

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY,

SEPTEMBER 14, 2010

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH H. MOLDENHAUER, Chairperson
NICOLE C. SORG, Vice Chair, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN

KAREN THOMAS

MAXINE BROWN-ROBERTS

This transcript constitutes the minutes from the Public Hearing held on September 14, 2010.

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

(9:50 a.m.)

CHAIRPERSON MOLDENHAUER: This meeting will please come to order. Good morning, ladies and gentlemen.

This is the September 14th, 2010 Public Meeting of the Board of Zoning Adjustments for the District of Columbia. My name is Meridith Moldenhauer, Chairperson.

Joining me today is Vice Chair, Nicole Sorg. We also have, to my right, for his first day here, Jeff Hinkle, our representative of the National Capital Planning Commission, and Mr. Turnbull representative of the Zoning Commission.

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

We do not take any public testimony at our meeting unless the Board asks someone to come forward. Please be advised this proceeding is being recorded by a court

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1 reporter and is also be webcast live.

2 Accordingly, we must ask you to
3 refrain from any disturbing noise or actions
4 in the hearing room. Please turn off all cell
5 phones and beepers.

6 Mr. Secretary, are there any
7 preliminary matters?

8 MR. MOY: Yes, we do, Madam Chair,
9 but it's just that we take that on a case-by-
10 case basis.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you. Then, let's call the first case for
13 decision.

14 MR. MOY: Yes. Madam Chair, staff
15 would suggest that before going into the cases
16 for decision, we do have, for the first time
17 ever for doing it, an item for Board action
18 which is the expedited calendar. And on the
19 expedited calendar there are two cases. The
20 first is Application No. 18121 of Michael and
21 Svetlana Krainak, as well as Application No.
22 18123 of Mary Melchior. I believe I

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1 pronounced that correctly.

2 But anyways, the Board is to act
3 on these two cases on the expedited calendar,
4 meeting the requirements of Section 3118 for
5 Board approval.

6 CHAIRPERSON MOLDENHAUER: Thank
7 you very much, Mr. Moy.

8 Before getting into these cases, I
9 just want to provide a little bit of a primer
10 since, as Mr. Moy indicated, this is the first
11 time we've had expedited cases and this is a
12 brand-new process.

13 It's Section 3118, which allows
14 for expedited hearings, expedited case review,
15 and what that means is it allows an applicant
16 to actually waive the requirement for a
17 hearing.

18 Under Section 3118.2, both the
19 cases we have today, it permits such
20 applications are eligible if you're seeking a
21 223 for a single-family home enlargement or
22 addition to that structure, or under 208 for

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1 a park or playground or swimming pool area.

2 This allows for the applicant to
3 waive a hearing and be placed on an expedited
4 review calendar and decide without a hearing,
5 unless the Board would go forward.

6 They do require in these cases
7 that they complete the public notice
8 requirement and that they require a completion
9 of ANC review periods of 30 days from the date
10 it receives the notice, plus an additional 14
11 calendar days.

12 What that does is, it allows any
13 application of the ANC to weigh in. That
14 being said, there also is an opportunity for
15 these cases to be removed by an individual who
16 is going to testify either for or, mostly
17 likely, against this application.

18 They can submit an application
19 with 14 days prior to the expedited review
20 schedule and indicate specific elements which
21 are articulated in Section 3118.8, and we
22 would then remove it, or the Board

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1 unilaterally can, or an individual can
2 actually determine that they would also like
3 to remove it.

4 And with that being said,
5 obviously this is a new process, and we'll
6 probably be seeing more of these. But, for
7 now, we'll start off with Case No. 18121.

8 APPLICATION NO. 18121 OF
9 MICHAEL AND SVETLANA KRAINAK

10 CHAIRPERSON MOLDENHAUER: This is
11 a rear addition to a property located at 3609
12 Patterson Street, N.W. for a 223 review. We
13 have received the application. We have
14 sufficient documentation in our record which
15 supports the application, supports the
16 different requirements under 223.

17 In addition to that, under -- we
18 have a July 14th letter from the ANC which is
19 our Exhibit No. 21, which indicates that at a
20 regularly-scheduled public meeting on July
21 12th, the ANC voted four-to-two to support the
22 application.

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1 We also have a letter from a
2 neighbor indicating that they support their
3 neighbor's application. That being said,
4 seeing the support and seeing that the
5 application is full, I would be ready to move
6 forward for a decision unless any other
7 individuals have -- any Board Members have
8 anything else that they would like to add.

9 (No response.)

10 MOTION TO APPROVE APPLICATION NO.
11 18121

12 CHAIRPERSON MOLDENHAUER: Seeing
13 no additional comments, then I'll move into
14 the voting portion, and I would submit a
15 motion to support Application No. 18121 for
16 BZA approval for 223 relief for lot dimension
17 under 401, rear yard under 404, and side yard
18 under 405 for 3609 Patterson Street, N.W.

19 My motion has been made. Is there
20 a second?

21 VICE CHAIR SORG: Second.

22 VOTE TO APPROVE APPLICATION NO. 18121

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1 CHAIRPERSON MOLDENHAUER: Motion
2 has been made and seconded. All those in
3 favor say aye.

4 (Chorus of ayes.)

5 CHAIRPERSON MOLDENHAUER: Mr. Moy,
6 could you read back the vote?

7 MR. MOY: Yes, Madam Chair. Staff
8 recorded the vote as 4:0:1. That's on the
9 motion of the Chair, Ms. Moldenhauer, to
10 approve Application 18121, seconded by the
11 Vice Chair, Ms. Sorg, in support of the
12 motion, Mr. Turnbull and Mr. Hinkle. No other
13 Board Member participating.

14 CHAIRPERSON MOLDENHAUER: Thank
15 you. Next on our expedited calendar we have
16 Application No. 18123.

17 MS. GLAZER: Madam Chair, is the
18 Board going to waive findings of fact and
19 conclusions of law?

20 CHAIRPERSON MOLDENHAUER: Yes. We
21 will have as I request, a summary order.
22 Thank you very much. I appreciate that.

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1 MARY MELCHIOR

2 APPLICATION NO. 18123

3 CHAIRPERSON MOLDENHAUER: This
4 application is for a -- to allow an attic on
5 an existing dwelling to your place with a
6 habitable third floor for 223 relief for a
7 property located at 1023 Newton Street, N.W.

8 In this application we have
9 indicated in our Exhibit No. 21, letters of
10 support from neighboring properties -- many of
11 the neighboring properties.

12 This is a two-page signature page
13 of sign-off's supporting the application,
14 indicating that the applicant has met with the
15 majority of their neighbors and have shown
16 them the plans and has obtained their support
17 in writing.

18 We also have documentation showing
19 that they've sent notification to the ANC and
20 that the time frame under Section 3118 has
21 lapsed, but we have no specific documentation
22 from the ANC.

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1 That being said, based on the
2 support from the neighbors and the fact that
3 the ANC has had time to review the application
4 and has not replied, I think that that is
5 sufficient under the standards of the
6 expedited review process.

7 In addition to that, the applicant
8 submitted sufficient documentation to satisfy
9 the different elements of a 223 relief and I
10 see no problem with this application.

11 I'll open up the Board for any
12 additional members -- Board Members to make
13 any comments.

14 (No response.)

15 MOTION TO APPROVE APPLICATION NO. 18123

16 CHAIRPERSON MOLDENHAUER: Seeing
17 none, then at this time I'll submit a motion,
18 a motion to grant Application No. 18123 for a
19 special exception under 223, not meeting side
20 yard requirements of 405, requirements which
21 are for the premises for 1032 Newton Street,
22 N.W.

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1 A motion has been made. Is there
2 a second?

3 VICE CHAIR SORG: Second.

4 VOTE TO APPROVE APPLICATION NO. 18123

5 CHAIRPERSON MOLDENHAUER: Motion's
6 been made and seconded. All those in favor.

7 (Chorus of ayes.)

8 MR. MOY: Staff would record the
9 vote as 4:0:1 on the motion of the Chairperson
10 to approve the Application 18123. Seconding
11 the motion, Vice Chair, Ms. Sorg. Also in
12 support of the motion, Mr. Hinkle and Mr.
13 Turnbull.

14 So, again, the vote is to approve
15 4:0:1.

16 CHAIRPERSON MOLDENHAUER: And, Mr.
17 Moy, can we please waive our requirements and
18 have a summary order?

19 MR. MOY: Yes. With pleasure.
20 Thank you.

21 CHAIRPERSON MOLDENHAUER: I
22 believe that concludes our expedited cases for

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1 the morning.

2 PRELIMINARY MATTERS

3 APPLICATION NO. 18063 OF

4 ZACHARY AND LYDIA PLOTZ, ET AL.

5 MR. MOY: Yes. The next Board
6 action is directed to Application under 18063.
7 This is of Zachary and Lydia Plotz, et al.,
8 pursuant to 11 DCMR 3104.1, for a special
9 exception to allow a rear deck addition to an
10 existing flat (two-family) row dwelling, under
11 Section 223, not meeting the rear yard
12 (section 404), and court (section 406)
13 requirements in the R-4 District, at premises
14 3420 13th Street, N.W. The property is in
15 Square 2838, Lot 25).

16 Staff notes for the Board that the
17 applicant, at the last hearing on July 13th,
18 2010 submitted revised plans and withdraw
19 zoning relief from lot occupancy (section
20 403).

21 Also, on July 13th the Board
22 completed public testimony, closed the record,

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1 and scheduled its decision on September 14th.
2 The Board requested additional information to
3 supplement the record.

4 This required a filing. The Board
5 allowed filings from the applicant and party
6 opposition, as well as responses and allowed
7 the Office of Planning to submit supplemental
8 report.

9 In your case folios this morning,
10 Madam Chair, you have a filing from the
11 applicant. That posthearing document is
12 dated August 3rd, 2010, identified as Exhibit
13 54. There is also a posthearing document from
14 the party opposition dated August 3rd, 2010,
15 identified as Exhibit 55.

16 As a preliminary matter, Madam
17 Chair, there are two additional filings, which
18 was not requested by the Board. The first is
19 a response filing from the applicant, dated
20 August 23rd, 2010 identified as Exhibit 56,
21 and the second filing was entered into the
22 record by the party opposition yesterday,

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1 Monday, September 13th, identified as Exhibit
2 57.

3 The Board is to act on the
4 preliminary matters as well as the merits of
5 the applicant's request for special exception.
6 So, any relief from Section 223 not meeting
7 the rear yard and court with requirements,
8 that completes the staff's briefing, Madam
9 Chair.

10 CHAIRPERSON MOLDENHAUER: Thank
11 you very much, Mr. Moy.

12 Just to first address the
13 preliminary matters, which would be the
14 documents. When we indicate that we are
15 closing the record, it means that we are
16 closing the record, other than the documents
17 we specifically asked for.

18 If you're going to try to send in
19 documents that we did not ask for, you have to
20 either request relief and show good cause and
21 no prejudice, or we are not going to accept
22 those documents.

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1 Here, we had closed the record and
2 so we are not going to be accepting any
3 response from the applicant which was
4 submitted on August 23rd, which is our Exhibit
5 No. 56, and we're also not going to be
6 accepting a letter from the opposition which
7 was submitted, I believe, yesterday. So, both
8 of those documents will be stricken from the
9 record.

10 In addition to that, Mr. Moy, I
11 just want to make sure that it's clear on the
12 record. Exhibit No. 55 was actually filed
13 late. It was dated on August 3rd, but it was
14 received late. But, that letter did submit
15 reasons for us to waive our requirements and
16 to provide good cause shown, because it
17 indicated that the documentation that they
18 were waiting on was received late and, thus,
19 in order to respond they needed an addition
20 few days.

21 I don't believe that that was --
22 would prejudice the parties, and so we will

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1 accept that into the record.

2 APPLICATION NO. 18063 OF
3 ZACHARY AND LYDIA PLOTZ, ET AL.

4 That being said, we'll go on and
5 discuss the merits of this case. This case
6 was before us on two separate occasions. We
7 had an initial hearing on May 18th, 2010, and
8 then we postponed it for an additional hearing
9 on August 13th, 2010.

10 August 13th we heard the majority
11 of the testimony from both the Applicant, the
12 Applicant's architect and from the opposing
13 party, and so based on that, and the
14 submissions we have, I will start our
15 deliberation and I'll reference some
16 additional documents.

17 What we have is, we have a request
18 for a 223 relief. 223 is a lower standard of
19 relief that is required for zoning approval
20 and it simply requires us to look to see
21 whether or not the addition shall not have a
22 substantial adverse effect on the use and

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1 enjoyment of an abutting property, and that
2 the light and air available to a neighboring
3 property shall not be unduly affected, and
4 that the privacy and use and enjoyment of the
5 neighbor shall not be unduly compromised.

6 There are additional standards,
7 but I think that those are the crux of the
8 issue in this case before us today. Here we
9 have a deck that -- and as I indicated in our
10 -- in the hearing, we are looking at this as
11 though it is a brand-new case.

12 The submissions are not going to
13 be addressing any existing deck but, rather,
14 as though we were blind to the fact that a
15 deck exists and just as though a new deck was
16 being created, and the application and the
17 plans were submitted in that way.

18 You know, that being said, we have
19 to look to see whether or not this application
20 passes those standards.

21 We have, in our record, two ANC
22 letters; one, which is our Exhibit No. 31; and

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1 then one, which is our Exhibit No. 43. Both
2 letters express opposition to the application
3 for special exception. Unfortunately, they
4 don't satisfy our standards.

5 Our standards require that the
6 application the ANC indicate that the date in
7 which the vote occurred, the fact that it was
8 a regularly-scheduled meeting, which they do,
9 and also that a quorum was present, the vote
10 does not indicate that that quorum was
11 present, and so we cannot give it great
12 weight, but we will consider the letters, as
13 we consider all of the evidence in our file.

14 In addition to that, we have a
15 number of letters of opposition in our file,
16 including Exhibit No. 28, which is from a
17 neighbor. We have another letter of
18 opposition expressing some concerns about the
19 impact that this would have, from an
20 individual,
21 Kathy Miller, which is our Exhibit No. 27.

22 We have another letter of

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1 opposition, our Exhibit No. 35 from two
2 individuals on Monroe Street. We have another
3 letter of opposition, which is our Exhibit No.
4 34. And, Exhibit No. 29, and then Exhibit No.
5 41, and Exhibit No. 46 are all letters
6 referencing concerns of the neighboring
7 properties, potentially, regarding this
8 application.

9 While we are considering those
10 letters, we can only consider those aspects
11 that actually affect the 223 application and,
12 as I indicated before, we are not considering
13 any references in those letters that reference
14 any illegal work or any past issues associated
15 with a current deck but, rather, we're looking
16 at any concerns that would affect the standard
17 under 223.

18 That being said, we did hear
19 extensive testimony from the applicant and
20 from opposing party regarding the concern over
21 light and air. We asked the applicant to
22 provide us with some additional diagrams and

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1 drawings as this, the information we had was
2 insufficient to show the surrounding
3 properties and how that would be affected.

4 The submission that we did receive
5 from the applicant on August 3rd did provide
6 that information, and did show a clear
7 understanding of the line of sight from the
8 three windows on the opposing -- opposing
9 party's property.

10 Some of the things that I observed
11 from that submission were that, while there
12 are three windows of concern that came out
13 during the hearing, one of those windows which
14 I believe had the most view, I thought, to the
15 deck or to any addition that would be made is
16 actually a glass-blocked window, so that would
17 then -- there would be no real effect of light
18 and air on that window.

19 The other two, there were sun
20 studies provided by the applicant that
21 illustrated to me that there were really less
22 of an impact by any addition or any deck that

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1 was being made.

2 In addition to that, the applicant
3 provided multiple options for potentially
4 pulling back and also has stipulated that they
5 will put in screening on the property to
6 screen any light and air issues and to screen
7 potentially any noise from the -- that is
8 generated by the deck.

9 I did hear testimony, and I think
10 that it was persuasive that the deck was as
11 small as they could make it. In regards of
12 providing just, you know, a table for four,
13 that they were trying not to have any addition
14 that would be larger than that.

15 The opposing party did present, I
16 think, some very valid arguments in regards to
17 noise and the level of noise that would be
18 heard from the two rooms -- I mean, the
19 bedroom into the property. However, I have to
20 go back to the issue of our standard, and our
21 standard is "substantially adverse effect and
22 shall not unduly affect privacy, enjoyment."

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1 And I think that, living in a
2 city, and this is a property that's,
3 unfortunately, more in a city portion rather
4 than some of the rural areas of Washington,
5 D.C., we have the hard job of having to decide
6 what is normal noise, what, then potentially
7 rises to the level of "substantial or unduly
8 affected noise."

9 And it's a real challenge trying
10 to figure out where does that line -- where is
11 that line drawn.

12 And I think that all individuals that live in
13 the city have accepted certain levels of noise
14 and, in my view, reviewing the application,
15 due to the scale of this project and under the
16 standard, there is not going to be, you know,
17 a substantial adverse effect by the size of
18 this deck, especially with the screening
19 provided.

20 That being said, I think I have
21 kind of articulated most of the issues that I
22 have in my record from my notes from the

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1 hearing. I would like to open this up to
2 other Board Members before we move forward.

3 VICE CHAIR SORG: Thank you, Madam
4 Chair. I think that your analysis if the case
5 is very much -- is exhaustive and I agree with
6 -- with what you're saying.

7 Just to sort of put out there
8 where I am and how the additional
9 documentation that we received since our last
10 hearing has affected the way that I'm
11 thinking, I agree with you. I think a couple
12 of things sort of affected my thinking on
13 this.

14 One -- and you noted the letters
15 of support and opposition and all of those
16 things that are in our record. So, in
17 addition to that, I think, based on the
18 additional photographs that were submitted and
19 other documentation, that pushed me a little
20 bit towards this line to understand in better
21 detail, you know, what are the existing
22 conditions in the courtyard that's created by

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1 the existing buildings here and, you know, the
2 configuration of that and the surrounding
3 buildings and how this additional structure of
4 the three-story deck would contribute to that
5 and whether -- you know, so whatever
6 surrounding, you know, conditions.

7 I agree with you also on -- in
8 regards to the sun studies that were submitted
9 that show -- that I believe show that the
10 addition of this deck, you know, would have --
11 would not have an undue effect on the light
12 and air that is available to this, you know,
13 pretty well-enclosed and close sort of
14 courtyard area, which is, you know, not a
15 great deal of light in the area in the first
16 place.

17 In addition, I felt like that --
18 the study showing the sight lines in
19 combination with the consideration of the
20 screening options and privacy options offered
21 by the applicant, I -- sort of helped me
22 understand a little bit more about, you know,

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1 how those might mitigate concerns and under-
2 effect on the privacy.

3 So, I think basically an
4 understanding of -- of the shadows that are
5 cast on the courtyard and -- and how
6 significant that is, and the limited increase
7 in that in combination with what the effect of
8 the screening options that the neighbors could
9 choose from, I think leads me to a similar
10 conclusion.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you. Yes, I definitely agree with what you
13 are saying, and I think that really the issue,
14 based on the sun study is not an issue of
15 light and air. It's more an issue of privacy.

16 And obviously, the Acostas are
17 looking out their window and they are seeing
18 a deck. I think that with some BZA 5 as their
19 option, you know, is definitely going to
20 reduce any line-of-sight that they would see
21 out of their one angled window, but that there
22 would still be a reduction in the privacy.

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1 I'm not indicating there's not
2 going to be a reduction. There's definitely
3 going to be a reduction. The question is:
4 Does it rise to the level of a 223 standard,
5 and I don't think that it does.

6 I think that, when looking at the
7 submission by the applicant in regards to the
8 line-of-sight for those different windows
9 under the BZA plan five, I think that, you
10 know, that's definitely not as much an
11 issue.

12 I think that there was also the
13 option of cutting the property in a diagonal
14 which was their BZA 5#, however I'm kind of
15 now more talking to the different options that
16 were presented.

17 I think that one of the concerns
18 there that I heard at the hearing was that the
19 two pillars were going to create more of an
20 issue with the basement owner at their house's
21 property and that she was concerned the
22 Acostas at the hearing were relaying her

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1 concerns about that diagonal by creating two
2 pillars versus one pillar and, for that
3 reason, you know, I would be more inclined to
4 go with the BZA 5 versus BZA 5#, trying to
5 limit any general effect as much as possible.

6 And I do think that by the
7 applicants, and requiring the applicants to
8 put up screening of some nature will reduce
9 any issues of privacy by providing, you know,
10 a screened area so that if any neighbors wish
11 to open their windows they are looking on a
12 screen rather than looking directly at a
13 neighbor individually.

14 That being said, is there any
15 further deliberation?

16 (No response.)

17 MOTION TO APPROVE APPLICATION NO. 18063

18 CHAIRPERSON MOLDENHAUER: Now
19 then, I will submit a motion, a motion to
20 approve Application No. 18063 for a special
21 exception for a deck at -- for the property,
22 3410 13th Street, N.W.

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1 A motion has been made. Is there
2 a second?

3 VICE CHAIR SORG: Second.

4 VOTE TO APPROVE APPLICATION NO. 18123

5 CHAIRPERSON MOLDENHAUER: Motion's
6 been made and seconded. All those in favor
7 say aye.

8 (Chorus of ayes.)

9 MR. MOY: Madam Chair, before the
10 staff records the vote, two items. First is,
11 my understanding is your motion also included
12 BZA No. 5.

13 CHAIRPERSON MOLDENHAUER: Yes.

14 MR. MOY: Correct?

15 CHAIRPERSON MOLDENHAUER: Yes.

16 Thank you.

17 MR. MOY: Okay. Also, we have --
18 staff is in receipt of an absentee vote from -
19 - from Mr. Anthony Hood who is also our
20 participant on the application, and his
21 absentee vote is to approve the application.
22 So that would give a final vote of 3:0:2.

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1 This would be on the motion of the Chairperson
2 to approve the special exception request for
3 223, not meeting the rear yard and court with
4 requirements.

5 Second, the motion, Vice Chair,
6 Ms. Sorg, and, of course, for the motion, Mr.
7 Hood.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you very much, Mr. Moy.

10 APPLICATION NO. 18088 OF M. SIKDER

11 MR. MOY: The next application for
12 a decision is Application No. 18088 of M.
13 Sikder, pursuant to 11 DCMR, 3103.2 for a
14 variance.

15 This is from a lot area and lot
16 width requirements under Section 401, and a
17 variance from the side yard requirements under
18 Section 405, to allow the construction of a
19 new one-family detached dwelling in the R-2
20 District at premises 4411 Grant Street, N.E.
21 This is in Square 5130, Lot 33.

22 As the Board will recall, on

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1 August 3rd, 2010, the Board completed public
2 testimony, closed the record and scheduled its
3 decision on September 14th. The Board
4 requested additional information to supplement
5 the record, which included revised plans from
6 the applicant.

7 The Board also allowed responses
8 from individuals in opposition. The Board is
9 in receipt of one posthearing document in your
10 case folders. That's from the applicant,
11 dated August 15th, 2010, and it is identified
12 as Exhibit 28.

13 The Board is to act on the merits
14 of the applicant's request for variance relief
15 and that completes the staff's briefing, Madam
16 Chair.

17 CHAIRPERSON MOLDENHAUER: Thank
18 you very much, Mr. Moy.

19 Before we enter into deliberation
20 I would like to state for the record that I
21 have read this record and, that being said,
22 I'm actually going to turn to Vice Chair Sorg

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1 to sort of start the deliberation.

2 VICE CHAIR SORG: Thank you, Madam
3 Chair.

4 So, in this case, you know, we
5 heard a good deal of testimony that's in the
6 record from the last hearing, and I'll just go
7 -- what I'll do is I'll go quickly through the
8 Office of Plannings Analysis, and then
9 indicate where the plans have been amended
10 since that's happened twice, and how I think
11 that contributes to the understanding of -- of
12 what's being asked for here and how I'm
13 considering it.

14 You know, what we have is an
15 existing substandard lot, and so the
16 applicant's application to build a single-
17 family home would need relief from 401 with
18 the -- for the lot area and the lot width as
19 well as lot occupancy and side yards.

20 And so clearly, you know, we can
21 see that, you know, the lots, you know, show
22 a good deal of uniqueness being that they are

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1 legally existing but not conforming to the
2 bulk regulations in the R-2.

3 As well, there's an inability to
4 combine the lots based on the neighboring
5 properties and inability to purchase those or
6 combine those. Therefore, you end up with a
7 narrow lot that is difficult to develop within
8 the zoning standards. In fact, it looks like
9 with the required eight-foot side yards you
10 end up with a nine-foot-wide house.

11 In any case, so that -- that
12 establishes the uniqueness as well as the
13 practical difficulty, I think. And then, you
14 know, the plans that we've seen from the
15 applicant, I think, show that the intent of
16 the zone plan is not unduly affected or
17 affected by what is being proposes as a
18 single-family home in -- in this application.

19 I will note that in the hearing --
20 prior to the hearing, I think the last time,
21 we received an amended set of plans that
22 removed a rear deck that was included in the

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1 original plans that brought the lot occupancy
2 down to 41 percent from 45.8 percent in the
3 original proposed plans.

4 With some objections from the
5 most-affected neighbors, it was discussed
6 during the last hearing that the applicant
7 would remove, based on, you know, the effect
8 of light and air to their properties with a
9 three-story house, you know, being built next
10 door.

11 So, in his posthearing submission,
12 the applicant has, in my opinion, you know,
13 gone through and made the adjustments that
14 were requested that were discussed in the
15 hearing and requested by the neighbors,
16 basically entailing decreasing the
17 construction by one floor and these were
18 submitted also to the neighbors that testified
19 from the hearing, although in a timely
20 fashion, and we have not heard any additional
21 objections from them.

22 So, I think with those facts, I'm

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1 inclined to support this application.

2 CHAIRPERSON MOLDENHAUER: I agree.

3 You provided a very thorough analysis. I
4 think that with OP's support, with the
5 individuals who did testify, James Ware and
6 Jomo Oludipe, those who testified, their
7 concerns, I think, have been assuaged in
8 regards to the reduction of the size of the
9 project and I do think that this project has
10 a uniqueness.

11 You pointed out a very exceptional
12 circumstance that's associated with the
13 property that, if they actually conform with
14 the requirements it would be a nine-foot-wide
15 house.

16 So, I agree with your analysis and
17 I -- I have no additional comments, if you
18 have a motion.

19 VICE CHAIR SORG: Yes, I do.

20 MOTION TO APPROVE APPLICATION NO. 18088

21 VICE CHAIR SORG: I'll submit a
22 motion to approve Application No. 18088 for a

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1 variance from the lot area and lot width
2 requirements under Section 401, variance from
3 the side yard requirements under 405, to allow
4 construction of a new one-family drawing at
5 4411 Grant Street, N.E.

6 CHAIRPERSON MOLDENHAUER: The
7 motion's been made, and I will second the
8 motion. The motion has been made and
9 seconded. All those in favor, say aye.

10 VOTE TO APPROVE APPLICATION NO. 18088

11 (Chorus of ayes.)

12 MR. MOY: Madam Chair, before the
13 staff records the vote, there is an absentee
14 vote from another participant on this
15 application, which is -- who is Mr. Anthony
16 Hood, and his absentee vote is to approve the
17 application, which would give a resulting
18 total vote of 3:0:2, so this would be on the
19 motion of the Vice Chair, Ms. Sorg, to approve
20 the application, seconded by the Chairperson,
21 Ms. Moldenhauer, also in support of the
22 motion, Mr. Hood. No other Board Member is

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1 participating. So, again, it would be 3 -- on
2 a vote of 3:0:2.

3 There were no party status --

4 CHAIRPERSON MOLDENHAUER: Yes,
5 exactly. Thank you. So, we would like to
6 request a waiver of our requirements and have
7 a summary order.

8 MR. MOY: Okay. Very good. Thank
9 you.

10 APPLICATION NO. 18089 OF M. SIKDER

11 MR. MOY: The next and last action
12 for the Board in the Public Meeting, Madam
13 Chair, is Application No. 18089 of M. Sikder,
14 pursuant to 11 DCMR 3103.2 for a variance from
15 the lot area -- lot area and lot width
16 requirements under Section 401 and a variance
17 from the side yard requirements under Section
18 405, to allow the construction of a new one-
19 family detached dwelling in the R-2 District,
20 at premises 4417 Grant Street, N.E. The
21 property is in Square 5130, Lot 36.

22 On August 3rd, 2010, the Board

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1 completed public testimony, closed the record,
2 and scheduled its decision on September 14th.
3 The Board requested additional information to
4 supplement the record, which included filings
5 from the applicant, as well as responses from
6 two individuals at the August 3rd hearing.

7 In your case folios, Madam Chair,
8 is a posthearing document from the applicant
9 dated August 15th, 2010, identified as Exhibit
10 30. The Board is to act on the merits of the
11 requested variance zoning relief from lot area
12 and lot width requirements under Section 401
13 and from the side yard requirements under
14 Section 405. And that completes the staff's
15 briefing, Madam Chair.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you very much.

18 Before we begin our deliberation,
19 I'd like to note for the record that I have
20 read and reviewed this application.

21 That being said, Ms. Sorg, would
22 you like to sort of supplement the

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1 deliberation?

2 VICE CHAIR SORG: Sure thing.

3 This, I think we can be similarly briefed.

4 It's a very similar application to the
5 previous.

6 Again, going through the Office of
7 Planning's analysis, the lot here, again, for
8 this project is -- is similarly substandard,
9 creating the unique condition as well. The
10 inability to combine lots or purchase other
11 neighboring lots to create a -- a lot meeting
12 the standards to create any possibility for
13 manner of right development.

14 Here also, in addition to the
15 clear exceptional condition that exists in the
16 property as well as the practical difficulty
17 to do any development that conforms with the
18 regulations in this zone, the project that is
19 contemplated here, again, is a single-family
20 home which is keeping in character of -- of
21 the surrounding area, neighborhood and so, it
22 seems not to affect the zone plan.

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1 With regard to opposition that was
2 expressed, or concerns that were expressed by
3 two neighbors in the last hearing, we heard
4 from Mr. Ware, also a neighbor of this
5 property, whose main concern, I think, was the
6 height of the structure.

7 In the plans that we received in
8 our Exhibit 30, Mr. -- the applicant has
9 reduced the height of the proposed plan by one
10 story to create a two-story single-family
11 home.

12 The other neighbor who we heard
13 from last year -- or I mean the last hearing,
14 Mr. Oludipe, was concerned about -- spoke
15 mostly about concerning the flooding and a
16 drain that can be found on the site.

17 And it's my opinion that this --
18 the considerations that we're making today in
19 approving this -- in considering this project
20 are not related to the drain that's found on
21 the site and that if there's any issues
22 related to that, that will be found in the

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1 permit process or in another portion of the
2 construction process.

3 So that being said, given the
4 amended plans that removed the deck to reduce,
5 again, the degree of relief for the lot
6 occupancy down, I believe, again to 41 percent
7 from a request of 45.8 percent, as well as
8 reducing the -- the bulk of the structure to
9 two stories leads me, again, to -- for me to
10 support this application.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you very much, Ms. Sorg. I think that was a
13 very full and detailed analysis. I don't
14 really have anything to add. I would just
15 simply -- we'll just see if there's a motion.

16 MOTION TO APPROVE APPLICATION NO. 18088

17 VICE CHAIR SORG: Yes, there is.
18 Thank you.

19 I'll submit a motion to approve
20 Application No. 18089 for variance from the
21 lot area and lot width requirements under
22 Section 401, variance from side yard

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1 requirements under 405 to allow the
2 construction of a new one-family dwelling at
3 premises 4417 Grant Street, N.E.

4 VOTE TO APPROVE APPLICATION NO. 18088

5 CHAIRPERSON MOLDENHAUER: A
6 motion's been made. I will second the motion.
7 Motion has been made and seconded. All those
8 in favor, say aye.

9 (Chorus of ayes.)

10 MR. MOY: Again, Madam Chair,
11 before staff gives a vote count, there is an
12 absentee ballot cast by Mr. Anthony Hood who
13 also participated on this application, and his
14 absentee vote is to approve the application,
15 which would give a resulting total vote of
16 3:0:2. No other Board Members were
17 participating. This is on the motion of the
18 Vice Chair, Ms. Sorg, to approve the
19 application for variance relief to lot area,
20 lot width and side yard requirements, seconded
21 by the Chairperson, Ms. Moldenhauer and, of
22 course, in support of the motion, Mr. Hood.

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1 So, again, the vote is 3:0:2 in
2 approval of the application.

3 CHAIRPERSON MOLDENHAUER: Thank
4 you very much, Mr. Moy.

5 We will also request a waiver of
6 our requirements in the summary order.

7 MR. MOY: Very good. Thank you.

8 CHAIRPERSON MOLDENHAUER: I
9 believe that concludes our morning hearing and
10 we will start with our morning session now.

11 (Whereupon, the foregoing matter
12 was concluded at 10:31 a.m.)

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