despite comments
17 and jests. I think that we can continue on,
18 but I appreciate obviously full disclosure in
19 that. Thank you.

20 MEMBER SORG: Thank you.

21 BZA CHAIR MOLDENHAUER: That being
22 said, does the applicant have any concerns

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1 about that? I would not believe that they do.

2 At this point in time we'll turn
3 to the applicant to present their case before
4 the Board.

5 MR. FORD: The case that we are
6 presenting we have modified from the original
7 submittal and given the office the changes
8 that we had made. We were going now for 50
9 children instead of 49, and of course the
10 staff is going up by two to 12. Otherwise,
11 there are not changes in the numbers of
12 occupants.

13 The church has had this day care
14 in it since I believe '91. And we have met
15 and talked with the Office of Planning, and
16 matter of fact I ended up meeting on site with
17 Traffic at one point as I was going through
18 posting the signs. And we have not gotten any
19 opposition from anyone that would be affected
20 by the additional children and staff.

21 What is intended to occur is that
22 originally we were going to change the traffic

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1 pattern for entering and exiting the site to
2 include an alley which we eventually changed
3 to maintain the same entry and exit off of
4 Florida Avenue and 22nd Street. Main reason
5 being is that we had a meeting with the
6 affected neighbors and found out how busy that
7 alley is at this point. It is an active
8 alley. The garages are used to a great deal.
9 There is some parking in the alley itself, so
10 that would cause quite a bit of congestion in
11 the alley.

12 So, we have gone back to the
13 original entry and exit to the site. We will
14 make some improvements in that we will have
15 monitors out in the drive area and parking
16 area to assist with children exiting and
17 entering the vehicles. Also, we'll create a
18 walkway, a safe path in front of where cars
19 are parked so that when children exit and
20 parents want to go into the building also they
21 will be able to do so without interfering or
22 being interfered by the movement of the

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1 vehicles on the site.

2 Currently, under the previous
3 special exception that was granted the school
4 was required to have four parking spaces.
5 There are approximately 15 parking spaces on
6 the site. And if additional parking spaces
7 are thought to be needed, there would not be
8 a problem with providing those.

9 The classroom setup for the
10 additional kids is the same as the classroom
11 for all the existing children. That classroom
12 was used as an office space. Office is moving
13 and so that's freed up this particular space.

14 It meets all the requirements as
15 far as life safety issues are concerned.
16 Still have the required exits and bells and
17 gongs and so on and so forth.

18 The playground last year was
19 renovated and as a matter of expanded to a
20 small degree. And it's kind of tucked in so
21 traffic is not present in this area and it is
22 close to the school itself. And it's adequate

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1 amount of space for the number of children
2 based on the requirements.

3 Also, the Office of Traffic has
4 asked that we place a bicycle rack to
5 encourage people to bicycle either to the
6 school or maybe even in the area. And we have
7 so located that on the site in kind of coveted
8 area, or a protected area. Also, Traffic has
9 asked that a sign be placed stating right turn
10 only as you come out of the site. And that's
11 so that traffic will not attempt to go across
12 two lanes of traffic and then head north up
13 Florida Avenue onto 22nd Street, which we have
14 no problems with either. We would have no
15 problem with posting that. So, we would have
16 to work with Office of Planning on that.

17 We have no objections from the ANC
18 in which the building and site is located, nor
19 do we have any objection from the neighboring
20 ANC. And the reason I mention the neighboring
21 ANC is because there are multi-family
22 buildings across the street from where the

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1 school is located and that happens to be in
2 another ANC location.

3 At this point if you have any
4 questions, feel free.

5 BZA CHAIR MOLDENHAUER: Thank you
6 very much. You had first mentioned that you
7 had changed around the drive aisle to provide
8 a -- sounded like a drive access where parents
9 would pull in and then drop off the children.
10 Is that shown on your report?

11 MR. FORD: The original report
12 showed a site plan as like a drive-through.
13 You come into the alley off of Q Street. Then
14 you come in, drop of the child or children and
15 then exit onto Florida Avenue or 22nd Street.
16 I did a revision to that and submitted it to
17 the office here and --

18 BZA CHAIR MOLDENHAUER: I don't
19 believe we have a copy of that.

20 Do Board Members have a copy of
21 that?

22 I believe all we have is the July

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1 18th report, which is our Exhibit No. 31. Oh,
2 I believe actually it was then attached to the
3 back. We have actually additional documents
4 that are attached to the back. I'm going to
5 hold up what we have as a revised proposed
6 traffic plan, which is still attached to the
7 first letter. Is this the revised?

8 MR. FORD: That's the revised,
9 yes.

10 BZA CHAIR MOLDENHAUER: Okay. So,
11 if you can just kind of walk me through them,
12 because obviously the concern was using the
13 alley. So, if you can walk me through by
14 describing how cars would come off of Florida
15 and then drop off and then exit.

16 MR. FORD: Yes, the cars would
17 come off Florida going southwest and enter the
18 site and pull up into the site. They can
19 either pull up in and park or they can pull in
20 and turn around and come back out. Like I
21 said, there would be a monitor there on site,
22 one, to control traffic coming and going, and

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1 also, one, to assist in the exiting and entry
2 of children into the vehicles.

3 BZA CHAIR MOLDENHAUER: So, the
4 monitor would be, one, a traffic monitor
5 providing I guess assistance to make sure that
6 the parents, if they were doing the U-turn,
7 were doing that safely within I guess a coned
8 or a marked area?

9 MR. FORD: That's correct.

10 BZA CHAIR MOLDENHAUER: Okay.

11 MR. FORD: Yes. Now, and that's
12 the way it's done now.

13 BZA CHAIR MOLDENHAUER: That is?
14 Okay.

15 MR. FORD: Except for the fact we
16 don't have a monitor there. We are going to
17 now place a monitor because with the
18 additional children we feel that we may have,
19 you know, a few more cars. One, they're not
20 used to the situation because the kids are
21 coming from another school that's now closing.
22 So, this would assist them in a safe aspect.

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1 BZA CHAIR MOLDENHAUER: How many
2 monitors or traffic assistants would be
3 provided for pickup and drop off?

4 MR. FORD: There would be one
5 traffic assistant and there would be two
6 monitors, one for the outside area and one for
7 the interior. The reason for the interior is
8 that when cars come in, especially and they're
9 picking up children, you can call in and say
10 parent such-and-such is here; have child sent
11 out, that type of thing. So, that particular
12 monitor who's dealing with the children would
13 not have to run into the building and run back
14 out with the child because it would take a lot
15 of time. Also, they will have two-way
16 communications, so they would be in contact
17 with each other.

18 BZA CHAIR MOLDENHAUER: And this
19 may be to you, Mr. Ford, or to the applicant.
20 Do the majority of students currently coming
21 come via vehicles, or do some of them come in
22 other forms, maybe walking patrols or things

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1 to that effect?

2 MR. FORD: Most of them come by
3 vehicle. We figure right now with the walkers
4 -- we have about eight percent that are coming
5 by walking. What Traffic is looking at, and
6 really we're looking at, is that by providing
7 access for bicycles parents may then want to
8 ride the bikes in with the little coaches ont
9 he back to bring the children. Since you have
10 pretty good sidewalk areas in that area it's
11 somewhat pedestrian-friendly in that area,
12 that that might encourage more people to bring
13 the children by way of other than vehicle.

14 BZA CHAIR MOLDENHAUER: Yes, I
15 know that the District has some programs where
16 they really encourage schools to provide
17 either walking buses where one parent walks a
18 group of students to school from the community
19 to reduce the traffic concerns of a school or
20 a CDC of this aspect, or biking groups where
21 students of a certain age obviously would be
22 biking to the school or biking with a parent.

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1 Is that something that the applicant -- it
2 sounds like may not have currently in
3 existence, but are they planning to provide
4 and encourage?

5 MR. CLAY: Well, currently we do
6 have families that bring children from more
7 than one family, either in strollers or
8 walking or in cars. So, people have different
9 work schedules, so they're not all coordinated
10 in dropping off before child care in the
11 morning, but particularly in the afternoon a
12 parent might take two or three children home
13 that they live in the neighborhood. We
14 encourage them to do it, but you know,
15 everybody's an individual.

16 BZA CHAIR MOLDENHAUER: Thank you.
17 There's been orders for the CDC on this
18 project going back to 1968 and so I just
19 wanted to ask a couple questions about some of
20 the conditions that are in existence. And so
21 one is that the applicant should maintain in
22 good repair the fence around the abutting

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1 property and do all that is possible to limit
2 any possible infringement on the property of
3 the adjacent neighbor.

4 Is that fence still in existence?

5 MR. CLAY: The fence is still in
6 existence. A new fence was placed between the
7 play area and the parking area last year.

8 BZA CHAIR MOLDENHAUER: Okay. The
9 condition from '69 states that the school bus
10 shall not park in the public alley.

11 MR. CLAY: From '69? That would
12 have been a Headstart school bus. There
13 hasn't been Headstart in the building since
14 1986.

15 BZA CHAIR MOLDENHAUER: So, that
16 was a Headstart school bus? Do you have any
17 school buses that are currently associated
18 with the project?

19 MR. CLAY: No, we don't.

20 BZA CHAIR MOLDENHAUER: Do you
21 have any intentions of having any school buses
22 in the future?

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1 MR. CLAY: No, we don't.

2 BZA CHAIR MOLDENHAUER: Okay. I'm
3 trying to figure out what conditions are
4 applicable and what are not.

5 Another condition is a commercial
6 trash and garbage collection shall be
7 provided. I'm assuming that you're still
8 using a commercial trash collection?

9 MR. CLAY: Yes, the church does.
10 Yes.

11 BZA CHAIR MOLDENHAUER: And are
12 you not having any problems with any
13 complaints from neighbors of smell or ability
14 to pick up trash?

15 MR. CLAY: I'm not aware of any.

16 BZA CHAIR MOLDENHAUER: Okay.
17 background information those are all of the
18 prior conditions that we have.

19 Do any other Board Members have
20 any other questions for the applicant?

21 (No audible response.)

22 BZA CHAIR MOLDENHAUER: Seeing

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1 none, then at this point in time we'll move
2 onto the Office of Planning's report.

3 MR. GOLDSTEIN: Good morning,
4 Madam Chair, Members of the Board. For the
5 record my name is Paul Goldstein and I'm with
6 the Office of Planning.

7 OP recommends approval of the
8 applicant's request for a special exception to
9 expand the existing child development center.
10 And I really don't have much more to add at
11 this point. I'm happy to rest on the record
12 or follow up with any questions that you may
13 have. Thank you.

14 BZA CHAIR MOLDENHAUER: Thank you
15 very much, Mr. Goldstein. I think that your
16 report was very thorough and I don't believe
17 that we have any questions.

18 Do any Board Members have any
19 questions for the Office of Planning?

20 (No audible response.)

21 BZA CHAIR MOLDENHAUER: Seeing
22 none, does the applicant have any questions

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1 for the Office of Planning?

2 MR. CLAY: No.

3 BZA CHAIR MOLDENHAUER: Thank you.

4 Then at this point in time we turn to any
5 individuals in support or opposition of this
6 case.

7 (No audible response.)

8 BZA CHAIR MOLDENHAUER: Seeing
9 none in the audience, I would turn then to see
10 if anybody is present representing the ANC 2B
11 here.

12 (No audible response.)

13 BZA CHAIR MOLDENHAUER: Seeing
14 nobody else in the audience, I'll reference
15 the Exhibit No. 28 which is a letter dated May
16 13th, 2010 indicating that at a regular public
17 meeting on May 12th, 2010 the ANC 2B met and
18 with a quorum present they voted seven to zero
19 to one to approve a resolution to support the
20 special exception for the School of Friends.

21 And then at this point in time,
22 while I'm just reviewing the record, I'll also

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1 reference that we do have our letter from
2 OSSE, which is our Exhibit No. 30, indicating
3 support and that the applicant had satisfied
4 all of its licensing requirements.

5 Does the applicant have any
6 closing remarks?

7 MR. FORD: It was a pleasure
8 working with the BZA staff and the Office of
9 Planning. I've worked with them in the past
10 and nothing has changed. They're still good
11 workers. Thank you.

12 BZA CHAIR MOLDENHAUER: Thank you
13 very much. The OZ staff is fabulous and I
14 always thank them and I appreciate all their
15 hard work with all these different
16 applications.

17 Do Board Members have any follow-
18 up questions for the applicant?

19 (No audible response.)

20 BZA CHAIR MOLDENHAUER: Seeing
21 none, then at this point the case will be
22 concluded. I believe we can go directly into

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1 deliberation, and I will start us off.

2 Application No. 18079 is a request
3 for a special exception pursuant to 205 for a
4 child development center using the existing
5 building at 2201 P Street.

6 This child development center has
7 been in existence for many, many years. As I
8 referenced there are orders dating back to
9 1968 and the applicant has testified that
10 there are no, to their knowledge, concerns
11 regarding any neighborhood concerns.

12 We have a letter from the ANC
13 recommending approval. We have an Office of
14 Planning report recommending approval.

15 The applicant is looking to expand
16 to 50 children and an increase from two to
17 twelve staff members.

18 The Office of Planning has a
19 recommendation to approve the application.
20 And the applicant also provided some
21 additional testimony in regards to a revised
22 plan for the parking and traffic pattern

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1 providing that there would be no use of the
2 alley due to the fact that there is heavy use
3 of the alley currently and to provide a safer
4 condition for the pickup and drop off of the
5 students in addition to be providing three
6 assistants for the traffic and pickup. One
7 would be a traffic assistant individual that
8 would be helping cars turn around and exiting
9 back onto Florida Avenue. One would be a
10 monitor for students on the outside to be
11 picked up and sent back into the school or to
12 be placed into cars of their parents. And
13 then one would be a monitor for the student on
14 the inside to coordinate sending children out
15 to be picked up at the end of the day.

16 The Department of Transportation
17 is also encouraged that the applicant provide
18 a right turn only sign and bike racks on the
19 facility, and the applicant has agreed that
20 that would be something that they would be
21 willing to do.

22 Seeing that the ANC is in support

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1 and that there's no parties in opposition, I
2 think that the applicant has satisfied their
3 burden and I will look to see if there's any
4 additional deliberation on this case.

5 (No audible response.)

6 BZA CHAIR MOLDENHAUER: Seeing
7 none, then I would submit a motion to approve
8 Application 18079 for 2201 P Street for an
9 expansion of a child development center under
10 205 to 50 children, 12 staff members. The
11 hours of operation would be from 8:00 a.m. to
12 6:00 p.m. Monday through Friday year round.
13 And that the children would be provided
14 monitoring for traffic pickup and drop off by
15 having one monitor on the outside, one monitor
16 on the inside of the building and one traffic
17 assistant, that the applicant would provide a
18 right turn only sign on Florida Avenue, that
19 the applicant shall maintain in good repair
20 the fence around the abutting property and do
21 all that is possible to limit any possible
22 infringement on the property of the abutting

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1 neighbor, to provide commercial trash and
2 garbage collection, and to include that this
3 will be a 10-termed approval.

4 The motion has been made. Is
5 there a second?

6 VICE CHAIRMAN DETTMAN: Second.

7 BZA CHAIR MOLDENHAUER: Motion's
8 been made and seconded. All those in favor?

9 MS. MONROE: Madam Chair, do you
10 include parking or not? It was an old
11 condition. That's the only reason I bring it
12 up. In 1991 it was a condition. You don't
13 have to. Because it's a requirement of the
14 regulations, you don't need to. I'm just
15 mentioning it.

16 BZA CHAIR MOLDENHAUER: I don't
17 believe it's necessary considering the
18 enormous number of parking that the church
19 already has. Do any members feel as though
20 it's necessary?

21 (No audible response.)

22 BZA CHAIR MOLDENHAUER: Seeing in

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1 agreement, then I will maintain my motion as
2 it was stated without including parking as a
3 condition.

4 The motion's been made. Is there
5 a second?

6 VICE CHAIRMAN DETTMAN: Second.

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

10 VICE CHAIRMAN DETTMAN: Aye.

11 MEMBER SORG: Aye.

12 ZC CHAIR HOOD: Aye.

13 MR. MOY: Staff would record the
14 vote as four to zero to one. This is on the
15 motion of the Chair, Ms. Moldenhauer, to
16 approve the application for special exception
17 relief under 205 with conditions as stated.
18 Again, seconded is Mr. Dettman. In support of
19 the motion Ms. Sorg and Mr. Anthony Hood. No
20 other Board Member participating. So again,
21 the vote for approval is four to zero to one.

22 BZA CHAIR MOLDENHAUER: Thank you

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1 very much. And seeing that there's no
2 opposition, I believe we'd request to waive
3 our requirements and have a summary order.

4 MR. MOY: Very good.

5 BZA CHAIR MOLDENHAUER: Thank you.

6 Thank you very much.

7 I believe that concludes the
8 morning hearing. And so, we will reconvene at
9 1:00.

10 (Whereupon, the hearing was
11 recessed at 11:46 a.m. to reconvene at later
12 this same day.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

3

1:50 p.m.

4

MADAM CHAIRPERSON MOLDENHAUER:

5

Good afternoon. This hearing will please come

6

to order.

7

This is the July 13th, 2010 public

8

hearing for the Board of Zoning Adjustment for

9

the District of Columbia.

10

My name is Meridith Moldenhauer,

11

Chairperson. Joining me today to my right is

12

Vice-Chair Shane Dettman, representative of

13

the National Capital Planning Commission. To

14

his right is Anthony Hood, Chairman of the

15

Zoning Commission. To my left is Nicole Sorg,

16

mayoral appointee.

17

Copies of today's agenda are

18

available to you and are located to my left in

19

the wall bin near the door.

20

Please be advised this proceeding

21

is being recorded by a court reporter and is

22

also webcast live. Accordingly, we must ask

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1 you to refrain from any disturbing noise or
2 actions in the hearing room.

3 When presenting information to the
4 Board, please turn on and speak into your
5 microphone first stating your name and home
6 address. When you are finished speaking,
7 please turn your microphone off so that your
8 microphone is no longer picking up sounds or
9 background noise.

10 All persons planning to testify
11 either in favor or in opposition are to fill
12 out two witness cards. These witness cards
13 are located to my left on the table near the
14 door and on the witness tables. Upon coming
15 forward to speak to the Board, please give
16 both cards to the court reporter sitting to my
17 right.

18 The order of procedure for special
19 exceptions and variances are as follows: (1)
20 Statement and witnesses of the applicant; (2)
21 Government reports, including the Office of
22 Planning and Department of Public Works; (3)

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1 reports of the Advisory Neighborhood
2 Commission; (4) parties and persons in
3 support; (5) parties or persons in opposition;
4 and then (6) closing remarks of the applicant.

5 Pursuant to sections 3117.4 and
6 3117.5, the following time constraints will be
7 maintained: The applicant/appellant, persons
8 and parties, except an ANC in support,
9 including witnesses will be provided 60
10 minutes collectively. Appellees, persons and
11 parties, except an ANC in opposition,
12 including witnesses will be provided 60
13 minutes collectively. And individuals, three
14 minutes. These time restraints do not include
15 cross-examination and/or questions from the
16 Board. Cross-examination of witnesses is
17 permitted by the applicant or parties.

18 The ANC within which the property
19 is located is automatically a party in a
20 special exception or variance case. Nothing
21 prohibits the Board from placing reasonable
22 restrictions on cross-examination, including

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1 time limits, and limitations on the scope of
2 cross examination.

3 The record will be closed at the
4 conclusion of each case except for any
5 material specifically requested by the Board.
6 The Board and the staff will specify at the
7 end of the hearing exactly what is expected
8 and the date when the person must submit the
9 evidence to the Office of Zoning. After the
10 record is closed no other information will be
11 accepted by the Board.

12 The Sunshine Act requires that the
13 public hearing on each case be held in the
14 open before the public. The Board may,
15 consistent with its Rules of Procedure and the
16 Sunshine Act, enter into executive session
17 during or after a public hearing on a case for
18 purposes of reviewing the record or
19 deliberating on the case.

20 The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance to

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1 the contrary the Board requests that persons
2 present not engage the members of the Board in
3 conversation.

4 Please turn off all beepers and
5 cell phones at this time so not to disrupt
6 these proceedings.

7 The Board will make every effort
8 to conclude the public hearing as near as
9 possible to 6:00 p.m. If the afternoon cases
10 are not completed at 6:00 p.m., the Board will
11 assess whether it can complete the pending
12 case or cases and render the agenda.

13 At this time the Board will
14 consider any preliminary matters. Preliminary
15 matters are those that relate to whether a
16 case will or should be heard today such as
17 requests for postponement, continuance or
18 whether proper adequate notice was provided.

19 If you believe that a case should
20 not be heard today, or if you are not prepared
21 to go forward with a case, now is the time to
22 raise such a matter.

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1 Mr. Secretary, are there any
2 preliminary matters?

3 MR. MOY: Madam Chair, in your
4 existing folders at this time, there are none.

5 BZA CHAIR MOLDENHAUER: Thank you
6 very much.

7 Then all individuals wishing to
8 testify, please stand and Ms. Bailey will
9 administer the oath.

10 MS. BAILEY: Please raise your
11 right hand?

12 (Whereupon, the witnesses were
13 sworn.)

14 MS. BAILEY: Madam Chair, the
15 first case is Application 18075. It's the
16 application of Gospel Ark Temple Church and
17 it's pursuant to 11 DCMR 3104.1 for a
18 special exception for a child development
19 center. that's 45 children and 14 staff. The
20 application is under section 205. The
21 property is zoned R-5-A and it's located at
22 4551 Benning Road, Southeast, Square 5350, Lot

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1 125.

2 BZA CHAIR MOLDENHAUER: Thank you
3 very much, Ms. Bailey.

4 Will the parties for this case
5 please come forward?

6 Good afternoon. You can take a
7 seat and then turn on your microphones once
8 you've gotten set up and introduce yourself
9 stating your name and home address.

10 MS. LIDE: Hi, my name is Delvon
11 Lide. My address is 12504 Hillantrae Drive.
12 That's Clinton, Maryland. My ZIP code is
13 20735.

14 DEACON LEWIS: I'm Deacon Eugene
15 Lewis from Gospel Ark Temple Church, 4551
16 Benning Road, Southeast.

17 BZA CHAIR MOLDENHAUER: Thank you,
18 both.

19 At this time, this would be an
20 opportunity for you to present any information
21 regarding your application that you believe
22 maybe has not already been provided in the

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1 record.

2 MS. LIDE: Yes, all the
3 information has been provided.

4 BZA CHAIR MOLDENHAUER: Okay. And
5 have you had a chance to review the Office of
6 Planning's report?

7 MS. LIDE: No.

8 BZA CHAIR MOLDENHAUER: Well, what
9 we'll do right now is we'll actually turn to
10 the Office of Planning and then allow them to
11 present their report. And then if you have
12 any questions or we have any questions for you
13 at that point in time we'll move forward.

14 MS. LIDE: Okay.

15 MS. BROWN-ROBERTS: Good
16 afternoon, Madam Chairman and Members of the
17 Board. I'm Maxine Brown-Roberts from the
18 Office of Planning.

19 I did email the applicant a copy
20 of the report, so maybe she just didn't check.
21 But anyway, I have been in contact with her
22 through the process and have worked with her,

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1 so she's pretty familiar with what I'm going
2 to say anyway.

3 And so, I'll just summarize that
4 the application is for the child development
5 center under section 205 which outlines the
6 standard under which the child development
7 center has to be evaluated.

8 The center is capable of meeting
9 the applicable code and licensing requirements
10 as stated by the letter from OSSE in the
11 record. I did call and talk to Ms. Weir
12 personally and she assured me that they would
13 be able to meet those requirements as stated
14 in her letter.

15 The child development center in
16 the application is -- for the number of
17 children that is being proposed will not be
18 objectionable to traffic condition or create
19 any unsafe condition for picking and dropping
20 off. As you'll see in some of the pictures in
21 the record there is a large parking lot
22 adjacent to the site and the applicant has

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1 stated that all drop off and pickup will occur
2 on the site and not along the roadway. She
3 also states that the children that are dropped
4 off will have to be taken into the center by
5 their parent or guardian. And so, we do not
6 see a problem with that. I did contact DDoT
7 about the situation and they did not have any
8 concerns. No concerns were conveyed to me
9 anyway from DDoT.

10 Again, the off-street parking for
11 the center for the teachers and visitors will
12 be done at the rear of the church. The
13 applicant states that there are some parking
14 lots to the rear of the church that will
15 accommodate the staff parking.

16 Regarding the outdoor play area,
17 currently the outdoor play area has been
18 identified but has not been delineated at this
19 time. In talking to the applicant one of the
20 things that we recommended was that the play
21 area, the area identified has to be fenced.
22 That has not taken place as yet, but that is

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1 one of the conditions that you see in the
2 report that the play area be fenced. And it
3 was also one of the requirements for their
4 licenses under OSSE, so that is something that
5 I feel confident will be done.

6 Regarding trash pickup, currently
7 the church has a private contractor that does
8 the pickup. There is a huge receptacle for
9 pickup. It's done once a week and the
10 applicant states that that will continue, that
11 their trash will be dumped there. So, I don't
12 have a concern regarding that.

13 There are no other special
14 treatments that we're recommending except for
15 the fencing of the play area. There are no
16 other child development centers within 1,000
17 feet of the site, however, there is the
18 Plummer Elementary School which is about 850
19 feet to the south of the site. That is
20 fronting a major thoroughfare and I don't see
21 that there should be any conflicts with the
22 traffic from the school and the proposed day

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1 care center. So, I don't think that there
2 will be any impact on the community.

3 And because I think that they meet
4 all the requirements of the section 205 and
5 therefore we recommend approval. And attached
6 to that we have outlined five conditions. The
7 number of children at any time shall not
8 exceed 45. The number of staff will not
9 exceed 14. The hours of operation will
10 between 6:30 a.m. and 6:30 p.m. Mondays
11 through Friday. All drop off and pickup of
12 children will be on site and the on-site
13 parking area will be fenced.

14 One other thing I didn't mention
15 was that the church is also on the property,
16 but the day care -- one of the questions that
17 I asked of the applicant was were there any
18 other functions that take place during the day
19 and I was told that there was nothing else, no
20 other activity at the church during the day.
21 So it will only be the day care there that is
22 operating daily and that goes up until 6:30

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1 p.m. and any activity for the church would be
2 after that time.

3 And that's my recommendation.

4 Thank you, Madam.

5 BZA CHAIR MOLDENHAUER: Thank you
6 very much. It was a very thorough report and
7 we appreciate that.

8 I think at this time does the
9 applicant have any questions for the Office of
10 Planning?

11 MS. LIDE: No.

12 BZA CHAIR MOLDENHAUER: No? Do
13 any Board Members have any questions of the
14 Office of Planning?

15 (No audible response.)

16 BZA CHAIR MOLDENHAUER: Then at
17 this point in time we would move onto any
18 persons or parties in support or opposition in
19 the audience with this case.

20 (No audible response.)

21 BZA CHAIR MOLDENHAUER: Seeing
22 none, I ask if the ANC for this case is

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1 present.

2 (No audible response.)

3 BZA CHAIR MOLDENHAUER: I don't
4 believe they are. I'm looking to see -- do
5 you know if we received a letter from the ANC?

6 MS. LIDE: I don't think so. I
7 think Ms. Elaine Booth did give me some
8 information that they did receive something.

9 BZA CHAIR MOLDENHAUER: We don't
10 have anything in our records and the Office of
11 Planning in their report also indicates that
12 ANC 7E has not provided them any feedback. Is
13 that still the case?

14 MS. BROWN-ROBERTS: Yes, it is,
15 Ms. Brown-Roberts?

16 BZA CHAIR MOLDENHAUER: Thank you
17 very much.

18 MS. BROWN-ROBERTS: Yes, it is.

19 BZA CHAIR MOLDENHAUER: Okay. Do
20 you have any knowledge of any concerns of the
21 ANC or any neighbors?

22 MS. BROWN-ROBERTS: No.

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1 BZA CHAIR MOLDENHAUER: Seeing no
2 persons or parties in opposition, then at this
3 point in time we can turn back the applicant
4 with any closing remarks.

5 MS. LIDE: I just would like to
6 thank the Department of Zoning for all their
7 help, Ms. Elaine Booth and Mercedes for being
8 so helpful as far as me getting my application
9 process. And that's about it.

10 BZA CHAIR MOLDENHAUER: Let me
11 just ask you a couple questions. Are you okay
12 with the different conditions that the Office
13 of Planning has recommended such as the time
14 frames, the operation hours from 6:30 a.m. to
15 6:30 p.m. Monday through Friday?

16 MS. LIDE: Yes, ma'am.

17 BZA CHAIR MOLDENHAUER: And as was
18 stated the pick-up would be on site?

19 MS. LIDE: Yes, ma'am.

20 BZA CHAIR MOLDENHAUER: The
21 students or children that are going to be
22 coming to the child development center, are

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1 they going to be coming from the community
2 walking in or most of them will be driving?

3 MS. LIDE: They'll be dropped off
4 by their parents.

5 BZA CHAIR MOLDENHAUER: Dropped
6 off by their parents? Okay. There are a lot
7 of D.C. programs nowadays that are encouraging
8 local families to, you know, walk to a local
9 child development center if that's possible.
10 And so we're obviously encouraging any
11 applicants to try to encourage walking buses
12 or things of that effect if, you know, they
13 don't have to drive or if it's close enough
14 for those types of benefits.

15 MS. LIDE: Yes.

16 BZA CHAIR MOLDENHAUER: With that
17 being said then, I appreciate you coming down.
18 I think we'll conclude this portion of the
19 hearing and we'll enter into deliberation.

20 If the rest of my Board Members
21 are in agreement, then we will start
22 deliberation for Case 18075 for a child

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1 development center at Little Ark Angels
2 Childhood Development Center at 14551 Benning
3 Road, Southeast. This is an application under
4 205 for 45 children ages two to five and 14
5 staff members. I will incorporate by record
6 the Office of Planning report which actually
7 in great detail goes through the different
8 requirements of 205 and states that the
9 applicant has satisfied all those conditions.

10 The OSSE provided a letter
11 indicating that the applicant would satisfy
12 all the licensing requirements, which is our
13 Exhibit No. 23.

14 We have no documentation of any
15 opposition to this case and we have nothing
16 from the ANC indicating that there would be
17 any adverse effects from the child development
18 center.

19 The applicant has provided
20 sufficient off-street parking and has I think
21 very adequately worked with Office of Planning
22 in regards to providing drop-off and pick-up.

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1 Do any of the other Board Members
2 have any additional comments for deliberation?

3 ZC CHAIR HOOD: Madam Chair, I
4 just wanted to ask a question about the
5 fenced-in area. Was there a time limit put on
6 that or is the Office of Planning recommending
7 we just leave that open?

8 MS. BROWN-ROBERTS: As part of
9 their licensing responsibility, when I looked
10 at the regulations for licensing of the day
11 care centers and one of the requirements there
12 is that outside play area is fenced. So, I
13 think that will be taken care of at that time,
14 yes.

15 ZC CHAIR HOOD: Thank you.

16 Thank you, Madam Chair.

17 BZA CHAIR MOLDENHAUER: Chairman
18 Hood, would you be interested in not having
19 that as a condition then as we start to get
20 forward to a point where maybe I'd be making
21 a motion?

22 ZC CHAIR HOOD: Yes, obviously

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1 apparently that's going to be handled in
2 another venue, so I don't know if we need to
3 -- we want to make sure we make things
4 enforceable. I'm not sure if that's something
5 in purview. And it's also going to be handled
6 in another venue, but I can go either way.

7 BZA CHAIR MOLDENHAUER: I do agree
8 with you. We try not to include unnecessary
9 conditions when those are already being
10 addressed by other licensing boards and
11 requirements.

12 So then, is there any further
13 deliberation?

14 (No audible response.)

15 BZA CHAIR MOLDENHAUER: Seeing
16 none, I'll make a motion. Motion to approve
17 Application No. 18075 for a child development
18 center under 205 at 4551 Benning Road,
19 Southeast. That application would be approved
20 conditioned upon -- the number of children
21 that could be enrolled would be 45. The
22 number of staff shall not exceed 14. The

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1 hours of operations shall be between 6:30 a.m.
2 and 6:30 p.m. Monday through Friday. All
3 drop-off and pick-up of the children will be
4 within on-site parking lot. And that this
5 would be for a three-year term.

6 A motion has been made. Is there
7 a second?

8 ZC CHAIR HOOD: Second.

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

12 VICE CHAIRMAN DETTMAN: Aye.

13 MEMBER SORG: Aye.

14 ZC CHAIR HOOD: Aye.

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

17 MR. MOY: Yes, Madam Chair. The
18 staff would record the vote as four to zero to
19 one. This is on the motion of the Chair Ms.
20 Moldenhauer to approve the application for
21 special exception relief under section 205.
22 Second motion, Mr. Hood, Chair of the Zoning

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1 Commission. In sort of the motion, Mr.
2 Dettman and Ms. Sorg. And no other Board
3 Member participating. So again, the final
4 vote is four to zero to one.

5 BZA CHAIR MOLDENHAUER: Thank you
6 very much. And with no opposition then, I
7 would recommend that the Board waive their
8 requirements and provide a summary order.

9 MR. MOY: Very good.

10 BZA CHAIR MOLDENHAUER: Thank you,
11 both, very much.

12 DEACON LEWIS: Thank you.

13 MS. BAILEY: Madam Chair, the next
14 case?

15 BZA CHAIR MOLDENHAUER: Yes,
16 please. Thank you.

17 MS. BAILEY: 18081, application of
18 TBM Holdings LLC and it's pursuant to 11 DCMR
19 3103.2 for a variance from the floor area
20 ratio requirements under subsection 771.2, a
21 variance from the off-street parking
22 requirements under subsection 2101.1 and a

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1 variance from the loading requirements under
2 subsection 2201.1 to allow the renovation and
3 addition to an existing one-story building.

4 The property is zoned HS/C-2-A. It's located
5 at 400 H Street, Northeast. It's Square 808,
6 Lot 10.

7 BZA CHAIR MOLDENHAUER: Thank you
8 very much.

9 Could the parties at the table
10 please introduce themselves?

11 MR. FREEMAN: Good afternoon,
12 Madam Chair. My name is Kyrus Freeman. I'm
13 an attorney with the law firm of Holland &
14 Knight here on behalf of the applicant, TBM
15 Development LLC.

16 MR. REDDING: James Truit Redding,
17 the owner of TBM, one of them.

18 MR. SHER: Steven E. Sher,
19 Director of Zoning and Land Use Services with
20 the law firm of Holland & Knight.

21 MR. CARROLL: Edward Carroll
22 representing the architects SRA Architecture

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1 & Engineering.

2 ZC CHAIR HOOD: Madam Chair?

3 BZA CHAIR MOLDENHAUER: Yes,
4 Chairman Hood?

5 ZC CHAIR HOOD: I have a
6 disclosure to do. I know Mr. Redding. I
7 didn't know he was going to be here today
8 actually, so I think I can continue in this
9 case unless someone has an issue or problem
10 with me continuing. Working with him in the
11 past has no bearing on this case or my
12 decision in this case.

13 BZA CHAIR MOLDENHAUER: Thank you
14 very much, Chairman Hood, for that disclosure.
15 I don't see an issue with that and I believe
16 we can move on.

17 ZC CHAIR HOOD: Okay.

18 BZA CHAIR MOLDENHAUER: At this
19 point in time I'll turn to the applicant to
20 present their case.

21 MR. FREEMAN: As the Board knows,
22 we're here today, as Ms. Bailey stated,

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1 seeking three variances; one from the FAR
2 requirements, one from the parking
3 requirements and one from the loading
4 requirements in order to permit the renovation
5 and addition to an existing building which is
6 currently vacant at 400 H Street, Northeast.

7 The manner in which the applicant
8 meets our burden of proof is set forth in your
9 statement, which is included as Exhibit 26 of
10 the record. We'll highlight some of those
11 points, but that is our primary case.

12 We'll also be submitting Mr.
13 Sher's report which I think you may have now,
14 which details how we meet the burden of proof
15 and we'll go through that in a little more
16 detail if the Board likes.

17 Finally, we'd like to note that we
18 have the ANC's support. We've spent a lot of
19 time at ANC meetings and we have two letters
20 of support in the record from the ANC marked
21 as Exhibits 24 and 28.

22 And as you know, the Office of

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1 Planning has submitted a report recommending
2 approval of the project.

3 That concludes my brief
4 presentation. We're happy to proceed as the
5 Board deems fit. We think the record is
6 fairly sufficient, so if you want us to do a
7 full presentation, we're happy to do that.
8 Otherwise, we're happy to just respond to any
9 questions you may have.

10 BZA CHAIR MOLDENHAUER: I
11 appreciate that. I think that what we would
12 be interested in is, as you stated, maybe Mr.
13 Sher's presentation in regards to the
14 distinction between your presentation and your
15 interpretation of the H Street Overlay and
16 OP's and to provide some clarity on how you
17 interpret that in regards to the relief that
18 you're seeking.

19 MR. FREEMAN: Steve?

20 MR. SHER: Madam Chair, Members of
21 the Board. Again for the record my name is
22 Steven E. Sher, the Director of Zoning and

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1 Land Use Services with the law firm of Holland
2 & Knight.

3 The Office of Planning raised to
4 issues in effect with respect to the H Street
5 Overlay. One was whether we were entitled to
6 1.5 FAR of non-residential use because we were
7 preserving a façade in existence prior to 1958
8 and the other was whether the H Street Overlay
9 District requires that an entrance to the
10 building be from H Street as opposed to a
11 street. And let me deal with that one first.
12 Well, we'll deal with both of them, but we'll
13 deal with that one first.

14 That particular section is
15 1324.10, and I'm going to read the specific
16 language, because the language is key to the
17 answer. It says, "Each commercial use with
18 frontage on H Street, Northeast shall have an
19 individual public entrance directly accessible
20 from the public sidewalk. Multiple dwellings
21 shall have at least one primary entrance on H
22 Street," says he emphasizing on H Street,

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1 "directly accessible from the sidewalk." The
2 plan language of that provision, the first
3 sentence is different from the second
4 sentence. Second sentence says if you have a
5 multiple dwelling, the entrance has to be from
6 H Street. The first sentence says if you have
7 a commercial use, it has to have an entrance
8 directly from the public sidewalk. Doesn't
9 say from the public sidewalk on H Street.

10 This is an existing building. It
11 actually at present today has its only
12 entrance from the 4th Street side of the
13 property, and photographs in the record
14 reflect that. And we believe that that is a
15 condition which is allowed to continue by the
16 Overlay and that we are not required to have
17 an entrance directly from H Street. I think
18 the provision was written in a way that said
19 you would not have one entrance to a building
20 and then off that lobby entrance have interior
21 entrances to retail. The idea was enter the
22 retail directly from the street. In the case

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1 of this corner lot, we're doing that. We're
2 entering it from 4th Street rather than from
3 H Street. And again, that is a continuation
4 of the existing condition. And maybe I should
5 just stop and see if that's enough on that.

6 MR. FREEMAN: I'd just like to add
7 one point. As I'm sure you're aware, Madam
8 Chair, there's a long line of cases which say
9 you read the statute as it's written. You
10 don't add language to the statute, nor do you
11 take words away. I have a stack of cases
12 which I could submit for that proposition if
13 necessary. If you'd like to see those, I'm
14 happy to submit those.

15 BZA CHAIR MOLDENHAUER: I mean, I
16 think obviously we'll have to discuss this
17 with the Board and see what Board questions
18 they have, but I think it's also a question
19 of, you know, is the language clear on its
20 face. And if we determine that it's not clear
21 on its face, then obviously we don't read the
22 content of the statute as it is, but rather

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1 maybe look towards background interpretations.
2 So, it may behoove Mr. Sher to provide us with
3 some background understanding of the intent of
4 the legislation to support his notion that it
5 can be interpreted by meaning that it's just
6 any entrance on the public street and not
7 providing, kind of as you're describing Mr.
8 Sher, I think a shopping mall or a shopping
9 center-type of entrance where you have one
10 entrance and then entrances to multiple
11 facilities from that.

12 MR. SHER: Yes, I think that's
13 what it was intended to preclude.

14 BZA CHAIR MOLDENHAUER: Do you
15 have any additional --

16 MR. SHER: Not with me, no.

17 BZA CHAIR MOLDENHAUER: Do any
18 other Board Members have any questions for Mr.
19 Sher about this specific section of the
20 statute and how it applies?

21 (No audible response.)

22 BZA CHAIR MOLDENHAUER: Seeing

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1 none, at this time maybe you can continue onto
2 the other point, and thank you.

3 MR. SHER: The second point has to
4 do with section 1324.3, and again I'll quote
5 that for the record. "New construction that
6 preserves an existing façade constructed
7 before 1958 is permitted to use" -- I'm sorry.
8 Wrong one. Where's the one on the 1.5? I'm
9 sorry. Wrong provision.

10 What we should be looking at is
11 1321.3, which is "New construction that
12 preserves an existing façade constructed
13 before 1958 is permitted to use an additional
14 1.0 FAR for up to a maximum non-resident
15 density of 1.5 FAR for office uses or
16 neighborhood-serving retail uses as permitted
17 in section 701.1 and 701.4."

18 There's no question that the
19 restaurant use is a neighborhood-serving
20 retail use as specified in those sections, so
21 that's not the question. The question is
22 preserving an existing façade constructed

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1 before 1958. It is our understanding that the
2 building in question was built sometime before
3 1900. Doesn't look that way, but that's when
4 it was built. We found permit records and
5 other indication that that's how old the
6 building is. Exactly when that finish was
7 applied to that façade is not clear, but it is
8 clear that the building itself predates 1958.

9 We're going to change the façade.
10 Again, there's no question about that. It's
11 not a particularly distinguished looking
12 façade today. It's not historic district.
13 It's not subject to that kind of limitation
14 that we couldn't take it completely off if we
15 wanted to. The architects have designed a
16 façade which we think is an improvement over
17 what's there today. But we are keeping the
18 existing façade and we're renovating it.

19 The underlying C-2-A District
20 permits an FAR of 1.5 for commercial uses and
21 the H Street Overlay limits that to .5 except
22 you can get back to the 1.5 if you're

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1 preserving an existing façade. We're
2 preserving more than the existing façade.
3 We're basically preserving the existing one-
4 story building and adding a second story on
5 top of it. So, we believe again that we have
6 met the literal specifications of 1321.3 that
7 we need. We certainly need an FAR variance
8 because we're over 1.5. We're at 1.84 and
9 that's why we're here seeking relief. But I
10 don't think that we are constrained by the .5
11 FAR of the Overlay. We are constrained by the
12 overall 1.5 FAR. So, the variance that we
13 need is .34 FAR.

14 MR. FREEMAN: And I would just
15 add, I think we set forth in our statement an
16 analysis, and we could go through this in a
17 more detailed analysis of how we meet the
18 variance test. And the analysis with respect
19 to how we meet the variance test would be the
20 same whether it's .3 or whether it's .84 as
21 proffered by the Office of Planning. And I
22 think; not to speak for Mr. Jackson, I think

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1 we agree on the end result that a variance
2 should be granted in order to permit the
3 development and to move forward, a Florida
4 Avenue from the FAR requirements should be
5 granted in order to permit the development as
6 proposed and move forward. And I think we and
7 OP at least agree that that is the case and
8 that the argument for meeting the standards
9 for achieving that variance would be the same
10 under any other case.

11 BZA CHAIR MOLDENHAUER: Thank you
12 very much. And I do think that OP in general
13 does agree with the -- and I'll let them
14 obviously speak more in detail to that issue,
15 but with the general approval or the lack of
16 opposition with the case in that regard.

17 But are you completed, Mr. Sher,
18 with your presentation on both of those
19 points?

20 MR. SHER: Yes, on those points.

21 BZA CHAIR MOLDENHAUER: I would
22 like; and I don't know if other Board Members

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1 would like, but I'd like the architect to
2 maybe just describe a little about how the
3 façade is going to be modified and things to
4 that effect.

5 MR. CARROLL: Okay. These are
6 some existing photographs which are included
7 in the zoning application. What you'll see is
8 a building which has essentially one door
9 built on a little carbuncle and one window in
10 the building on H Street and one very small
11 window in the building on 4th Street. Here's
12 the 4th Street elevation of the site. It is
13 essentially a blind box.

14 What we've proposed to do with the
15 project is to introduce French-style doors
16 along the H Street façade, of which the center
17 one will be the entrance to the building.
18 We're going to remove the addition, which is
19 this piece that is attached to the side of the
20 building to create this New Orleans-style
21 character. Also, in looking around the
22 neighborhood, also tried to create a character

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1 which fits into the neighborhood. And then to
2 add an open but roofed area predominately on
3 the roof which would have an open metal grill,
4 something akin to what you might find in New
5 Orleans. Only a very small portion of the
6 second floor would actually be fully enclosed.
7 That particular area is enclosed exclusively
8 to provide additionally support area which we
9 cannot fit within the building itself.

10 If we look at the H Street façade,
11 which is a very, very small piece of façade;
12 it's only 25 feet wide, we're going to
13 continue the character of the upper addition
14 around the front, which would be the arched
15 metal openings, to in addition to put large
16 windows in the form of French doors and a
17 single window here to balance the composition
18 of this particular façade here.

19 We've met with the ANC. We've
20 increased the number of openings and windows
21 in an attempt to get as close as to the
22 character that we're trying to create and

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1 which is also found along the H Street
2 corridor at this point in time. The
3 disposition of uses within the building are
4 directly a result of the shape of the
5 building. It's essentially 25 feet wide by
6 100 feet long. So, maintaining the existing
7 entrance along 4th Street really allows us to
8 make a much more efficient building.

9 And just to elaborate upon that
10 briefly, this would be the entrance here.
11 This way we're entering centrally with all our
12 kitchen and service areas as far away from H
13 as possible, with all seating areas as close
14 to H. Then we have a small basement which we
15 absolutely have to utilize, which forces us to
16 have vertical circulation at that end. So,
17 we're a little constrained along H Street in
18 this particular area here.

19 And the second floor would then
20 have stairs to the seating area and a separate
21 fire exit in convenience there to the kitchen
22 service area. And we're set back 15 feet,

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1 which meets I believe the Overlay requirements
2 in this area here. And we have a smaller
3 rendering if you're interested of what we're
4 proposing to do right here.

5 BZA CHAIR MOLDENHAUER: Thank you.
6 The stairway down on the first floor, is that
7 an existing stairway?

8 MR. CARROLL: No, the existing
9 stairway doesn't meet the code. We basically
10 have to rip it out and put a new stairway in.
11 The current stairway exists --

12 BZA CHAIR MOLDENHAUER: But is the
13 current stairway in the same location?

14 MR. CARROLL: No, the current
15 stairway is right here, which basically
16 prevents us from circulating back through the
17 building. So, we're pushing it as far as away
18 from the space that we need to use. And we're
19 putting the bathrooms in the basement at this
20 point and some storage areas.

21 BZA CHAIR MOLDENHAUER: Do any
22 Board Members have any questions?

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1 (No audible response.)

2 BZA CHAIR MOLDENHAUER: Seeing
3 none, thank you very much.

4 At this point in time, Mr.
5 Freeman, are you completed with your -- oh --

6 ZC CHAIR HOOD: I'm sorry. Yes, I
7 do, but I was trying to wait.

8 BZA CHAIR MOLDENHAUER: All right,
9 sir, please.

10 ZC CHAIR HOOD: I'm sorry, Madam
11 Chair. Let me ask the applicant.

12 The structure that exists there
13 now, and I know that's not necessarily within
14 question, does that have an opening on the H
15 Street side?

16 MR. FREEMAN: No.

17 ZC CHAIR HOOD: Okay. Now, across
18 the street, which is to the west of the site,
19 what's happening on that parcel of land across
20 the street? Because I know the architect
21 mentioned he was looking at the character.
22 What's happening to the west.

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1 MR. FREEMAN: The site of the
2 approved Stewart 3rd and PUD.

3 ZC CHAIR HOOD: Oh, I'd like to
4 say it approved.

5 MR. FREEMAN: Yes.

6 ZC CHAIR HOOD: Okay. Was that
7 taken in consideration in the architecture, of
8 the consideration of what you're doing on that
9 façade, because I heard you mention about the
10 façade on the 4th Street side?

11 MR. FREEMAN: No. He's putting a
12 grocery store there I believe with a parking
13 lot and I knew nothing about Guy Stewart. I
14 know Guy, but I didn't know anything about the
15 project that he was doing before I got myself
16 involved in this project.

17 ZC CHAIR HOOD: Okay. So, what
18 was looked at was the other surrounding area
19 that already exists?

20 MR. FREEMAN: Correct, on the H
21 Street corridor.

22 ZC CHAIR HOOD: And I do have a

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1 question about the H Street Overlay, as
2 someone who sat on it, but I will wait and ask
3 that of Office of Planning. Thank you. Thank
4 you very much.

5 BZA CHAIR MOLDENHAUER: Any other
6 questions from Board Members?

7 VICE CHAIRMAN DETTMAN: Just one
8 question, Madam Chair, thank you.

9 I was just wondering, Mr. Sher, if
10 you could very quickly take the Board through
11 the variance analysis just for the FAR?

12 MR. CARROLL: Okay. Board is
13 familiar with the three-part variance test,
14 that there be some exceptional or
15 extraordinary situation or condition of the
16 property that causes in this case a practical
17 difficulty for the owner and that granting the
18 relief can be done without substantial
19 detriment to the public good and impairing the
20 intent, purpose and integrity of the Zone
21 Plan.

22 As it relates to FAR, the lot is

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1 small for its proposed use. We have looked at
2 other restaurant uses in the H Street corridor
3 and find that all of them are not all of the
4 sort of full-service sit-down restaurants
5 exceed the 2,500 square feet that you could
6 get just on the first floor of this building
7 by itself. Not talking about carry-outs or
8 other places that don't have sit-down
9 operations like this.

10 It's improved with an existing
11 building which occupies 100 percent of the
12 lot, so there's no open space at the rear.
13 And everything that you do obviously then has
14 to go on in the building. There's no room for
15 an outdoor garden or whatever. We are
16 considering the possibility of a sidewalk café
17 and public space, but that hadn't been
18 approved yet and that's not subject to the
19 jurisdiction of the Board.

20 The building is the only existing
21 one-story building on H Street in this
22 immediate vicinity. Everything else is

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1 already two stories. And so, there are likely
2 grandfather rights on most of those buildings
3 to use the upper floors for commercial use.
4 Many of them predate the time when the C-2-A
5 District was reduced in FAR to 1.5. It used
6 to be two prior to 1978. So, you have the
7 situation where this is the only one of those
8 buildings in this block, and pretty much into
9 the next block, where you've got a one-story
10 building that could be used for retail
11 purposes.

12 So, when you look then at trying
13 to put a second floor on to make the space big
14 enough for a restaurant, as the architect
15 described, you lose a lot of that second story
16 space to things that are not seating. You
17 need two means of access from the second
18 floor, you need building service, you need
19 restaurant kitchen space and things like that.
20 When you look at all the space that's devoted
21 to that, and the plans illustrate that, there
22 just isn't enough space on the second floor to

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1 make the second floor viable without expanding
2 beyond the half an FAR that you would get on
3 the second floor if you were limited to 1.5.
4 Since the building occupies 100 percent of the
5 lot on the first floor, that eats up one FAR.

6 So, when you take all that
7 together and say what can we do? Well, the
8 practical difficulty is you don't have enough
9 room left over to make the restaurant work.
10 And so, we are proposing then to go to 1.84
11 FAR as opposed to 1.5 and that gives us the
12 room to create the space that we would like
13 for the restaurant.

14 In terms of the impact on the
15 public good, we're going to wind up with a
16 two-story building which is essentially the
17 same as most of the other buildings in that
18 immediate vicinity. The one right next door
19 is three stories. As Mr. Hood was just
20 alluding to, the PUD approved across the
21 street would go to 75 feet at its maximum
22 height, but that's a brand new building on a

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1 way bigger lot and it would have a grocery
2 store down at the 3rd and H Street end, but
3 that's not at all comparable to this building.

4 We have a site that's well-served
5 by transit. There's bus service on H Street.
6 The trolley is under construction at that
7 point. We believe that the restaurant would
8 draw predominantly from the surrounding
9 neighborhood, and so the need for parking and
10 loading is minimized because of that. So, as
11 it relates to those issues, we believe that we
12 have demonstrated that we would not cause
13 substantial detriment to the public good.

14 VICE CHAIRMAN DETTMAN: Thank you.

15 BZA CHAIR MOLDENHAUER: I believe
16 there are no additional questions at this
17 time. Then what we'll do is move onto the
18 Office of Planning's report.

19 MR. JACKSON: Good afternoon. We
20 have submitted a report on this application,
21 and as the applicant notes, it recommends
22 approval. There are some differences in the

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1 way we interpret the regulations in this case,
2 and so we're available to answer any questions
3 you may have in that regard.

4 BZA CHAIR MOLDENHAUER: Yes, I
5 think that we definitely have some questions
6 in regards to the interpretation of whether or
7 not the applicant is going to need an entrance
8 on the H Street public sidewalk side, or if
9 the 4th Street access is sufficient. In
10 regards to the interpretation, I know that you
11 provided your interpretation of that
12 regulation in your report. If you could
13 elaborate on that, that would be fabulous.

14 MR. JACKSON: All right. Well,
15 again to read that provision, "Each commercial
16 use with frontage on H Street shall have an
17 individual public entrance directly accessible
18 from the public sidewalk." And that's really
19 what we were planning for this property.

20 If you look at our report on page
21 3, the figure 1, you note that the only public
22 sidewalk along the frontage of the property is

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1 along H Street. There is public sidewalk
2 along 4th Street, but that does not extend to
3 the frontage of the property. In fact, the
4 space along the front of the property now is
5 a parking lot and it has seven parking spaces.
6 So, the only public sidewalk adjacent to this
7 property is along H Street.

8 And we also think that the overall
9 intent of this regulation, being that it is
10 for the H Street Overlay, is to encourage the
11 activity and vitality along the H Street
12 corridor and not on the adjacent residential
13 streets. So, that's the basis of our
14 interpretation that the entrance needs to be
15 along H Street.

16 BZA CHAIR MOLDENHAUER: Am I
17 understanding your interpretation to state
18 that the frontage on 4th Street is not of a
19 sidewalk but rather another public area? What
20 is that exactly? How is that defined on the
21 survey?

22 MR. JACKSON: Well, on the survey,

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1 well at least on the aerial and in our
2 description of the property we're explaining
3 that that is striped for parking. But you see
4 that the sidewalk really is the paved area.
5 You see along the edge of 4th Street, there's
6 the pavers on the street, the masonry pavers.
7 That is the sidewalk. It continues but then
8 it becomes concrete sidewalk along 8th Street.
9 So, the entrance into the lobby currently is
10 not adjacent to the sidewalk. And the
11 applicant is proposing to retain the entrance
12 to the lobby now and add additional doors, but
13 none of those doors would open onto the
14 sidewalk. In fact, the proposal is for that
15 space that is currently a parking area to be
16 more of a terrace for outdoor seating. So,
17 the only public sidewalk adjacent to the
18 property currently is H Street.

19 BZA CHAIR MOLDENHAUER: Do you
20 know what that -- I guess I'll refer to it as
21 the paved parking area currently on the OP
22 report. Do you know how that's defined on the

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1 D.C. survey?

2 MR. JACKSON: No, but it's public
3 space.

4 BZA CHAIR MOLDENHAUER: It's
5 public space?

6 MR. JACKSON: Yes.

7 BZA CHAIR MOLDENHAUER: But it's
8 not defined as a sidewalk?

9 MR. JACKSON: Well, no.

10 BZA CHAIR MOLDENHAUER: Do any
11 Board Members have any specific questions on
12 this issue? I'll try to bifurcate OP's
13 presentation.

14 MR. JACKSON: Okay. Now, I should
15 clarify that I said no, but I have not looked
16 at a survey map, a public survey map that
17 indicates what is divided. Because you'll
18 have cart way, then you'll have sidewalk, then
19 you'll have some of the other space for -- so,
20 there are various classifications of public
21 space and so I would have to do additional
22 research to say exactly how that area is

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1 currently delegated in terms of the public
2 record. I'm basically going on what the
3 existing uses -- how the property is striped
4 for usage now. And again, right now it's
5 striped for usage as parking and the
6 applicant's proposed to use as a patio.

7 BZA CHAIR MOLDENHAUER: Do any
8 Board Members have any questions for the
9 Office of Planning on this issue of the H
10 Street frontage?

11 ZC CHAIR HOOD: Yes, Madam Chair,
12 I just wanted to ask Mr. Jackson.

13 I almost feel like I didn't pay
14 attention on this, I'm just curious though.
15 On the H Street Overlay -- let's see, how can
16 I ask this question? The intent of the Zoning
17 Commission I guess, as you mentioned, was the
18 retail and the pedestrian-friendly walkways.
19 But did anybody research and look back at the
20 transcript; I think I read somewhere where
21 someone may have, and exactly see what the
22 Zoning Commission -- if that was the intent?

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1 MR. JACKSON: The transcript
2 really isn't that clear. I think most of the
3 focus was to the amenities and benefits
4 primarily to encourage -- the H Street Overlay
5 is divided in three sections. And I think the
6 goal was to try to encourage residential in
7 one section, to encourage retail in another
8 section and to encourage entertainment and
9 arts uses in the third section. So, most of
10 the discussion was really about how to best go
11 about achieving that end.

12 I think the design standards, at
13 least based on the record, were really to
14 encourage that there would be consistent
15 treatment of buildings along -- such that
16 there was -- interaction was encouraged
17 between the sidewalk and the activities that
18 were along H Street. And they also wanted to
19 make sure that there would be preservation of
20 the existing character of buildings. But that
21 really isn't spelled out either. I mean, it's
22 not clear whether or not just keeping the

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1 building footprint adjacent to the public way
2 was enough of a preservation or that something
3 else was sought.

4 So, some issues weren't focused
5 on, but I think the impetus for this whole
6 proposal was to revitalize H Street and all
7 the mechanisms that were put in the overlay
8 and that was tuned for the various three
9 sections really was to encourage, as I say,
10 the active streetscape with residential in the
11 first part, an active streetscape with retail
12 in the second part, and then arts and
13 entertainment in the third part, which was
14 done at the opposite end of the H Street next
15 to Maryland Avenue.

16 ZC CHAIR HOOD: Now, because it's
17 4th and H, if I remember, this is considered
18 the first part. And I know we have a PUD
19 right across the street.

20 MR. JACKSON: Yes.

21 ZC CHAIR HOOD: And there is some
22 other buildings that took place. And I'm just

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1 curious, and help me remember, just as we come
2 over, is there an opening? Just as we come
3 over the bridge the building to the left if
4 I'm going towards Hechinger Mall, is there an
5 opening in that building on H Street?

6 MR. JACKSON: Well, the building
7 on the left there's just a -- as you come over
8 the bridge --

9 ZC CHAIR HOOD: Just as we're
10 starting -- yes, there's a whole building
11 there, and I --

12 MR. JACKSON: Well, that was the
13 museum, the Children's Museum.

14 ZC CHAIR HOOD: Okay.

15 MR. JACKSON: And the Children's
16 Museum --

17 ZC CHAIR HOOD: Was a part of the
18 overlay, if I'm not mistaken, but it was in
19 the first section.

20 MR. JACKSON: It's on the very
21 edge of it.

22 ZC CHAIR HOOD: Right.

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1 MR. JACKSON: And the Children's
2 Museum I don't believe had a direct entrance
3 from H Street. I believe the development
4 does, but I haven't walked past the property
5 since -- the times that we walked past the
6 property before our move they had the walls up
7 to protect passersby while they were doing
8 construction, so I don't recall that there's
9 an actual direct entrance from H Street to the
10 Children's Museum development.

11 But then you beyond that. There
12 was a service station on the corner which you
13 could access from H Street, but the service
14 station was oriented toward the side street.
15 So, I believe at one time there was a proposal
16 for a service station/retailer use on that
17 property. But again, I don't think they had
18 a direct entrance from the H Street either.

19 ZC CHAIR HOOD: And I will tell
20 you, Mr. Jackson, I think the Zoning
21 Commission, because we're talking about 25,
22 500, something that I would ask the Office of

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1 Planning at some point in time to go back to
2 the Zoning Commission. Because I don't think,
3 at least from this Commissioner's standpoint,
4 that these sites basically I saw as mandating
5 the entrance from H Street, but that's neither
6 here or there for this case. So, thank you,
7 Mr. Jackson.

8 MR. JACKSON: One observation I
9 would make though is if you go east of this
10 site and curve down the street, the majority
11 of the lots are narrower than this one. And,
12 but of course, they have no side entrance.
13 They have to use H Street because that's the
14 only way they can get in and out. This being
15 a corner lot, obviously there are more options
16 on this property than the other properties
17 would have along H Street because they're row
18 buildings.

19 ZC CHAIR HOOD: And I'm just
20 trying to think, in visualizing this does it
21 make sense? I'm just trying to see what makes
22 sense. Okay. Thank you, Mr. Jackson.

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1 BZA CHAIR MOLDENHAUER: I'd like
2 to turn back to the applicant and see if they
3 can respond to the issue that OP brought up
4 about the fact that it is not a sidewalk but
5 rather public space.

6 MR. FREEMAN: Let me start by
7 again thanking OP for their support and
8 recommendation for approval of our
9 application. So, let's start with that.
10 That being said, we obviously disagree with
11 some of Mr. Jackson's statements.

12 Let's just start with whether
13 that's a sidewalk or a parking lot. I think
14 if you pull up Google Earth, which is dated,
15 it shows cars parked there. It's not a
16 parking lot. If you look at the photos in our
17 application; and Mr. Carroll has a photo
18 there, the site photo A, and this is included
19 in your submission, you can see concrete
20 bollards, for lack of a better word, and
21 barrels there that were put there in order to
22 prevent people from parking there because it's

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1 a public sidewalk. I'm not sure what the
2 history was, but people were illegally parking
3 on the sidewalk, therefore DDoT installed
4 those things to prevent people parking on a
5 public sidewalk. Actually, some of those on
6 the west side of 4th Street as well in order
7 to again prevent people from parking on the
8 public sidewalk. So, it's a public sidewalk.

9 Included with your application is
10 a building plat prepared by the D.C.
11 Surveyor's Office, and I can hand a copy of
12 this. The plat shows private space versus
13 public space and it shows very clearly a 20-
14 foot wide sidewalk on 4th Street.

15 Thirdly, we have filed and will be
16 moving forward with a sidewalk café
17 application with DDoT because we would like to
18 use of that sidewalk for a café. So, it is a
19 sidewalk. Mr. Jackson did indicate he wasn't
20 sure, that it might not be a sidewalk, but we
21 have every indication that it is a sidewalk.

22 So, to what the requirements of

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1 section 1324.10 say, each commercial use with
2 frontage on H Street shall have an individual
3 public entrance directly accessible from the
4 public sidewalk. We believe we have that.
5 Our public entrance is directly accessible
6 from 4th Street, which is a public sidewalk.

7 BZA CHAIR MOLDENHAUER: Thank you.
8 You said that you had a copy of D.C. building
9 permit drawing that had been identified?

10 MR. FREEMAN: Right, included with
11 our application we, as you know, have to
12 include a copy of the D.C. Surveyor's plat
13 with our building footprint.

14 BZA CHAIR MOLDENHAUER: Exhibit
15 No. 3, I believe. But it doesn't actually
16 say. It just shows the public space.

17 MR. FREEMAN: Well, right. The
18 dark line is the property line and that's the
19 same for every building plat from the
20 Surveyor's Office, whereas everything to the
21 left of that is a sidewalk. It's public
22 space. So, you can see we put a dimension on

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1 that.

2 BZA CHAIR MOLDENHAUER: Well, I
3 think what OP was stating was there's a
4 distinction between public space and sidewalk.
5 And so, it's not specifically identified here
6 on this survey as one or the other, other than
7 it's not being --

8 MR. FREEMAN: There's not.
9 There's not. I mean, there's sidewalk.

10 BZA CHAIR MOLDENHAUER: There's no
11 legal distinction between sidewalk and public
12 space?

13 MR. FREEMAN: If you were to look
14 at our site photo A, that long wall, our
15 building abuts the property line. So,
16 everything across from that is sidewalk.
17 There's a 20-foot wide sidewalk there.

18 BZA CHAIR MOLDENHAUER: I think
19 it's potentially ambiguous because you do have
20 -- in a lot of the areas of the city you have
21 public space which is not being used and is
22 potentially an expansion of a roadway. Now,

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1 obviously that's not the case here. But you
2 do have areas where people use their public
3 area, public space, and that would be public
4 space that wouldn't be a sidewalk, but it
5 would be a potential expansion for
6 streetscapes. Isn't that correct in the city?

7 MR. FREEMAN: There's public
8 space. Public space can be comprised of a
9 number of things. It could be comprised of
10 sidewalk. It can be comprised of planters.
11 It can be comprised of streets. In this case,
12 this public space which is paved is a
13 sidewalk. If you look kind of to the right,
14 there are some planters there. That other
15 grayish pavement if you will, that's a planter
16 area as distinguished from our sidewalk area.
17 So, I'm not sure where the assertion that it's
18 something other than a sidewalk is really
19 stemming from. We're happy to get public
20 space distribution records from DCRA or the
21 Surveyor's Office, whichever office keeps
22 those. But we have no doubt whatsoever that

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1 that's a sidewalk. In fact, we are filing a
2 sidewalk café application for the use of that
3 sidewalk.

4 So, we weren't prepared for this
5 conversation because we didn't know that was
6 going to be a comment made today, but we're
7 happy to present anything necessary which
8 clearly demonstrates that that is a public
9 sidewalk.

10 BZA CHAIR MOLDENHAUER: I
11 appreciate that. I'm just trying to make sure
12 that we understand any counters that you may
13 have as the applicant to comments that are
14 being made by the Office of Planning.

15 So, I think at this point we can
16 then go onto the Office of Planning. Do you
17 have any other comments in regards to façade,
18 or no?

19 MR. JACKSON: Well, did you have
20 any other questions pertaining to the façade?

21 BZA CHAIR MOLDENHAUER: I do not,
22 no.

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1 MR. JACKSON: Okay. No other
2 comment.

3 BZA CHAIR MOLDENHAUER: Do Board
4 Members have any questions for the Office of
5 Planning?

6 (No audible response.)

7 BZA CHAIR MOLDENHAUER: I don't
8 see any. And so then at this point in time we
9 will move on.

10 Chairman Hood, did you have a
11 question?

12 ZC CHAIR HOOD: No. No, thank you
13 though. No, I don't.

14 BZA CHAIR MOLDENHAUER: Okay.
15 Move onto the ANC 6C. Is ANC 6C present?

16 (No audible response.)

17 BZA CHAIR MOLDENHAUER: Not seeing
18 them present, I have our Exhibit No. 28 which
19 is a letter from the single member district
20 ANC. And then the applicant had also included
21 in their Exhibit 26(d) a letter from the full
22 ANC. And the letter from the single member

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1 district, which is our No. 28, obviously does
2 not satisfy all of the requirements, but the
3 letter dated June 14th, 2010 from Karen Wirt
4 does -- it is a letter from the full ANC
5 indicating that there was a duly-noticed and
6 held meeting on June 9th, 2010 where a quorum
7 was present and eight out of nine of the
8 commissioners were present representing a
9 quorum and that it was a vote unanimously to
10 support the application eight to zero to zero.

11 They did provide some conditions
12 indicating that the applicant will provide
13 lighting in the rear alley, that parking will
14 not be permitted on the sidewalk adjacent to
15 the building on the 4th Street Northeast side,
16 and that according to the H Street Overlay the
17 design of the H Street façade will include
18 windows that are higher in vertical length
19 rather than shorter. In regards to the
20 windows, we'll continue with the ANC
21 commissioner.

22 But I believe that some of those

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1 elements are not elements that we have the
2 authority to dictate. But let me put it back
3 to the applicant and see.

4 Have you worked with the ANC on
5 these issues?

6 MR. FREEMAN: Right. We went to
7 the ANC a number of times. So what happened,
8 we went to their Planning and Zoning Committee
9 and then the full ANC meeting. And at that
10 full ANC meeting, the letter you just
11 referenced, they asked us to do certain things
12 like lighting in the alley, which we're happy
13 to do, not allowing cars to park on the
14 sidewalk, which we will not be allowing, which
15 we will not do. And we also met with
16 Commissioner Phelps to just kind of further
17 refine the articulation of the façades. And
18 what you see today are those revised façades,
19 which is why Commissioner Phelps then
20 submitted just that follow-up letter saying
21 that we met with her to address her concerns
22 and the plans you've seen today resolve her

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1 concerns.

2 So, I think we're fine. I don't
3 know if you necessarily had to put those three
4 things as -- assuming you vote to approve it,
5 I'm not sure you have to put those as
6 conditions, but they're all things that we've
7 agreed to do.

8 BZA CHAIR MOLDENHAUER: Thank you.
9 At this point in time are there any additional
10 individuals is support or opposition?

11 (No audible response.)

12 BZA CHAIR MOLDENHAUER: Seeing
13 none, then I would turn back to the applicant
14 for any closing remarks.

15 MR. FREEMAN: Well, thank you for
16 your time this afternoon. I think all of our
17 witnesses and materials submitted indicate how
18 we meet the burden of proof for the request
19 we've asked for. I think although we have
20 some differences, I think the Office of
21 Planning's report also indicates that we meet
22 the burden of proof for the request we've

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1 asked for. There may be some issue about
2 whether we need more relief, but we disagree.
3 And if we needed more relief, we'd come back
4 for that relief if necessary. So, we're
5 confident we don't need that relief. So, we'd
6 like to thank them for their report.

7 We'd like to thank the ANC for
8 their support and we think the record is
9 complete.

10 And if the Board is so inclined,
11 we'd like to move forward with our project.
12 I know the summer's coming up here, so you're
13 running out of dates. If possible we'd ask
14 for some direction from the Board today.

15 BZA CHAIR MOLDENHAUER: Thank you
16 very much, Mr. Freeman, for your presentation
17 and for the applicant.

18 I believe that we are in a
19 position to move forward into deliberations.
20 Then at this point in time, I will conclude
21 this hearing and we will enter into
22 deliberation. I will turn then to Mr. Dettman

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1 to start us off.

2 VICE CHAIRMAN DETTMAN: Thank you,
3 Madam Chair. This is an application for three
4 areas of relief all in the form of variance.
5 Those three areas of relief are from the
6 allowable FAR, parking under 2101, and loading
7 under 2201.

8 For parking, given the proposal,
9 eight parking spaces would be required and no
10 parking spaces are being proposed.

11 Similarly for loading, given the
12 size of the building, one loading berth at 30
13 feet as well as a 100-square-foot loading
14 platform would be required and no loading
15 facilities are being proposed.

16 And with respect to FAR, what's
17 being proposed is a total FAR of 1.84, where,
18 according to the applicant and according to
19 the regs, a maximum non-residential FAR would
20 be permitted by way of 1321.3. Just to make
21 one very quick note about that provision, I
22 actually agree with the applicant in terms of

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1 its interpretation of 1321.3. I know in the
2 Office of Planning's report they state on page
3 3 they don't agree with the applicant's
4 interpretation that they are allowed .5 FAR of
5 new non-residential construction in addition
6 to the current 1.0 FAR. They go onto say that
7 they think it's a reasonable interpretation to
8 retain the street wall. If the BZA agrees
9 with this interpretation, then it would be
10 1.5.

11 I think OP's approached that
12 provision to require that the façade be
13 historically significant or landmarked, or
14 however you want to describe it, but I think
15 the language is pretty clear. Perhaps when
16 drafting this provision there was this notion
17 that any façade constructed before 1958 would
18 be -- you know, it would be admirable to
19 retain. Just so happens maybe this one
20 aesthetically isn't what, you know, the
21 drafters thought it was going to be. But
22 nonetheless, there's no requirement for it to

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1 be historically designated or significant.

2 So, I think the applicant is entitled to an
3 FAR of 1.5 for non-residential.

4 I think the parking and loading
5 variances are pretty straightforward. We have
6 a building that's been in existence for quite
7 some time. It certainly predates the
8 regulations and it encompasses 100 percent of
9 the lot. And so to provide any kind of
10 surface parking would require substantial
11 demolition of the building, almost an entire
12 demolition of the building given the minimum
13 requirements for the size of a parking space.
14 And the same goes for loading. Some extent of
15 demolition of the existing building would be
16 required, which essentially would probably
17 create practical difficulties in making this
18 a viable restaurant business venture.

19 To provide parking or loading
20 facilities underground would of course create
21 some practical difficulties by way of cost and
22 impact to the economic feasibility of the

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1 project. Not only that, but given the shape
2 and the relative narrowness of the site and
3 the space requirements for the necessary
4 access down underground, you're talking about
5 probably more than one level of parking and
6 that creates some practical difficulties.

7 The last variance for FAR, and the
8 extent of the variance for FAR is de minimis.
9 We're talking about an additional .34 FAR of
10 building space. And the applicant doesn't
11 rely upon one exceptional circumstance.
12 There's kind of a confluence of them.

13 Mr. Sher testified that the
14 proposed use is small in relation to the other
15 full-service restaurants along the H Street
16 corridor. The building occupies 100 percent
17 of the lot. It's the only one-story building
18 along H Street. They're required to have two
19 means of access and egress per the building
20 code and that in order to do a second story
21 addition, it requires some support space, some
22 kitchen space up on that level.

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1 I think that the applicant has met
2 its burden for the FAR, though I don't
3 consider it to be the strongest argument. I
4 think that if a property owner is required
5 through the building code to provide two means
6 of egress, I don't think that that necessarily
7 is an exceptional circumstance specific to
8 that piece of property that would encompass a
9 certain amount of square footage that would be
10 counted towards unusable FAR, I guess I'll
11 call it.

12 But, I think that given the
13 improvements on the land, that this building
14 and the 100 percent lot occupancy in relation
15 to other buildings along the corridor, I think
16 that the applicant has made its case that
17 there are a confluence of exceptional
18 circumstances that give rise to a practical
19 difficulty.

20 My last point I wanted to make was
21 whether or not the provision of 1324.10 is
22 applicable to this case. And I think I see it

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1 a little differently than the applicant in
2 that I think that the spirit of the provision
3 is directed at encouraging entrances along the
4 H Street corridor. So, I think reading
5 1324.10 it's interesting that the
6 differentiate between an individual public
7 entrance for commercial uses and saying that
8 multiple dwellings shall have at least one
9 primary entrance along H Street. And so, I
10 think the focus is on the H Street sidewalk or
11 the H Street frontage and that for commercial
12 uses that they're almost limited to having an
13 individual public entrance to the sidewalk.
14 But for multiple dwellings they have to have
15 at least one primary entrance on H Street.
16 And then if there are other entrances, other
17 primary entrances, they could be located
18 elsewhere.

19 But nonetheless, I don't think
20 that that prevents us from going forward today
21 on taking a vote on this project because as
22 this is a self-certified application and it

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1 would be up to the Zoning Administrator in
2 carrying out the typical zoning review for a
3 building permit, that if the Zoning
4 Administrator determines that relief from
5 1324.10 is necessary, the applicant would be
6 required to come back.

7 So, with that, Madam Chair, I'm in
8 support of the project and will turn it back
9 to you.

10 BZA CHAIR MOLDENHAUER: Thank you
11 very much, Mr. Dettman. And I think you did
12 a very thorough analysis of the multiple
13 relief that is being requested here, and I am
14 actually in agreement with you on all the
15 factors. I personally think that the fact
16 that the building takes up 100 percent of the
17 lot in and of itself provides a uniqueness and
18 a practical difficulty for really any viable
19 use. And that I do agree with you in the fact
20 that it's not a matter of a restaurant use or
21 the need for additional forms of egress or
22 things of that effect, but rather that by

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1 having an existing building that takes up the
2 entire lot, it makes it practically difficult
3 to put any parking on the space or in regards
4 to put required loading and things of that
5 effect and to satisfy the standards of the
6 Zoning Regulations as they are stated.

7 I think that your evaluation of
8 1321.3 is also correct and we will, you know,
9 make a decision in regards to the requests
10 that are before us, not additional requests
11 that may be required or needed by the Zoning
12 Administrator.

13 That being said, I will look to
14 see if there's any additional deliberation for
15 any other Board Members.

16 ZC CHAIR HOOD: I don't have any
17 more to add, but I agree with the assessment,
18 especially dealing with 1324.10. Thank you.

19 BZA CHAIR MOLDENHAUER: That I
20 believe being all the deliberation, is there
21 a motion?

22 VICE CHAIRMAN DETTMAN: Madam

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1 Chair, I'd move approval of Application No.
2 18081 of TBM Holdings LLC for a variance from
3 the floor area requirements of subsection
4 771.2, a variance from the off-street parking
5 requirements under 2101.1, and a variance from
6 the loading requirements under subsection
7 2201.1 at premises 400 H Street, Northeast.

8 BZA CHAIR MOLDENHAUER: Thank you.

9 A motion has been made. Is there a second?

10 ZC CHAIR HOOD: Second.

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

14 VICE CHAIRMAN DETTMAN: Aye.

15 MEMBER SORG: Aye.

16 ZC CHAIR HOOD: Aye.

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

19 MR. MOY: Yes, Madam Chair. Staff
20 would record the vote as four to zero to one.
21 This is on the motion of the Vice-Chair, Mr.
22 Dettman to approve the application with

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1 variance relief from 771.2, 2101.2 and 2201.1.
2 Seconded is Mr. Hood. In support of the
3 motion Ms. Moldenhauer and Ms. Sorg. No other
4 Board participating. Again, the total is four
5 is zero to one.

6 BZA CHAIR MOLDENHAUER: Thank you
7 very much, Mr. Moy. And seeing that there's
8 no opposition, the Board would waive the
9 requirements and I request that a summary
10 order be issued.

11 MR. MOY: Very good. Thank you.

12 MR. FREEMAN: Thank you, Madam
13 Chair and Members of the Board.

14 MR. CARROLL: Thank you.

15 BZA CHAIR MOLDENHAUER: I believe
16 we can call the next case and the parties can
17 step forward.

18 MS. BAILEY: Madam Chair, the next
19 case is Application 18063. It's the
20 application of Zachary and Lydia Plotz and
21 others, and it's pursuant to 11 DCMR 3104.1,
22 for a special exception to allow a rear deck

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1 addition to an existing flat; that's a two-
2 family row dwelling, under section 223, not
3 meeting the lot occupancy (section 403), rear
4 yard (section 404), and court requirements
5 (section 406). The property is zoned R-4.
6 It's located at 3420 13th Street, Northwest,
7 Square 2838, Lot 25.

8 BZA CHAIR MOLDENHAUER: Thank you
9 very much, Ms. Bailey.

10 I guess we'll wait until all the
11 parties get seated and then I'll ask everyone
12 to introduce themselves.

13 Ms. Acosta, we'll start off with
14 you, and if you can introduce yourself, you
15 know, your name and address, and then we'll
16 work our way down the table.

17 MS. ACOSTA: Hi, I'm Wendy Acosta,
18 owner of Unit 1 for 1300 Monroe Street,
19 Northwest, Washington, D.C., 20010, in
20 opposition.

21 MR. NOKER: Hi, I'm Jason Noker.
22 I'm Wendy's husband. I'm also an owner at

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1 1300, Northwest.

2 MR. RUSSO: Good afternoon.

3 Michael Russo from the law firm of Council
4 Baradel Kosmerl & Nolan, 1725 West Street, 4th
5 Floor, Annapolis, Maryland.

6 MS. FORD: Hi, I'm Susan Ford also
7 with Council Baradel Kosmerl & Nolan, 125 West
8 Street, Annapolis, Maryland, also for the
9 applicant.

10 MR. SEWELL: Hi, I'm Mike Sewell.
11 I'm owner of Michael Sewell Architect PLLC
12 registered in the District of Columbia.

13 MR. HASKELL-HOEHL: Good
14 afternoon. My name is Micah Haskell-Hoehl.
15 I'm a resident at 3420 13th Street, Northwest,
16 Unit No. 2.

17 MS. PLOTZ: Hi, my name is Lydia
18 Plotz. I'm an applicant and owner of Unit 1
19 at 3420 13th Street, Northwest.

20 MS. LEMKE: Hi, I'm Jessica Lemke,
21 also an owner of 3420 13th Street along with
22 Micah.

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1 BZA CHAIR MOLDENHAUER: Thank you
2 very much. I first want to start off and ask
3 the applicant, either Mr. Russo or Ms. Ford,
4 I guess who is going to be handling the
5 primary so I know who to address?

6 MR. RUSSO: Ms. Ford.

7 BZA CHAIR MOLDENHAUER: Okay. Ms.
8 Ford then, the documents that we have in the
9 record that were submitted by you as to like
10 July 8th and other documentation, was that
11 served on the parties in opposition?

12 MS. FORD: Yes, I believe all the
13 documents were served on the parties in
14 opposition.

15 BZA CHAIR MOLDENHAUER: Okay.
16 Thank you. There was no CC'ing of them on the
17 bottom of the documentation, so I didn't have
18 knowledge of that. I appreciate that
19 confirmation.

20 And, Ms. Acosta, you had received
21 all the documentation?

22 MS. ACOSTA: We have received

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1 plans from the neighbors personally, but aside
2 from plans we haven't received anything else.
3 So, I'm not quite sure of other documentation
4 being submitted.

5 MS. FORD: I thought you meant the
6 plans. Did you mean something else?

7 BZA CHAIR MOLDENHAUER: I mean any
8 letters, any correspondence that is provided.

9 MS. FORD: Just for the record I
10 apologize. I'm not sure that the letter that
11 went to Mr. Moy that they asked me to send out
12 last week, I'm not clear that that went to the
13 neighbors as well. And I do have extra
14 copies. I'd be glad to give them a copy right
15 now if that would be helpful.

16 BZA CHAIR MOLDENHAUER: Please do
17 so. I mean, I don't believe that the parties
18 in opposition want to delay the case any
19 longer, but I think that they should have an
20 opportunity to read or review any submissions
21 that come to this office.

22 MR. NOKER: We also never got a

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1 copy of the Office of Planning's report.

2 MS. FORD: I have extra copies of
3 that, too, that I could give them if that
4 would be helpful.

5 BZA CHAIR MOLDENHAUER: Please.

6 MR. NOKER: Yes, I thought that
7 was part of the party status was that you're
8 supposed to get a copy of everything.

9 BZA CHAIR MOLDENHAUER: You should
10 be getting a copy of everything. I'm looking
11 down to Mr. Moy.

12 MR. MOY: Yes, typically the
13 Office of Planning is not considered a party
14 in the sense of the word "party." They make
15 their filing to the Office of Zoning and that
16 fulfills their obligation.

17 BZA CHAIR MOLDENHAUER: Yes, I
18 believe last time, Mr. Noker and Ms. Acosta,
19 you guys didn't want to do so much delay. So,
20 what I'll do is I'll provide you a few minutes
21 to review that. Okay.

22 MS. FORD: I think we let her have

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1 that, too. Did you get that?

2 MR. NOKER: We didn't.

3 MS. FORD: All right. Here's the
4 ANC letter and the second staff report. The
5 6th Office of Planning. And I think that's
6 everything in the world that I know of, apart
7 from the initial application.

8 BZA CHAIR MOLDENHAUER: Perfect.
9 I appreciate that. I just want to make sure
10 that we get things to that effect out at the
11 beginning of a case. So, at this --

12 MS. FORD: I'm sorry to interrupt.
13 While we're exchanging documents, I believe
14 that the opponents -- yes, I haven't seen
15 their documents. Great. Thank you.

16 BZA CHAIR MOLDENHAUER: Mr. Noker,
17 would you like a few minutes to review the
18 documents that you've just received? Would
19 you like a five minute break, or are you
20 sufficient with moving forward?

21 MR. NOKER: I mean, yes, we'll
22 take five minutes.

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1 BZA CHAIR MOLDENHAUER: Okay. So
2 then, what we'll do is we will reconvene at
3 let's just say 3:20 based that clock. So,
4 it's about 10 minutes. Okay?

5 MS. FORD: Great.

6 BZA CHAIR MOLDENHAUER: Thank you.

7 (Whereupon, at 3:11 p.m. off the
8 record until 3:20 p.m.)

9 BZA CHAIR MOLDENHAUER: Okay.
10 We're back on the record. I believe that
11 we've been providing everybody sufficient time
12 to review any additional documents.

13 At this point in time I will turn
14 then to Ms. Ford to present the applicant's
15 case. I believe you have to turn your
16 microphone on.

17 MS. FORD: So, is that on now?

18 BZA CHAIR MOLDENHAUER: Yes.

19 MS. FORD: Sorry. Thank you,
20 Madam Chairman and Members of the Board.
21 Again, I'm Susan Ford with Council Baradel and
22 I would be the agent for the property owners

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1 for this case.

2 I was here in the audience when
3 they did the postponement request, so I
4 understand the Board has a flavor for sort of
5 some of what's going on and that there's
6 certainly opposition to this deck. And then
7 we got involved and the first thing I said
8 when I looked at this is you got to scale this
9 back. That's the first thing that has got to
10 happen.

11 And so, what we did is immediately
12 get together, brainstorm, what plans could we
13 come up with to scale this back? And then we
14 submitted in June, I believe, a revised deck
15 configuration. And I call it the long
16 diagonal, and that's represented in the plans
17 that we submitted two weeks ago for Mr. Sewell
18 as BZA 3. And that configuration is what was
19 submitted in early June.

20 Since that time, we also were very
21 fortunate to have Mr. Sewell come on board as
22 our architect, and he's done a great job with

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1 visual depictions of other alternatives. And
2 he actually came up, he said why don't you
3 think about a rectangular configuration? So,
4 that's submitted within the exhibit as Exhibit
5 BZA 5.

6 Both of these plans were submitted
7 to the neighbors and there have been intensive
8 discussions about all this. And it turns out
9 that the neighbors would really prefer to see
10 just the rectangular deck as opposed to the
11 one with the long diagonal. So, at this point
12 we're just asking that the Board consider the
13 revised configuration which is submitted as
14 BZA 5 at this time, because that's the one the
15 neighbors have -- well, the neighbors -- to be
16 fair; I don't want to misrepresent anything,
17 they prefer that there's no deck at all.
18 That's going to come out loud and clear. I'm
19 sure that's going to be their number one
20 choice, to rip the whole thing done. That's
21 what they want to see. But if there has to be
22 some kind of deck, it's my understanding that

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1 between the two configurations that the
2 rectangular configuration is the preferred
3 one.

4 Now, I presume they're going to
5 present testimony that they would prefer that
6 it be even smaller than it is. We would
7 prefer to keep it the size that it is shown in
8 BZA 5, and the Board will do what the Board
9 will do. But just to be clear about where we
10 are right now, the neighbors have also
11 expressed concern about noise and privacy and
12 the like. And Mr. Sewell again will address
13 the configuration of the deck and how it --
14 the proposed reconfiguration and how it
15 addresses privacy.

16 The neighbors have requested, Ms.
17 Acosta and -- I'm sorry --

18 MR. JACKSON: Noker.

19 MS. FORD: -- Noker, I apologize
20 -- have requested that we actually buy or
21 install or whatever a soundproof window, and
22 we've agreed to do that for their unit. So,

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1 if that would help as well, we can put it in
2 the record as a condition that -- they sent a
3 website over, and so a window that would be in
4 conformance basically with what they've sent
5 on the website and that we would pay for the
6 soundproof window if that would help.

7 Screening has also been brought
8 up. And to address that, it's my
9 understanding that the first floor neighbors
10 would prefer that there is no screening. So,
11 that's fine. We'd put no screening if they
12 don't want it. We're not clear what the
13 second and third floor owner on the other side
14 wants as far as screening. We've heard that
15 she likes the lattice. I don't believe she's
16 going to be here to testify, but we would put
17 on the record that if she preferred a lattice,
18 we'll do lattice. If she prefers no
19 screening, we'll no screening. If she wants
20 bamboo shades, we'll do that, that basically
21 we're very open to whatever they prefer to do,
22 we will do. So, again and those can be the

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1 conditions of the variance if the Board
2 determines that it would like to grant any
3 such approval.

4 So, at this point with the revised
5 configuration BZA 5, we no longer need a
6 variance for lot coverage. We've come down
7 below the 60 percent. So the only variances
8 we're asking for at this point are for rear
9 yard and courtyard variances. And actually,
10 every time I say "variance," I also mean
11 variance or in the alternative, special
12 exception as well, just to make the record
13 clear that we're asking for the relief in the
14 alternative. And the application documents
15 have been submitted indicating that the
16 applicant meets the standards for both of
17 those.

18 So, I understand that the record's
19 fully full with the application documents.
20 I'd like to ask Mr. Sewell to basically go
21 through BZA 5 and indicate how it reflects a
22 reduction in size from the current decks as

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1 they're built and how it addresses concerns
2 with regard to privacy, and light and air and
3 the like.

4 And then, I believe the applicants
5 would both like to testify a bit about the
6 situation and again their attempts to address
7 and ameliorate the situation and how it
8 occurred.

9 VICE CHAIRMAN DETTMAN: Ms. Ford,
10 just very, very quickly --

11 MS. FORD: Yes?

12 VICE CHAIRMAN DETTMAN: -- just to
13 make sure the record is very clear, it is a
14 special exception. There are no variances
15 here. It's a special exception under 223.
16 So, I didn't know if you intended on taking us
17 through the special exception criteria as well
18 as the area variance, but unless Board Members
19 disagree, we're strictly looking at a special
20 exception here.

21 MS. FORD: Okay. But Mr. LeGrant
22 had told us we need a variance, so that's why

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1 we applied for one initially, and that's why
2 we applied in the alternative for the relief.
3 So, we just didn't want to not apply for
4 something that we were told to apply for.

5 BZA CHAIR MOLDENHAUER: I believe,
6 just for clarification, that was when Mr.
7 LeGrant was looking at the initial deck as it
8 existed currently, not in regards to a
9 modified BZA 5 size deck. And now, under the
10 current size; and I want to make sure that I
11 understand your application, are you
12 completely amending your application to only
13 be asking for a BZA 5 deck?

14 MS. FORD: Yes.

15 BZA CHAIR MOLDENHAUER: Okay. So,
16 if that is the case, then because of the size
17 of that, it now fits within this 223 relief
18 and there is absolutely no need for a variance
19 so long as you understand that you're formally
20 amending your application.

21 MS. FORD: Yes.

22 BZA CHAIR MOLDENHAUER: Okay.

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1 Perfect. So, then we will then just look at
2 the 223 relief standard for that.

3 I will let you continue on in your
4 application both with the architect and then
5 with the unit owners, but I just want to make
6 something clear, and I think I made this clear
7 at the last meeting, but there are references
8 to different issues in the record. Before
9 people start testifying I want to make sure
10 that there should be no testimony as to past
11 events or how the deck was obviously created.
12 We're dealing simply with as though no deck is
13 there and then being able to build now a BZA
14 5 deck as it's being presented.

15 Let me address one more thing and
16 then if there's any questions. If opposing
17 party wishes to use the existence of a deck in
18 regard to knowledge of how a deck could
19 potentially create problems with privacy,
20 light or air, you can use that in that
21 instance only, for knowledge of how that could
22 affect it. But again, no prior discussion of

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1 the existing deck will be discussed. It will
2 just simply be whether or not a BZA 5 deck can
3 be constructed.

4 MR. NOKER: Yes.

5 BZA CHAIR MOLDENHAUER: Yes, if
6 you have questions.

7 MR. NOKER: Okay. Well, my
8 question I guess would be for the Office of
9 Planning since the basis of the report they
10 put together has a column for the existing
11 deck structure in it.

12 BZA CHAIR MOLDENHAUER: Okay.
13 Again, under a 223 that won't be an issue and
14 we'll talk to Office of Planning when it comes
15 to the time in the proceeding to have OP
16 report. But under 223 relief we simply look
17 at the factors for 223. So, I want to make
18 sure that's clear for everybody as we move
19 forward.

20 I'm going to go back now to the
21 applicant and I believe if you are I guess at
22 the point where you want to have your

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1 architect present the case.

2 MS. FORD: Yes, please. And I
3 guess before the Board I'd like to have him
4 testify as an expert architect licensed in the
5 District of Columbia.

6 BZA CHAIR MOLDENHAUER: Do we have
7 his résumé?

8 MS. FORD: I don't believe we do,
9 but I could go through and qualify him through
10 voir dire if that would be necessary.

11 BZA CHAIR MOLDENHAUER: Our rules
12 do require that we have a résumé or
13 information, so it would be required.

14 MS. FORD: Okay. Mr. Sewell,
15 could you state your name and address for the
16 record, please?

17 MR. SEWELL: Sure. My name is
18 Michael P. Sewell. My address is 4438
19 Ellicott Street, Northwest and I also practice
20 out of that address.

21 MS. FORD: Okay. And could you
22 tell the Board what your occupation is,

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1 please?

2 MR. SEWELL: Yes, I'm a licensed
3 architect in the District of Columbia, NCARB
4 and LEED certified.

5 MS. FORD: And how long have you
6 been a licensed architect?

7 MR. SEWELL: I've probably been
8 licensed for 12 years now.

9 MS. FORD: Okay. And how long
10 have you practiced as an architect in D.C.?

11 MR. SEWELL: In D.C. these last
12 five years.

13 MS. FORD: Okay. And do you teach
14 anywhere with regard to architecture?

15 MS. BAILEY: I teach design at
16 Catholic University and the University of
17 Maryland.

18 MS. FORD: Okay. At this time I
19 would offer Mr. Sewell as an expert architect
20 in D.C.

21 VICE CHAIRMAN DETTMAN: Mr.
22 Sewell, I'm just curious, in terms of the

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1 scope of your testimony today, how much of it
2 has anything to do with architecture and how
3 much of it has anything to do with actual
4 zoning and the technical nature of calculating
5 rear yard lot occupancy, etcetera?

6 MR. SEWELL: The lion's share.
7 Well, a little bit of both with the lion's
8 share to zoning and regulatory conditions,
9 although I'd submit those are a vast part of
10 the professional practice of architecture.

11 VICE CHAIRMAN DETTMAN: Okay.
12 Could you just kind of give us a general idea
13 of what you'll be testifying to in terms of
14 architecture and your expertise?

15 MR. SEWELL: A little bit about
16 the relationship between the zoning envelope
17 broadly construed and the proposal in
18 reference in BZA 5, and then also a little bit
19 to the -- what's the right word -- health,
20 safety, light and air conditions addressed,
21 and visual conditions redressed or addressed
22 by this specific proposal relative to the

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1 adjacent property.

2 VICE CHAIRMAN DETTMAN: Okay. And
3 with respect to the noise and the visual
4 implications of the proposed deck, that's the
5 area that you'll be relying upon your
6 expertise in architecture?

7 MR. SEWELL: Yes, and zoning again
8 insofar as zoning and building codes
9 constitute a significant proportion of my 15
10 years in the professional practice of
11 designing and constructing buildings, in many
12 cases public buildings.

13 VICE CHAIRMAN DETTMAN: Okay. But
14 you're not presenting yourself as an expert in
15 planning and zoning, right? So, to the extent
16 that your testimony deals with the
17 calculation, the technical ramifications of
18 zoning, that portion of your testimony would
19 not be afforded the great weight. However,
20 with respect to views, noise, what have you,
21 the actual structure and how it stands up,
22 we'll be giving great weight to that

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1 testimony?

2 MR. SEWELL: Okay. I think I
3 agree with that statement insofar as I
4 understood it. The only clarification or the
5 other response I'd have to that is that the --
6 I'm trying hard to observe the existing -- or
7 prior injunction about existing or prior
8 conditions. It is true that one piece of work
9 that I have performed relative to this case
10 was to produce documents on the existing
11 conditions which were substantially more
12 accurate than those that had previously been
13 evaluated, and I can talk a little bit about
14 the relationship between the existing ones or
15 the previous documents and the news ones.

16 In the course of that work we also
17 commissioned a survey which was not available
18 at the time for pre-submission documents for
19 this meeting. But we now have in hand and so
20 I'm also able to address the relationship
21 between the survey produced by a licensed
22 surveyor in D.C. and enter it into the record.

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1 Or, not enter it into your record, but a legal
2 document and our drawings that we now have on
3 the table. Did I answer your question?

4 VICE CHAIRMAN DETTMAN: Oh, yes.
5 Thank you.

6 BZA CHAIR MOLDENHAUER: Thank you.
7 I believe based on Mr. Dettman's further voir
8 dire that we would introduce -- I'm sorry,
9 your last name again --

10 MR. SEWELL: Sewell.

11 BZA CHAIR MOLDENHAUER: -- Sewell,
12 Mr. Sewell as an expert in architecture. Are
13 there any additional objections to that?

14 (No audible response.)

15 BZA CHAIR MOLDENHAUER: Seeing
16 none, if you would like to proceed, Mr.
17 Sewell?

18 MS. FORD: Okay. And I was just
19 going to ask him a few questions and have him
20 discuss this.

21 Mr. Sewell, you're familiar with
22 the property in question and the general

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1 courtyard area?

2 MR. SEWELL: Yes, I am.

3 MS. FORD: And what's the basis
4 for your familiarity?

5 MR. SEWELL: Visited the site on
6 one occasion last month and have performed
7 documentary and visual research.

8 MS. FORD: Okay. And did there
9 come a time when you prepared documents
10 including BZA 1 through 7, I believe, and I'd
11 direct your attention particularly to BZA 5
12 that was submitted to this Board?

13 MR. SEWELL: Yes, that's correct.

14 MS. FORD: Okay. And could you
15 discuss for the Board please with regard to
16 BZA 5, you've got a person standing in a
17 window in the neighbor's house and looking
18 out, and you've got some kind of view cone.
19 Can you explain what you mean by all that,
20 please?

21 MR. SEWELL: The intent behind
22 that design or deck configuration for the

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1 property was to remove a proposed deck from
2 the cone of vision of an occupant in the
3 adjacent building as shown through that
4 window. Conventionally speaking, the human
5 cone of vision is considered to be 60 degrees
6 in a plan view. So, looking directly down and
7 using a 60-degree triangle, without rotating
8 your head, which of course we all do, that's
9 more or less what you see. If you look at the
10 two black lines emanating from the center of
11 the person's head in the drawing, then you can
12 see that without actually opening the window
13 and putting your head outside and looking
14 around the corner, the proposed deck
15 configuration is almost completely obscured or
16 removed from the direct line of sight from
17 that particular window.

18 MS. FORD: Okay. And can you
19 describe please the reduction in size for BZA
20 5 versus the current deck as it's actually
21 built?

22 MR. SEWELL: Is that acceptable to

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1 the Board within the context of our -- okay.
2 So, it's about 60 percent. There's a roughly
3 40 percent reduction in size from the deck
4 shown on previous pages. Some 10 to 15
5 percent of that deck is not considered to be
6 usable space or wouldn't be considered under
7 usable space calculation because of space
8 taken up by the handrail assembly and
9 structural posts. The size of that deck as
10 shown is considered to be a minimal size that
11 would allow the furnishing of a small café-
12 type table and four chairs placed around it
13 with enough room to push the chair away from
14 the table for which you need approximately
15 seven feet at an absolute minimum. You know,
16 anyone who's been in a restaurant that has
17 tight tables, you need about seven feet in any
18 direction just to get up from a table and sit
19 down and have a meal. So, that was the
20 dimensional criteria that we were working
21 with.

22 Those dimensions also -- well, I

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1 have a comment about the lot line dimensions
2 and --

3 MS. FORD: Okay.

4 MR. SEWELL: -- relief relative to
5 the zoning envelope. Is it a good time to
6 address that?

7 MS. FORD: Absolutely.

8 MR. SEWELL: I'd like to make a
9 clarification based on my understanding of the
10 Zoning Regulations in the rear yard setback as
11 enumerated in the Office of Planning report.

12
13 It's my understanding that a rear
14 yard setback on a non-orthogonal or non-
15 rectilinear lot is calculated at the mean
16 distance between structure and lot line. So,
17 in this case whereas our BZA 5 is shown in the
18 Office of Planning report; I'm not sure of the
19 date, of July 6th as having a 1.9-foot
20 setback, in fact the mean distance calculated
21 on the drawing is five feet. So, the
22 exception that we're seeking for is roughly in

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1 the order of magnitude of 75 percent, not 90
2 percent --

3 MS. FORD: Okay.

4 MR. SEWELL: -- as suggested by
5 that chart.

6 MS. FORD: And I notice that in
7 the application documents BZA 7 has got some
8 photographs. Did you take those, or are you
9 familiar with what they depict?

10 MR. SEWELL: These were provided
11 by the property owner, but both those images
12 and a review of the aerial photographs,
13 everyone may or may not know that this block
14 is a parallelogram in plan and there are a
15 number -- as in common in D.C., because of the
16 L'Enfant Plan, a number of irregularly-shaped
17 and truncated lots, both on this block and on
18 adjacent blocks. The relationship between the
19 two lots in question happens to actually be at
20 the most sort of critical point of
21 intersection between two lots, if you will,
22 where they come into closest tangency. And

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1 so, but those photographs are intended to
2 illustrate the presence of numerous backyard
3 decks on this particular block, many of them
4 with irregularly-shaped and truncated lots.

5 MS. FORD: Okay. So, it's fair to
6 say there's many other decks in this same
7 courtyard?

8 MR. SEWELL: Yes.

9 MS. FORD: Okay. And with regard
10 to the proposed BZA 5, do you believe the
11 reconfigured deck would have a substantially
12 adverse effect on the use enjoyment of the
13 abutting or adjacent dwellings?

14 MR. SEWELL: No.

15 MS. FORD: And why not?

16 MR. SEWELL: Again, as stated
17 previously, it's removed from direct line of
18 sight from the critical window. I understand
19 that there is an additional window not shown
20 in that drawing about 12 feet away in plan on
21 the -- or perhaps more on the existing house.

22 MS. FORD: Okay. And you've

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1 already addressed the light and air issues.
2 In your opinion is the proposed reconfigured
3 deck -- has that addressed the issues of
4 visual intrusion and privacy?

5 MR. SEWELL: Yes.

6 MS. FORD: Okay.

7 MR. SEWELL: Particularly if
8 incorporating the proposed or discussed
9 privacy screening in one of its several
10 potential configurations.

11 MS. FORD: Okay. And you've
12 attached BZA 6, which shows some proposed
13 privacy screenings?

14 MR. SEWELL: That's right.

15 MS. FORD: Okay. And again, for
16 the record the clients would indicate that if
17 any of the lot owners in the adjacent
18 properties wanted to see basically any
19 screening like BZA 6 or something similar,
20 we'd be glad to do it. If they don't want it,
21 we'd be glad not to do it. Whatever they
22 would prefer is fine. And there may be even

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1 differences of opinion between the floors, and
2 we'd be willing to accommodate different
3 screenings or not screenings on the different
4 floors. You know, however they want to do it
5 is fine.

6 Okay. I have no further questions
7 for Mr. Sewell. I don't know if the Board had
8 any for him.

9 BZA CHAIR MOLDENHAUER: Do Board
10 Members have any questions?

11 MEMBER SORG: I have one that I
12 could ask.

13 In your BZA 5 plan, which is the
14 one that's under discussion, I'm just curious
15 what's going on here where the sort of
16 truncated portion of the deck is, the juncture
17 with the window.

18 MR. SEWELL: I think structurally
19 we'd like to hold a post a foot or two away
20 from the wall and cantilever if practical some
21 small portion of the deck 18 inches. In my
22 conversations with the owners, everybody rides

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1 a bike in this part of town, and so really
2 that corner of the deck would probably be
3 bicycle space, for a little bit of bicycle
4 storage or --

5 MEMBER SORG: So, that's why you
6 kept it out from the corner?

7 MR. SEWELL: So just this one
8 little sliver of space, which might be a
9 little hard to construct, seemed highly
10 desirable just for them to sort of keep the
11 bikes out of the living room per se.

12 MEMBER SORG: Okay. Thanks.

13 BZA CHAIR MOLDENHAUER: Any
14 additional questions? Mr. Dettman?

15 VICE CHAIRMAN DETTMAN: Yes, just
16 a little, and it's not directly applicable to
17 our zoning analysis, but how many units are in
18 this condo?

19 MR. SEWELL: Two.

20 VICE CHAIRMAN DETTMAN: Oh, just
21 two? Okay. So, in terms of egress, you don't
22 need any sort of mode of egress from the deck

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1 down to ground level to make code?

2 MR. SEWELL: Right. And in fact
3 the rear year is landlocked. There's no
4 alley.

5 VICE CHAIRMAN DETTMAN: Okay. All
6 right. Thank you.

7 BZA CHAIR MOLDENHAUER: I don't
8 believe there's any other Board questions at
9 the moment.

10 I turn to the party opponent for
11 cross-examination.

12 MR. NOKER: Thank you. Mr.
13 Sewell, where did you come up with the size
14 six-foot-ten by ten feet? How did you
15 determine that was the optimal size for a
16 space that small?

17 MR. SEWELL: It had been
18 determined that there was a potential -- let
19 me make that simpler. In discussions with the
20 property owner and other parties to the case,
21 there had, predating my involvement with the
22 case, been a discussion about I believe an 18-

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1 inch adjustment to other dimensions under
2 discussion.

3 MR. NOKER: Okay. Did you
4 consider anything smaller?

5 MR. SEWELL: Again, I took the
6 rule of thumb that said that if you had a
7 four-foot diameter café table, a pretty small
8 table to have a couple of people over to
9 brunch, and it's that -- I hate to reductive
10 about it, but it's that dumb. And 18 inches
11 for a little chair and enough room barely to
12 push it away while you were, you know, holding
13 yourself rigid, three and four gave me about
14 seven. And so cutting it down a little bit
15 down to six-foot-ten seemed right on the
16 margin of usability.

17 MR. NOKER: So, actually I really
18 thought that the restaurant analogy was good.
19 So, would it be safe to say then that your
20 primary goal on that deck was to accommodate
21 a restaurant-type setting --

22 MS. FORD: Objection.

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1 MR. NOKER: -- and not our
2 privacy?

3 BZA CHAIR MOLDENHAUER: If there's
4 an objection pending, you have to stop your
5 questions so we can address the objection.

6 MR. NOKER: I apologize.

7 BZA CHAIR MOLDENHAUER: So, Ms.
8 For, what is your objection?

9 MS. FORD: I believe that the
10 question is argumentative and misleading.
11 This is obviously a residentially-zoned area.
12 No one's proposing to put a restaurant in
13 here. And I think the question should be
14 withdrawn.

15 MR. NOKER: That was his analogy.

16 BZA CHAIR MOLDENHAUER: I think
17 that Ms. Ford has a point in regard to the
18 fact that this is residential. I see where
19 you're going with the question. You can
20 rephrase it.

21 MR. NOKER: Okay.

22 BZA CHAIR MOLDENHAUER: But I

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1 think that this is a residential community, so
2 it's obviously not going to be used for
3 restaurant purposes.

4 MR. NOKER: Okay.

5 BZA CHAIR MOLDENHAUER: But if you
6 want to rephrase your question, you can move
7 on.

8 MR. NOKER: Okay. So, is it safe
9 to say then that your primary concern was the
10 ability to accommodate four people eating
11 comfortably on a deck and not privacy, not the
12 neighbors, not the enjoyment or use, but
13 really the primary driver behind these plans
14 were to accommodate four people for a meal?

15 MR. SEWELL: My concern was to
16 arrive at a minimum solution for usability.
17 Yes, that's as clearly as I could put it. And
18 I assumed being working people that enjoying
19 breakfast on Sunday morning and maybe having
20 a few friends over was a safe scenario, a
21 minimal scenario.

22 MR. NOKER: And what do you think

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1 the maximum number of people that could be
2 comfortably on that deck would be?

3 MS. FORD: I'm going to object
4 unless you clarify whether you're talking from
5 a fire code perspective or a standing
6 perspective.

7 MR. NOKER: From a conversation
8 perspective.

9 MS. FORD: Like how many people
10 could you cram on the deck if you were going
11 to fully fill it up? Is that what you mean?

12 MR. NOKER: Yes, ma'am.

13 MS. FORD: Oh. If you can answer.

14 MR. SEWELL: I can only answer
15 from an absolute criteria standpoint not
16 relative to the deck in question and not --

17 MR. NOKER: Okay.

18 MR. SEWELL: -- living there.

19 MR. NOKER: It's okay. So, I
20 noticed in the drawings the sight lines from
21 the windows, you know, you said that you made
22 those. Did you physically visit the window in

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1 question to determine those sight lines?

2 MS. FORD: I'm going to object
3 unless he clarifies what he means physically
4 visiting a window.

5 MR. NOKER: So that the sight
6 line --

7 MS. FORD: You mean do you go into
8 your house and --

9 BZA CHAIR MOLDENHAUER: I believe
10 your objection was clear and I think that Mr.
11 Noker's going to rephrase to be more --

12 MR. NOKER: Right. Yes. I'm not
13 Matlock, you know?

14 So, okay. So, I noticed the
15 drawings that you had and the sight lines from
16 the window. You made those, correct?

17 MR. SEWELL: Yes.

18 MR. NOKER: Okay. How did you
19 determine those sight lines?

20 MR. SEWELL: Again, I determined
21 the location of the window using digital
22 photographs of the property and scaling from

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1 the photographs using known elements to
2 determine the relationship of the window to
3 the corner and its width. And then took the
4 rule of thumb that the human cone of vision is
5 approximately 60 degrees from a stationary
6 viewpoint and projected from there.

7 MR. NOKER: Okay. Did you
8 personally visit that window to determine what
9 the actual sight lines were?

10 MS. FORD: I renew my objection as
11 to personally visiting --

12 BZA CHAIR MOLDENHAUER: You mean
13 on the exterior of the property?

14 MR. NOKER: No, from the window
15 because --

16 BZA CHAIR MOLDENHAUER: From the
17 inside of your house?

18 MR. NOKER: What we have here is
19 we have a -- this is theoretical sight line,
20 but what I want to --

21 BZA CHAIR MOLDENHAUER: And I
22 think --

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1 MR. NOKER: -- know is did he
2 actually go and visit that sight line?

3 BZA CHAIR MOLDENHAUER: Mr. Noker,
4 I think your question is, Mr. Sewell, did you
5 physically go into the party opponent's
6 property to --

7 MR. SEWELL: I did not.

8 BZA CHAIR MOLDENHAUER: Okay. So,
9 I think that's clear.

10 MR. NOKER: Did you consult with
11 any of the affected parties at the 1300 Monroe
12 Street during the creation of these plans?

13 MR. SEWELL: I did not.

14 MR. NOKER: Okay. Why not?

15 MS. FORD: I'm going to object at
16 this point. He's being argumentative. We can
17 certainly have my clients testify about the
18 numerous, numerous meetings and emails and
19 attempts at communication that went on between
20 themselves and the opposition. So at this
21 point it's being argumentative.

22 MR. NOKER: Well, excuse me

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1 though, but there was --

2 BZA CHAIR MOLDENHAUER: I'm going
3 to --

4 MR. NOKER: -- there is a sight
5 line here.

6 BZA CHAIR MOLDENHAUER: Excuse me.
7 I want to make sure you direct any comments to
8 the Board and to myself versus going back and
9 forth with each other.

10 MR. NOKER: Okay.

11 BZA CHAIR MOLDENHAUER: I think
12 that I've heard your question and I've heard
13 the objection, and I do think that any
14 questions about why did he not -- Mr. Sewell
15 was hired by the owners and the owners will
16 testify. And I think that any additional
17 questions you that have can also be asked on
18 cross and be more appropriately to one of the
19 owners as to maybe why they didn't instruct
20 their architect to work with you.

21 MR. NOKER: Okay.

22 BZA CHAIR MOLDENHAUER: That being

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1 said, if you have any further questions.

2 MR. NOKER: Yes. I mean, so with
3 this sight line that you drew, okay, so with
4 this theoretically sight line, would it be
5 different if you were standing at a different
6 angle facing that window? So, if there was
7 bed -- so, as you look at this BZA 5, if there
8 was a bed in this lower left hand corner here,
9 how does that affect the new sight line?

10 MR. SEWELL: I believe that if you
11 did press your face to the glass at the lower
12 corner, at the southwest corner of the window,
13 you could probably see the corner of the
14 proposed deck as it hit the house at 3420.

15 MR. NOKER: Okay. So, I'll move
16 on, you know? So, were you here for the
17 previous hearing?

18 MR. SEWELL: I was not.

19 MR. NOKER: Okay. So, at the
20 pervious hearing Commissioner Turnbull said,
21 and this is a quote from the record, "I want
22 a set of documents that we could look at and

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1 actually gauge the total impact on the other
2 properties." Do you feel that these set of
3 documents is representative of the total
4 impact of the other property?

5 MS. FORD: I'm going to object.
6 As far as his feelings about what the
7 documents represent, that's irrelevant. The
8 documents represent what they represent. Our
9 case is certainly not completed yet. He's our
10 first witness and the architect's feelings
11 about documents are irrelevant.

12 BZA CHAIR MOLDENHAUER: I actually
13 think that your architect's been qualified as
14 an expert. And so, the question does present
15 a standard in which he as an expert in
16 architecture can provide whether or not these
17 drawings satisfy the effect, and whether maybe
18 there would be other potential architectural
19 plans that could be provided. So, I will
20 allow the question to stand.

21 Mr. Sewell, if you could please
22 answer the question.

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1 MR. SEWELL: We actually made an
2 attempt or had constructed a digital model.
3 And the reality is that the observation or the
4 experience was that it's slicing something
5 very, very thin. It actually was extremely
6 difficult to portray that condition using a
7 realistic digital model, which are usually
8 quite accurate.

9 MR. NOKER: I mean, what I notice
10 though is I notice that there is -- you know,
11 you're missing the view from the dining room
12 on the second floor. So, I would like to know
13 -- you know, that in my mind, and from Unit 2,
14 that is part of the total impact. So, do you
15 think that that is not part of the total
16 impact, the fact that, you know, a deck would
17 be visible from a dining room window?

18 MR. SEWELL: I'm not aware of
19 where the dining room is. In the property on
20 Monroe Street or the dining --

21 MR. NOKER: Right, on Monroe
22 Street.

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1 MR. SEWELL: Yes, I'm not aware of
2 where that dining room is.

3 BZA CHAIR MOLDENHAUER: Yes, I
4 believe that your question was not very clear.
5 Are you talking about another window that is
6 in the same location as the window that's
7 being portrayed on BZA 5?

8 MR. NOKER: That window would be
9 to the north. So, it would be on the north
10 side of the house. There are windows that run
11 vertically along that side of the house. And
12 what I want to know is what is the impact
13 there and why is not included in the drawings?

14 BZA CHAIR MOLDENHAUER: And I
15 think it's just a matter of making sure that
16 it's clear for the record.

17 MR. NOKER: I'm really sorry. I
18 nervous as heck.

19 BZA CHAIR MOLDENHAUER: On the BZA
20 5 diagram Mr. Noker is stating that there are
21 windows that go north on the far wall?

22 MR. NOKER: The window would be

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1 facing the east.

2 BZA CHAIR MOLDENHAUER: Are you
3 talking about windows that go north in this
4 direction?

5 MR. NOKER: Yes.

6 MR. SEWELL: I think my
7 understanding is the window in question may
8 show up on BZA 1.

9 BZA CHAIR MOLDENHAUER: I'm sorry.
10 Ms. Ford, you have to turn on your mic so that
11 the --

12 MS. FORD: I just want to be sure
13 I understand his testimony that he's saying
14 that there's windows -- you're saying there's
15 additional windows on this brick wall on the
16 north side here? You're saying there's a
17 window here?

18 MR. NOKER: There is on the --
19 yes.

20 BZA CHAIR MOLDENHAUER: On a
21 second floor?

22 MR. NOKER: Yes.

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1 BZA CHAIR MOLDENHAUER: I want to
2 make sure that the questions are accurate and
3 the record reflects correctly what's being
4 stated. This is a one-story diagram that
5 we're looking at on BZA 5 and you're stating
6 that this is only portraying one floor, that
7 there is a floor above on the second floor of
8 the property at 1300 Monroe where there are
9 windows on the brick side going north in this
10 diagram?

11 MR. NOKER: Yes. So, there are
12 two units, Unit 1 and Unit 2. And from the
13 dining room of Unit 2 the deck is visible.

14 BZA CHAIR MOLDENHAUER: Obviously
15 you will have a chance to testify as to what
16 you believe is the accuracy as to these
17 questions.

18 MR. NOKER: Okay.

19 BZA CHAIR MOLDENHAUER: So, that
20 is your question. And now let's pose that
21 back to Mr. Sewell and ask, one, are you aware
22 of those windows? And, two, if you are aware

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1 of those windows, why are they not provided in
2 the diagram? I believe that was a gist of the
3 questions that were being presented.

4 Mr. Sewell, when you've had a --

5 MR. SEWELL: That's right. I am
6 aware of their existence and I will -- we did
7 not (a) parlay the drawings. As a function of
8 the drawings in order to show the extent of
9 the deck relative to the property line, the
10 existing wall of the building didn't get far
11 enough up there to show that window. And
12 second, those aren't also in direct line sight
13 of the proposed deck. However, it's my
14 understanding -- if I can refer you to BZA 1.
15 Just let me know when you're there.

16 BZA CHAIR MOLDENHAUER: I believe
17 we're all there.

18 MR. SEWELL: Okay. It's my
19 understanding that those windows are both
20 located north of the 3420 property line, one
21 of the short, very short dogleg to it, the
22 very short dogleg that you see there. And the

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1 other one immediately adjacent to it. And I
2 believe we have a photo, some digital photos
3 in hand that show that immediately adjacent to
4 it and the wall which is running roughly
5 northwest.

6 BZA CHAIR MOLDENHAUER: Thank you,
7 Mr. Sewell. I believe that answers your
8 question, Mr. Noker. Do you have any
9 additional questions for the witness?

10 MR. NOKER: So, the answer there
11 was no?

12 BZA CHAIR MOLDENHAUER: The answer
13 was no it does not describe and that he
14 provided his reasoning as to why it did not.

15 MR. NOKER: Okay. I do have a
16 couple more questions. So, you know, as an
17 expert architect can you explain to me as a
18 layperson and to the Board here what the
19 impact of sound between three foot and twelve
20 foot would be? So, in terms of decibels, in
21 terms of sound degradation?

22 MR. SEWELL: No, I'm not an

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1 acoustical engineer.

2 MR. NOKER: Okay. So, when you
3 teach at University of Maryland, what are the
4 best practices as far as distance from windows
5 when you are creating a structure?

6 MR. SEWELL: Well, those are
7 usually a function of fire considerations or
8 other life safety considerations. I will tell
9 you my rule of thumb about sound and
10 acoustics, if you will, which is that we all
11 know that distance is the best insulator or
12 the best buffer against sound. And to my mind
13 there's a difference, there's of course a
14 difference between two feet, five feet and 20
15 feet. But in terms of overall attenuation of
16 decibels, I'm guessing not being an acoustical
17 engineer, but I don't believe they're actually
18 all that substantial.

19 MR. NOKER: Okay. So, but there
20 is a significant difference, like you said?
21 I mean, distance becomes a big factor when
22 determining sound?

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1 MR. SEWELL: That is the rule of
2 thumb.

3 MR. NOKER: Okay. So, there would
4 be a significant difference between having a
5 deck or having a structure that is 24 inches
6 from a window versus say six feet from a
7 window?

8 MS. FORD: Objection. He's mis-
9 characterizing the testimony. He said there
10 was no substantial difference between three
11 feet versus four feet.

12 BZA CHAIR MOLDENHAUER: I agree.
13 You have to rephrase the question. The
14 objection stands. You have to rephrase your
15 question because you were misrepresenting Mr.
16 Sewell. He did not say specifically that it
17 was significant. So, if you'd like to either
18 rephrase or move on.

19 MR. NOKER: Okay. We'll move on.
20 I think that's probably about it. Well,
21 actually one more question.

22 So, as an architect, I mean, you

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1 do design plans for people?

2 MR. SEWELL: Yes, I do.

3 MR. NOKER: Okay. So, you have a
4 good handle on -- well actually, why do people
5 typically want to add to their house? Why
6 would somebody want, or why do people approach
7 you to have them construct an addition or a
8 deck?

9 MR. SEWELL: They need more space.

10 MR. NOKER: Okay. Would you say
11 that property value is part of that also?
12 Like a house with a deck would have a better
13 property value? A house with an addition may
14 have an improved property value?

15 MR. SEWELL: That's usually the
16 aspiration.

17 MR. NOKER: Okay. So, do you
18 think that -- and this one's going to be
19 multiple choice. But do you think that having
20 a deck adjacent to my window either (a) adds
21 to my property value; or (b) detracts from my
22 property value?

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1 MS. FORD: Object. Mr. Sewell's
2 has not been qualified as a professional
3 appraiser. It's an unfair question.

4 MR. NOKER: Okay.

5 MS. FORD: If they wanted to bring
6 an appraiser, they could have.

7 BZA CHAIR MOLDENHAUER: I think
8 that your objection stands. And is that your
9 last question, Mr. Noker?

10 MR. NOKER: Yes, that's it.

11 BZA CHAIR MOLDENHAUER: Okay.

12 Then at this time we'll turn back to the
13 applicant, if you'd either like to redirect
14 Mr. Sewell or present your next witness.

15 MS. FORD: I believe I'd like to
16 present my next witness at this time. I'd
17 like to call Ms. Lydia. Ms. Plotz is your
18 next witness.

19 And, Ms. Plotz, if you could state
20 your name and address for the record?

21 MS. PLOTZ: My name is Lydia
22 Plotz. I live at 3420 13th Street, Unit No.

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1 1, and that's Northwest.

2 MS. FORD: Okay. Are you a first
3 time home buyer here in D.C.?

4 MS. PLOTZ: Yes.

5 MS. FORD: Okay. And can you
6 describe your home and the courtyard area
7 around it, please?

8 MS. PLOTZ: Yes, it's a two-story
9 home, or condominium. We have the basement
10 floor and the second floor. You know, it's an
11 old row house, pretty much long and narrow.
12 And, I mean, we have one deck off the second
13 floor and it's in the --

14 MR. NOKER: Objection. We're not
15 supposed to talk about the existing deck.

16 MS. PLOTZ: I apologize.

17 MS. FORD: That's fine. We'll
18 move on. Can you describe the courtyard in
19 your community, please?

20 MS. PLOTZ: Yes, there's our
21 house, and it kind of -- as you can see on the
22 plans it abuts the 1300 Monroe Street in the

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1 back. To our right side; I'm not sure what
2 the cardinal direction is, but if you're
3 standing in the back of our house there are
4 two floor patios, our next door neighbor, and
5 then people next to them have two floor
6 patios. Two houses down there's another home
7 that has a two-story deck. There's a few more
8 decks behind our home. So, the courtyard is
9 a mix of like, you know, open yards and other
10 decks.

11 MS. FORD: Okay. And have you
12 ever had occasion to observe people on the
13 other decks that are in your courtyard area?

14 MS. PLOTZ: Oh, yes.

15 MS. FORD: What are they doing?

16 MS. PLOTZ: They're grilling,
17 talking on the phone or eating dinner. That's
18 pretty much it.

19 MS. FORD: Okay. And who lives in
20 your house with you?

21 MS. PLOTZ: My husband.

22 MS. FORD: Okay. And you've been

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1 made aware I presume of your neighbor's
2 concerns with regard to your proposed deck
3 about privacy, security and light and air?

4 MS. PLOTZ: Yes.

5 MS. FORD: Okay. And you heard
6 Mr. Sewell's testimony and my proffers at the
7 beginning as far as agreeing to just seek
8 approval for BZA 5?

9 MS. PLOTZ: Yes, that's correct.

10 MS. FORD: And do you agree with
11 that?

12 MS. PLOTZ: Yes, I do.

13 MS. FORD: Okay. And you heard my
14 proffers about screening for the neighbors as
15 far as if the neighbors would like to see
16 screening similar to what is set forth in BZA
17 6, that you and your husband would agree to do
18 that, and if they would prefer to have no
19 screening, you would agree to do that? Do you
20 agree with that as well?

21 MS. PLOTZ: Yes, I do.

22 MS. FORD: Okay. And I have no

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1 further questions for Ms. Plotz.

2 BZA CHAIR MOLDENHAUER: Thank you
3 very much, Ms. Plotz. Are there any questions
4 by Board Members?

5 (No audible response.)

6 BZA CHAIR MOLDENHAUER: At this
7 point in time I'll turn back to the party
8 opponent for cross-examination.

9 MS. ACOSTA: Hi. Ms. Plotz,
10 everybody actually, you guys mention that
11 there's all these decks around, and you know,
12 we've lived in that property for five years
13 and there's three decks. And I just want to
14 clarify exactly what you're saying, that
15 you've seen people and it's more of a
16 clarification I think than a question about
17 some of these decks here in this diagram. The
18 deck here that you guys see --

19 BZA CHAIR MOLDENHAUER: If it's a
20 point of clarification, you're going to be
21 testifying, you can do that --

22 MS. ACOSTA: Okay. I'll just ask

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1 a question.

2 BZA CHAIR MOLDENHAUER: -- in
3 regards to your case, if you have a specific
4 question. Thank you.

5 MS. ACOSTA: To the decks that you
6 refer, Lydia, Ms. Plotz, what's the address on
7 the decks?

8 MS. PLOTZ: I don't know the
9 specific home numbers.

10 MS. ACOSTA: So, would you say
11 they're right next to our house, or a couple
12 houses away, or --

13 MS. PLOTZ: They're a couple
14 houses away.

15 MS. ACOSTA: Okay. So, how much
16 of an impact do they actually have on our day
17 to day basis? Would you say that -- this deck
18 for example is a roof top deck. So, it's up
19 here and --

20 MS. FORD: I'm going to object.
21 Ms. Plotz hasn't been qualified as even having
22 been to Ms. Acosta's home. I don't know if

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1 she has or not, but she certainly hasn't been
2 qualified as providing testimony as to impacts
3 from the other decks in the neighborhood. She
4 just testified that they existed and that
5 people use them.

6 MR. NOKER: Okay. So can you give
7 us the address of the decks that you're
8 referencing on BZA 7?

9 MS. FORD: I'm sorry, what did you
10 say?

11 MR. NOKER: Can you please provide
12 the addresses of the decks that are referenced
13 on BZA 7?

14 MS. FORD: We could hold the
15 record open and do that. I think Ms. Plotz
16 testified she wasn't sure about the exact
17 addresses.

18 MR. NOKER: Well, I guess, I mean,
19 our concern here is that you've entered this
20 into the record. You've testified just now to
21 seeing these decks used. That was her
22 testimony.

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1 BZA CHAIR MOLDENHAUER: Well, I
2 don't --

3
4 MR. NOKER: She's seen people use
5 them. We'd like to determine where they are.

6 BZA CHAIR MOLDENHAUER: Let me say
7 something. I don't believe that Ms. Plotz
8 testified specifically about any pictures that
9 are in the record. She just said to her
10 knowledge she's seen decks. You did ask the
11 question in regards to her -- the weight of
12 her testimony about does she know the
13 addresses. She said no. I don't think that
14 there needs to be any additional questions.
15 If you want a request from the Board or from
16 me to ask the applicant to provide specific
17 addresses for documents, you can do that at a
18 later date and we can make a decision as to
19 whether that's necessary.

20 MR. NOKER: Okay.

21 BZA CHAIR MOLDENHAUER: But do you
22 have any additional questions regarding Ms.

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1 Plotz' specific testimony?

2 MR. NOKER: What would you
3 estimate the distances from the window, our
4 windows to these decks that you've seen people
5 on?

6 MS. PLOTZ: To estimate?

7 MS. ACOSTA: If you can.

8 MS. PLOTZ: The closest one or all
9 of them?

10 MR. NOKER: BZA 7. The metal
11 structure here.

12 MS. PLOTZ: I'd say that one is
13 maybe 150 feet away.

14 MR. NOKER: Okay. Thank you.

15 BZA CHAIR MOLDENHAUER: I don't
16 believe there's any additional questions. Any
17 Board questions?

18 (No audible response.)

19 BZA CHAIR MOLDENHAUER: No? Ms.
20 Ford, if you'd like to put on your next
21 witness?

22 MS. FORD: Sure, I'd call Mr.

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1 Haskell-Hoehl, please.

2 And could you state your name and
3 address for the record, please?

4 MR. HASKELL-HOEHL: Micah Haskell-
5 Hoehl, 3420 13th Street, Northwest, Unit 2.

6 MS. FORD: Okay. And are you a
7 first time home buyer here in D.C.?

8 MR. HASKELL-HOEHL: Yes.

9 MS. FORD: Okay. And could you
10 describe the courtyard area that you can see
11 from your windows, please?

12 MR. HASKELL-HOEHL: It's a rather
13 large open space. There's a variety of
14 different structures in the back, people using
15 either their yards or deck spaces. And then
16 there are some yards that have fallen into
17 some disrepair.

18 MS. FORD: Okay. And I assume
19 that there came a time when you became aware
20 of your neighbors' concerns about privacy,
21 security, light and air with regard to the
22 decks that were currently in existence?

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1 MR. HASKELL-HOEHL: Yes.

2 MS. FORD: Okay. And did there
3 come a time when you attempted to make
4 compromises and had discussions with your
5 neighbors?

6 MR. HASKELL-HOEHL: Yes.

7 MS. FORD: Okay. And can you just
8 describe for the Board after the postponement
9 hearing what it is that you attempted to do to
10 work out a compromise?

11 MR. HASKELL-HOEHL: Absolutely.
12 The time line for the resubmission of the
13 plans was fairly tight and we worked to
14 develop a plan and bring the neighbors over to
15 -- Mr. Noker and Ms. Acosta over to our
16 property in they days preceding the filing
17 deadline, you know, if only to go over with
18 them what it was that we were thinking about
19 doing at that point.

20 We did have a meeting within a day
21 or two of that filing deadline. We furnished
22 the plans to all of the residents in 1300

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1 Monroe Street, including Ms. Amis who lives in
2 the upstairs unit, the same day that they were
3 submitted to the BZA and followed up
4 immediately with emails and a phone call to
5 Ms. Amis who lives in California and is not as
6 easy to reach just because of her, you know,
7 physical proximity to us at this point. And
8 over that time we've also decided to develop
9 the drawings that Mr. Sewell has developed on
10 our behalf just to provide improvements upon
11 what was submitted initially to the BZA. And
12 every step along the way, we were in touch
13 with Mr. Noker and Ms. Acosta. They were
14 multiple points at which, you know, we were
15 going to have them come over or, you know,
16 someone ended up breaking plans, you know, it
17 was sometimes us, sometimes them. But, you
18 know, a lot of emailing about various
19 configurations of both the deck and the
20 privacy screening as well as an active
21 solicitation on our part for any questions,
22 comments, concerns, additional considerations.

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1 I feel that we've reached out very actively.

2 MS. FORD: And did there ever come
3 a time when either of them actually came over
4 onto your deck?

5 MR. HASKELL-HOEHL: Yes, there
6 have been three times that they've been over.

7 MS. FORD: And did --

8 MR. HASKELL-HOEHL: Or three times
9 that Wendy -- Ms. Acosta's been there and Mr.
10 Noker was over twice.

11 MS. FORD: Okay. And did they
12 take measurements or anything like that when
13 they were there?

14 MR. HASKELL-HOEHL: Yes,
15 absolutely. Last week, I believe it was
16 Thursday, but -- I believe it was Thursday,
17 Ms. Acosta was over to take measurements and
18 both of them were over on Wednesday evening
19 and to look at -- we had actually taped off
20 with masking tape on the existing structure
21 what it would look like outside if we had BZA
22 3 or BZA 5. And we actually asked our

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1 downstairs neighbor, Ms. Plotz' husband
2 Zachary, to go downstairs onto their existing
3 structure and allow Ms. Acosta and Mr. Noker
4 to go into their unit and for Zachary Plotz to
5 stand out on their deck at, you know, the
6 points on the deck where the hand railings
7 would be as well as the supporting structure
8 so that they could get a good sense for what
9 the structure might look like, how it would
10 appear from their property.

11 MS. FORD: Okay. And you heard my
12 proffers at the beginning of the case that
13 we're just asking for approval for BZA 5, is
14 that correct?

15 MR. HASKELL-HOEHL: Yes.

16 MS. FORD: And you agree with
17 that?

18 MR. HASKELL-HOEHL: Yes.

19 MS. FORD: Okay. And you heard my
20 proffers with regard to screening, that if
21 either the unit owners on the first floor or
22 the other unit owners, if they would like to

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1 see screening that you'd be amenable to doing
2 that? Do you agree?

3 MR. HASKELL-HOEHL: Yes.

4 MS. FORD: Okay. And if the
5 owners would like to not see screening, would
6 you agree to not have screening?

7 MR. HASKELL-HOEHL: Yes.

8 MS. FORD: Okay. And do you
9 believe the deck at this point is as small as
10 possible but still to give you adequate use
11 and enjoyment of your property?

12 MR. HASKELL-HOEHL: Yes.

13 MS. FORD: Okay. I have no
14 further questions for Mr. Haskell-Hoehl.

15 BZA CHAIR MOLDENHAUER: Do any
16 Board Members have any questions for Mr.
17 Haskel?

18 (No audible response.)

19 BZA CHAIR MOLDENHAUER: I actually
20 have one. You mentioned Ms. Amis and your
21 discussions with her. And we have a letter
22 from her, which is our Exhibit No. 46. And in

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1 this she talks about potentially asking you to
2 reduce the number of decks I believe from four
3 decks, is that correct?

4 MR. HASKELL-HOEHL: There are
5 three and two of them are attached to our
6 property.

7 BZA CHAIR MOLDENHAUER: All right.
8 So, there are three decks?

9 MR. HASKELL-HOEHL: Total.

10 BZA CHAIR MOLDENHAUER: And you're
11 reducing it to two decks? Did you consider
12 that as an option?

13 MR. HASKELL-HOEHL: We considered
14 it and Ms. Amis and I have talked about the
15 deck on the third story multiple times. I've
16 expressed our position that that's, you know,
17 the part of the house that sort of gets over
18 the tree line and where there's light and that
19 we're very hopeful to be able to have a
20 structure on that floor.

21 BZA CHAIR MOLDENHAUER: Are you
22 aware, I guess in regards to looking out of

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1 the window -- and again this has to do with,
2 you know, privacy and ability to see things so
3 I am going to refer to the existing deck
4 because you have probably a better knowledge
5 as to what is in that window currently. Does
6 that deck then on the upper level, the third
7 deck, does it actually look into her bedroom?
8 I'm trying to reference her letter and
9 understand exactly in regard to privacy
10 issues.

11 MR. HASKELL-HOEHL: I believe it
12 does. She's told me that that is her second
13 bedroom that currently being used as an office
14 by her current tenant. We believe that the
15 configuration of BZA 5 -- the windows on each
16 floor of 1300 Monroe Street are all vertically
17 aligned in that corner. So, the drawings that
18 we've submitted in BZA 5, you know, pertain to
19 each story. And we've, you know, offered the
20 privacy screenings and to work with her on how
21 to address her concerns about being able to
22 see or hear noise or what we're doing on that

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1 deck.

2 BZA CHAIR MOLDENHAUER: So, the
3 room that she refers to in regard to her
4 bedroom in her report would be the window on
5 the angle of 1300 Monroe Street that's shown
6 on BZA 5?

7 MR. HASKELL-HOEHL: Yes.

8 BZA CHAIR MOLDENHAUER: So, what
9 then, if you've had conversations or you have
10 knowledge of it, would be any of her windows
11 in regards to privacy that we refer to as
12 those, that north, the northern windows on the
13 other side of the masonry that were not shown
14 on BZA 5?

15 MR. HASKELL-HOEHL: I have not
16 heard concerns about the view or sound from
17 the windows.

18 BZA CHAIR MOLDENHAUER: Okay. I
19 don't have any other further questions. Do
20 any other Board Members?

21 (No audible response.)

22 BZA CHAIR MOLDENHAUER: At this

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1 point in time we'll turn over for cross-
2 examination.

3 MS. ACOSTA: My only question was
4 I don't think I got the final answer about Ms.
5 Amis proposing to remove the -- you know, to
6 just have one deck facing her property versus
7 two. I didn't hear your answer. Did you say
8 yes to that or not?

9 MR. HASKELL-HOEHL: Just for
10 clarification, you're asking if I said yes to
11 removing the third-story structure?

12 MS. ACOSTA: Or if you were open
13 to it or were you completely opposed?

14 MR. HASKELL-HOEHL: Our position
15 is that we're opposed. I mean, we have
16 broached the topic of various configurations
17 and scale backs of the deck on that story as
18 well, and it has been my perception that Ms.
19 Amis would like to just have no structure on
20 that story. So, it's been presented to me as
21 she's opposing there being something on that
22 story and we're opposing not having something

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1 up there.

2 MR. NOKER: Just a couple of quick
3 questions. Have you considered anything
4 smaller than the proposed 57 square feet?

5 MR. HASKELL-HOEHL: Can you
6 clarify that?

7 MR. NOKER: Did you consider
8 building or applying for a variance for
9 something smaller than 75 square feet?

10 MR. HASKELL-HOEHL: I believe that
11 we're under 75 square feet for BZA 5 right
12 now.

13 BZA CHAIR MOLDENHAUER: Would you
14 like to rephrase your questions in regard to
15 the specific BZA 5 design?

16 MR. NOKER: It says 75 square
17 feet.

18 MR. HASKELL-HOEHL: Oh, I'm sorry.
19 Excuse me, I don't have the Exhibit in front
20 of me. I believe that we have discussed
21 alternative configurations and asked for
22 further input from the neighbors.

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1 MR. NOKER: Would you consider
2 something half that size?

3 MR. HASKELL-HOEHL: Our position
4 has been that we have addressed the privacy,
5 light and air concerns that have been
6 presented by the neighbors.

7 MR. NOKER: Well, that's fine.
8 Thank you.

9 BZA CHAIR MOLDENHAUER: Is there
10 any redirect?

11 MS. FORD: No, thank you.

12 BZA CHAIR MOLDENHAUER: Do you
13 have any other witnesses?

14 MS. FORD: No, I do not.

15 BZA CHAIR MOLDENHAUER: Okay.
16 Then at this point in time it seems that the
17 applicant rests its case.

18 Do Board Members have any
19 questions for the applicant?

20 (No audible response.)

21 BZA CHAIR MOLDENHAUER: Seeing
22 none at this time, we'll move onto the party

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1 opponent's case.

2 MS. FORD: And I'm just going to
3 start out with a blanket objection, if I
4 could. To the extent that the Board has
5 indicated that they don't want testimony about
6 the current deck, much of the slide show
7 presentation that we were handed today focuses
8 on the current deck. So, I guess I would
9 object to the extent it's relevant to those
10 pictures and documents.

11 BZA CHAIR MOLDENHAUER: And I will
12 grant that objection. So, I will instruct Mr.
13 Noker to please pass any comments and don't
14 read into the record any of the references
15 that you may have. And you can still use your
16 PowerPoint presentation so long as you just
17 point out those elements that have to do with
18 the 223 relief that's being sought today.

19 MR. NOKER: Okay. So, just for
20 clarification, what specifically are we
21 allowed to talk about?

22 BZA CHAIR MOLDENHAUER: You can

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1 talk about the standard and any problems that
2 you may have with the BZA 5, the 75-square-
3 foot deck and how a construction of a deck of
4 that size could negatively impact your light,
5 air and enjoyment of your property.

6 In doing that, I am providing you
7 with the ability to talk about the current
8 deck and maybe how that has provided you with
9 some personal knowledge as to how a deck would
10 create problems in regards to light and air.
11 But obviously you have to caveat those
12 statements so that they're referring to a new
13 75-foot deck, rather than the existing deck
14 which we all on notice is much larger than
15 that.

16 MR. NOKER: Okay. Can I use the
17 PowerPoint?

18 BZA CHAIR MOLDENHAUER: Yes, you
19 may. If we could turn the lights off?

20 Thank you, Ms. Bailey.

21 VICE CHAIRMAN DETTMAN: Mr. Noker,
22 if you're going to be standing up talking,

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1 you're going to need the hand-held mic. You
2 can get it from Ms. Bailey.

3 MS. FORD: And then, Madam
4 Chairman, how would you like me to handel then
5 objections to exhibits? Is this going to be
6 part of the record that would indicate the
7 proposed deck? Again, I would object to these
8 being shown or made part of the record based
9 upon your previous instructions.

10 BZA CHAIR MOLDENHAUER: I think
11 that as, you know, Board Members we can ignore
12 or not taken under consideration any of the
13 comments that are being made. Obviously we
14 know about the history in general, but we're
15 not going to consider those in any portion of
16 our deliberation. So, I believe that we will
17 be fine with obviously allowing him to flip
18 through that section as long as it's not
19 actually part of the transcript. And I think
20 that by stating that, all Board Members feel
21 sufficient in knowing that we will not
22 consider any of those comments or any of those

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1 statements on the PowerPoint presentation in
2 our deliberation.

3 MS. FORD: Thank you.

4 BZA CHAIR MOLDENHAUER: Thank you.

5 MR. NOKER: So, my name is Jason
6 Noker. Wendy and I are residents at 1300
7 Monroe Street, Northwest. You know, I've been
8 a proud D.C. resident since 2002. Wendy and
9 I, we're also first time home buyers. So, you
10 know, we bought a house in 2005. And for us,
11 that was also the beginning of our life
12 together. While it probably in hindsight
13 wasn't the best time to buy a house, you know,
14 it still means more to us than four walls and
15 a roof. So, we've been through -- and you can
16 see the litany of D.C. offices that we've gone
17 through. I don't need to go through all
18 these, but these are all the different people
19 that we've bounced around throughout the
20 District of Columbia to get to where we are
21 today. So, you can understand that we've gone
22 through the process. We've talked to the --

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1 MS. FORD: Okay. And I want to
2 object to this line of questioning or
3 testimony.

4 BZA CHAIR MOLDENHAUER: If you can
5 just talk about the knowledge that you have in
6 regards to maybe the standard. You can talk
7 about people that you've spoken to to
8 understand the standards of zoning and things
9 of that effect.

10 MR. NOKER: Okay. I mean, I
11 thought because they got to talk about being
12 a first time home buyer that we got the same
13 luxury.

14 BZA CHAIR MOLDENHAUER: No, you
15 are able to talk about that, but the objection
16 was about the different agencies that you've
17 spoken to. And I think that you can continue
18 on in talking about the agencies you've spoken
19 to in regards to educating yourself on zoning
20 standards in order for you to be testifying
21 and providing your personal understanding of
22 the zoning standards. I think it's just more

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1 of a caveat as to how to proceed.

2 MR. NOKER: Okay.

3 BZA CHAIR MOLDENHAUER: Thank you.

4 MR. NOKER: Next slide. So, in
5 reality, you know, we would really like to see
6 the deck just go away completely. We would
7 like to have no deck there. And we'll go
8 through the impact on our privacy, on our
9 enjoyment, which happens to be one of the
10 tests. But we actually did come up with a
11 compromise. So, we said, you know, take the
12 BZA 5 diagram. Move one foot further back
13 from the house, nine inches additionally away
14 from our window. The resulting deck would be
15 60 square feet where D.C. Code does not allow
16 any structure at all without a variance. We
17 asked for two floors instead of three. We
18 asked for them to procure and install two
19 soundproof windows and we asked for a change
20 to the condo association bylaws so that we
21 wouldn't have to fight decks coming at us from
22 all sides. Okay? That proposal was rejected.

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1 Okay? So that proposal happened to have been
2 rejected.

3 Next slide. This is from the
4 record from our May 18th hearing that we had
5 here. So, you can read it. I can read it,
6 enter it into the record. It's no one intent
7 to not be a good neighbor. We're trying to
8 come to some resolutions before we present.
9 It would be great if we could come back to you
10 and say these are the options we've explored.
11 This is how we've tried to work with the
12 neighbor. This is how we've tried to
13 alleviate some of the concerns. That is
14 verbatim from the record. I felt that if that
15 was actually what was meant, that maybe the
16 compromise we proposed would have been good.

17 So, now we're going to get into
18 the actual application of zoning relief. Next
19 slide. So, section 404.1, rear yard
20 requirement for a deck requires the rear yard
21 to be at least 20 feet. The letter in
22 support, which you should have in the record,

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1 which is from the applicant, it says the rear
2 yard prior to the addition of the deck was
3 11.25 feet on the west side. The addition of
4 the deck takes the rear yard down to 4.5 feet
5 at the point closest to the rear property line
6 requiring a variance of 15.5 feet. That is a
7 variance of over 75 percent. I think that
8 that is probably -- from our perspective, that
9 is significant more than what should be
10 allowed. It's also our feeling that, you
11 know, there is -- I mean, 75 percent is a lot.

12 Next slide. I don't know if we
13 can talk about this or not, but --

14 MS. FORD: And I will object.

15 MR. NOKER: Okay.

16 BZA CHAIR MOLDENHAUER: If you can
17 talk about this in regards to how a new deck
18 would impair your light and air, that would be
19 the only way in which you can provide
20 additional testimony.

21 MR. NOKER: Okay. Well, I mean,
22 you know, so the deck, so the proposed deck,

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1 we measured it. It's about 34 to 36 inches
2 from our window. That's it.

3 So, section 223.2. I believe that
4 is what we're supposed to be talking about.
5 And the adverse effect test. The addition or
6 accessory structure shall not have a
7 substantially adverse effect on the use or
8 enjoyment of any abutting or adjacent dwelling
9 or property. In particular, you know, we
10 talked about the light and the air. We also
11 have test B, the privacy of use and enjoyment
12 of neighboring properties shall not be unduly
13 compromised. So, I think that's a key
14 distinction. It doesn't say "or," it says
15 "and." Okay? So that means that the privacy
16 of use and the enjoyment.

17 So, in our mind, you know,
18 enjoyment is quiet. Enjoyment is being able
19 to use a nursery, to be able to have a
20 nursery, be able to sleep, to be able to do
21 that when you want to do that, or at least
22 within a reasonable time period. And if you

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1 look at the proposed deck, it is 36 inches
2 from a window, 34 to 36 inches from a window.
3 We think that adversely impacts both our
4 enjoyment. We think it impacts the privacy of
5 use. I think if you look at the view from the
6 deck, I think that you'll see light and air.
7 You know, you have to keep your windows
8 closed. So, clearly, you know, the air is
9 limited. I think also as you'll see from one
10 of the other pictures that we have, from the
11 actual dining room, you again are going to see
12 that there's an obstructed view now.

13 Next slide. So again, you know,
14 we talked about this a little bit earlier.
15 This was actually also in the record. It was
16 Commissioner Turnbull. He's not present
17 today. He said I want a set of documents that
18 we could look at and actually gauge the total
19 impact on the other properties. This right
20 here is a view. You can see this is from the
21 dining room. This is that mythical, or the
22 one that we couldn't figure out where this

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1 window was. The window looks directly against
2 the wall. So, with a proposed deck, there
3 will be people next to this wall. So, that is
4 going to adversely impact light, air and
5 enjoyment of use.

6 So, this window right here would
7 be along the western -- excuse me, the eastern
8 wall. It would be north of the window that
9 was so nicely documented by Mr. Sewell, but he
10 did not take this window into account.

11 Okay. So, one of the big concerns
12 that we have is around sound. I think that
13 sound, any reasonable person would say that
14 sound definitely has an adverse impact on
15 enjoyment of use for privacy -- excuse me,
16 privacy of use or enjoyment. So, this is a
17 little lesson on sound. And it's very
18 complicated stuff, so I'll try to make it --

19 MS. FORD: I'm going to object
20 unless Mr. Noker's been qualified as a
21 acoustical engineer or as an expert in sound
22 to his providing testimony on sound as an

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1 expert witness.

2 MR. NOKER: No, I mean this is
3 factual right here. This is not my opinion.
4 This is just fact -- I mean, it's, you know --

5 MS. FORD: Unless there's been
6 some foundation laid that he has any expertise
7 whatsoever in sound analysis, it's completely
8 inappropriate.

9 MR. NOKER: Well, I'm not
10 testifying as a witness. I'm presenting my
11 case.

12 BZA CHAIR MOLDENHAUER: Mr. Noker,
13 can you provide some foundation as to where
14 you got this information and the factual
15 background? First of all, can you provide
16 some foundation for where you obtained some of
17 this information?

18 MR. NOKER: Yes, I can actually.
19 You know, it's a noise organization. I mean,
20 a trade organization.

21 BZA CHAIR MOLDENHAUER: I will
22 allow testimony only as to the general

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1 information, but not to any conclusions or
2 opinions of how it relates to the certain
3 case. But you can provide just general
4 information, but no conclusions --

5 MR. NOKER: Okay.

6 BZA CHAIR MOLDENHAUER: -- as to
7 how it potentially relate, because that would
8 actually be an opinion, which I don't think
9 that you're qualified to provide.

10 MR. NOKER: Okay. I mean, you
11 know, I would say that if I could -- so how
12 about you let me go and I will provide you
13 with the documentation afterwards. And if
14 anything that I said was false, then you can
15 just delete it from the record.

16 MS. FORD: I would object to that.

17 BZA CHAIR MOLDENHAUER: Yes, I
18 think that what we have to do is again, if you
19 want to ask at the end of your statement to
20 provide a supplemental document, I think that
21 that may be the best. And then obviously that
22 would provide the applicant time to then

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1 respond to it as well.

2 MR. NOKER: Okay.

3 MS. FORD: With all due respect,
4 if they wanted to bring an acoustical
5 engineer, this hearing has not been a
6 surprise. I mean, to then provide additional
7 I guess quasi expert testimony and not give us
8 the opportunity to rebut it or get our own
9 experts is unfair.

10 MR. NOKER: Well, I mean, to be
11 fair, you know, I plan on asking your expert,
12 but he is not aware. I mean, but you know,
13 you brought an expert and he doesn't know
14 sound. So, what are we left with? I mean,
15 I'm footing the bill for all of this.

16 BZA CHAIR MOLDENHAUER: Mr. Noker,
17 I mean, again, we're not going to get into
18 personal discussions back and forth between
19 both parties.

20 If we feel it is appropriate at
21 the end of the hearing we will identify
22 elements that we seek to leave the record open

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1 for. I don't know yet where we will be at the
2 end of the hearing, but if we feel it is
3 necessary in order to make our deliberation,
4 we will make that known and we'll provide time
5 for both parties to respond.

6 At this point in time I don't know
7 if that's going to be necessary, but let's
8 move along in regards to Mr. Noker, your
9 testimony.

10 BZA CHAIR MOLDENHAUER: Okay.
11 Thank you.

12 MR. NOKER: So, sound intensity is
13 measured in decibels.

14 MS. FORD: Well --

15 MR. NOKER: Everybody's familiar
16 with that terminology.

17 MS. FORD: Again, I object to then
18 Mr. Noker continuing to testify as an expert
19 with regard to sound decibels and what
20 everybody knows. It's a continuing objection,
21 if you'd grant that.

22 VICE CHAIRMAN DETTMAN: Madam

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1 Chair, I think it's time to move forward from
2 this issue. I mean, Mr. Noker's not claiming
3 to be an expert in sound engineering or any of
4 the information that he's presenting. He
5 essentially got it off the Web and he's
6 presenting it to the Board. The Board can
7 make a determination whether or not, you know,
8 we want to even consider it at all, give it
9 any weight whatsoever. But we're definitely
10 not going to give it great weight because he's
11 not qualified as an expert in sound.

12 MS. FORD: With that being said, I
13 withdraw my objection.

14 BZA CHAIR MOLDENHAUER: Thank you,
15 Mr. Dettman, for that clarification.

16 Please move forward.

17 MR. NOKER: Okay. So, most people
18 are familiar with the term "decibel level,"
19 right? People have heard that before? So,
20 that's how sound intensity is measured.
21 Decibel is actually a logarithmic scale.
22 Okay? So, what that means, you can see it

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1 right here, 30 decibels is ten times -- it's
2 not actually perceived louder, but it's ten
3 times more sound intensity, and it has to do
4 with the way that the ratios are measured.

5 dbA is taking an A wave and
6 applying that to decibels so that you get into
7 sound perception. So, this is how we perceive
8 sound. Okay? So, you can see that 20 dbA is
9 perceived as two times louder than 10, 30 dbA
10 is perceived as four times louder than ten.
11 I mean, this is all verifiable.

12 So, think of sound like the
13 rippling of a pond, the wave.

14 BZA CHAIR MOLDENHAUER: Can I just
15 ask that, Ms. Ford, if you'd turn off your
16 mic. I believe your mic is still on and it's
17 picked up background sound. Thank you.

18 MR. NOKER: So, if you think of
19 sound as waves rippling from a pond, sound
20 dissipates, as was testified to by Mr. Sewell,
21 the expert. Sound dissipates as you get
22 further and further away from it. So,

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1 distance is key.

2 Next. Right here, this is just
3 very common. So, if you look at this chart,
4 what you'll see is that in normal conversation
5 70 decibels at one foot, 60 at three foot, 54
6 at six foot.

7 Next. If we go back to the math,
8 you can see that at three foot you have 60
9 decibels. Twelve foot would be no deck, would
10 be 48 decibels. If you actually look and you
11 do the math against the logarithmic scale,
12 what you'd see is that you're getting 15 times
13 more sound energy, but perception is 2.3 times
14 as loud.

15 So, what that means is that for
16 us, our bedroom, our future nursery, we would
17 have 2.3 times louder perception of sound for
18 us if that deck is there. So effectively,
19 what you're doing by allowing this deck would
20 be taking my two-bedroom house or my two-
21 bedroom home and giving us a one-bedroom plus
22 den. And that's what we object to

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1 fundamentally.

2 Okay. So, we also have some
3 community opposition. I'm sorry about the
4 terminology there. This is from the previous
5 presentation. So, you should have letters
6 against the proposed relief for the variance.
7 You should have something from Larry Ambrose
8 and Richard Greenway, Kathy Miller, Loe
9 Bosner, Gabe and Kristen Assad, Eric Leffert
10 and then obviously from Wendy and I. So,
11 that's actually from the neighborhood's
12 perspective. So, these are neighbors that
13 took it upon themselves to write in a letter
14 against this proposed relief and it could be
15 for a variety of reasons. I'm sure that you
16 have in your record specifically why they were
17 against it. But nonetheless, they were
18 against it.

19 So one of the other things that
20 was part of that BZA diagram that you got, so
21 that BZA 7 that we seem to be talking about,
22 those pictures of the deck there, there's a

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1 couple of key points. Number one is that the
2 metal deck that you see -- so, that would
3 actually be to the south. Okay? That deck
4 has 20 feet in its backyard, so they did not
5 need relief to build that structure. So they
6 could build that by right.

7 MS. FORD: Object to this
8 testimony unless Mr. Noker is going to qualify
9 himself as either a zoning expert or he's
10 going to lay some foundation for the analysis
11 of the actual rear yard dimensions of each of
12 these lots he's talking about.

13 BZA CHAIR MOLDENHAUER: I'm
14 actually going to allow the objection but not
15 for the grounds that have been specified. The
16 reality is is that -- and, Mr. Noker, just let
17 me explain this so that you don't have an
18 issue, because obviously we would not have
19 considered even Mrs. Plotz' testimony about
20 other decks in the area. That has no
21 relevance to how we evaluate this case.

22 So, I think that just for purposes

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1 of efficiency and trying to make sure that
2 there's a clarity as to how we evaluate a case
3 in this matter, we don't take into
4 consideration whether or not other people on
5 the same lot have certain types of decks or
6 other relief.

7 MR. NOKER: Okay. No, that's
8 fine. I understand that. So, I guess this is
9 -- you know, I mean, this is kind of it for
10 us, right? So, the BZA really is our last and
11 only recourse here. And we feel that the
12 system has kind of let us down over the last
13 18 months. You know, we're being held hostage
14 by this case, by these postponements, by
15 what's been going on. We just want to move on
16 with our lives. But I mean this puts a
17 tremendous, tremendous strain on our lives, on
18 our relationship, on our marriage, on so many
19 different things that you can never
20 appreciate. You know, you don't know until it
21 happens to you.

22 And what we think is that laws and

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1 codes exist for a reason. They exist for a
2 reason, to protect people, to protect
3 homeowners, to protect our rights. And, you
4 know, we have privacy issues. We have
5 financial issues. I mean, clearly these decks
6 bring the property values down and any
7 reasonable person; you can object, but any
8 reasonable person would say that having a deck
9 adjacent to a bedroom window is going to make
10 your property less desirable. You know,
11 obviously that's a privacy issue. And you
12 just can't be allowed to build when and where
13 you want. I mean, a deck is not a right, you
14 know?

15 And I think that we've been overly
16 flexible. We actually made some proposals
17 that were smaller, you know, and, you know,
18 even those were rebuffed. And you heard that
19 testimony today. Well, we want to have a
20 third floor. Well, at some point you have to
21 say, you know, you're not entitled to any
22 decks, but to have three is just pushing the

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1 limits of what I think is reasonable.

2 And we also think that there
3 should be some kind of accountability here.
4 So obviously, we're not supposed to talk about
5 the existing deck, but there is recourse for
6 those folks. I mean, I don't know for sure
7 who's paying for the attorney's fees, who's
8 paying for all of this, but my guess is that
9 there's title insurance. My guess is that --

10 MS. FORD: Object. Objection.

11 BZA CHAIR MOLDENHAUER: Yes. Mr.
12 Noker, I'm going to limit that testimony
13 because that is not relevant.

14 MR. NOKER: Okay.

15 BZA CHAIR MOLDENHAUER: Thank you.

16 MR. NOKER: So, we can't sue
17 anybody, so this is our only recourse, right?
18 So, somebody builds something adjacent to our
19 window. If you give them relief, then we are
20 stuck with that structure forever. So, that
21 would mean that 36 inches from two bedroom
22 windows you would have decks. And I see you

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1 guys wearing in the day. I apologize for
2 going on. You know, this has been, you know,
3 17 months coming out at once.

4 So, this is really our plea to the
5 BZA, which we deny the application for
6 variance and special exception because clearly
7 it doesn't meet the necessary test for
8 consideration. Those tests again being
9 privacy of use and enjoyment. And enjoyment.
10 So, clearly we are going to enjoy our home
11 less having a deck out our window and having
12 noise three feet from it. Okay? We would
13 like you to enforce the correction order
14 issued 4/2009 for the removal of the illegally
15 constructed deck and --

16 BZA CHAIR MOLDENHAUER: I just
17 want to put on the record, the correction
18 order is not what we're reviewing today under
19 the record.

20 MR. NOKER: Okay.

21 BZA CHAIR MOLDENHAUER: Thank you.

22 MR. NOKER: Thank you.

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1 BZA CHAIR MOLDENHAUER: Thank you
2 very much, Mr. Noker.

3 Do you have any additional
4 testimony, or does that complete your
5 testimony?

6 MS. ACOSTA: That's it for me. I
7 think at the end, you know, what Jason's
8 saying and, you know, we came here as
9 neighbors really. We don't have attorneys and
10 all the other resources that come with it
11 mostly for financial reasons, right? But you
12 know, we want the BZA to be able to take and
13 -- you know, a lot of the options that we put
14 forth on the table as well.

15 BZA CHAIR MOLDENHAUER: Thank you.
16 Do Board Members have any questions for either
17 of the opposing parties?

18 VICE CHAIRMAN DETTMAN: Thank you,
19 Madam Chair. I have two questions.

20 Mr. Noker, I want to look at your
21 slide No. 11, which kind of lays out the 223
22 analysis and actually has the language of the

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1 Zoning Regulations. And while you clued into
2 the privacy of use and enjoyment, the standard
3 that the regulations has is that those two
4 items be unduly compromised. And so, not only
5 just compromised, but it has to be unduly
6 compromised. And that's an adjustment that
7 the Board needs to make.

8 The introductory language to that
9 provision, it says the addition or accessory
10 structure shall not have a substantially
11 adverse effect. And so that's just not an
12 adverse effect. It has to be substantial.
13 And so, in your opinion what's being proposed,
14 how does that substantially effect the use and
15 enjoyment and the privacy of your property?

16 MR. NOKER: It substantially
17 affects us because we plan on using that
18 bedroom as a nursery. And, I mean, you know
19 you can't sleep through that. I mean, you
20 know, that noise issue is going to exist.
21 That noise issue is going to be there. And
22 when you are three feet away from a window --

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1 so if you have normal conversation with four
2 people, right, so normal conversation of four
3 people, which was what, you know, was
4 testified to already today, that's a pretty
5 significant amount of noise three foot from
6 your window. That noise dissipates
7 significantly when you go to 12 feet, when you
8 go to 18 feet. So, it's not the same as
9 hearing something from the street. I mean,
10 that's an enclosed alleyway. There is nothing
11 back there. So, I think that that
12 substantially impacts us.

13 It substantially also impacts us
14 in our ability to sell the house eventually.
15 Right? So, if we decide that we do want to
16 move, somebody's going to look at that house
17 and they're going to say you have a one-
18 bedroom plus office, one-bedroom plus den.
19 That's not a true bedroom when you have a deck
20 that's that close to you.

21 VICE CHAIRMAN DETTMAN: What basis
22 do you use to determine that you can't sleep

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1 through that? Just kind of opinion that --

2 MR. NOKER: I mean, so when -- I
3 forgot her name, the attorney.

4 VICE CHAIRMAN DETTMAN: Mrs. Ford.

5 MR. NOKER: Mrs Ford. When she
6 actually came over the first time and she met
7 with our neighbors, my wife actually opened
8 the window and said to her, and she'll testify
9 to this if you ask her, I can hear everything
10 you're saying. You might as well just come
11 over here and talk to me. Okay? So, we
12 didn't know that there was anybody there.
13 Nobody told us that anybody was there. Wendy
14 heard a conversation verbatim and she opened
15 the window and said, you know, if you guys
16 want to ask me any questions, I'm right here.
17 Feel free to talk to me.

18 So, this is not kind of theory,
19 sound theory. This is reality. So, you can
20 hear that noise. You can hear that
21 conversation.

22 BZA CHAIR MOLDENHAUER: Can I jump

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1 in, Mr. Dettman?

2 VICE CHAIRMAN DETTMAN: Sure.

3 BZA CHAIR MOLDENHAUER: And just
4 ask a follow-up question. Ms. Acosta, do you
5 recall when you opened the window where on the
6 deck they were standing that you could hear
7 that conversation?

8 MS. ACOSTA: I do want to clarify.
9 I went downstairs to our little patio to talk
10 to them in person, but I heard it through the
11 window. They were right by my window. I
12 looked over and I -- my blinds are always
13 closed because they have to be, so when I
14 peeked, I saw at the time -- I'm sorry, I
15 forget your last name.

16 MS. FORD: We did have discussion
17 outside when she was out on her patio.

18 BZA CHAIR MOLDENHAUER: Okay. No,
19 but again, I'm going back to the issue of if
20 you could hear the conversation from when they
21 were on the deck, were they standing on a
22 portion of the deck that is intended to be

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1 demolished and no longer exist, or are they
2 standing on a portion -- to your recollection,
3 on an area further in? You said that they
4 were standing on the portion that was closest
5 to your deck.

6 MS. ACOSTA: Right. They weren't
7 standing that -- they weren't like this, right
8 next to the deck. I mean, they were, you
9 know, like about a foot back.

10 MS. FORD: Were your blinds shut?

11 MS. ACOSTA: They're always shut
12 actually.

13 MS. FORD: So, how could you see
14 where we were standing if your blinds were
15 shut?

16 MS. ACOSTA: Because I --

17 BZA CHAIR MOLDENHAUER: All right.
18 This isn't an opportunity for cross. I'm
19 trying to just ask a question. Obviously you
20 can cross-examine and we can --

21 MS. FORD: I apologize. I do.

22 MS. ACOSTA: You're welcome to ask

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1 me that question.

2 BZA CHAIR MOLDENHAUER: Okay, Ms.
3 Acosta. So, and to your recollection
4 obviously you're saying that they were
5 somewhere about a foot away from the edge of
6 the deck?

7 MS. ACOSTA: Right.

8 BZA CHAIR MOLDENHAUER: Okay.

9 MS. ACOSTA: May I -- there were
10 two -- sorry.

11 BZA CHAIR MOLDENHAUER: I'm going
12 to back to Mr. Dettman's question. I was just
13 trying to jump in to clarify that point.
14 Thank you.

15 VICE CHAIRMAN DETTMAN: No, that's
16 fine. I think my last question was, you know,
17 kind of how did you come to the conclusion
18 that you can't sleep through that. And so, I
19 guess my follow-up question would be based on
20 your compromise where you're proposing to I
21 guess reduce the depth of the deck by a foot
22 and the width by nine inches, you're confident

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1 that those changes are going to allow you to
2 use that room and allow a baby or a child to
3 use that room to sleep through that?

4 MR. NOKER: No. No, not at all.
5 Actually, we're just worn out. You know, we
6 just didn't want to fight anymore. I mean, I
7 was up all last night, you know, putting this
8 presentation together. This is my first all-
9 nighter in a decade and, you know, I was
10 putting all of this material together. I
11 mean, we don't want to fight anymore. So, we
12 said it's not what we wanted. We really don't
13 want the deck there, but we tried to come to
14 some type of compromise. And moving it over
15 nine inches, it takes out I would say 50
16 percent of the rest of the line of sight. So,
17 it would alleviate some of the line of sight.
18 But frankly, I mean, you know, maybe something
19 half the size would be better. But really,
20 you know, no deck is the best.

21 VICE CHAIRMAN DETTMAN: Yes.

22 MR. NOKER: You know, as to your

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1 question of, you know, how do I know something
2 going to be, I mean, you can look at these
3 plans and you can see that right in the plans
4 the closest point to a window is about 36
5 inches, 34 inches. So, if I turn the
6 microphone off and I get 34 inches away from
7 you guys, you're going to hear me really well.
8 I mean, so either we can leave our window
9 shut, we can put windows in, we can put
10 soundproof windows in, I mean, then we still
11 have to leave them shut. But, I mean, you can
12 turn to your neighbor and you can whisper to
13 her and you guys are about 34 inches away.

14 VICE CHAIRMAN DETTMAN: My last
15 question is that, you know, and this is going
16 to sound a little bit blunt, and I don't mean
17 it to be, but I don't know how to word it any
18 other way. But, you know, when trying to
19 reach a compromise, it's very much an
20 iterative process. And it seems like you've
21 kind of looked at the plans, you've come up
22 with, you know, where you think you'll reach

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1 a level of comfort. They've kind of said no
2 and that's it. Now you're totally against it.

3 I guess my question is, is there
4 additional room for compromise if they were to
5 reduce the deck by a foot by not reduce the
6 nine inches? If they were to reduce the nine
7 inches but not the foot? Where are you at at
8 this point?

9 MR. NOKER: I mean, you know,
10 there's always room for compromise, honestly.
11 I mean, you know, we put that proposal
12 together I think in pretty good faith, you
13 know, last Friday. You know, at this point,
14 you know, I've been up for 36 hours. So my
15 willingness to compromise is significantly
16 less than it was before this. Plus, you know,
17 Mrs. Ford over here is just kind of pretty
18 tough on us today. So, you know, we're
19 willing to compromise. I mean, you know,
20 really honestly, we're okay.

21 But when that deck was being
22 built, you know, our first thing was -- and I

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1 know we're not supposed to talk about it,
2 right, but when it was being built our first
3 thing was, hey, that's pretty cool. These
4 guys are going to have a balcony, you know?
5 And we were totally like open to that and we
6 thought that that would be nice and we want
7 them to be able to go outside. But there's
8 got to be something between a dinner party for
9 four and nothing. And, you know, I don't know
10 exactly what that is, but there's no reason to
11 say that, you know, 70 square feet times three
12 floors. How about 35 square feet? I mean,
13 you know, I'm sorry. I'm rambling again.

14 MS. ACOSTA: So, back to the whole
15 compromise piece, yes, some of the points were
16 actually raised up there, which is, hey, how
17 about two floors instead of three, right? And
18 some of these points were actually addressed
19 between -- Micah, I'm sorry, I forget your
20 last name, but Micah and I and Kelly and I
21 regarding -- you know, they opposed the just
22 two versus three floors. So, right there some

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1 of the proposals were rejected. Some of the
2 proposal was rejected, some of the proposal
3 was accepted. And we actually feel that our
4 proposal together was fair because we're
5 saying, hey, you know what, maybe you guys can
6 just find a way to protect us against the
7 other neighbor right next to you building up
8 against our wall, right? That was one of the
9 compromise points.

10 Two is can you scale it back,
11 because I personally measured it and said, you
12 know, this is -- yes, this is where you have
13 it, but line of sight going back to where
14 Jason was saying, it would eliminate that.

15 And finally, just you know the
16 whole structure of being two versus three
17 floors, we thought that was pretty reasonable.

18 VICE CHAIRMAN DETTMAN: Okay.
19 Thank you.

20 ZC CHAIR HOOD: Madam Chair, I was
21 not here for the brief part, and picking up
22 from my colleague, and I understand we did not

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1 hear -- get into the merits of the case
2 previously on the 18th. But I see here where
3 my colleague did say, apparently what I'm
4 taking from the opposition, is I want to see
5 a set of documents that we could look at and
6 actually gauge the total impact of other
7 properties. Not refraining or talking about
8 any particular structure, I too want to see
9 that document. Basically what we have is
10 something to show the relationship of how --
11 whatever's being -- I don't want to say --
12 whatever exists is the relationship to what
13 it's going to be in relationship to. And I'm
14 trying to follow the rules and not talk about
15 any existing -- even though I haven't followed
16 the rules in 13 years. I will tell you I
17 don't usually follow rules, so I'm trying to
18 follow rules.

19 But I would tell you, I think --
20 and I don't see it here in front of me, and
21 I'll tell you, before this particular
22 commissioner moves forward with this, I need

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1 to see that, unless someone can help me,
2 direct me to that.

3 Yes, I saw that, but that's not
4 exactly getting me where I need to me.

5 MS. FORD: I might be able to
6 address that, if that's helpful. Mr. Hood, do
7 you mean the relationship between the deck as
8 proposed to be reduced as vis-à-vis the deck
9 as it currently exists? Is that what you
10 mean?

11 ZC CHAIR HOOD: What I need to
12 see, and I see all this. I see this. Yes,
13 what's proposed versus --

14 MS. FORD: Right. If you look at
15 BZA 5 there, and I've got extra copies here.

16 ZC CHAIR HOOD: I saw BZA 5. I
17 saw BZA 5.

18 MS. FORD: Why don't I pull an
19 extra copy of that now?

20 ZC CHAIR HOOD: Unless it changed
21 from the BZA 5 I have here.

22 MS. FORD: Oh, it sure does, sir.

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1 And so, if you see, it's got the outline of
2 the existing --

3 ZC CHAIR HOOD: Ms. Ford, if you
4 can look at what I have here, does it change
5 from this?

6 MS. FORD: No, sir, and it's got
7 the outline of the existing deck there. That
8 dashed line that you see and it's written over
9 above where it says 1300 Monroe Street. So,
10 that is the outline, is that what you mean, of
11 the existing deck?

12 ZC CHAIR HOOD: Well, just
13 understand that I'm usually on the BZA every
14 other month or so. I'm not here often. And
15 we see something a little more than this. And
16 I'm not sure if that's what -- oh, yes, we see
17 something a little more than this that shows
18 the relationship of exactly what's -- I don't
19 know. What exists to what exists on the other
20 side. I see a little more and it's -- I don't
21 know if they call it views, elevations, or --

22 BZA CHAIR MOLDENHAUER: Yes, I

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1 believe Commissioner Hood is right. Elevation
2 drawings --

3 ZC CHAIR HOOD: Okay. That's it.

4 BZA CHAIR MOLDENHAUER: -- that
5 would show a ground elevation and then the
6 comparison between potentially two properties
7 or the comparison between a person standing on
8 the street and line of sight and things to
9 that effect. Is that what you're referring
10 to?

11 ZC CHAIR HOOD: Exactly. Exactly.
12 Thank you very much.

13 MEMBER SORG: Well, and in
14 addition I thought his comment -- and I think
15 perhaps what you're getting at, Mr. Hood, or
16 Chairman Hood, is since what we're looking for
17 in the standard is about light and air, some
18 graphic representation or other type of
19 representation of that effect, perhaps that's
20 also something you're looking for.

21 ZC CHAIR HOOD: That's exactly.

22 And I'm just taking what I saw my colleague

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1 mention, and I know what we're used to seeing,
2 and I think that's probably in line with his
3 comments also.

4 MS. FORD: So, to be clear you'd
5 like to see a graphic representation of the
6 light and air?

7 BZA CHAIR MOLDENHAUER: I don't
8 know if you're familiar, but what we see a lot
9 of times are something called sun studies.

10 MS. FORD: Okay.

11 BZA CHAIR MOLDENHAUER: Are you
12 familiar with that?

13 MS. FORD: I've certainly dealt
14 with sun studies in other cases, but I frankly
15 didn't realize that's something this Board
16 wanted to see, a sun study. It wasn't
17 mentioned and we'd be glad to provide a sun
18 study. Be happy to do that if it would be
19 helpful to the Board. I was under the
20 impression from the comments that you were
21 looking to have a representation of the
22 current deck and any proposed reductions in

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1 size and then the actual view from the
2 adjacent neighbor's window and the view cone,
3 as well as the elevations of the existing
4 structures and what the elevations would be,
5 which are shown on the drawings that were
6 submitted back with the first revision. So,
7 if you'd like to see a sun study or something
8 like that, we'd be happy to supplement the
9 record with that. That's not a problem.

10 BZA CHAIR MOLDENHAUER: I don't
11 know if it's absolutely necessary; and
12 Chairman Hood you can jump in here, I was just
13 trying to provide you with different examples
14 of reports that we see for 223 relief in
15 regards to how an addition can effect or
16 create maybe a negative impact on these
17 elements of 223.

18 ZC CHAIR HOOD: I think elevations
19 is, you know --

20 BZA CHAIR MOLDENHAUER: More on
21 point for this case, yes.

22 ZC CHAIR HOOD: -- more on point

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1 of what I would like to see.

2 MS. FORD: And just so I'm
3 completely clear, you mean elevations other
4 than was submitted with the cross-section
5 diagram showing the actual elevations of the
6 deck?

7 ZC CHAIR HOOD: Ms. Ford, are you
8 still talking about BZA 5?

9 MS. FORD: I am not, sir.

10 ZC CHAIR HOOD: Okay.

11 MS. FORD: I'm talking about the
12 documents that were submitted with the June
13 10th drawing. Here.

14 BZA CHAIR MOLDENHAUER: I don't
15 believe any elevations of the June 10th
16 drawing would actually have the BZA 5 option
17 on it though, would it?

18 MS. FORD: No, they were showing
19 the elevations of the currently existing deck,
20 but obviously the elevations would be the
21 same. We're not changing the elevation of the
22 deck.

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1 BZA CHAIR MOLDENHAUER: But the
2 distance of the -- when you're looking at an
3 elevation, the distance from where the deck
4 ends and where the 1300 Monroe Street starts
5 would change. So, when you looking at an
6 elevation, the space between that area would
7 be changing and I don't know how relevant
8 another diagram would be, or the old diagrams
9 would be.

10 MS. FORD: If there's any other
11 diagrams, dimensions that you'd like to see,
12 we'd be happy to supplement the record. Mr.
13 Sewell would -- nothing could make us happier
14 than to supplement the record to make it
15 complete.

16 ZC CHAIR HOOD: Well, I'll tell
17 you this, Ms. Ford, I've asked for elevations
18 before; and I'm not an expert, I'm not an
19 architect, even though I've been here long
20 enough to probably be one now, and that's
21 never been a major issue about keep asking.
22 We ask for elevations to show relationship,

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1 and that's what usually comes back.

2 BZA CHAIR MOLDENHAUER: Well, I
3 think that we've addressed the issue now
4 sufficiently. And what we'll do is -- we're
5 not yet through the entire process of this
6 hearing. And as the chairperson I'm going to
7 try to see if we can't move this along.

8 Are there any other questions
9 specifically for the party opponents?

10 MEMBER SORG: I have a couple
11 questions not relating to documents.

12 For Mr. Noker or Ms. Acosta, you'd
13 lived in the house before the deck was built?

14 MR. NOKER: Yes, ma'am.

15 MEMBER SORG: And could you maybe
16 talk a little bit about your experience, just
17 personal experience, not having to do with
18 decibels or anything like that, just what
19 things sounded like? Because from your
20 testimony it's sounding like the sound as
21 opposed to the light and air is your primary
22 concern. You can correct me if I'm wrong

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1 about that. But my question is, maybe you can
2 give a comparison or an example of some sound
3 you heard from the neighbor's window while
4 they were talking perhaps in the summer like
5 people do to your window. Because as far as
6 I can see the two buildings are maybe nine or
7 ten feet apart at their closest. So, they're
8 pretty close anyway as compared to what you
9 can hear now.

10 MR. NOKER: Right. And so, you
11 know, our primary concern I guess would be,
12 you know, two-fold, right? So, one is you
13 have the general noise and the other would be
14 you have the general noise at night. Okay?

15 MEMBER SORG: Yes.

16 MR. NOKER: So, I think that those
17 are somewhat different issues. So, noise in
18 general, you know, yes, during the day, you
19 know, would potentially hear somebody out
20 back. You know, again, there's a difference
21 between three foot and 12 foot, which would be
22 the difference between, you know, something

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1 that's adjacent to your window and just having
2 a patio where you're outside and your down one
3 level, because now you're getting the
4 hypotenuse of that triangle. So, you'd
5 actually be, you know, going down, right, as
6 opposed to something that's elevated. So, the
7 way it stands there or the way it's proposed
8 today, you know, that's about three feet away
9 from our window, okay, as opposed to if there
10 was no deck at all, then you'd get about 10 to
11 12 feet. Okay? So, that would be for regular
12 conversation. And then at night it would
13 really not be usable space and that would also
14 alleviate our second concern, which was, you
15 know, being able to sleep at night, being able
16 to have a nursery, being able to do whatever
17 you want to do in the bedroom. You know,
18 having that 12 feet at 10:00 at night, it's
19 not really a livable space. Did I answer
20 that?

21 MEMBER SORG: Maybe I can simplify
22 the question to say before the deck was built,

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1 although I'm probably breaking the rules about
2 talking this way; I also don't follow rules
3 sometimes very well, have you heard your
4 neighbors behind you before that frequently?

5 MR. NOKER: So, before that house
6 was constructed, it was a meth house or a
7 crack house.

8 MEMBER SORG: So, then the answer
9 would be yes, I guess.

10 MR. NOKER: Actually, yes, there
11 are some funny stories about that, but you
12 know, we didn't hear that. It's not livable.
13 You know, there's nothing that's elevated
14 outside. So, the only area that you had, it
15 was actually more jungle than anything else.
16 We do hear noise. I mean, there's a barking
17 dog that's like six houses down. It's
18 actually one of the pictures that was
19 submitted on BZA 7. So, I mean, you can hear
20 that. It's not loud. It's not something that
21 you can't sleep through. But, you know, it's
22 significantly, significantly far away from us.

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1 There's nothing else that's next to our
2 window. And prior to this, I mean, you know,
3 we heard to construction obviously back there,
4 but you know, there was no livable space.

5 MEMBER SORG: Okay. Thanks.

6 MS. ACOSTA: I just want to give a
7 quick example of just hearing noise at night
8 versus day, what Jason's talking about. I
9 don't have the exact date, but I remember
10 writing it down. I think it was on June 17th.
11 Mr. and Mrs. Plotz had a guest over for a
12 dinner. And, you know, they finished around
13 like around 11:00 at night or something, and
14 I remember this because I wrote it down. And
15 you know, TV was on in the background a little
16 bit and I work from my office back there. My
17 desk is right next to my wall. So, you know,
18 I can hear them and they had a male -- he was
19 a man that -- a guest, you know, he was a male
20 guest. So, that's -- I could tell the voice
21 and some names and, you know, hearing the
22 conversation. And I thought to myself, wow,

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1 if I can hear this now you know the way it is,
2 and they only have one person over, what would
3 this be like with five additional people? And
4 it was around, you know, anywhere from 10:00
5 to 11:00 at night. I do work late sometimes.
6 So, that's a quick example.

7 BZA CHAIR MOLDENHAUER: Thank you.
8 I don't believe there are any additional
9 questions. At this point in time we'll turn
10 the witness over for cross-examination by Ms.
11 Ford.

12 MS. FORD: Thank you very much.
13 Mr. Noker, I just want to clarify that you're
14 not an acoustical engineer?

15 MR. NOKER: I think that's been
16 determined already.

17 MS. FORD: Okay. And you're not
18 an architect or surveyor or anything like
19 that?

20 MR. NOKER: I am not.

21 MS. FORD: Okay. And did you ever
22 invite the unit owners next door over in your

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1 house to look at the view from in your house?

2 MS. ACOSTA: I think I proposed it
3 to Micah a long --

4 MS. FORD: Do you recall when?
5 Did you write that down?

6 MR. NOKER: (No audible response.)

7 MS. FORD: Okay.

8 MR. NOKER: You have to turn
9 your --

10 BZA CHAIR MOLDENHAUER: Can you
11 answer that question again with the microphone
12 on?

13 MS. ACOSTA: No, we've talked,
14 we've texted. Actually, you know what, at the
15 last hearing I said, Micah, you're also
16 welcome to come over any time. And I don't
17 know if that made it into the record, but it
18 was actually here in this room. I do remember
19 that.

20 MS. FORD: Okay. So like when you
21 guys met at their house or anything, did you
22 ever say come on over and come into my house

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1 and see the effect? Did you ever say that to
2 them when you met on their deck or in their
3 home?

4 MR. NOKER: We actually had a
5 conversation with Mr. Plotz last week between
6 windows. So, we had a perfect line of sight
7 to him. He had a perfect line of sight to us.

8 MS. FORD: Okay.

9 MR. NOKER: And we also had a
10 conversation. So, I think that, you know, I
11 mean, you know, we didn't offer it, but they
12 are more welcome to.

13 MS. FORD: Okay.

14 MR. NOKER: But the fact that we
15 could conversate, you know, face-to-face, you
16 know, that closely I think, you know, they
17 have a pretty good idea of the line of sight.

18 MS. FORD: And from those windows
19 you could hear each other?

20 MR. NOKER: No, the window was
21 open and we were actually talking like this,
22 okay?

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1 MS. FORD: And you could hear each
2 other from window-to-window, is that correct?

3 MR. NOKER: Oh, absolutely.

4 MS. FORD: Okay.

5 MR. NOKER: Yes, absolutely.

6 MS. FORD: Okay. And you didn't
7 invite them over then?

8 MR. NOKER: No, we did not invite
9 them over.

10 MS. FORD: Okay. And are there
11 ever horns blaring outside?

12 MR. NOKER: Yes, of course.

13 MS. FORD: And do car alarms go
14 off?

15 MR. NOKER: Car alarms very rarely
16 go off, but I'd say that sirens and horns
17 happen more often.

18 MS. FORD: Okay. And so it's not
19 your testimony that it's a perfectly
20 pristinely quiet neighborhood all day and all
21 night, is that correct?

22 MR. NOKER: I think that actually

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1 we already clarified that I wasn't a sound
2 engineer.

3 MS. FORD: Okay. I'm just asking
4 because you testified about sound and the
5 effects on sound, and I'm trying to understand
6 the ambient --

7 MR. NOKER: Yes. Yes. No. Yes,
8 that's fine.

9 MS. FORD: -- sounds that would be
10 out there.

11 MR. NOKER: And the distance from
12 the road -- and actually if you look at the
13 diagram there, what is the distance from the
14 road to the bedroom?

15 MS. FORD: Okay. Can you hear
16 horns at night?

17 MR. NOKER: Not from that room.

18 MS. FORD: Okay. And so is it
19 your testimony that there's basically no
20 ambient sound at night at all?

21 MR. NOKER: Is that what I said?

22 MS. FORD: I'm asking you that.

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1 MR. NOKER: Actually I thought
2 that I said something else.

3 BZA CHAIR MOLDENHAUER: It's a
4 question, Mr. Noker, so I'd prefer if you'd
5 just answer the question. If you can't answer
6 to your personal knowledge, you can state
7 that. But if you can answer the question
8 that's been presented.

9 MR. NOKER: Okay. So, can you
10 repeat the question, please?

11 MS. FORD: Is it your testimony
12 there's no ambient sound at night that you can
13 hear at all from outside whatsoever if your
14 window is open?

15 MR. NOKER: No.

16 MS. FORD: Okay. And did you take
17 any ambient sound measurements with regard to
18 your decibel presentation and all that?

19 MR. NOKER: No.

20 MS. FORD: Okay. So you have no
21 idea what the ambient sound level is day or
22 night out there right this minute, is that

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1 correct?

2 MR. NOKER: Right.

3 MS. FORD: Okay. And you have an
4 outdoor patio?

5 MR. NOKER: We do.

6 MS. FORD: Do ever have people
7 over?

8 MR. NOKER: We don't.

9 MS. FORD: You never have people
10 over?

11 MR. NOKER: Not out back. No, not
12 out back there. In the backyard, I mean, you
13 know, since we've moved there we might have
14 had somebody there. Pardon? We might have
15 had somebody four to five years ago, but there
16 are a lot of mosquitoes back there.

17 MS. FORD: Okay.

18 MR. NOKER: So, I would say in the
19 last three years we have not had company in
20 that back patio.

21 MS. FORD: How big is that back
22 patio you have?

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1 MR. NOKER: I don't know.

2 MS. FORD: Is it big enough for a
3 table and chairs?

4 MR. NOKER: Yes, it's big enough
5 for a table. There isn't a table and chairs
6 out there.

7 MS. FORD: Okay.

8 MR. NOKER: But it's probably big
9 enough for one, yes.

10 MS. FORD: Would it be big enough
11 for a grill out there?

12 MR. NOKER: Oh, absolutely.

13 MS. FORD: Do you have a grill out
14 there?

15 MR. NOKER: I do.

16 MS. FORD: Okay. And do you grill
17 out there?

18 MR. NOKER: Yes, ma'am.

19 MS. FORD: Okay. And if you
20 wanted to have five or six people over, could
21 you do that outside?

22 MR. NOKER: Yes.

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1 MS. FORD: Okay.

2 MR. NOKER: Yes.

3 MS. ACOSTA: Excuse me. Yes. I'm
4 sorry. Yes, you can have five to six people
5 if they're standing up holding their food.

6 MR. NOKER: I'm actually going to
7 object --

8 BZA CHAIR MOLDENHAUER: I think we
9 can move on.

10 MR. NOKER: -- because I'm trying
11 to figure out the relevance. I'm not applying
12 for a variance here.

13 BZA CHAIR MOLDENHAUER: I don't
14 believe there is any relevance, so I'll just
15 ask Ms. Ford to move on.

16 MS. FORD: Okay.

17 BZA CHAIR MOLDENHAUER: I believe
18 she's finished with that line of questioning.

19 MS. FORD: And with regard to the
20 compromises, you're aware that Mr. Haskell-
21 Hoehl, with regard to your proposed
22 compromise, actually sent you another proposed

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1 compromise where he posed to chop off another
2 corner of the deck. And he sent that over
3 Friday or so. Is that correct?

4 MR. NOKER: I don't believe that's
5 correct, no.

6 MS. ACOSTA: I'm sorry, which
7 email are you referring to and what time and
8 what date, because I have them here.

9 MS. FORD: Yes, we have it right
10 here.

11 MR. NOKER: So, by Friday, you
12 mean Sunday?

13 MS. FORD: It was Sunday
14 afternoon. Oh, I apologize. Yes, I meant
15 Sunday.

16 MR. NOKER: Okay.

17 MS. FORD: And they proposed
18 another chop back configuration where they'd
19 do another angle on the corner that's closest
20 to your window and they proposed to move it
21 back another couple feet, is that correct?

22 MS. ACOSTA: I don't see that.

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1 MR. NOKER: We didn't see this. I
2 mean, I don't --

3 MS. FORD: You didn't see that
4 email?

5 MR. NOKER: No.

6 MS. ACOSTA: What number? He
7 wrote back to our points. I think we made
8 four points and I'm trying to figure out here
9 to which of the four points was that to.

10 MS. FORD: All right. The one
11 basically has the BZA 5 new diagram that's
12 submitted with the email that was sent over
13 there.

14 MS. ACOSTA: You're saying the
15 email that came in at 12:21 p.m. on Friday?

16 MS. FORD: Correct.

17 MS. ACOSTA: Okay.

18 MR. NOKER: No, it should be
19 Sunday, right?

20 BZA CHAIR MOLDENHAUER: Ms. Acosta
21 and Mr. Noker, can I just ask that you either
22 have one microphone one and one person talk,

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1 because I don't know how it's being obtained
2 from the transcript in regard to both of you
3 talking at the same time?

4 MS. ACOSTA: Can you just clarify
5 please which email, what date it is?

6 MS. FORD: Yes, it's the one that
7 was sent I believe on -- excuse me. Micah can
8 help out here.

9 When was this sent? Oh, I'm
10 sorry. It's the one you have right in front
11 of you. There we go.

12 MR. HASKELL-HOEHL: Sunday, July
13 11th.

14 MS. FORD: There we go.

15 MR. HASKELL-HOEHL: At 12:24 p.m.

16 MS. FORD: Right.

17 MR. HASKELL-HOEHL: Addressing
18 each of the four proposals.

19 MS. FORD: And, Micah, when did
20 this guy go over?

21 MR. HASKELL-HOEHL: The revised
22 drawing with the change to the corner by the

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1 window in question was sent with that email at
2 12:24 p.m. last Sunday.

3 MS. FORD: On Sunday? Okay.

4 MR. HASKELL-HOEHL: Two days after
5 they had sent their --

6 MS. FORD: It's the ones -- right.

7 MR. NOKER: So, I mean, I'm going
8 to be honest.

9 BZA CHAIR MOLDENHAUER: Okay.

10 Okay. Excuse me, everybody. We have to keep
11 this -- you know, the court reporter needs to
12 be able to record everything. We have to have
13 everybody speaking into a microphone and only
14 one person speaking at a time.

15 So, I think that right now what
16 you've been doing is there's questions about
17 an email that was sent over to Mr. Noker and
18 Ms. Acosta regarding a counter offer to the
19 proposal and, Mr. Noker, I believe now you're
20 aware of the email. And if you can answer the
21 question about whether or not you reviewed his
22 counter proposal and accepted it.

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1 MR. NOKER: So, I mean, I'm just
2 going to be honest on this one. So, you know,
3 I talked to Wendy and -- what? What? No, I
4 mean, so I was -- I mean, I was told that they
5 said no to our proposal, okay? So, I
6 personally did not look at this. I personally
7 did not look at this picture. I apologize.
8 I have no excuse for not looking at it. It's
9 completely my responsibility to be on top of
10 this, but I did not do it.

11 BZA CHAIR MOLDENHAUER: Okay.
12 Just jumping in here now. So, is the proposal
13 that is presented something that you would
14 consider, Mr. Noker, after now having had a
15 chance to review it as something that would be
16 acceptable?

17 MS. ACOSTA: The picture that was
18 actually admitted is not something with the
19 shaved corner.

20 MS. FORD: No, I fully understand
21 that. The BZA 5 is --

22 MS. ACOSTA: So, just to make it

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1 clear, Jason has looked at all the plans. So,
2 right now when he said, you know, I haven't
3 looked, thinking that there's a new picture in
4 here when there's not, I'm the one that's been
5 seeing these diagrams back and forth even when
6 you switched from the old architect to the new
7 one, but there was no specification on how
8 much is being shaved off.

9 MS. FORD: All right. Well --

10 BZA CHAIR MOLDENHAUER: Okay.

11 Yes, let's go back to Ms. Ford. And we don't
12 have copies of these documents. I don't know
13 what you're referring to. But, Ms. Ford, if
14 you can now ask. I'm trying to make sure that
15 we don't jump in. You can ask a question
16 responding to both of their statements.

17 MS. FORD: I guess, let me hand
18 you -- the document that Mr. Noker has there
19 has a small version, and this is just a larger
20 version that I'm handing you know. And so,
21 this is, Ms. Acosta, what was sent over to you
22 last week. And it's got a revised corner.

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1 And apparently Mr. Noker didn't have a chance
2 to look at it. And it's just another proposed
3 compromise and further scaling back the
4 location of the deck in the area closest to
5 your window. And I'd just ask if you'd
6 comment upon that and see if that's something
7 that would help here. Of that compromise was
8 offered, would that help address your concerns
9 with regard to privacy and light and air. And
10 if it does, we would certainly enter it into
11 evidence and agree to do that. I mean, if it
12 would help.

13 MR. NOKER: So, to answer your
14 question, certainly anything that is smaller
15 than what is proposed helps. The extent to
16 which it helps is unclear to us at this time.

17 MS. FORD: Okay.

18 MR. NOKER: Okay?

19 MS. FORD: And so it's fair to say
20 you'd prefer to see all the decks just go?

21 MR. NOKER: Well, I mean, if I
22 preferred that -- oh, obviously we'd prefer

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1 that, right. I mean, you know, yes, without
2 a doubt we'd prefer that. I mean, you know,
3 we wouldn't have proposed a compromise had we
4 not been willing to compromise. So, yes, I
5 mean, we're, you know -- again, like I said,
6 you know, we proposed a compromise. We would
7 still like to see the deck be significantly
8 smaller even than what we proposed, but I
9 mean, you know, after 17 months we're worn
10 out.

11 MS. FORD: Okay. And just to make
12 the record clear, what we're talking about
13 here is a view; and I could introduce it into
14 evidence if that would be remotely helpful --

15 BZA CHAIR MOLDENHAUER: Yes, I
16 would like that just so we have clarification
17 in our documentation. If you can provide that
18 to Ms. Bailey, she will make copies for us.

19 MR. NOKER: You know, so one of
20 the things that we did talk about though was
21 Wendy wanted the 90-degree angle. We
22 preferred the 90-degree angle because of the

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1 large load-bearing structures that support the
2 angle. Okay? So, the 90-degree angle was
3 preferable to us because of the view that you
4 get from our window, okay, and from our
5 property. So, the sight line is adversely
6 affected by having that diagonal across. I
7 mean, I'm not hedging here. There's no
8 chicanery. I'm just trying to understand what
9 the impact would be and we're looking at a
10 picture that we've never seen before.

11 BZA CHAIR MOLDENHAUER: All right.
12 I appreciate your candor.

13 Ms. Ford?

14 MS. FORD: Yes, at this point
15 we'll -- and I'm sorry for the difficulty with
16 this. I didn't think this would be something
17 we'd even entertain. The diagram we're going
18 to submit, we'd like for the evidentiary
19 purposes the Board just to look at the
20 proposed triangle idea of chopping off another
21 portion over here that would be closest to the
22 window. There's, God knows, geometric

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1 triangles and squares here, which I don't
2 pretend to understand or offer testimony
3 about.

4 MR. RUSSO: For the record, the
5 diagram we're offering depicts the
6 southernmost boundary of the deck, six-foot-
7 ten-inches, reducing it to five-foot. And
8 then the western-most boundary of the deck,
9 which is ten-foot-nine-inches, reducing it to
10 eight-foot-four-inches. The difference being
11 the catty-corner cutoff. That catty-corner
12 cutoff will be three-foot-nine-inches in
13 length. These markings are the changes
14 depicted on BZA 5, which with those markings
15 in black ink are -- we're offering. And also
16 clarifying that that is indeed the same
17 document that was emailed to the opposition
18 and which the opposition has in front of them
19 today.

20 BZA CHAIR MOLDENHAUER: Thank you.
21 I think we'll take that into our record and
22 we'll make copies for all the Board Members.

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1 MS. FORD: Great. Thank you.

2 BZA CHAIR MOLDENHAUER: Do you
3 have any additional questions for Mr. Noker?

4 MS. FORD: No, I have nothing
5 further for Mr. Noker.

6 BZA CHAIR MOLDENHAUER: Thank you
7 very much.

8 Mr. Noker and Ms. Acosta, are you
9 completed with your case? You have no further
10 witnesses, is what I'm asking?

11 MR. NOKER: No. Yes, we're done.

12 BZA CHAIR MOLDENHAUER: Then, at
13 this point in time both of the cases have been
14 concluded.

15 We now turn to the Office of
16 Planning for their testimony.

17 MS. BROWN-ROBERTS: Good
18 afternoon, Madam Chairman and Members of the
19 Board. I'm Maxine Brown-Roberts again
20 representing the Office of Planning.

21 I'm just going to summarize or
22 supplement a report which was filed on June

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1 6th. And basically, under the criteria of the
2 223 and looking at BZA 5; we did analyze BZA
3 3, but that's off the table right now, on BZA
4 5 we looked at that as the one that we
5 preferred. And also as you can see on the
6 diagram, we also propose some additional
7 screening.

8 The criteria under the 223, the
9 basic criteria is for the light and air and
10 the privacy of use. And because already this
11 area is fairly close and the properties all
12 have irregular shape, I think that we have to
13 look on is where the regulation talks about
14 the substantial adverse effect on the use or
15 enjoyment of the abutting properties.

16 We think, as outlined in our
17 report, that under the proposal, under the 5
18 proposal that it does alleviate or does
19 address some of those impacts. We do agree
20 that there are going to be impacts, but does
21 it rise to being a substantial adverse impact?
22 And we think that under the analysis that we

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1 did that that was addressed. However, from
2 the conversations that I've been hearing here
3 today, we would be in support of any
4 reductions, if the Board was to go that way,
5 into additional reduction, and think that is
6 something that we would support.

7 Also outlined in our report is
8 concerning the screening. We thought that
9 that was an important part because it
10 addresses -- I think the screening addresses
11 both the privacy. It also addresses the light
12 and air, because with a screen there's some
13 opportunity for the neighbors to open their
14 windows and so let in additional light and
15 air. And so, we would be supportive of any
16 other alternative that is proposed or agreed
17 on between the opponents and the applicants.
18 And therefore our recommendation was just
19 stating that we're in support of that and not
20 really definite approval of it, because I
21 think there are still moving parts to this
22 application.

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1 Thank you, Madam Chair. And I'm
2 open to any questions and more detail
3 questions. Thanks.

4 BZA CHAIR MOLDENHAUER: Thank you
5 very much.

6 Do any Board Members have any
7 questions for the Office of Planning? Mr.
8 Dettman?

9 VICE CHAIRMAN DETTMAN: Good
10 afternoon. I wanted to look at page 4 of your
11 report. It seems like, especially with 223.2,
12 you used existing condition as kind of a
13 baseline for judging whether or not what's
14 being proposed will meet the provisions of 223
15 where you say the proposed reduction in the
16 size of the decks would alleviate the
17 situation.

18 So, first question is in that
19 paragraph you say the existing decks do not
20 directly affect the light and air. How do you
21 know that?

22 MS. BROWN-ROBERTS: Well, I went

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1 out there and I think what I was talking about
2 is that it didn't cast any shadows. That was
3 the direction I was going in that statement.

4 VICE CHAIRMAN DETTMAN: Okay. I
5 guess although the deck currently exists, I
6 mean, the BZA really needs to approach this as
7 if nothing's there now.

8 MS. BROWN-ROBERTS: That's
9 correct.

10 VICE CHAIRMAN DETTMAN: And so,
11 again it seems like your report is using the
12 existing condition as a baseline to justify
13 that what's being proposed would not have a
14 substantially adverse effect on the
15 neighboring properties. And specifically you
16 say the proposed reduction, the size of the
17 decks, would alleviate the situation,
18 referring to the fact that the neighbors
19 currently have to close their shades.

20 MS. BROWN-ROBERTS: Yes.

21 VICE CHAIRMAN DETTMAN: Why would
22 it alleviate the situation? I assume that you

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1 have --

2 MS. BROWN-ROBERTS: Well, as you
3 said, I think I was looking at what's the
4 existing situation and comparing it to the
5 proposals that were submitted.

6 VICE CHAIRMAN DETTMAN: Because I
7 suspect that the neighboring properties have
8 to keep their shades closed because of privacy
9 issues.

10 MS. BROWN-ROBERTS: Right.

11 VICE CHAIRMAN DETTMAN: Perhaps
12 views into it. And I think we're going from
13 a distance of eight feet to six-foot-ten-
14 inches.

15 MS. BROWN-ROBERTS: Yes.

16 VICE CHAIRMAN DETTMAN: But the
17 lines of sight would remain the same
18 essentially, right?

19 MS. BROWN-ROBERTS: Well, again,
20 if we go back to looking at where the deck is
21 existing, it is much closer. Under 5, I think
22 there is some change in the line of sight.

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1 VICE CHAIRMAN DETTMAN: Okay.

2 Okay. Thank you.

3 MS. BROWN-ROBERTS: Yes.

4 BZA CHAIR MOLDENHAUER: Any

5 further Board questions?

6 (No audible response.)

7 BZA CHAIR MOLDENHAUER: I just
8 would like to ask, could you orally modify
9 your testimony in regards to whether or not
10 BZA 5, as a brand new deck -- do you in your
11 opinion as from the Office of Planning believe
12 that that would provide a substantial adverse
13 impact as to the privacy of use and enjoyment
14 of neighboring properties?

15 MS. BROWN-ROBERTS: Regarding 5,
16 again I think that it would have to be in
17 conjunction with screening and not as a stand
18 alone. I think that there are impacts, but
19 can be alleviated if we do have the
20 screenings.

21 BZA CHAIR MOLDENHAUER: Now, I
22 guess one of the things that I would be

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1 concerned about in talking about screening,
2 the screening options that were being provided
3 or options that were being presented by the
4 applicant seem to be fairly solid screens,
5 which are shown on BZA 6. Mostly the bamboo
6 one to the left. Maybe not as much the mesh
7 element that would have some trees that could
8 grow on them. But wouldn't creating screening
9 also then create light and air issues with
10 shadows? It would create more than what
11 currently exists?

12 MS. BROWN-ROBERTS: I am not sure.
13 I'm not 100 percent sure.

14 BZA CHAIR MOLDENHAUER: I'm not
15 either. So, I appreciate your honesty in that
16 regard, and that may be some questions that we
17 ask applicant later on.

18 I have no additional questions for
19 Office of Planning. Are there any additional
20 questions from Board Members?

21 (No audible response.)

22 BZA CHAIR MOLDENHAUER: Seeing

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1 none, I'll turn to the applicant. Does the
2 applicant have any questions for the Office of
3 Planning?

4 MS. FORD: I'm sorry. And I thank
5 you very much for your time and consideration
6 in working with us with this report. I want
7 to thank you.

8 MS. BROWN-ROBERTS: Okay.

9 BZA CHAIR MOLDENHAUER: Mr. Noker,
10 do you have any questions for the Office of
11 Planning?

12 MR. NOKER: I do. I do. So, I
13 mean, I'm reading this. You know, we only had
14 five, ten minutes to read this today. But I'm
15 reading in section. It references 223.2.

16 MS. BROWN-ROBERTS: Yes.

17 MR. NOKER: And it says right
18 here, "The existing decks do not directly
19 affect the light and air into the adjacent
20 properties." Is that accurate? Is that what
21 you meant to say?

22 MS. BROWN-ROBERTS: As I said, I

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1 think that is the same question that was asked
2 before, and in this we were talking about, you
3 know, casting of shadows.

4 MR. NOKER: Okay. On May 11th of
5 2010 you submitted a report that said that the
6 existing decks do adversely affect the light,
7 air of the adjacent properties. So, the
8 initial submission by the Office of Planning
9 actually recommended against the existing
10 structure.

11 MS. BROWN-ROBERTS: Yes.

12 MR. NOKER: So, I'd like to know
13 how can you resolve that discrepancy, where
14 here you're saying the existing decks do not
15 directly affect the light and air, but
16 originally you said it did negatively affect
17 the light and air?

18 MS. BROWN-ROBERTS: Well, I think
19 what I was trying to say is that the structure
20 itself -- however, if you look, it continues
21 that because of the proximity that the windows
22 have to be kept closed and shaded would result

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1 in a minimized light and air. So, that's the
2 meaning of that.

3 MR. NOKER: I mean, I'm really not
4 trying to give you a hard time.

5 MS. BROWN-ROBERTS: Not really.
6 I'm not taking it as giving me a hard time.

7 MR. NOKER: Okay. I mean, I don't
8 have a copy of that Office of Planning report
9 in front of me, but --

10 BZA CHAIR MOLDENHAUER: The prior
11 one? We have a copy of that in our file.

12 MR. NOKER: Okay. And in that one
13 it does say that the -- I'm accurate, right?

14 BZA CHAIR MOLDENHAUER: It does,
15 and I believe that Ms. Brown-Roberts has
16 provided her explanation to the distinction of
17 the two reports and her perspective on making
18 those comments.

19 MR. NOKER: Okay. And so, you
20 know, just quickly, I mean, did you visit with
21 the residents at 1300 Monroe Street?

22 MS. BROWN-ROBERTS: Yes, I did.

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1 MR. NOKER: Okay. And that was
2 for the initial report?

3 MS. BROWN-ROBERTS: Yes, I did.
4 Yes.

5 MR. NOKER: Okay. Did you visited
6 us again on the second report --

7 MS. BROWN-ROBERTS: No, I didn't.

8 MR. NOKER: -- to see the actual
9 line of sight and what it would be?

10 MS. BROWN-ROBERTS: No, I did not
11 because I did not get the information from the
12 applicant until -- the final documents from
13 the applicant until about two days before my
14 report was due. And at the same time, I was
15 talking to the applicant and letting them know
16 that they should be in contact with you and
17 having discussions with you. And so, the
18 proposed deck is not there. I mean, BZA 5 is
19 not there now, so I don't think that I would
20 be seeing anything different from what I had
21 seen in the original visit.

22 MR. NOKER: Okay. You know, just

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1 I guess the last question. Did you talk to
2 any of the other neighbors that wrote letters
3 against the proposed deck?

4 MS. BROWN-ROBERTS: No, but I saw
5 their opinion in their record. I read the
6 letters, yes. And I spoke to the other
7 property owner, yes.

8 MR. NOKER: Okay. All right.
9 That's it. Thank you.

10 BZA CHAIR MOLDENHAUER: Thank you
11 very much, Ms. Brown-Roberts. I believe that
12 concludes the Office of Planning's testimony.

13 At this point in time then we will
14 turn to the ANC, and I don't believe I see
15 anybody in the audience from the ANC for this
16 property.

17 I'll reference that we have in our
18 record Exhibit No. 43, which does not satisfy
19 our standards in order to give it great
20 weight. It is a letter from the single member
21 district. I'm sorry, it is a letter from the
22 ANC 1A, but it does not incorporate the

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1 requirements such as providing the fact that
2 the meeting was duly noticed. It does not
3 state what the quorum was or what the vote
4 was. And so, while it does state that while
5 ANC remains opposed to the decks, we cannot
6 give this letter great weight.

7 Are there any individuals in the
8 audience in support or in opposition of this
9 case?

10 (No audible response.)

11 BZA CHAIR MOLDENHAUER: Seeing
12 none, then we will move on. I just want to
13 reference that we do have some letters in our
14 record from other neighbors and from other
15 individuals such as Councilmember Graham, and
16 those letters have been reviewed by us and
17 will be reviewed in our deliberation.

18 At this point in time, I will turn
19 back to the applicant for closing remarks.

20 MR. NOKER: Excuse me, ma'am. I
21 want to make an objection.

22 BZA CHAIR MOLDENHAUER: An

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1 objection to what?

2 MR. NOKER: I'm going to make an
3 objection because Councilman Graham doesn't
4 live in the affected radius.

5 BZA CHAIR MOLDENHAUER: You can't
6 object. He's provided a letter and we can
7 take into our record any letter in regards to
8 information. The letter is part of our
9 record. We will weigh that in appropriately
10 in regards to his statements. So, I
11 appreciate your objection, but at this point
12 what we'll do is we'll move onto Ms. Ford for
13 closing remarks.

14 I'm going to ask, Ms. Ford; this
15 has been a long hearing and we are going to be
16 requesting some additional documents, can you
17 provide me or proffer for me how long your
18 closing will take?

19 MS. FORD: (No audible response.)

20 BZA CHAIR MOLDENHAUER: That
21 wasn't on the record and I don't want to put
22 that on the record.

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1 MS. FORD: No, I would take five
2 minutes.

3 BZA CHAIR MOLDENHAUER: Five
4 minutes? Okay. So then at 5:30 we should be
5 over. So, please start your closing.

6 MS. FORD: I want to thank the
7 Board and the Members of the Board and Ms.
8 Maxine Brown-Roberts for your time. It has
9 been a difficult case and it has been
10 difficult for the neighbors, and I appreciate
11 their concerns.

12 When we were brought on board,
13 frankly pretty recently, the first thing we
14 did was try and brainstorm to scale back these
15 decks. We provided revised plans to the
16 neighbors who've had multiple -- well, the
17 clients have had multiple meetings with the
18 neighbors. We hired a brand new architect to,
19 you know, come up with proposed depictions of
20 what it was going to look like. They asked
21 for soundproof windows. We had agreed to do
22 that. They asked for no screening. We agreed

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1 to do that. If they wanted screening, we'd
2 agree to do that.

3 So, these are first time home
4 buyers and they want to have a small deck,
5 particularly the second and third floor
6 properties, or unit owners. They have no
7 outside space at all. They don't have a stone
8 patio, you know, and it's difficult out there.
9 So, they're asking for something that is about
10 40 percent less in size than what's out there.
11 And I know you're not supposed to consider
12 what's out there now, but we truly made an
13 effort to scale it back as much as possible
14 and still have something small and reasonably
15 sized. Frankly, as late as this weekend we
16 were working with the neighbors to scale it
17 back even further and cut off another corner.
18 We'd be glad to do that with regard to the
19 revised BZA diagram that you saw.

20 Obviously this is a city. It's an
21 urban area. It's not a pristinely quiet area.
22 And to the extent there's issues with

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1 sleeping, the soundproof windows should
2 hopefully address that at night.

3 So, we'd request that you grant
4 this variance proposal. And again, if there's
5 additional documents you'd like to see, I'd be
6 more than happy to submit them.

7 BZA CHAIR MOLDENHAUER: Thank you
8 very much. That was even under time. I
9 appreciate that.

10 At this point in time I don't
11 believe that I would encourage us to go right
12 into deliberation. I do think that there are
13 documents that we'd like to see. I just want
14 to make sure for the record that everyone's
15 clear this is a special exception. A variance
16 test is a much higher standard. This is a
17 special exception test under 223.

18 And so, what I'd like to do, I'm
19 going to start listing some documents that I
20 would like to see, and obviously additional
21 Board Members can provide that.

22 I'd like to see an elevation

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1 drawing showing all windows that face the deck
2 or have any view. And obviously, you've heard
3 testimony as to the diagonal windows that are
4 included in some of the current drawing, but
5 additionally any other windows that may
6 potentially have a view onto this deck showing
7 that elevation.

8 Right now I believe we have two
9 options that are being discussed. Option BZA
10 B, and then the option that was provided to us
11 today, which is on a diagram that has
12 additional markings and will be added to our
13 record as the last diagram. I'll call it BZA
14 6. Or 5A. How about that? 5A.

15 I'd like to see, there was
16 testimony that Ms., I believe it was Wendy,
17 one of the unit owners at 1300 Monroe who
18 lives on the lower is concerned about the
19 obstruction of vision and use and enjoyment
20 and privacy by having the bollards, by having
21 this angled structure on the 5A diagram. So,
22 in making sure that the elevations are clear,

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1 I want to make sure that we can see
2 potentially those bollards and how that would
3 be viewed by additional unit owners at 1300
4 Monroe.

5 I'd also like to see, there has I
6 believe been some testimony from OP about the
7 fact that without having screening there would
8 be -- I don't want to misrepresent, in my
9 opinion, from what I've heard, that there
10 would be potential problems with light and air
11 if there was not screening because of the
12 close proximity of the windows and the decks.
13 And thus, screening would be required or
14 needed in order to alleviate any substantial
15 impact.

16 That being said, I think that
17 there's also some concern that if you put up
18 screening there may be some additional affects
19 that then are associated with that. So, I'd
20 like to see both these diagrams with screening
21 or without screening and then any effects that
22 we could balance could balance or weigh and

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1 evaluate from there.

2 I'd also like to see current
3 photographs or imagery of what exists in
4 regards to the windows of the building,
5 whether that's from the applicant or whether
6 that's from the opposing party. I think that
7 that would be helpful. And so, that would be
8 good.

9 Are there any other documents that
10 Board Members would like to see?

11 ZC CHAIR HOOD: Madam Chair, on
12 your last comment, if we could get it from
13 both sides, because I will tell you that while
14 Exhibit No. 3 was missing from our packet;
15 maybe Mr. Turnbull still has it. But anyway,
16 this is getting me closer to where I need to
17 be, but if I can get the other side. And as
18 you said, photographs showing the
19 relationship, but both sides. I think this is
20 only showing me one side. And I want to see
21 what's true on the opposite side of this
22 particular photograph in Exhibit 3, which

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1 shows the proposed decks. I guess that's the
2 word I should be using.

3 BZA CHAIR MOLDENHAUER: Mr.
4 Dettman, any additional documents?

5 VICE CHAIRMAN DETTMAN: Yes, I
6 would just ask that if the applicant decides
7 to do a sun study using whatever computer
8 program, that it would help the Board to be
9 able to verify the results of the sun study.
10 If some photo documentation, actual going out
11 there and taking photos and documenting when
12 and what time they were taken so that we can
13 compare it to the sun study, that would be
14 very helpful.

15 MS. ACOSTA: Okay.

16 ZC CHAIR HOOD: I just have one
17 question. I was just wondering what the
18 objection was to Councilmember Graham's
19 letter. I'm not trying to rehash anything,
20 but I don't really see actually who's in the
21 -- well, it was just asking people to look
22 into more of a special exception, which is now

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1 is in the letter. So, I don't think the
2 councilmember took a position. I just wanted
3 to make sure that was clear.

4 MR. NOKER: Yes, we never saw that
5 letter.

6 ZC CHAIR HOOD: Well, I can tell
7 you this is just asking to look into your
8 situation, so I don't think that --

9 MR. NOKER: Okay.

10 BZA CHAIR MOLDENHAUER: It's a
11 very vague letter that -- yes.

12 MR. NOKER: Yes.

13 BZA CHAIR MOLDENHAUER: I mean,
14 it's a very -- obviously we always appreciate
15 whenever the council members provide their
16 input to us and we would not want to --

17 MR. NOKER: Yes. No, I mean, my
18 only concern was that we just kept it to the
19 people who were within the radius of
20 relevance. So, there was a red circle that
21 went out around that square or that lot, or
22 whatever exactly it's called, within the

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1 District.

2 ZC CHAIR HOOD: But you live in
3 Ward 1, right?

4 MR. NOKER: Yes.

5 ZC CHAIR HOOD: Okay.

6 MR. NOKER: Yes.

7 BZA CHAIR MOLDENHAUER: Are there
8 any questions about the documents that we've
9 asked to be provided to us?

10 MS. FORD: Yes, I just had one.
11 On the elevation drawing showing all windows
12 that face the deck, because it's a courtyard
13 and if you look at some of the exhibits we
14 submitted, I mean, there are some houses that
15 are really pretty far away in the courtyard.
16 Do you want every single window in the whole
17 courtyard that could possibly see it, or do
18 you want within three houses away? I just
19 want to be clear.

20 BZA CHAIR MOLDENHAUER: I think
21 three houses. I mean, I think we're talking
22 about people that would be adversely affected

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1 by being able to view the deck.

2 MS. FORD: Okay.

3 BZA CHAIR MOLDENHAUER: So, if you
4 want to provide --

5 MS. FORD: So, like three houses
6 on each side or something like that?

7 BZA CHAIR MOLDENHAUER: Yes.

8 MS. FORD: Okay.

9 BZA CHAIR MOLDENHAUER: I think
10 obviously, you know, 1300 Monroe is our focus.
11 They are the individuals that are coming
12 forward. But as a board, we are a public body
13 that is supposed to look at --

14 MS. FORD: Sure.

15 BZA CHAIR MOLDENHAUER: -- any
16 neighbors who may not, you know, bring forth
17 a -- and there also are letters in the file.
18 So, if there are letters in the file raising
19 some concerns and those are within three
20 houses or maybe; I don't have the addresses on
21 the top of my head -- maybe one of those
22 letters in opposition is from a fourth house.

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1 MS. FORD: Okay.

2 BZA CHAIR MOLDENHAUER: I would
3 maybe advise you to include that house.

4 MS. FORD: So, just a reasonable
5 three to four houses, something like that?

6 BZA CHAIR MOLDENHAUER: Yes, I
7 think that would be advisable.

8 MEMBER SORG: I might be able to
9 help clarify a little bit here.

10 MS. FORD: Sure.

11 MEMBER SORG: In your current
12 drawings you stopped looking at the adjacent
13 property at the subject property's property
14 line, which was in my opinion not exactly the
15 correct thing to do here, which is why we
16 didn't get those windows entered into that
17 discussion. The regulation asks you to
18 consider abutting and adjacent properties, so
19 the three houses and those things. But those
20 houses abutting or adjacent that would be
21 affected by this construction. It's pretty
22 clear.

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1 MS. FORD: Okay. Thank you.

2 BZA CHAIR MOLDENHAUER: Are there
3 any other questions about clarification as to
4 what we're looking for?

5 (No audible response.)

6 BZA CHAIR MOLDENHAUER: I don't
7 see any. So now at this point we're going to
8 talk about time frame.

9 MR. SEWELL: I'll ask a question
10 when you're ready, but I can wait until you're
11 done.

12 BZA CHAIR MOLDENHAUER: Go ahead.

13 MR. SEWELL: I hate to be
14 pedantic. On the other hand, I want to be
15 clear so I am able to prepare exhibits that
16 precisely address the concerns of the Board.
17 An elevation drawing technically speaking is
18 a flat two-dimensional representation of a
19 surface, a surface which is not parallel to
20 the plane which it's cut is represented as
21 foreshortened, truncated and difficult to see.
22 There is in fact no technically speaking

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1 elevation drawing that could represent the
2 relationship between the deck, the property on
3 Monroe Street and the 13th Street house.

4 There could be a sectional drawing that showed
5 the relationship between the --

6 BZA CHAIR MOLDENHAUER: I'm going
7 to interrupt and I'm going to show you a
8 diagram that was presented in another case of
9 ours.

10 MR. SEWELL: Good.

11 BZA CHAIR MOLDENHAUER: This is a
12 diagram that shows both an elevation, and then
13 as you indicated a sectional here.

14 MR. SEWELL: Yes.

15 BZA CHAIR MOLDENHAUER: Obviously
16 we have all different types of diagrams
17 represented to us and we would be looking for
18 your expertise to provide as best as you can
19 as many options to provide us with a clear
20 understanding of how it would be affected.
21 So, this is a sectional drawing and an
22 elevation that was showing from the

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1 streetscape.

2 MR. SEWELL: And I'm confident I
3 can provide the materials that you guys need.
4 We won't have an interim step in order to
5 determine that, or we can talk about that.

6 MS. FORD: Sure. Okay.

7 BZA CHAIR MOLDENHAUER: So, now
8 we're going to the time frame. I would think;
9 and you can jump in if you don't believe my
10 timing is sufficient, that three weeks would
11 be sufficient to pull together elevation and
12 different types of drawings to this effect.

13 I'm hearing a yes which is off the
14 record, but I will provide on the record that
15 Mr. Sewell is saying yes. So, that would be
16 let's just say a month. Let's just say that
17 would be August 3rd. I would ask that the
18 applicant provide this office, the Office of
19 Planning and the opposing party copies of any
20 documents in regard to plans.

21 At the same time I would ask the
22 opposing party to provide any documents that

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1 you seek to enter into evidence in regards to
2 photographs at that same time.

3 MR. NOKER: Would it be
4 appropriate for us to commission an appraisal?

5 BZA CHAIR MOLDENHAUER: If you
6 look at 223, 223 does not allow us to evaluate
7 anything in regards to value of the property.
8 It says privacy, light, air and use and
9 enjoyment. So, that's not one of the
10 standards that we review.

11 MR. NOKER: So, enjoyment wouldn't
12 be, you know, you are upside-down on your
13 mortgage because you've got less property
14 value than you had pre-deck?

15 BZA CHAIR MOLDENHAUER: I'm going
16 to turn to OAG and see. Is there any cases
17 that would specifically speak to the issue of
18 presenting evidence as to value for a 223
19 case?

20 MS. NAGELHOUT: None that come to
21 mind offhand. It's more about the use of the
22 property. I don't know that the Board has

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1 ever really spoken on what exactly is
2 encompassed with enjoyment.

3 BZA CHAIR MOLDENHAUER: Since
4 there's no specific legal issue as to whether
5 I can or cannot allow or not allow that, I
6 will say that all evidence that wants to be
7 supplemented has to be in by the 3rd. I'm
8 going to give another date after this in which
9 both parties can respond to the submissions
10 that are received on the 3rd. If there's any
11 legal arguments on either side as to the
12 validity or a lack of weight that we should
13 give to certain documents, we will hear -- not
14 hear those. You will receive those in writing
15 and consider those in our deliberation.

16 So, we are specifying what we'd
17 like, but in general we are leaving the record
18 open for submissions from both parties which
19 need to be received by the 3rd. No additional
20 documents will be accepted after the 3rd.

21 After that we will provide
22 everybody an additional three weeks to

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1 respond. Both parties will have simultaneous
2 response opportunities. So, responses then
3 will be due on the 24th of August. And I
4 think we can set this for decision then. Our
5 next date for decision would be the 14th.

6 Is that right, Mr. Moy? Do we
7 have time in our calendar for a decision on
8 the 14th?

9 And then actually, then that would
10 be providing OP an opportunity to supplement
11 their report if they felt that was necessary.
12 If you don't feel it's necessary; I'm not
13 going to hold you to a requirement, but if you
14 do, if we have a decision on the 14th, I think
15 that would be provide OP sufficient time since
16 we are potentially going to have I guess BZA
17 5 and BZA 5B as two options. If there's
18 potential need to supplement that in regards
19 to any issue of fencing or not fencing and
20 that effect of light and air, there may be an
21 opportunity for OP to opine as to their
22 opinion. That may help the Board deliberate.

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1 MR. MOY: Madam Chair, yes,
2 there's space for a public meeting for this
3 application on September 14th in the morning.

4 BZA CHAIR MOLDENHAUER: Okay. So,
5 then this case will be heard for decision.
6 Again, decision is not an opportunity for us
7 to hear any additional arguments. It will be
8 an opportunity for us to decide the case in
9 public. You can come down and listen in
10 public or you can go log on to the webcast and
11 simply at your home and listen to our
12 deliberation and then decision.

13 Are there any questions,
14 clarifications?

15 (No audible response.)

16 BZA CHAIR MOLDENHAUER: Seeing
17 none -- or --

18 MS. ACOSTA: Sorry. One last --
19 I'm just thinking about -- back to --

20 BZA CHAIR MOLDENHAUER: I'd rather
21 you ask now.

22 MS. BROWN-ROBERTS: I'm going back

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1 to like, you know, the resources that we have
2 available and like, you know, going about
3 conducting studies. So, I'm trying to keep
4 what you guys want but also what we can
5 provide and have -- you know, and build our
6 legitimate evidence, right? And you had
7 mentioned pictures. Mr. Hood had mentioned
8 pictures. So, we had submitted some in the
9 past and I was wondering do you want to keep
10 those, or do you want us to resubmit new ones?

11 BZA CHAIR MOLDENHAUER: We have
12 all documents in our record if they're been
13 submitted in the past. If you would like to
14 submit -- I mean, pictures don't cost any time
15 or energy to make.

16 MS. ACOSTA: Right. That's why I
17 said --

18 BZA CHAIR MOLDENHAUER: So, if you
19 want to take additional pictures, I would say
20 it probably can't hurt.

21 MS. ACOSTA: Okay. I just wasn't
22 sure if I had to, you know, resubmit the same.

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1 Okay. Thank you.

2 MR. NOKER: One last question.
3 Just procedurally are we going to get copies
4 of everything that's submitted?

5 BZA CHAIR MOLDENHAUER: Yes, you
6 will get copies. And I will say this again.
7 Both parties need to serve each other on, I
8 believe -- what was the date I said, the 4th?
9 August 3rd? Sorry. I had moved my calendar.
10 On August 3rd. So, both parties will send
11 each other copies of these documents. And
12 when OP, if they provide a supplemental
13 report, that will be after all replies are in.
14 So, you would not get OP's report because OP's
15 report would be going directly to the Zoning
16 Office, which we would have a copy of. And
17 their report would be based on any submissions
18 on the 3rd and then any replies on the 24th.

19 MR. NOKER: Okay. And final
20 question. If we could come to some kind of an
21 agreement where we would support their
22 application --

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1 BZA CHAIR MOLDENHAUER: That would
2 be fabulous.

3 MR. NOKER: -- what would we -- I
4 mean, wait a minute. I mean, if you think
5 that we wore you down today, we've been
6 dealing with this for a long time. But if we
7 could come to an agreement --

8 BZA CHAIR MOLDENHAUER: No, this
9 is what we do and we serve the city.

10 MR. NOKER: Okay. So --

11 BZA CHAIR MOLDENHAUER: If you
12 come to an agreement, all we would ask is that
13 at any point in time between today and the
14 September 14th hearing that you provide a
15 written letter that is signed by both of you
16 stating that you agree and that you as a party
17 opponent rescind any opposition of the case as
18 it is amended.

19 MR. NOKER: Okay. Thank you.

20 BZA CHAIR MOLDENHAUER: You're
21 welcome. And now that we are completed with
22 all the procedural issues, I appreciate

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1 everybody coming in today. I know this is
2 obviously a very long process. I know that
3 there's a lot of emotions back and forth. You
4 know, we as Board Members are representing the
5 city. We understand that, you know, these are
6 neighborly issues that sometimes get heated
7 and contested. I really encourage continued
8 dialogue. I would love to see things
9 resolved. You know, that makes us happy as
10 Board Members. But if it can't be, please
11 provide the documentation and we will evaluate
12 it based on the standard that we're obligated
13 to do. Okay? Thank you all.

14 We still have one more case today,
15 so --

16 MS. ACOSTA: Oh, my goodness.

17 MR. NOKER: Wow.

18 BZA CHAIR MOLDENHAUER: -- Mr.
19 Moy, if you could read the last case for the
20 day, please?

21 MS. ACOSTA: Thank you.

22 BZA CHAIR MOLDENHAUER: Thank you.

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1 MS. BAILEY: Madam Chair, I would
2 read the case if that's appropriate.
3 Application 17987, application of El Jardin'
4 Infantil and it's pursuant to 11 DCMR
5 3104.1, for a special exception to allow a
6 child development center; that's 12 children
7 and two staff, under section 205. The
8 property is zoned R-1-B. It's located at 2108
9 48th Street, Northwest, Square 1390, Lot 825.

10 BZA CHAIR MOLDENHAUER: Is the
11 applicant in the room?

12 (No audible response.)

13 BZA CHAIR MOLDENHAUER: I believe
14 I had seen the applicant in the room earlier.
15 What we'll do is we'll wait two minutes and if
16 the applicant does not --

17 MR. JACKSON: Madam Chair, the
18 applicant had the leave.

19 BZA CHAIR MOLDENHAUER: Okay. We
20 continue until 6:00 p.m. every evening. So,
21 the applicant knew that we continued to 6:00
22 p.m. and she was last on the agenda.

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1 That being said, we have continued
2 this case now for almost over -- since
3 November 10th, 2009. And I believe I have the
4 authority; OAG, you can correct me if I'm
5 wrong, but we will dismiss this case and the
6 applicant can bring a new case if she so
7 desires at a future time.

8 MS. NAGELHOUT: I believe the rule
9 says you're supposed to give the applicant
10 notice.

11 BZA CHAIR MOLDENHAUER: I think on
12 March 9th, 2010 we had given her notice, and
13 on May 4th, 2010 I believe we had given her
14 notice indicating that, you know, this had
15 gone on way too long and she was obligated to
16 satisfy the obligations of the BZA, and I
17 think that this would qualify under that. And
18 I think that --

19 MS. NAGELHOUT: 3100.6. That's
20 the rule.

21 BZA CHAIR MOLDENHAUER: I'm
22 looking at the rule here. 3100.6 states that

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1 no appeal or application shall be dismissed on
2 the grounds that the applicant failed to
3 comply with provisions of this chapter unless
4 after dual notice of deficiency and expiration
5 of a reasonable time as fixed by the Board and
6 deficiency has not been corrected.

7 I stand on the fact that as I said
8 earlier that this applicant has been notice on
9 multiple occasions as to her deficiencies and
10 that we have provided her with sufficiently
11 reasonable enough time by the multiple
12 extensions and continuances that we've granted
13 her. And thus, I would again state that I
14 believe we shall dismiss this case. I'll
15 submit a motion on that. But I'll also state
16 that if the applicant wishes to resubmit the
17 application we would look favorably upon any
18 waiver of time frame between this dismissal
19 and any new application.

20 MR. JACKSON: Madam Chairman, just
21 point of clarification. I believe at the last
22 meeting you were requesting that she bring a

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1 certification of the posting.

2 BZA CHAIR MOLDENHAUER: Yes.

3 MR. JACKSON: And I didn't know
4 whether you were aware that that has been
5 filed. I don't think it was in your packet.
6 I just wanted to clarify that.

7 BZA CHAIR MOLDENHAUER: Yes, the
8 last time there was a question that she did
9 not post the property correctly and I believe
10 that that was a late filing on her behalf.
11 And we don't have it in our official record,
12 but I believe it had been given to the Office
13 of Zoning and has been added to our file now.

14 Is that correct, Mr. Moy?

15 MR. MOY: That's correct, Madam
16 Chair. I just wanted to state for the record
17 she did file it later this afternoon and that
18 is in the record, an affidavit of posting.

19 BZA CHAIR MOLDENHAUER: An
20 affidavit of posting. But for the record it
21 was filed late, correct.

22 MR. MOY: That's correct.

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1 BZA CHAIR MOLDENHAUER: Yes.

2 MS. NAGELHOUT: Madam Chair?

3 BZA CHAIR MOLDENHAUER: Yes?

4 MS. NAGELHOUT: If you look at
5 3113.11, it says without leave of the Board an
6 application dismissed by the Board shall not
7 be accepted for filing again for at least 90
8 days. Did I hear leave from the Board, or did
9 you want to leave it at 90 days?

10 BZA CHAIR MOLDENHAUER: No, I did
11 indicate that if she sought a waiver of that
12 section that we would look very favorably upon
13 that and most surely grant that relief in
14 order to permit her to bring this case again.

15 Based on that statement, I have a
16 motion to dismiss Application 17987.

17 A motion has been made. Is there
18 a second?

19 VICE CHAIRMAN DETTMAN: Second.

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

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1 VICE CHAIRMAN DETTMAN: Aye.

2 MEMBER SORG: Aye.

3 ZC CHAIR HOOD: Aye.

4 MR. MOY: Staff would record the
5 vote as four to zero to one on the motion of
6 the Chair to dismiss the application.

7 Seconded by Mr. Dettman. In support of the
8 motion Ms. Sorg and Mr. Hood. Again, that's
9 four to zero to one.

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

12 And I believe that concludes our
13 hearing for the day. So, thank you.

14 MR. MOY: Thank you.

15 BZA CHAIR MOLDENHAUER: Oh, I'm
16 sorry. It does not conclude our necessary
17 work for the day. Continuing on the record we
18 have one very, very sad order of procedure
19 that we have to handle, but also exciting.
20 Mr. Dettman is leaving us shortly. And while
21 nobody will be able to fill his shoes, we are
22 going to be having a new individual from the

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1 National Capital Planning Commission. But
2 that being said, we are also in need of a new
3 vice-chairman. And so, I will open up the
4 discussion for any nominees for vice-chair,
5 and I nominate --

6 MEMBER SORG: You have a lot of
7 choices. It could take a while.

8 BZA CHAIR MOLDENHAUER: I will
9 nominate Ms. Sorg for vice-chair.

10 ZC CHAIR HOOD: Second.

11 BZA CHAIR MOLDENHAUER: I have a
12 motion and a second. All those in favor of
13 Ms. Sorg becoming the vice-chair of the BZA,
14 say yes. Yes.

15 ZC CHAIR HOOD: Yes. Aye.

16 VICE CHAIRMAN DETTMAN: It's
17 unanimous.

18 BZA CHAIR MOLDENHAUER:
19 Unanimously --

20 MEMBER SORG: Thank you very much.
21 I'm very honored to assume this position,
22 although also very saddened to see Mr. Dettman

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1 go.

2 I've learned a great deal from the
3 short time that I've been able to serve on
4 this Board from you and you will, I know, by
5 me and all of my fellow Board Members be
6 sorely missed.

7 ZC CHAIR HOOD: Madam Chair, I
8 just wanted to echo. I didn't know really, I
9 think -- today is your last -- next? Oh,
10 well, I won't be here whenever your last day,
11 I don't think.

12 But I think Mr. Dettman has
13 brought a lot to the Board of Zoning
14 Adjustment and to the Office of Zoning as a
15 whole. Him passing this way; and I say this
16 about all of the folks that I like that I've
17 worked with, him passing this way has made a
18 major impact and a difference for the
19 residents of the District of Columbia. And I
20 think his impact and his presence will be felt
21 for years to come.

22 So, I wish you the best on behalf

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1 of the Zoning Commission on your future
2 endeavors.

3 VICE CHAIRMAN DETTMAN: Thank you,
4 Chairman Hood. I very much appreciate that.

5 And congratulations to Ms. Sorg.

6 And, Madam Chair, next week is my
7 last day and I'll reserve any comments for
8 next week.

9 BZA CHAIR MOLDENHAUER: And I will
10 be praising you next week in more detail. So,
11 just be ready.

12 VICE CHAIRMAN DETTMAN: Well, I
13 was going to ask you to do that anyway, so I
14 appreciate that.

15 BZA CHAIR MOLDENHAUER: Oh, good.

16 VICE CHAIRMAN DETTMAN: But, no,
17 congratulations to Ms. Sorg. I'm very happy
18 that she is now the BZA's vice-chairperson and
19 I think that she's going to serve admirably
20 and really do an excellent job.

21 ZC CHAIR HOOD: And I also want to
22 congratulate the new vice-chair also.

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1 MEMBER SORG: Well, thanks.

2 BZA CHAIR MOLDENHAUER: Well,
3 we're very excited to have a new vice-chair.
4 And thank you very much.

5 And that would now actually
6 conclude our business for today. Thank you.

7 (Whereupon, the hearing was
8 concluded at 5:56 p.m.)

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