

GOVERNMENT OF THE DISTRICT OF COLUMBIA

D.C. Office of Zoning
441 4th Street, N.W.
Room 200 South
Washington, D.C. 20024

DISTRICT OF COLUMBIA
OFFICE OF ZONING
WEEKLY MEETING
PO 343166

9:58 a.m. through 4:29 p.m.

November 02, 2010

441 Fourth Street, N.W. - Room 220 South
Washington, D.C.

OLENDER REPORTING, INC.
1100 Connecticut Ave., NW, Suite 810, Washington, DC 20036
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BOARD MEMBERS PRESENT:

Meredith Moldenhauer, Chairperson
Jeffrey L. Hinkle
Nicole Sorg
Konrad Schlater
Clifford Moy, Secretary

OTHERS PRESENT:

Greg Selfridge, Zoning Commission
Beverley Bailey, Office of Zoning
Mary Nagelhout, Office of the Attorney General

OFFICE OF PLANNING:

Karen Thomas
Paul Goldstein
Maxine Brown-Roberts
Arthur Jackson

ANC COMMISSIONER PRESENT:

Janae Grant

PUBLIC PRESENT:

Robert Weaver
Sunday Ojigbo
Paul T. Atang
Loretta M. Jones
Simon Sidamon-Eristoff
Mamuka Tsereteli
Joel Tomlinson
Margaret O'Connor
Richard L. Brooks

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C O N T E N T S

MORNING SESSION

	<u>Page</u>
Chairperson's Introduction	4
Case No. 18103	4
Case No. 18122	14
Case No. 18108	26
Case No. 18105	36

Public Hearings

Chairperson's Introduction	48
Preliminary Matters	52
Case No. 18125	55
Case No. 18126	66

AFTERNOON SESSION

Chairperson's Introduction	80
Case No. 18128	85
Case No. 18127	98
Case No. 18090	108

- - -

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

2 MS. MOLDENHAUER: This meeting will
3 please come to order. Good morning, ladies and
4 gentlemen.

5 This is the November 2nd, 2010 Public
6 Meeting of the Board of Zoning Adjustment for the
7 District of Columbia.

8 My name is Meredith Moldenhauer,
9 Chairperson.

10 Joining me today are representative of
11 the National Capital Planning Commission, to my
12 right, Jeffrey Hinkle; to my left, Vice-Chairman
13 of -- Chairperson Nicole Sorg; and to her left is
14 Zoning Commissioner Greg Selfridge.

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

18 We do not take any public testimony at
19 our meeting unless the Board asks someone to come
20 forward. Please be advised the proceeding is
21 being recorded by a court reporter; it is also
22 being webcast live. Accordingly, we must ask you

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1 to refrain from any disturbing noise or actions
2 in the hearing room. Please turn off all cell
3 phones and beepers at this time.

4 Mr. Secretary, do we have any preliminary
5 matters?

6 MR. MOY: Not for the public meeting
7 session, Madam Chair.

8 MS. MOLDENHAUER: Okay. Well then we'll
9 proceed with our agenda.

10 MR. MOY: Yes, good morning, Madam
11 Chairperson, members of the Board.

12 The first of the four cases for decision
13 this morning begins with Appeal Number 18103 of
14 the Advisory Neighborhood Commission 8E, pursuant
15 to 11 DCMR 3100 and 3101, from an -- from an
16 April 1st, 2010, decision by the Director of the
17 Department of Consumer and Regulatory Affairs, to
18 issue a building permit, Building Permit Number B
19 as in Bravo 1002975, for interior renovation of
20 an apartment building for Peaceoholics,
21 Incorporated, in the R-5-A District at premises
22 1300 Congress Street, Southeast. The property is

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1 located at Square 5915, Lot 12.

2 As the Board will recall, on September
3 28th, 2010, the Board completed public testimony,
4 closed the record, and scheduled its decision on
5 November 2nd. The Board requested written
6 closing arguments from all the parties by Friday,
7 October 29, 2010.

8 These filings are in your case folders,
9 Madam Chair, as follows: The first filing is
10 from the Appellee, who was requested to submit
11 page- sized interior renovation plans. That was
12 received timely, identified as Exhibit 24.

13 There are other filings from the Appellee
14 is dated October 29, 2010, identified as Exhibit
15 26. The Appellants filing -- that's ANC 8E, his
16 closing brief is -- is identified as Exhibit 25.

17

18 And the Interveners closing brief is
19 identified as Exhibit 27.

20 The Board is to act on the merits of the
21 ANC's appeal, and that completes staff's brief,
22 Madam Chair.

1 MS. MOLDENHAUER: Thank you very much,
2 Mr. Moy.

3 We are here, as indicated by Mr. Moy --
4 that we heard public testimony; we've reviewed
5 all of the post-closing statements and written
6 submission to our office.

7 And I will start off the deliberation by
8 outlining where we are and then my initial
9 analysis on this. Then we'll open it up to
10 additional discussion.

11 We are here to determine whether or not
12 the building permit issued to Peaceoholics was in
13 error and whether or not -- and the Appellant is
14 challenging the error indicating that the
15 Peaceoholics and property owner are actually
16 intending to potentially operate a CBRFA, a
17 Community Based Residential Facility.

18 We heard testimony from all the parties
19 in that regard discussing the analysis as to what
20 potentially was a reasonable review by the ZA at
21 the time, what should have been analyzed in
22 regards to issuing the building permit.

1 And then we heard testimony from the
2 zoning administrator Matt LaGrant in regards to
3 the DCRA process and procedures for reviewing
4 such an application.

5 And after hearing all the testimony, I'm
6 in the opinion that this case is a situation
7 where there was no request to change the load, to
8 change the use -- and in that regard the DCRA
9 Administration Office provided a determination
10 that there was no ZA analysis required. This is
11 distinguished from cases that the Appellant quote
12 such as Abel where there was a change of use
13 required. Here there was simply interior non-
14 structural work being done and interior
15 renovations done to the apartment building.

16 Based on that, I don't see an error. I
17 think that we have to give the ZA and the DCRA
18 our deference in regards to reviewing these types
19 of applications and permits. There was no way --
20 even based on the Appellant's arguments that
21 there were references to a ship -- ship which is
22 the program used by Peaceoholics and that there

1 was documentation that they could have reasonably
2 obtained in regards to their DHCD lending and
3 funding.

4 I disagree. I don't find that that is
5 reasonable, nor do I find that it's conclusive as
6 to whether or not a CBRF would potentially or
7 currently be operating in the facility. We heard
8 from the property owner and the president of
9 Peaceoholics who indicated that, you know, they
10 don't run CBRFs. We heard testimony in regards
11 to the fact that individuals from the age, I
12 believe, of 18 to I believe it's 25 -- if I'm
13 incorrect on --

14 (Inaudible.)

15 MS. MOLDENHAUER: Twenty-four, thank you
16 -- you know, are permitted to participate in
17 these types of programs that Peaceoholics runs.
18 And, you know, I don't see that it is absolutely
19 clear either to me on appeal, based on the
20 documentation and evidence that has been
21 presented to us, nor at the time -- especially at
22 the time of issuing a building permit where

1 you're at a preliminary stage, you're simply
2 looking at the plans. You're looking at the fact
3 that there is no request for change of use;
4 there's no request for change of load; and all
5 that is being done is interior renovations.

6 Based on that I would recommend denial of
7 the appeal, and I'm -- at that point in time I'm
8 going to open up the floor for additional
9 deliberation from other Board members.

10 MR. SELFRIDGE: Thank you, Madam
11 Chairperson.

12 There's two -- two items that I looked at
13 when reviewing this. The first was the DHCD
14 contract. I was struck originally with the fact
15 that it did require at-risk use, but we have
16 Title 29, Chapter 63 -- actually, 6301.1 just to
17 clarify which defines adolescents and young
18 adults as persons 16 to 21. So the fact that
19 they're over the age of 18 indicates to me that
20 you certainly could have adolescents and young
21 adults that would not require supervision, and
22 you would be in conformity with the DHD loan

1 covenants. So I didn't think that was -- in
2 itself was evidence.

3 And then, also, AD pointed out the use of
4 the word common area in the plans. And while it
5 may have been a poor choice of words, I don't
6 think that and of itself actually constitutes a
7 CBRF. And absent that, there's -- there's --
8 there are some other common areas, but they're
9 not uncommon in apartment buildings - computer
10 labs, fitness, studies, maintenance office -- and
11 so, I see nothing on the plans that would
12 indicate that it's a CBRF and certainly at the
13 point of C of O I think the ZA will probably take
14 a close look at this, which I think we would
15 encourage; but I don't think at this point it's
16 appropriate to grant the appeal.

17 MS. MOLDENHAUER: I definitely agree with
18 you, and I thank you for pointing out those two
19 additional issues. I think that you make a
20 really good point in that regard, that right now
21 the only thing before the Board is the review of
22 the issuance of the building permit.

1 neither the application or the building plans
2 actually reflected that there would be any change
3 in the use of the structure.

4 I also don't believe that there was any
5 evidence that was presented that showed that DCRA
6 would have been aware of this DHCD contract. And
7 I also don't believe that if they had been aware
8 of that the contract necessarily showed that this
9 structure would be used for anything else besides
10 the apartment structure that was in the
11 application.

12 MS. MOLDENHAUER: I believe then that
13 concludes our deliberation. Unless there's any
14 further deliberation, I will make a motion -- a
15 motion to deny appeal 18103, which was an appeal
16 of DCRA's issuance of a building permit, Number
17 B1002975, for interior renovation for an
18 apartment building for Peaceoholics.

19 MR. SELFRIDGE: Second.

20 MS. MOLDENHAUER: Motion's been made and
21 seconded. All those in favor say I.

22 (Respond I.)

1 MS. MOY: The staff would record the vote
2 as 3 to 0 to 2, this on the motion of the
3 Chairperson, Ms. Moldenhauer, to deny the appeal,
4 Appeal Number 18103, seconded the motion , Mr.
5 Selfridge, in support of the motion Mr. Hinkle.
6 No other board members participating.

7 So, again, the final vote to deny is 3 to
8 0 to 2.

9 The second case for Board action, Madam
10 Chair, is Application Number -- Application
11 Number 18122 of Arthur G. Carr, pursuant to 11
12 DCMR 3103.2, for a variance from the lot area
13 requirements under subsection 401.3, to allow the
14 conversion of a flat, a two-family dwelling, to a
15 three-unit apartment building in the R-4
16 District. This is at premises 815 A Street,
17 Northeast, Square 919, Lot 31.

18 On October 26, 2010, the Board completed
19 public testimony, closed the record and scheduled
20 its decision on November 2nd. There was -- the
21 Board did not request any supplemental
22 information for the record. The Board is to act

1 on the merits of the variance relief from lot
2 area requirements under subsection 401.3. And
3 that completes the staff's briefing, Madam Chair.

4 MS. MOLDENHAUER: Thank you very much,
5 Mr. Moy.

6 I think I'm going to turn to Mr. Hinkle
7 to start us off for deliberations.

8 MR. HINKLE: Thank you, Madam Chair.

9 As was just mentioned, this is for a
10 variance for the lot area requirements under
11 subsection 401.3 to allow the conversion of a
12 flat, which is a two-family dwelling, to a three-
13 unit apartment building at 815 A Street,
14 Northeast.

15 And this building was built in 1913, and
16 it's located in the Capitol Hill Historic
17 District. It's a three-story structure with a
18 basement, and it also has a two-car detached
19 garage at the rear of the property.

20 The building's been used over the years
21 for a number of purposes. It was initially
22 constructed with a grocery store and two

1 residential units above on the second and third
2 floors. Thereafter it was used as a rooming
3 house. Then it was converted to a church on the
4 first floor with residential uses above.

5 And then finally in 1991 we heard and
6 have documentation that the BZA provided an order
7 that -- for the approval of a -- to convert the
8 building to three apartment units. And this
9 order has since expired.

10 So, currently the applicant has a second-
11 floor unit and a third-floor residential unit,
12 and the first floor and the basement are
13 currently used by the -- by the current owner as
14 -- as home office.

15 So, what this application -- the
16 applicant is proposing to convert that first
17 floor as well as the basement to another
18 residential unit. And there's no exterior
19 renovations proposed.

20 As noted, this property is zoned R-4, and
21 the conversion of existing flats to a 3-unit
22 apartment building is permitted within the zone

1 with a minimum lot area of 900 square feet per
2 dwelling unit.

3 So, the subject site is required to have
4 a lot area of 2,700 square feet, and the existing
5 lot right now is 2,312 square feet. So the
6 applicant is seeking relief for 388 square feet
7 from the required lot size.

8 As a variance request, the applicant is
9 required to show that there's an exceptional
10 situation or condition of the specific property
11 and that if the zoning regulations don't strictly
12 apply, that there would be exceptional practical
13 difficulties or undue hardship upon the owner.

14 At the hearing on this case on October 26
15 the owner testified and the Office of Planning
16 Report supported that the property does have
17 exceptional conditions that could result in
18 practical difficulties.

19 As noted, the building has already been
20 converted to a flat on the second floor and a
21 flat on the third floor, but both apartments are
22 served by a single entrance that is separate from

1 another entrance on the first floor and the
2 basement. And this also appears to be the
3 largest building on the square that is not
4 already used as an apartment building.

5 As the Board noted in its order --
6 previous order in 1991, if the building were to
7 be fully used as a two-flat structure, each of
8 the two apartments would be actually fairly large
9 -- unusually large in this case.

10 And so, absent relief the unusual
11 conditions would result in a practical difficulty
12 that would limit first floor and -- the first
13 floor and the basement to one of the following
14 uses, which is noted in the Office of Planning
15 Report: other home office or accessory use to
16 the second and third floor unit, or a vacant
17 space that would be visually conspicuous given
18 the glass bay that has served as a former
19 commercial and institutional nature of the first
20 floor, or a 220 plus square foot first floor and
21 basement residential unit which absent relief
22 would also require converting the already

1 renovated second and third floor apartments into
2 a single 220 to 240 square foot flat at great
3 expense.

4 I agree with this assessment and think
5 the request does meet the first prong for the
6 variance test.

7 For the second prong of the test, that is
8 can relief be granted without substantial
9 detriment to the public good -- as noted, this is
10 one of the largest buildings in the square that
11 has not been converted to an apartment building.

12 The requested relief, which is the addition of
13 one additional unit, could prevent the first
14 floor from becoming vacant if a home office by
15 one of the two units would not be needed.

16 Likewise, the garage can't accommodate one
17 required parking space if this were to become a
18 three-unit building. And recognizing that the
19 street parking is an issue in this neighborhood,
20 I don't think that the addition of one more unit
21 would be significantly detrimental to the parking
22 demand, especially in this neighborhood which is

1 served by transit.

2 Then for the third prong of the variance
3 test, would this granting of relief -- would this
4 granting of relief cause substantial harm to the
5 intent of the zoning regulations -- while there
6 is a minimum lot requirement for apartment
7 conversions in the R-4 zone, given the unique
8 physical characteristics of this existing
9 structure, the fact that there was a BZA order
10 allowing for a third residential unit as well as
11 the potential for the first floor to remain
12 vacant if relief is not given, I think that in
13 this case granting relief for an additional
14 residential unit within this residential zone
15 would not cause any substantial harm to the
16 intent of the zoning regulations.

17 And I do want to note that the Board did
18 grant party status to a Mr. Timothy Hauser, who
19 is in opposition to this application and whose
20 yard actually abuts the subject property. Mr.
21 Hauser expressed a few concerns, in particular
22 that no construction occur upon the detached

1 garage.

2 Likewise, we also have a letter dated
3 October 19th, 2010, from the ANC 6A that voted 7
4 to 0 to 0 on October 14th of 2010 to support the
5 application subject to the condition that a deck
6 not be constructed on the garage. And this is
7 Exhibit 33 in our records.

8 In addition, we have a letter dated
9 October 22nd, 2010, which is Exhibit 35, from the
10 Capitol Hill Restoration Society and a letter
11 dated October 14th, 2010, which is Exhibit 24,
12 from the Stanton Hill Neighborhood Association.
13 And both of these letters express support with a
14 similar condition that no construction occur upon
15 the roof of the garage.

16 In addition to these letters we do have
17 two additional letters of support: one from a
18 Mr. James Edmonds and one from Mr. James Ellison,
19 and then one additional letter of opposition from
20 a Mr. Joel Davidson.

21 But recognizing the plan submitted do not
22 include any proposed development upon the garage

1 but also recognizing that this is a major concern
2 to the neighborhood, I'm actually in support of
3 relief, given that we condition this relief upon
4 a restriction of any development upon the garage
5 roof.

6 Thank you.

7 MS. MOLDENHAUER: Thank you very much,
8 Mr. Hinkle. That was a very thorough and
9 complete analysis. And while I think I'm
10 inclined in the end to agree with your final
11 determination, I think that I'm a little more on
12 the fence than you are in regards to seeing
13 whether or not the applicant satisfies the three
14 prongs.

15 I have some concern over whether or not
16 there is a uniqueness, seeing that currently the
17 property is being used as a two-unit flat with
18 accessory uses. The prior construction or the
19 prior use of the property I don't feel is as
20 strong of an argument, but I do think that upon
21 further discussion in the hearing the statements
22 that the lower unit does not have an internal

1 staircase and creates a separation between the
2 upper units and the lower units, which is unique
3 that you have that type of layout. I think that,
4 you know, those are issues which creates a
5 uniqueness.

6 And I think then the second issue is
7 whether it satisfies a practical difficulty. And
8 I think that the limitations on the first floor
9 and the basement, as I said, this unique
10 separation between the upper floors -- second and
11 third floor -- is unique, but I think that the
12 applicant did himself an injustice without --
13 with not providing a significant amount of
14 documentation in regards to the practical
15 difficulty.

16 But I think that based on his statements
17 that it would create a financial hard -- a
18 difficulty, a practical difficulty for him
19 financially and economically to potentially build
20 an internal staircase to create a two-unit flat
21 and that, you know, what he would have to
22 probably do is just to continue to use it as a

1 home office or accessory use and then eventually
2 maybe leave that space vacant, I think that that
3 was persuasive enough to tip me over the line to
4 agree with you in the granting of the relief.

5 That being said, is there a motion?

6 MR. HINKLE: Yes, I'll submit a motion
7 for Application Number 18122 of Arthur C. Carr.
8 This is pursuant to 11 DCMR subsection 3103.2,
9 for a variance from the lot area requirements
10 under subsection 401.3, to allow the conversion
11 of a flat, two-family dwelling, to a three-unit
12 apartment building in the R-4 District at
13 premises 815 a Street, Northeast, conditioned
14 upon no -- no construction upon the garage roof.

15 MS. MOLDENHAUER: Okay. I would second
16 the motion, but why don't we first have a little
17 bit of discussion on the -- whether or not
18 there's a condition.

19 You feel that there should be a condition
20 in regards to not constructing on the rear deck?

21 MR. HINKLE: I think we've -- we have
22 heard testimony and we have some documentation

1 regarding support for this application and the
2 relief that's requested based on a condition that
3 no additional construction is -- is completed
4 upon the rooftop of the garage.

5 While the plans in front of us don't show
6 any construction necessarily, I would be
7 supportive of that condition as -- as a guaranty
8 to the people who have stated their support.

9 MS. MOLDENHAUER: Okay. I think I would
10 agree with you, and I think I would link that
11 condition to the third prong and to the testimony
12 of Mr. Hauser indicating that there was a
13 practical difficulty to the community and to the
14 two letters of opposition that we have in regards
15 to their concern for increased density and that
16 that condition would mitigate some of the
17 surrounding communities' impact or feeling of
18 increased density by potentially not permitting
19 any construction.

20 So, I would second the motion. So we
21 have a motion, and the motion's been seconded.
22 All those in favor say I.

1 (Respond I.)

2 MS. MOLDENHAUER: Mr. Moy, I think you
3 have an absentee ballot as well?

4 MS. MOY: Yes, Madam Chair, before staff
5 announces the final vote, we do have an absentee
6 vote from another participating member, who in
7 this case is Chairman Hood; and his absentee vote
8 is to approve the application with any conditions
9 that the Board might impose.

10 So with that absentee vote, that would
11 give a final vote of 3 to 0 to 2. This would be
12 on the motion of Mr. Hinkle to approve the
13 application with the condition that there would
14 be no construction on the garage rooftop,
15 seconded by Chairperson Moldenhauer, and again,
16 in support of the motion of Mr. Hood, no other
17 Board members participating. So, again, it's 3
18 to 0 to 2.

19 MS. MOLDENHAUER: Thank you very much.

20 Our next case for decision?

21 MR. MOY: That would be Appeal Number
22 18108 of the Advisory Neighborhood Commission 3C,

1 pursuant to 11 DCMR 3100 and 3101, from a
2 November 19, 2009, decision by the Zoning
3 Administrator to approve the subdivision of two
4 lots in the S-1-B District at premises 2909 and
5 2914 Garfield Street, Northwest and 2857 29th
6 Place, Northwest. The property is in Square 2113,
7 Lots 24, 76, and 829.

8 At its -- as the Board will recall, at
9 its scheduled decision meeting on October 26,
10 2010, the Board tabled its decision to revisit
11 its decision on -- to decide the appeal on
12 November 2nd, and so, therefore, the Board is to
13 act on the merits of the requested appeal. That
14 completes the staff's briefing, Madam Chair.

15 MS. MOLDENHAUER: Thank you very much,
16 Mr. Moy. And to start of this deliberation I'll
17 turn to Ms. Sorg.

18 MS. SORG: Thank you, Madam Chair.

19 Okay. So in this case we are looking at
20 an appeal by the ANC 3C to a November 19th, 2009
21 decision by the Zoning Administrator to approve
22 the subdivision of two lots at 2909 and 2914

1 Garfield Street, Northwest, and on 29th Place,
2 Northwest.

3 I would also mention at the outset that
4 in our record at Exhibit 17 we have a letter from
5 Ward 3 Council Member Mary Cheh. We heard in the
6 testimony a few weeks ago, I think, a lot of
7 information from both parties in this case; but I
8 think that the issues come down really to a few
9 things that are fairly narrow.

10 One of the -- the first issue raised, I
11 think, by the Appellant is that the decision by
12 the Zoning Administrator to subdivide the lots
13 violated Section 101.6 by creating nonconforming
14 lots.

15 We then in the next -- have go to -- that
16 In this case, you know, the Zoning Administrator
17 acted under 407.1 to allow the minor deviation,
18 that being the deviation allowed of two percent
19 of the lot area for one of the two lots in the
20 subdivision. The other lot is, in fact,
21 conforming.

22 And the original total lot area here,

1 just to mention, is just under 10,000 square feet
2 -- 9,946 square feet, creating one lot that's
3 conforming and one lot that is, I think, 92
4 square feet under the regulation.

5 So, in that -- in this case I'm acting
6 under the provision for minor deviation or
7 flexibility as something that the Zoning
8 Administrator is expressly authorized -- an
9 action that he's expressly authorized to take
10 under the zoning regulations.

11 So the question becomes, as raised by the
12 Appellant, did the ZA's ruling to accept the
13 subdivision take into consideration both prongs
14 of 407.1.

15 So going to the first piece of it, that a
16 building shall be allowed to deviate from the
17 requirements of no more than two of the sections
18 identified in the subsection, I think that
19 through the testimony and submissions here we can
20 see that that was satisfied under -- in my
21 opinion under the -- the decision by the Zoning
22 Administrator.

1 The second piece is where most of what we
2 heard a few weeks ago comes under that piece,
3 which is 407.1(b), the deviation or deviations
4 shall be deemed by the Zoning Administrator not
5 to impair the purpose of the otherwise applicable
6 regulations.

7 So, as we said, the density calculations
8 in Part A show that that was satisfied. Then I
9 think, in my opinion, it becomes incumbent on the
10 Appellant to show through the presentation of
11 their case that the ZA erred in his use of his
12 discretion pertaining to 407.1 Part (b).

13 And the -- there's a couple of things
14 that I think about that. You know, number one, I
15 think that the inclusion itself of Section 407.1
16 in the zoning regulation giving that the purpose
17 of the zoning regulations are to maintain - and
18 actually as the Comprehensive Plan indicate to
19 me, in general, that the ZA's use of this
20 allowance of a minor deviation would be in
21 conformance with the zoning regulations and their
22 purpose as well as with the Comprehensive Plan.

1 To go a little bit further into some of
2 the issues that were raised by the Appellant that
3 are -- that go to these -- these purpose and
4 intent as well as, you know, character of the
5 neighborhood and maintenance of that, we heard a
6 lot of compelling argument about, you know, the
7 general lot sizes in this area as well as the
8 very full tree canopy that the community was
9 concerned to maintain as well the character of
10 the architecture and the density of the buildings
11 in the neighborhood.

12 I think, though, that my opinion in this
13 case is that, you know, through the submissions
14 and the testimony that we saw from the Zoning
15 Administrator, that we can see that the evidence
16 here to me indicates that the Zoning
17 Administrator did, in fact, conduct both a
18 qualitative and quantitative analysis of the
19 issues surrounding the subdivision of the lots.

20 And I think with that I can open it up to
21 any other comments.

22 MS. MOLDENHAUER: Thank you very much,

1 Ms. Sorg. I think that you provided a very in
2 depth analysis, and I -- I think, you know, when
3 looking at this simply based on the issue on
4 appeal we're looking only at an issue of a
5 subdivision and did the ZA err in granting the
6 407.1 two-percent deviation relief.

7 We have -- we can -- we should not and
8 cannot look at the actual building plans, the
9 buildings that were being permitted. Those were
10 entered into evidence by the Appellant, and while
11 they were entered in, I think that we have to not
12 weigh that as much because that's not what the --
13 is under appeal.

14 Those were buildings that were built as a
15 matter of right, and what's under appeal is can
16 that lot be subdivided into a single conforming
17 lot and a single nonconforming lot that only
18 deviates by less than two percent.

19 And looking at that issue and that issue
20 alone, I agree with you, and I provide the ZA
21 deference in reviewing that application and
22 reviewing whether or not such a minor deviation

1 would conform with the zoning regulations. And
2 that being said, I think that when it's looked at
3 an issue of certain elements that the Appellant
4 brought up in regards to extreme overcrowding,
5 threatening the stability, inconsistency with the
6 -- you know, the comprehensive plan and other
7 aspects, I think that while they may be outraged
8 and upset by what may eventually be built, that's
9 in regards to a building permit, not a
10 subdivision which is before us.

11 And that being said -- you know -- there
12 are many ways that a community in a neighborhood
13 such as this who are interested in the character
14 and maintaining certain aspects can argue.

15 And one of the questions that I asked
16 specifically during the appeal was is there any
17 overlay in this area. And, unfortunately, there
18 isn't. But currently there's a rewrite going on
19 and there's always the opportunity for a
20 neighborhood to go before the Zoning Commission
21 or go to the Office of Planning and emphatically
22 argue and encouraged certain overlays such as a

1 tree overlay, which may have addressed and may
2 have limited some issues in regards to
3 subdivision or limited some abilities in regards
4 to final building permits.

5 In addition to that, you know, there are
6 other ways to preserve certain characters of the
7 neighborhood or to write into the regulations
8 specific issues in which would be required for
9 the ZA to review.

10 But that's not the case here. And we
11 have to look at what currently is in existence in
12 this zone. And based on this zone without an
13 overlay and with the fact that you're creating
14 one conforming lot and you're creating lots which
15 are under the zoning regulations sufficient and
16 do not create high density because that's what's
17 permitted by the regs.

18 That they're permitting matter of right
19 homes to be built on those lots and I think that
20 that in and of itself confirms that the ZA did
21 his review and did his analysis and providing him
22 the deference to say these will be sufficient,

1 these will be conforming. So -- not conforming.
2 They - obviously, one is not conforming. I --
3 let me correct myself. But, rather that these
4 will be in conformity with the zoning
5 regulations.

6 That being said, is there any additional
7 deliberation?

8 (No response.)

9 MS. MOLDENHAUER: I think -- is there a
10 motion?

11 MS. SORG: Yes, Madam Chair. I will
12 submit a motion to deny Appeal Number 18108 of
13 ANC 3C, pursuant to 11 DCMR 3100 and 3101, for a
14 Zoning Administrator decision to subdivide two
15 lots at 2909 and 2914 Garfield Streets and 2857
16 29th Place, Northwest.

17 MS. MOLDENHAUER: Motion's been made, and
18 I will second the motion. So, motion's been made
19 and seconded. All those in favor say I.

20 (Respond I.)

21 MR. MOY: Madam Chair, before the staff
22 gives a final vote, we do have an absentee ballot

1 from another participant on this appeal
2 application, who is Chairman Anthony Hood. His
3 absentee vote is to deny the appeal.

4 Mr. Hood also writes some language in his
5 comments which I suspect I should read where he
6 states that I believe that the Zoning
7 Administrator worked with the laws that were in
8 front of him at the time.

9 Finally, he also adds -- this goes to
10 your deliberation, Madam Chair, when you spoke
11 about -- about the -- with regards to the zoning
12 regulations. Where Mr. Hood writes: The Zoning
13 Commission may need to revisit this area --
14 that's attendant to, as you spoke on the
15 microphone.

16 So, again, that would give a final vote
17 of 4 to 0 to 1. This is on the motion of Vice-
18 Chair Ms. Sorg, second it to deny the appeal --
19 second it Mr. -- rather, Ms. Moldenhauer, in
20 support of the motion Mr. Hinkle, no other Board
21 member participating. So, again, the final vote
22 is 4 to 0 to 1 to deny the appeal.

1 The final application for Board Action is
2 Application Number 18105 of Primal Fitness,
3 Incorporated, pursuant to 11 DCMR 3103.2, for a
4 variance from the use provisions to operate a
5 fitness center under subsection 330.5. This is
6 in the R-4 District at premises 219 M Street,
7 Northwest, Square 555, Lot 805.

8 As the Board will recall, on October 26,
9 2010, the Board completed public testimony,
10 closed record, and scheduled its decision on
11 November 2nd. The Board is to act on the merits
12 of the request for variance release from the use
13 provisions under subsection 330.5, and that
14 completes the staff's briefing, Madam Chair.

15 MS. MOLDENHAUER: Thank you very much.
16 I'm just going to pull together my materials, and
17 then I'll start on the deliberation in a moment.

18 (Pause.)

19 MS. MOLDENHAUER: Good morning, this case
20 is before us. We had actually previously heard
21 this application back in 2008, and there was an
22 issue that was ordered for a nine-month order

1 that permitted expiration of that relief and a
2 request for the applicant to come back before us
3 and review how -- how any issues evolved in
4 regards to the third prong of the variance test
5 in regards to whether or not there was any
6 substantial detriment to the public good or
7 substantial impact to the integrity or purpose of
8 the zoning regulations.

9 And so we revisited those issues which
10 were extensive in that regard in our hearings on
11 this issue. We started off by discussing some of
12 the initial concerns from the neighborhood. We
13 have lots of letter in our record of opposition
14 referencing the neighborhood's concerns and
15 outrage in regards to the conduct of the
16 clientele at Primal Fitness, which is the tenant
17 and the operator of a gym, which the property is
18 owned by Mr. Valentine.

19 And we had discussions with both the
20 witnesses. There was no party opposition in this
21 case -- with the different witnesses, with the
22 ANC, and with the operators, both that attended

1 and presented testimony before us. And we -- I
2 think -- at the end of the day heard testimony
3 that -- from the ANC representative that there
4 had been a decrease in concerns from the
5 neighborhood based on a reduction of the groups
6 that were running -- initially there were groups
7 that were running in an abundance of, you know,
8 12 individuals running in a group, that those
9 groups were then cut down to groups of 8 gym
10 members or fewer, and that that seemed to address
11 some of the issues.

12 We heard testimony from Mr. Woody who had
13 indicated that, you know, he tried to reduce the
14 number of individuals that ran together. We had
15 letters that indicated that there was a lack of
16 respect or a lack of courtesy that was being
17 provided to pedestrians on the street, both in
18 regards to, you know, kind of running them over
19 or things of that effect that were referenced in
20 some of the different exhibit letters that we
21 have from oppositions.

22 However, at the hearing we heard that

1 actions had been taken to reduce any of those
2 concerns. We heard testimony from ANC
3 Commissioner that -- for the zoning issues --
4 that he felt as though those concerns had been
5 alleviated, or reduced, or mitigated based on the
6 reduction of the members that were running, as I
7 indicated, in a group of less than 8 now.

8 And I find that I agree with that. I
9 think that if, you know, the numbers are fewer
10 and that the applicant is limiting those, I think
11 that that will hopefully alleviate and reduce the
12 potential impact that has occurred on the
13 neighborhood based on permitting of approving a
14 variance of a commercial use in a residential
15 zone.

16 That being said -- I'll come back to that
17 issue at the end of my deliberation. In addition
18 to that, there were extensive concerns -- and we
19 heard testimony from Brenda Keys, who has a
20 business next door in regards to the vibration,
21 and the noise that are created by the lifting and
22 dropping of weights that are associated,

1 obviously, with any gym.

2 And we heard testimony both at this
3 hearing and as part of the prior conditions in
4 the prior order in regards to limiting any
5 weightlifting to the rear of the property, into
6 an area which is now identified as the
7 weightlifting room, requiring that mats be
8 applied.

9 We also, at the last hearing, heard
10 testimony regarding a vibration device which was
11 -- they recorded ambient vibrations in the gym.
12 And then there was also noise vibration -- noise
13 detection that was being done.

14 And in this regard I find that I have to
15 evaluate the circumstance as it relates to the
16 entire surrounding environment. And I have to
17 think about the fact that this property is
18 located right off of New York Avenue, right next
19 to the 395 interchange. And that there are an
20 exorbitant number of buses, trucks, and other
21 type of service vehicles that are constantly
22 traveling on New York Avenue.

1 That being said, I do believe Ms. Keys in
2 saying that in her statement that the vibrations
3 and the noise of the weights are different and
4 distinct from that, and that most likely probably
5 creates a negative situation for her; but I don't
6 believe that that rises to the level of a
7 substantial detriment to the public good in
8 regards to our third prong.

9 I think that -- I encourage the applicant
10 and Mr. Valenteen -- Valentine to continue to
11 work with Ms. Keys to address those concerns
12 because any -- anybody wants to be a good
13 neighbor and especially in an area where there is
14 a lot of new development, new types of
15 opportunities. I think that it's important to
16 continue to work with your surrounding community
17 and to try to create a stronger environment. And
18 that's always -- that's done by working together.

19 And that being said, I think that, you
20 know, a lot of the issues don't rise to the level
21 of a substantial detriment to the public good.
22 And I think that the prior conditions and

1 conditions that I probably recommend here would
2 mitigate any potential substantial detriment in
3 regards to any neighboring properties or any
4 neighboring uses in this area.

5 Finally, in looking at this I think there
6 are potential facts that may arise based on the
7 continued or future use of this property that
8 cannot specifically foreseen in this
9 circumstance.

10 That being said, as discussed at the last
11 hearing, I think I would be inclined to recommend
12 a term limit for this application. That way the
13 applicant can come back before the Board and just
14 ensure that if there are no future issues, the
15 obviously, you know, that would be taken into
16 consideration; but if there are facts that are
17 unforeseen, we can address those at the time.

18 So, that being said, I'm going to turn it
19 over to any other board members for further
20 deliberation, and then based on that discussion,
21 I'll submit a motion.

22 MR. HINKLE: Thank you, Madam Chair. I

1 think you were pretty thorough in your
2 discussion.

3 We did hear testimony -- quite a lot --
4 about the running in the neighborhood, the noise,
5 the vibrations, and some of the effects that
6 those have upon the neighboring properties and --
7 and I do think that we also heard testimony from
8 the applicant as well as the tenant of the
9 building on their efforts to mitigate these --
10 these concerns.

11 And, you know, I was fairly satisfied
12 with -- with the discussions and the evidence
13 that they provided in terms of how they're making
14 some pretty strong efforts to not be, I guess, a
15 nuisance to their neighbors. And I was pretty
16 satisfied with those efforts.

17 I do think that this use is appropriate
18 where it's at. While this is an area that's
19 zoned for residential, it's, as we've heard, a
20 relatively heavily commercial area. And, you
21 know, as you mentioned, it's right at the exit to
22 the freeway on New York Avenue; and there's a lot

1 of traffic. There's a lot of noise. There's a
2 lot of activity.

3 And that commercial activity in this
4 building, I think is appropriate, especially
5 given the configuration of the building and the
6 uniqueness of the structure.

7 So, with that I would support, you know,
8 the continued use as requested in this
9 application.

10 And, you know, there are some things that
11 I think we can condition this support upon that
12 would make this use acceptable or, you know, able
13 to continue to use the space without it
14 negatively impacting the neighbors. You know, so
15 with that --

16 MS. MOLDENHAUER: Thank you.

17 MR. HINKLE: -- we'll listen to your
18 conditions.

19 MS. MOLDENHAUER: Thank you.

20 The conditions that I would recommend
21 would be, one, to limit any gym member running
22 group to eight or fewer members; two, to require

1 that the applicant in conjunction with any
2 operation, post at the facility and on its
3 website, if applicable, a specific protocol and
4 rules and regulations for all gym customers that
5 they shall respect all other pedestrians on
6 sidewalks when engaging in outdoor running or
7 outdoor activities; three, that the gym -- the
8 applicant must install mats on the floor -- floor
9 mats and floor padding to reduce any vibration;
10 five - four, sorry. Four, that no dropping of
11 the weights shall be permitted and that all heavy
12 weightlifting shall be located in the rear of the
13 building and that that area shall also have
14 additional floor matting and that this shall have
15 a five-year term limit.

16 If those are acceptable, then I will
17 submit a motion -- a motion to approve
18 Application Number 18104 [sic] for request for a
19 use variance under 330.5 for a fitness center use
20 in a residential zone at 219 M Street, Northwest,
21 as conditioned.

22 A motion has been made. Is there a

1 second?

2 MR. HINKLE: Second.

3 MS. MOLDENHAUER: Motion's been made and
4 seconded. All those in favor say I.

5 (Respond I.)

6 MS. MOLDENHAUER: Mr. Moy?

7 MR. MOY: Yes, before the staff gives a
8 final vote, we do have an absentee vote from
9 another participating member on this application,
10 who is Mr. Michael Turnbull. And his absentee
11 vote is to approve with such conditions as the
12 Board may - may impose.

13 And in his comments he does reference a
14 term limit of five years.

15 So, that would give a final vote then, I
16 believe, of 3 to 0 to 2 -- two being no other
17 board members participating. This is on the
18 motion of the Chairperson, Ms. Moldenhauer, to
19 approve as conditioned, seconded by Mr. Hinkle,
20 and of course, absentee vote to approve, Mr.
21 Turnbull. So, again, the final vote of 3 to 0 to
22 2.

1 MR. MOLDENHAUER: Thank you very much,
2 Mr. Moy.

3 MR. MOY: So, if staff would assume this
4 is -- not assume but understand that this is a
5 summary order with conditions as stated.

6 MS. MOLDENHAUER: Yes, we would like to
7 waive our requirements and issue a summary order
8 with conditions.

9 MR. MOY: Very good. Thank you.

10 MS. MOLDENHAUER: Thank you.

11 That being said, that concludes our
12 morning meeting?

13 MR. MOY: Yes.

14 (Whereupon, at 10:50 a.m., the Regular
15 Board Meeting was adjourned and the Public
16 Meeting commenced.)

17 MS. MOLDENHAUER: Then, good morning.
18 This hearing will please come to order.

19 Good morning, ladies and gentlemen, this
20 is the November 2nd, 2010, public hearing of the
21 Board of Zoning Adjustments of the District of
22 Columbia.

1 My name is Meredith Moldenhauer,
2 Chairperson. Joining me today, to my right, is
3 Jeffrey Hinkle, Representative of the National
4 Capital Planning Commission; to my left is Vice-
5 Chairperson Nicole Sorg; and joining us shortly
6 is Representative of the Zoning Commission,
7 Konrad Schlater.

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

11 Please be advised this proceeding is
12 being recorded by a court reporter and is also
13 being webcast live. Accordingly, I must ask you
14 to refrain from any disturbing noise or action in
15 the hearing room.

16 When presenting information to the Board,
17 please turn on and speak into your microphone,
18 first stating your home and -- name and home
19 address. When you finish speaking, please turn
20 off your microphone so that your microphone is no
21 longer picking up sound or background noise.

22 All persons planning to testify either in

1 favor or in opposition must fill out two witness
2 cards. These cards are located to my left on the
3 table near the door and on the witness tables.
4 Upon coming forward to speak to the Board, please
5 give both witness cards to the court reporter
6 sitting to my right.

7 The order of procedure for special
8 exceptions and variances are as follows. One,
9 statement of the applicant -- applicant and
10 applicant's witnesses; two, persons and parties
11 in support; three, persons and parties in
12 opposition; four, government reports, including
13 the Office of Planning and Department of
14 Transportation; five, reports of the ANC; and
15 then six, rebuttal and closing statements from
16 the applicant.

17 Pursuant to Section 3117.4 and 3117.5,
18 the following time constraints will be
19 maintained. The applicant, appellant, persons
20 and parties, except an ANC in support will be
21 given 60 minutes collectively. Appellees,
22 persons and parties, except an ANC in opposition,

1 including its witnesses will be given 60 minutes
2 collectively. All individuals will be given
3 three minutes; and organizations will be given
4 five.

5 These time restraints do not include
6 cross-examination or questions from the Board.
7 Cross-examination of witnesses is permitted by
8 the Applicant and parties in a case. The ANC
9 within which the property is located is
10 automatically a party in a special exception or
11 variance case.

12 Nothing prohibits the Board from placing
13 reasonable restrictions on cross-examination,
14 including time limitations and limitations on the
15 scope.

16 The record will be closed at the
17 conclusion of each case except for any materials
18 specifically requested by the Board. The Board
19 and the staff will specify at the end of each
20 case the information which is requested and the
21 date in which the person must submit the evidence
22 to the Office of Zoning.

1 After the record is closed, no other
2 information will be accepted by the Board. The
3 Sunshine Act requires that the meeting -- the
4 public hearing on each case be held in the open
5 before the public. The Board may, consistent
6 with its rules and procedures and the Sunshine
7 Act, enter into Executive Session during or after
8 a public hearing on a case for purposes of
9 reviewing the record or deliberating on the case.

10 The decision of the Board in these
11 contested cases must be based exclusively on the
12 public record. To avoid any appearance to the
13 contrary, the Board requests that all members
14 present not engage the members of the Board in
15 conversation.

16 Please turn off all cell phones and
17 beepers at this time so as not to disturb these
18 proceedings.

19 The Board will consider any preliminary
20 matters. Preliminary matters are those that are
21 related to whether a case will or should be heard
22 today such as a request for postponement,

1 continuance, or withdrawal, or whether proper or
2 adequate notice of a hearing has been given.

3 If you are not prepared to go forward
4 with the case today or you believe that the Board
5 should not proceed, now is the time to raise such
6 a matter.

7 Mr. Secretary, do we have any preliminary
8 matters?

9 MR. MOY: Madam Chair, there are two
10 items. The first is of the cases scheduled for
11 the morning, we do have an issue of untimely
12 filing from ANC 5B to Case 18126.

13 The other matter is to Application Number
14 18124 of Adams-Connecticut.

15 I don't know if there's any parties here
16 this morning, but there was a consent motion to
17 continue this application to November 16th in the
18 afternoon. And the -- all the parties or
19 potential parties for that matter have been
20 contacted and have concurred with the ANC's
21 request, which is Exhibit Number 25; but most
22 importantly, the Applicant also concurred in

1 their Exhibit Number 32.

2 If the Board has consensus on this
3 request, then certainly the staff would move to
4 finalize the rescheduling of this application.

5 MS. MOLDENHAUER: Thank you very much,
6 Mr. Moy.

7 Yes, we will agree to grant the Consent
8 Motion to postpone the case to November 16th.

9 That being said, while we're addressing
10 this case, I'd like to just make a note for
11 Office of Planning. I know that the -- the chief
12 issue in dispute or in conflict on this case is
13 one of parking. And now that we're postponing
14 the case, I'd like to take this opportunity and
15 this time to request that the Department of
16 Transportation weigh in with a written report on
17 that issue.

18 MS. THOMAS: Good morning, Madam Chair.
19 I'm Karen Thomas with the Office of Planning
20 again.

21 MS. MOLDENHAUER: Good morning.

22 MS. THOMAS: Could you tell me what that

1 case number is again?

2 MS. MOLDENHAUER: Sure. That's Case
3 Number 18124.

4 MS. THOMAS: Thank you.

5 MS. MOLDENHAUER: Thank you.

6 Okay. Then at this point we'll postpone
7 that case and move on to the next case for the
8 morning.

9 MR. MOY: Thank you, Madam Chair.

10 MS. BAILEY: Madam Chair, good morning.

11 Is this a good time to swear the witnesses in?

12 MS. MOLDENHAUER: Yes, thank you.

13 All individuals wishing to testify today,
14 if you could please stand and take the oath.

15 (Witnesses were sworn.)

16 MS. BAILEY: Members of the Board, and to
17 everyone, again, good morning.

18 The first case is Application 18125.

19 It's the application of Dennis E. and Margaret T.

20 McLaughlin, and it's pursuant to 11 DCMR Section

21 3104.1, to allow the construction of a rear

22 addition to an existing one-family detached

1 dwelling under Section 223. The project does not
2 meet the side yard requirements. It is located
3 in the R-1-B District at 4726 Sedwick Street,
4 Northwest, Square 1526, Lot 821.

5 MS. MOLDENHAUER: Thank you. Will the
6 parties please step forward?

7 You have to turn on the microphone by
8 hitting it on the bottom.

9 MR. WEAVER: Oh, thank you.

10 MS. MOLDENHAUER: There you go.

11 MR. WEAVER: Good morning. Robert
12 Weaver. I am the architect representing Dennis
13 and Margaret McLaughlin and -- regarding special
14 exception as mentioned, pursuant to Section 223
15 for addition to one family addition and also
16 seeking relief from Section 405 for the side yard
17 setback as well as per the Office of Planning's
18 report, we'd like to amend to include Section
19 2001.3 pursuant to expansion to nonconforming
20 structures, which I think is kind of a corollary
21 but an administrative thing. I wanted that to be
22 included in the amendment, please.

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1 The report that we've provided, I think,
2 has a lot of detail in it, and I'm certainly
3 happy to answer questions on that as -- as they
4 may be. Also, I would point out that you'll be
5 hearing Office of Planning and ANC. They've both
6 issued to the record recommendations for approval
7 for this special exception.

8 Briefly, I would just say there's kind of
9 three categories that I would want to address.
10 One is why do we need the special exception; two,
11 what are the benefits that will come to the
12 neighborhood, community and surrounding
13 environment by granting its approval; and three,
14 compatibility, making sure that the special
15 exception won't create any undue negative impact,
16 which I think, again, the report demonstrates.

17 First, why for the special exception --
18 the existing house is smaller than the
19 surrounding houses by quite a bit. You might
20 want to look at the exhibit that is the aerial
21 photograph where it's superimposed -- the
22 addition is superimposed onto it. And you can

1 see that the existing house in gray is extremely
2 narrow. It's only about 15 feet deep. And so,
3 it's currently a two bedroom. There's one
4 bathroom upstairs, and they are looking to add in
5 a way that would be more consistent with the
6 neighborhood's -- the scale of the other
7 residences. It would be a three-bedroom house,
8 three and a half bath.

9 The addition that is seeking special
10 exception is the portion that is along the alley.
11 And that would be adding a dining room, a family
12 room, and a master suite.

13 The main reason for the special exception
14 is we are trying to save a mature tree that's
15 directly behind the existing house and in the
16 center of the back yard. And per the Arborist's
17 report that's included in the report as well, he
18 recommends maximizing the distance from the
19 construction to the tree.

20 And also, we're looking for -- to match
21 the existing house setback, so we're not asking
22 to go beyond that but kind of be consistent with

1 what the existing house is which predated the
2 side yard setback requirements. And that is 1.9
3 feet.

4 The community benefits -- and just
5 briefly, again, the addition is really trying to
6 embrace that tree in terms of the spaces with
7 doors and windows would definitely kind of open
8 out onto that back yard with the tree.

9 From a community benefit standpoint,
10 mature trees within the neighborhood like this --
11 this is an established neighborhood -- that
12 contributes to the landscape character both from
13 neighboring properties as well as driving along
14 the street. It's of such a scale that it has a
15 presence there.

16 Trees, from an environmental standpoint -
17 - you get the green canopy. You get the shade.
18 That results in less energy consumption. Trees
19 in general contribute to the health of the
20 environment. So there's reasons in that matter.

21 And then also it helps land values of the
22 neighbors. The addition would help the house be

1 more on scale with the -- with the surrounding
2 neighbors.

3 From a compatibility standpoint, we
4 believe that it does not unduly affect
5 neighboring properties. And there's a number of
6 requirements that, again, I would be happy to
7 answer questions regarding a point-by-point
8 report; but I won't go through each of those
9 right now -- in terms of light, air, privacy, et
10 cetera.

11 I think one of differentiating factors of
12 this case is, in addition to the tree, the place
13 where the addition is seeking relief is along an
14 alley. And so, if you look at -- and it's only a
15 one-story instead -- it could be much taller than
16 that. And if you look at the existing
17 photographs the alley has a bunch of, you know,
18 solid board-on-board fencing. And so there's
19 already some shielding from the neighboring
20 properties in addition to the extra distance
21 because of the presence of the alley.

22 If you look at that aerial photograph, in

1 some ways the best place for the addition
2 relative to the neighboring properties in terms
3 of light, and air, and so on is where we're
4 proposing to put it, which would be closer to the
5 alley.

6 The character of the elevation along the
7 alley - we actually think it's better than just a
8 series of board-on-board fences. We've tried to
9 design it in a way that is attractive. It's not
10 just a solid wall. It has kind of a cottagey
11 feel to it. The windows are higher, so there's
12 some privacy between the house and the alley.
13 And, again, it's use of materials to break down
14 the scale. And, again, it's one story.

15 The last thing I'd say is trying to
16 enhance the view -- the elevation, you know, it's
17 -- we really think it's -- you know, instead of
18 just having the fences, it actually will be a
19 little more nicer scale to it.

20 So, again, we're -- in terms of those
21 three categories, we think it's better for the --
22 for my clients because it'll be a more livable

1 house that will be able to take advantage of the
2 existing tree.

3 We think it's better for the neighborhood
4 and the community because of preserving that tree
5 and because of the scale of the addition versus
6 just, you know, by right there could be a massive
7 couple story addition that would be just right
8 outside the back of the house. Tear down the tree
9 and there'd be no need for a hearing. So they're
10 kind of going the extra mile here to try to do
11 what we believe is the right thing. And then
12 thirdly, you know, environmentally we think that
13 is good as well.

14 So the only note that I would add, again,
15 as I said in the beginning, is I would like to
16 amend it to include Section 405 and also 2001.3
17 as Office of Planning noted.

18 MS. MOLDENHAUER: Thank you very much. I
19 think that it's a very full report and I don't
20 have any questions for the Applicant. Do any
21 other board members have any questions?

22 (No response.)

1 MS. MOLDENHAUER: Seeing none at this
2 time, thank you. We'll return to you at the end
3 of the hearing.

4 At this point in time I'll look to the
5 audience. Is there any individual in the
6 audience that is either in support or in
7 opposition to this case?

8 (No response.)

9 MS. MOLDENHAUER: Seeing none, then we'll
10 turn to the Office of Planning for their report.

11 MS. THOMAS: Good morning, Madam
12 Chairman, members of the Board. The Office of
13 Planning believes that the application does
14 indeed satisfy the requirements of 223 -- Section
15 223, rather; and we're very supportive of the
16 retention of that tree in the back yard. So --
17 and in that case, we recommend approval of the
18 application. Thank you.

19 MS. MOLDENHAUER: Thank you. Do any
20 board members have any questions for the Office
21 of Planning?

22 (No response.)

1 MS. MOLDENHAUER: I thought your report
2 was very thorough, and I appreciate that.

3 At this point then we would turn to the
4 ANCs. Is anybody from the ANC 3D present?

5 (No response.)

6 MS. MOLDENHAUER: Seeing nobody in the
7 audience, all reference that we have are Exhibit
8 Number 24, which is a letter from the Chairman,
9 Stu Ross, from ANC 3D indicating that at a
10 regularly scheduled meeting on September 11th --
11 sorry, September 10th, 2010, with a quorum
12 present, that they voted to support the
13 application and a 5 to 3 to 2 vote for
14 Application umber 18125.

15 And so, that being said, at this point in
16 time we'll turn back -- if there's any closing
17 remarks from the Applicant?

18 (No response.)

19 MS. MOLDENHAUER: Seeing none, then we
20 appreciate the Applicant's testimony. We think
21 the record is very full, and we'll conclude the
22 hearing at this point in time, and then we will

1 then jump right into deliberation. That being
2 said, I'll start us off.

3 This is an application for a special
4 exception under 223, and I think that, as you
5 heard today, and as is fully documented in the
6 record, the Applicant is trying to take certain
7 measures to preserve a tree, which I always -- I
8 think is a wonderful effort, a wonderful purpose.
9 I think that the need for relief under 2001.3 for
10 extending a nonconforming side yard is something
11 that in this circumstance I don't see any
12 detriment to light and air or any other aspects
13 of 223 relief, especially due to the fact that
14 this is an extension of a side yard relief along
15 an alleyway.

16 As we heard testimony, that there is
17 fencing there, that the intent is to preserve a
18 tree, which obviously will enhance the light and
19 air, I think, on the surrounding communities and
20 will also contribute to the character of the
21 surrounding area and community.

22 Respond OP is in support. We have a letter, as I

1 said, from the ANC in support. And I would be in
2 support of the application as well.

3 That being said, I'll see if there's any
4 additional deliberation from board members.

5 (No response.)

6 MS. MOLDENHAUER: Seeing none, then I
7 will submit a motion -- a motion to approve
8 Application Number 18125 for a request for a
9 special exception relief under 223 to construct
10 an addition to an existing one-family detached
11 dwelling at 4726 Sedwick Street, Northwest. And
12 they're seeking relief under 405.9 for side yard
13 and under 2001.3 to extend a nonconforming
14 structure.

15 A motion has been made. Is there a
16 second?

17 MS. SORG: Second.

18 MS. MOLDENHAUER: Motion's been made and
19 seconded. All those in favor say I.

20 (Respond I.)

21 MS. MOY: Staff would record a vote as 4
22 to 0 to 1. This is on the motion of Chairperson

1 Moldenhauer to approve Application 18125 for a
2 special exception under 223, not meeting side
3 yard, 405 -- Section 405 and amend it to add
4 relief from 2001.3 because of the extension of
5 the side yard.

6 Second it is Ms. Sorg, Vice-Chairperson.
7 Also in support of the motion are Mr. Schlater
8 and Mr. Hinkle. No other board members
9 participating.

10 So, again, the final vote is 4 to 0 to 1.

11 MS. MOLDENHAUER: Thank you very much,
12 Mr. Moy. And with no opposition I'd like to
13 request a summary order and leave our
14 requirement.

15 MR. MOY: Yes, thank you. Very -- very
16 good.

17 MS. MOLDENHAUER: Thank you.

18 MS. BAILEY: Madam Chair, the second case
19 of the morning is the application of Paul T
20 Atang, and it's pursuant to 11 DCMR, Section
21 3104.1, to allow the construction of a second
22 story addition to an existing one-family detached

1 dwelling under Section 223, not meeting the rear
2 yard and side yard requirements. That's Section
3 404 and 405 of the regulations. The property is
4 on R-5-A. It's located at 2411 10th Street,
5 Northeast, Square 3869, Lot 24.

6 MS. MOLDENHAUER: Thank you very much,
7 Ms. Bailey. The parties can turn on their
8 microphone and introduce themselves.

9 MR. OJIGBO: Good morning, Chair. My
10 name is Sunday Sun Ak (Phonetic) and --

11 MR. ATANG: I'm Paul Atang, the owner of
12 the home.

13 MS. MOLDENHAUER: I think we have a very
14 full record before us in regards to the relief
15 that's being sought for 223.

16 I think the only thing that I have a
17 question for the Applicant is about the plans. I
18 understand that a majority of the construction
19 has already occurred and that currently, I guess,
20 the existing construction doesn't conform with
21 the plans that we currently have in our record,
22 that there are some distinctions between the

1 location of windows and doors. If you can speak
2 on that and -- the issue is just making sure that
3 the record is clear. We have to have records in
4 our file that accurately reflect what will be
5 built.

6 Since you've already started building, if
7 there is something that does not -- is
8 inaccurate, that needs to be resolved, whether
9 it's resolved in the field or whether that's
10 simply potentially providing us revised plans.

11 MR. OJIGBO: We intend to resolve it in
12 the field. We are going by the plans, not by
13 what was built.

14 MS. MOLDENHAUER: Okay. Okay, that's
15 fine. I just -- as long as that's on the record
16 since, obviously, any approval if we do determine
17 to approve, would be based only on the plans.
18 And so --

19 MR. OJIGBO: Correct.

20 MS. MOLDENHAUER: -- any potential change
21 could potentially mean a violation of any order.

22 That being said, I think the Applicant,

1 if they wish, they can rest on the record based
2 on what's before us today. Do you wish to do so?

3

4 MR. OJIGBO: Yes.

5 MS. MOLDENHAUER: Do any board members
6 have any questions for the Applicant?

7 (No response.)

8 MS. MOLDENHAUER: Seeing none at this
9 time, we can always return if any board members
10 have any other questions.

11 What we'll do is we'll turn to any
12 individuals in the audience in support or in
13 opposition to this case.

14 (No response.)

15 Seeing none, then we'll turn to the
16 Office of Planning.

17 MR. GOLDSTEIN: Good morning, Madam
18 Chair, members of the board. For the record, my
19 name is Paul Goldstein. I'm with the Office of
20 Planning.

21 The Office of Planning recommends
22 approval of the Applicant's request for special

1 exception relief under Section 223. We also
2 noted the caveat that we wanted clarified that
3 the Applicant's plans would be consistent with
4 what's been submitted. The Board has made that -
5 - has identified that issue and gotten
6 satisfaction on it from the Applicant.

7 Otherwise, OP does not really have
8 anything additionally to add beyond the report
9 that we've submitted.

10 And that concludes my presentation. I'm
11 now available for any questions.

12 MS. MOLDENHAUER: Thank you very much.

13 Sir, the only question I have for you is
14 in regards to -- I understand the need for the
15 side yard relief based on the requirement of side
16 yard is then reflective upon how high -- what the
17 height of the building is, but can you just go
18 through the need for 404 rear yard relief and why
19 that would be a extension or an addition to the
20 nonconformity?

21 MR. GREENSTEIN: Uh, I'd be happy to.

22 It's my understanding based on previous cases

1 that the expansion of the volume of the building,
2 whether -- in this case it's actually a vertical
3 expansion of the volume that is continuing the --
4 continuing the nonconformity of the rear yard is
5 actually something that would need relief. In
6 this case it's going up. There's an impact from
7 it, so that it's an expansion of the
8 nonconformity.

9 So that's why we identified rear yard.
10 Of course, this is only a special exception case
11 for 223 in which we're merely identifying in a
12 sense some of the nonconformities as well.
13 You're not specifically getting relief, for
14 instance, from the rear yard. It's kind of
15 identifying that there are nonconforming aspects
16 of the project.

17 Of course, ultimately it's the Zoning
18 Administrator's interpretation that's --that --
19 on this issue, but it's been our understanding
20 that this would be something that needs relief.

21 MS. MOLDENHAUER: Okay. I mean, just for
22 me, for rear yard it's not like side yard where

1 there's a direct correlation between the volume
2 or the height of the structure but rather only if
3 a building was extending further into the rear
4 yard, thus further reducing that or further
5 creating a nonconformity. But I appreciate you
6 taking through the OP's analysis.

7 Do any other board members have any other
8 questions for OP?

9 (No response.)

10 MS. MOLDENHAUER: Seeing none, thank you
11 very much, Mr. Goldstein, for your analysis and
12 for the report.

13 At this point in time I will turn to see
14 if there's any individuals in the audience from
15 ANC 5B.

16 (No response.)

17 MS. MOLDENHAUER: Seeing no one in the
18 audience from ANC 5B -- I don't believe we have
19 anything in our record actually from the ANC. We
20 have a reference in our OP report -- actually, we
21 just received something.

22 And I -- we received something indicating

1 that the ANC is not in support of this
2 application, that they held a meeting on May
3 23rd, 2010, and a make-up meeting on October
4 25th, 2010. The meeting was attended by many of
5 the homeowners and that the residents of the
6 impacted community indicated that the
7 modifications to 2411 10th Street are not in
8 keeping with community of the neighborhood, and
9 further, that they did not understand the need
10 for the three doors in the front of the house.
11 Based on that it says the ANC does not support
12 the application.

13 While reviewing this -- and,
14 unfortunately, there's no quorum indicated on
15 this notification. So it doesn't satisfy our
16 requirements. It doesn't indicate that a quorum
17 was present for this vote, so it wouldn't satisfy
18 our requirements for great weight; but we will
19 introduce this into evidence as just a simple
20 letter of documentation.

21 That being said, we do have letters of
22 support in our record -- Exhibit Number 22 which

1 indicate specific neighbors and their home
2 addresses. We have about -- let's see here --
3 three, four, five, six letters of support from
4 individuals indicating their addresses throughout
5 the property and indicating that they are
6 adjacent neighbors.

7 That being said, I'm going to turn back
8 to the Applicant and just ask this one follow-up
9 question in regards to did you attend that --
10 those ANC meetings?

11 MR. ATANG: We actually attended the one
12 on October 3rd but they did not give us the
13 opportunity of saying anything, and they said
14 they were going to hold a meeting. So we asked
15 them when will the meeting be. They said they
16 would not invite us. So we're surprised to -- to
17 learn that they had a meeting afterwards.

18 MS. MOLDENHAUER: Okay. Um, you have
19 some letters in your documentation -- letters of
20 support. Did you interact with any individuals
21 that were not in support of the application and
22 had some concerns?

1 MR. ATANG: I, personally, did not. I
2 went through all the homes next to my house, and
3 I knocked at the -- at the doors, and those that
4 were available, all of them were in support and
5 they wrote the letters.

6 MS. MOLDENHAUER: Okay. Um, do any other
7 board members have any questions of the
8 Applicant?

9 (No response.)

10 MS. MOLDENHAUER: Seeing none, then thank
11 you.

12 Do you have any closing remarks?

13 MR. OJIGBO: Not really.

14 MR. MOLDENHAUER: Okay. Thank you.

15 Then at this point in time we'll turn --
16 we'll conclude the hearing and we'll enter into
17 executive deliberation of this case.

18 And this case before us is a case under
19 223 relief. 223 relief is relief that requires
20 that we review any addition or relief for side
21 yard and rear yard, and in this case, a
22 nonconforming structure, and evaluate whether

1 there's any substantial adverse impact on the use
2 or enjoyment of the abutting property owners and
3 whether there's any impact on -- negative impact
4 in regards to the light and air available to
5 neighboring properties and use and privacy and
6 enjoyment of those properties.

7 That being said, I'm going to incorporate
8 OP's report. And I think that this addition does
9 not specifically adversely impact the neighboring
10 properties. I think that it is a modest
11 application under 223. I think that there are
12 specific letters from adjacent property owners
13 that we have in our Exhibit Number 22 indicating
14 support.

15 While I do give weight and concern to the
16 ANC report, seeing that we cannot give it great
17 weight and seeing that no one was here to
18 potentially expound upon their concerns, and that
19 we do have letters from the specific adjacent
20 neighbors which the 223 looks at, I feel that
21 while they may have some specific concerns about
22 the doors and the windows, those would not

1 specifically go to privacy, especially if you're
2 talking about a front door or a window to that
3 degree -- they indicate three doors in the front
4 of the house. I think that would go to the
5 character and pattern of homes on the -- in the
6 property.

7 And I think that the OP report indicates
8 that based on their review of the -- of 10th
9 Street that this application was within the
10 character and scale. And I will give OP
11 deference in that regards to evaluating that and
12 having reviewed that issue.

13 That being said, I would submit a motion
14 or see if there's any additional deliberation.

15 (No response.)

16 MS. MOLDENHAUER: Seeing that there's no
17 additional deliberation, then I'll submit a
18 motion -- a motion to approve Application Number
19 18126 under a request for special exception under
20 223 to construct a second story addition to 2411
21 10th Street, Southeast [sic]. This addition is
22 seeking relief under 404 and 405 and 2001.3.

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

3 MR. HINKLE: Second.

4 MS. MOLDENHAUER: Motion's been made and
5 seconded. All those in favor say I.

6 (Respond I.)

7 MR. MOY: Staff would record the vote as
8 4 to 0 to 1. This is on the motion of
9 Chairperson Moldenhauer to approve the
10 application pursuant to special exception 223 in
11 not meeting the rear yard, 404, side yard, 405.
12 And staff's understanding amended to add relief
13 from 2001.3.

14 Seconded motion, Mr. Hinkle -- also in
15 support of the motion Ms. Sorg, Vice-Chair, and
16 Mr. Schlater. No other board members
17 participating. So, again, the final vote is 4 to
18 0 to 1 to approve.

19 MS. MOLDENHAUER: Thank you very much,
20 Mr. Moy. And seeing as there is no opposition --
21 even though ANC --

22 MS. NAGELHOUT: This little party --

1 that's what we were talking about. I think you
2 would still have to be --

3 MS. MOLDENHAUER: Okay. Do a full order,
4 okay.

5 MS. NAGELHOUT: Because other parties
6 don't get great weight and we still do full
7 orders for them.

8 MS. MOLDENHAUER: Okay. Then I am -- I
9 am corrected. I appreciate that.

10 So, we will not waive any requirements,
11 and we'll have a full order on this issue.

12 MR. MOY: Thank you very much, Madam
13 Chair.

14 MS. MOLDENHAUER: Thank you very much.
15 Thank you.

16 And then that concludes our morning.
17 We'll reconvene at 1:00 o'clock.

18 (Brief recess.)

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

MS. MOLDENHAUER: This hearing will
please come to order.

Good afternoon, ladies and gentlemen.
This is the November 2nd, 2010, public hearing of
the Board of Zoning Adjustments for the District
of Columbia.

My name is Meredith Moldenhauer,
Chairperson. Joining me today, to my right, is
Jeffrey Hinkle, representative of the National
Capital Planning Commission; to my left is Vice-
Chairperson Nicole Sorg, Mayoral appointee; and
to her left is Konrad Schlater, representative of
the Zoning Commission.

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

1 near the door.

2 Please be advised this proceeding is
3 being recorded by a court reporter and is also
4 being webcast live. Accordingly, I must ask you
5 to refrain from any disturbing noise or actions
6 in the hearing room.

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

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

20 The order of procedures for special
21 exceptions and variances are as follows: One,
22 statement of the Applicant, Applicant's

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1 witnesses; two, persons and parties in support;
2 three, persons and parties in opposition; four,
3 government reports, including the Office of
4 Planning and Department of Transportation; five,
5 reports from the ANC, and, then six, closing and
6 rebuttal comments from the Applicant.

7 Pursuant to Section 3117.4 and 3117.5 the
8 following time constraints will be maintained:
9 The Applicant, Appellant, persons, and parties
10 except an ANC in support, including its witnesses
11 will be given 60 minutes collectively.
12 Appellees, persons, parties, except an ANC in
13 opposition, including witnesses will be given 60
14 minutes collectively. Individuals will be given
15 three minutes, and organizations will be given
16 five minutes.

17 These time restraints do not include
18 cross-examination or questions from the Board.
19 Cross-examination of witnesses is permitted by
20 the Applicant and parties. The ANC in which the
21 property is located is automatically a party.

22 Nothing prohibits the Board from placing

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1 reasonable restrictions on cross-examination,
2 including limitations on time and scope.

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

11 The Sunshine Act requires that a public
12 hearing on each case be held in the open before
13 the public. The Board may, consistent with its
14 rules and procedures and the Sunshine Act, enter
15 into Executive Session during or after a public
16 hearing on a case for reviewing the record or
17 deliberating on the case.

18 The decision of the Board in these
19 contested cases must be based exclusively on the
20 public record. Devoid any appearance to the
21 contrary, the Board requests that all persons not
22 engage the Board in any conversation.

1 Please turn off all cell phones and
2 beepers at this time as to not disturb these
3 proceedings.

4 The Board will make every effort to
5 conclude the proceeding as near as possible to
6 6:00 p.m. If the afternoon cases are not
7 completed at 6:00 p.m., the Board will assess
8 whether it can complete the pending case or cases
9 remaining on the agenda.

10 At this time the Board will consider any
11 preliminary matters. Preliminary matters are
12 those that relate to whether a case will or
13 should be heard today, such as a request for
14 postponement, continuance, or withdrawal, or
15 whether proper, adequate notice of the hearing
16 has been given.

17 If you are not prepared to go forward in
18 your case today, or if you believe the Board
19 should not proceed, now is the time to raise such
20 a matter.

21 Mr. Secretary, do we have any preliminary
22 matters?

1 MR. MOY: Madam Chair, there are no
2 preliminary matters for the Board's attention at
3 this -- at this time.

4 MS. MOLDENHAUER: Thank you. Then all
5 individuals wishing to testify, please stand and
6 Ms. Bailey will administer the oath.

7 (Witnesses were sworn.)

8 MS. BAILEY: Madam Chair, good afternoon.
9 The line-up that I have -- I just wanted to make
10 sure that I am in sync with you. We have Sikder,
11 Jones, and Tsereteli. Is that the order that you
12 would like for the cases to be called this
13 afternoon, Madam Chair?

14 MS. MOLDENHAUER: Yes, let's call the
15 cases. I don't know if I see the first case
16 audience in the -- the individuals in the
17 audience. We'll call it. If they're not here,
18 we'll then push it back to the end.

19 MS. BAILEY: Is Mr. -- 18090, M. Sikder -
20 - is Mr. Sikder here?

21 AUDIENCE MEMBER: No.

22 MS. BAILEY: Should I go to Jones then,

1 Madam Chair?

2 MS. MOLDENHAUER: Yes, please.

3 MS. BAILEY: I believe she's here.

4 Okay. Application 18128 -- this is the
5 application of Loretta M. Jones, and it's
6 pursuant to 11 DCMR, Section 3103.2, for a
7 variance from the lot occupancy requirements
8 under Section 4i03, a variance from the rear yard
9 requirements under Section 404, and a variance
10 from the nonconforming structure provisions under
11 Subsection 2001.3 to construct a two-story rear
12 addition to an existing one-family row dwelling.

13 The property is zoned R-5-B. It's located in
14 908 12th Street, Southeast, Square 1021, Lot 19.

15 MS. MOLDENHAUER: Good afternoon. If you
16 can introduce yourself for the record -- I think
17 you need to turn on your microphone.

18 MS. JONES: Good afternoon. My name is
19 Loretta M. Jones. I live at 908 12th Street,
20 Southeast, Washington, D.C. 20003.

21 MS. MOLDENHAUER: Thank you very much.

22 And you are here before us for an

1 application for variance relief. If you want to,
2 can you walk through the different standards and
3 how you meet those?

4 MS. JONES: I -- I -- I can. The first
5 one, 2001.3 -- it is the nonconforming variance
6 permit to permit a two-story addition to a
7 nonconforming structure. And my response is the
8 size and shape of my kitchen and rear is small
9 and narrow, and upstairs there's only one bedroom
10 which only one bed can fit in, and that's a twin
11 bed. And I propose just to open the space up --
12 not extending the house but to the side of the
13 house, making it a little bit wider and meeting
14 up with my neighbor's wall.

15 Presently I have what is called an open
16 space or what I have been told is a dog leg, I
17 think. And I'm just going to move over that
18 little bit of space.

19 The second one 403.2 would -- I'm sorry -
20 - yes, point 2. And that is a permit to a two-
21 story addition which does not comply with lot
22 occupancy. And, as I said, the requested space -

1 - I only propose to move over and not out, and
2 it's on existing space -- the existing lot right
3 now.

4 Fortunately, or unfortunately, my house
5 was built before all the zoning regulations. So
6 now expanding that will not really increase the
7 lot occupancy -- well, I guess it will because I
8 will move over a little bit, but not up or out --
9 not out.

10 The last one is about the rear yard,
11 404.1, permit to an addition without providing a
12 minimum 15 feet. There is no -- I intend -- I do
13 not intend to do anything with the existing rear
14 yard space. So it will remain the same.

15 And presently I -- we have what's called
16 a private alley. There is no foot traffic.
17 There is no -- no any kind of traffic. It's
18 closed off. So, my rear yard is not seen by
19 anyone but the neighbors who have already
20 consented to having this done.

21 If anything, I will make the rear yard
22 look a little bit better when I finish the

1 construction.

2 MS. MOLDENHAUER: Thank you very much.

3 Um, and we have, obviously, your testimony as to,

4 you know, how you think the property is unique

5 and how you satisfy these different standards.

6 How do you believe that that uniqueness creates a

7 practical difficulty for you?

8 MS. JONES: Well, one of the

9 difficulties is that, like I said, the room --

10 the kitchen is small. So with two people --

11 right now I have my daughter and my grandson

12 living with me, but two people getting into the

13 galley-style kitchen is kind of difficult.

14 Also, as I'm aging -- getting a little

15 bit older -- I intend to put a powder room on the

16 -- in the first floor in the rear so that --

17 because going up and down the steps does present

18 somewhat of a challenge for me as well as family

19 and friends who visit. So, the relief will be in

20 that I will get more space in a bedroom -- a

21 little bit more -- a little bit more space in my

22 kitchen, and I also will have a little small

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1 powder room.

2 MS. MOLDENHAUER: Thank you. Do any
3 board members have any other questions of the
4 Applicant?

5 (No response.)

6 MS. MOLDENHAUER: Seeing none, thank you.
7 At this time I will turn to the audience and see
8 if there's any individuals in the audience for
9 this case that are in opposition or in support of
10 this case.

11 (No response.)

12 MS. MOLDENHAUER: Seeing none, then we'll
13 turn to the Office of Planning for their report.

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

17 The application is for variances from
18 Section 403 regarding the lot occupancy and the
19 rear yard and also from 2001.3 for nonconforming
20 structure provisions.

21 Currently, the property has a lot
22 occupancy already above the 60 percent that is --

1 the 60 percent maximum that is required. With
2 the -- the court area is also included in that --
3 in that 82 percent. And so, therefore, the
4 Applicant is not proposing to increase the lot
5 occupancy but just fill that portion in.

6 Regarding the uniqueness, from my
7 analysis of looking at the lots within the square
8 -- that in the range of between 500 and 600-
9 square feet properties, this is the only one that
10 has an open court that has not been filled in.

11 In addition to that, the -- the house was
12 constructed prior to 1954; and, therefore, in
13 order to -- in order to meet the lot occupancy
14 requirement of 60 percent, the house would have
15 to be demolished, which causes a uniqueness that
16 -- on the Applicant.

17 Regarding the rear yard, it is already
18 less than the 15 feet required, and with the
19 filling in of the court, she does not propose to
20 extend that beyond the 7.4 feet that she has. In
21 order to meet the 15-foot requirement, again, it
22 would require some demolition of an already small

1 house.

2 For -- the proposal will not be a
3 detriment to the public good, again, because the
4 building is already at the 82 percent. The
5 additional -- the addition will not cause any
6 diminishun in light and air to the -- to any
7 adjacent -- any adjacent neighbors.

8 And in addition, the historic nature of
9 the area will be preserved. Again, reducing --
10 the rear yard is existing. No changes is -- is
11 impacted. And therefore, it doesn't impact on
12 the adjacent neighbors.

13 There is no substantial harm to the
14 zoning regulations because it would -- the
15 building would retain the existing lot occupancy
16 and rear yard. And as can be attested from the
17 neighbors, the house -- they don't have a problem
18 with the house currently. And, therefore, based
19 on these -- on these qualities, we believe that
20 the variances should be granted and request
21 approval -- and recommends approval. Thank you,
22 Madam Chairman.

1 MS. MOLDENHAUER: Thank you very much.

2 I just wanted to ask -- I thought your
3 analysis as to why the property is unique is that
4 this is one of the only properties that has not
5 filled in its open court; is that correct?

6 MS. BROWN-ROBERTS: It's either not
7 filled in or the other houses were not build with
8 a court.

9 MS. MOLDENHAUER: Okay. And you think
10 that for those houses that were not built with a
11 court, does this property distinguish in size, or
12 narrowness, or anything to that effect?

13 MS. BROWN-ROBERTS: Well, the effect is
14 that those houses were able to -- if they had a
15 court, then that court area has been filled in.
16 And their all don't meet -- they all don't meet
17 the current lot occupancy standards.

18 MS. MOLDENHAUER: Okay.

19 MS. BROWN-ROBERTS: So this is the
20 difference with this one that she has a court
21 that has not been filled in. That also meets the
22 lot occupancy that others have.

1 MS. MOLDENHAUER: Okay. Thank you. Do
2 any other board members have any questions for
3 the Office of Planning?

4 (No response.)

5 MS. MOLDENHAUER: Thank you very much.
6 Does the Applicant have any questions for the
7 Office of Planning?

8 (Inaudible.)

9 MS. MOLDENHAUER: All right. Can you put
10 that on the record?

11 MS. JONES: No, I do not.

12 MS. MOLDENHAUER: Thank you. At this
13 point in time then we'll turn to the ANC 6B. Is
14 anybody present from ANC 6B?

15 Seeing nobody in the audience, I'll
16 reference we have Exhibit Number 24 which
17 indicates that ANC 6B met in a properly held and
18 noticed meeting on October 12th, 2010, with a
19 quorum present. They voted 8 to 0 to support the
20 application.

21 That being said, is there any closing
22 remarks from the Applicant?

1 MS. JONES: Uh, no, I just want to --
2 yeah, one. I just wanted to say thank you to all
3 the people that have worked with me through this
4 process from Ms. Brown-Roberts to Mr. Nero, to
5 Ms. Mercedes, and everyone who's been working
6 with me trying to help me do this. It's been
7 quite a journey, and I appreciate their
8 assistance in meeting with them and them -- yes.

9 That's all.

10 MS. MOLDENHAUER: Thank you very much.
11 At this point in time then we'll conclude the
12 hearing, and I think we'll go directly into
13 deliberation. So, what we'll do is I'll start us
14 off.

15 We have Application Number 18128 in front
16 of us for a variance from lot occupancy in rear
17 yard requirements. The Applicant and OP have
18 provided us with a -- analysis in regard to how
19 the Applicant satisfies the variance test.

20 They articulate that due to the fact that
21 the other lots on the square have either filled
22 in a open court or a court that existed or did

1 not -- were not built with a court, that that
2 creates a unique aspect of this property which
3 creates a practical difficulty for building or
4 for satisfying their house needs.

5 And that there is no practical -- there's
6 no detriment to the public good in regards to lot
7 occupancy, or rear yards, or any harm to the
8 zoning plan as a reference were incorporated in
9 the OP report.

10 We have, as indicated on the record, a
11 letter of support by the ANC. We also have other
12 letters of support in our record from neighbors.

13 And we have the illustrative documents on
14 Exhibit Number 5 which show the narrowness of
15 this court and just -- the illustration that
16 obviously is a very small and narrow court that's
17 being provided here.

18 I find it -- I find it a gray area as to
19 whether or not a court satisfies the uniqueness
20 circumstance. While I find it a gray area, I
21 still feel that this case satisfies the standards
22 and passes it; I just think that it's, you know,

1 fairly tight in my perspective on analyzing the
2 three prongs of a variance test.

3 That being said, I'll open up the floor
4 to any other deliberations from any other board
5 members.

6 (No response.)

7 MS. MOLDENHAUER: Seeing none, then I
8 will submit a motion -- a motion to approve
9 Application Number 18128 for a variance from
10 2001.3 for relief in lot occupancy under 403 and
11 rear yard under 404.

12 A motion has been made. Is there a
13 second?

14 MS. SORG: Second.

15 MS. MOLDENHAUER: Motion's been made and
16 seconded. All those in favor say I.

17 (Respond I.)

18 MR. MOY: Staff would, Madam Chair,
19 record the vote as 4 to 0 to 1. This is on the
20 motion of the Chairperson, Ms. Moldenhauer, to
21 approve the application for the relief that was
22 requested, variance from lot occupancy rear yard

1 and nonconforming provision, seconded by the
2 Vice-Chair, Ms. Sorg -- also in support of the
3 motion, Mr. Hinkle and Mr. Schlater. So, again,
4 that's a vote of 4 to 0 to 1 to approve.

5 MS. MOLDENHAUER: Based on that there's
6 no opposition, I would like to ask for our leave
7 of our requirements and ask for a summary order.

8 MR. MOY: Thank you, Madam Chair.

9 MS. MOLDENHAUER: Next case?

10 Thank you very much for your complete --

11 MS. BAILEY: The next case is Application
12 18127. It's the application of Mamuka Tsereteli,
13 and it's pursuant to 11 DCMR Section 3104.1, for
14 a special exception under subsection 330.4, to
15 allow the continued use of a grocery store with
16 beer and wine sales, and an accessory prepared
17 food shop, last authorized by BZW Order Number
18 16310, dated March 18th, 1998. The property's
19 zoned R-4. It's located at 301 through 303 P
20 Street, Northwest, Square 521, Lot 40.

21 MS. MOLDENHAUER: Thank you very much,
22 Ms. Bailey. Before we get started, I just -- I

1 want to ask the Applicant some questions and
2 point out a couple of -- of issues because there
3 may be no need for us to continue this hearing.

4 My understanding is that this property
5 had received a special exception for a deli use
6 which had expired; but prior to that it's always
7 had a grocery store use, and that use has
8 continued. Even though it's a nonconforming use,
9 it's always continued.

10 Many of your cases and many of our
11 decisions have continued to find that it's
12 customary for a grocery use to have as part and
13 parcel of that use a small degree of prepared
14 foods -- prepared foods not to an exceptional
15 degree but -- and obviously, making sure that
16 it's still an accessory use and does not become a
17 primary use.

18 So, I'm just going to ask the Applicant
19 to describe this accessory prepared food use and
20 what your intention is because if your intention
21 falls within the customary accessory permitted
22 use of a grocery store, then there's no need for

1 additional relief; and that can be done simply as
2 a matter of right, and you can move forward, and
3 we would dismiss this case as not being relevant
4 or not needing relief under our requirements.

5 So, that being said, I'm going to turn to
6 the Applicant to just describe the use that
7 you're intending to have for a prepared food
8 shop.

9 MR. SIDAMON-ERISTELL: Well, this is the
10 Applicant, Dr. Tsereteli, and I'm his attorney,
11 Simon Sidamon-Eristoff.

12 We -- we already -- well, we -- we
13 attempted to obtain a certificate of occupancy
14 from the Office of Zoning based on the fact that
15 this was a pre-existing nonconforming use that
16 dated back to the period prior to the enactment
17 of the zoning law. And we were told that because
18 the BZA had issued a special exception back in
19 1998 and that that -- and that special exception
20 had actually expired because it was only a three-
21 year special exception, that no certificate of
22 occupancy was going to be available.

1 So, the reason -- you know, we -- we need
2 a special exception to use this property for this
3 particular commercial purpose, regardless of
4 whether it's -- you know, falls within the
5 definition of grocery store -- whether the
6 prepared food sale falls within that -- within
7 the definition of grocery store operation.

8 MS. MOLDENHAUER: Well, my understanding
9 is that the special exception was simply for the
10 deli use, that it may have included the prior
11 nonconforming use of a grocer, but that the
12 special exception was only for the deli use that
13 had been obtained.

14 MR. SIDAMON-ERISTOFF: I'm not sure what
15 -- the Office of Planning may be able to help
16 with that, but my understanding is that the
17 reason that his request for a certificate of
18 occupancy was denied was because a special
19 exception had been -- been needed before. So --
20 but perhaps you'd like to describe what you have
21 in mind for the prepared food.

22 MR. TSERETELI: Yeah, we didn't have a

1 permit to operate store as space as a commercial
2 entity. This was the reason why we applied for
3 the -- for this hearing.

4 And in general, this is a -- the primary
5 purpose of the operation was to have a grocery
6 store there and no -- no -- there's no purpose to
7 have a food preparation on the premises. So --

8 MS. MOLDENHAUER: The prior C of O,
9 though, was for a grocery store.

10 MR. SIDAMON-ERISTOFF: Yes.

11 I have a copy of that if that's helpful.

12 MS. MOLDENHAUER: Yeah, can I -- I mean,
13 can we have a copy of that for a moment?

14 Thank you. You can provide it to Ms.
15 Bailey.

16 MR. SIDAMON-ERISTOFF: It's part of this
17 letter that we sent to the Zoning Administrator.
18 It was one of the attachments.

19 We have Certificates of Occupancy dating
20 back for 50 years if --

21 (Pause.)

22 MS. MOLDENHAUER: I'm still -- based on

1 my prior statements, I'm going to continue to
2 express those issues, but I'm going to have OAG
3 just provide some additional statements on the
4 record to clarify the issue.

5 MS. NAGELHOUT: Let me see if I can
6 explain this a little bit what -- what we're
7 thinking. And this is directed to both of you
8 but somewhat to your attorney so you understand
9 and you can tell me factually.

10 Generally speaking, if it's not -- if the
11 nonconforming use has been in existence since
12 before May 12th, 1958, continuously -- you know,
13 hasn't stopped for any long period of time -- you
14 don't need any relief to run that nonconforming
15 use which would be the grocery store.

16 There is -- I have a couple of the older
17 orders which OP had put in: one from 1983
18 specifically says the subject nonconforming
19 grocery has existed at the present location for
20 at least 25 years -- that's in 1983. It also
21 says the Applicant proposes to change the subject
22 nonconforming use to a grocery store to include a

1 delicatessen. Now, this is a 1983 order from the
2 Board.

3 What that indicates to me is that there
4 was a nonconforming grocery store for the last
5 umpteen years.

6 MR. SIDAMON-ERISTOFF: Yeah.

7 MS. NAGELHOUT: In 1983 there was a
8 change to add a deli, which required a special
9 exception; you're correct.

10 MR. SIDAMON-ERISTOFF: That's -- yeah.

11 MS. NAGELHOUT: That's -- you're correct.

12 And then there's the latest order, which
13 I think is -- the latest is 1998.

14 MR. SIDAMON-ERISTOFF: Yeah.

15 MS. NAGELHOUT: And that also says in the
16 third line of the order -- the current
17 nonconforming use of the site has not
18 discontinued. Now at that point current meant
19 grocery and deli, okay? That was 1998; but here
20 we are 10, 12 years later -- sorry, I don't mean
21 to go on and on, but -- and it looks like the
22 deli has now expired because that order expired;

1 but my take on it and the Board is the ultimate
2 arbiter of this. They have to make the decision;
3 but what -- the interpretation could be that even
4 though the deli expired in two -- three years
5 after 1998, that nonconforming use has been there
6 -- never needed a special exception to begin
7 with, so there's nothing to expire unless it's
8 discontinued.

9 MR. SIDAMON-ERISTOFF: That was actually
10 the argument that we made with --

11 MS. NAGELHOUT: Okay.

12 MR. SIDAMON-ERISTOFF: -- Mr. LaGrant at
13 the Office of Planning.

14 MS. NAGELHOUT: And that's good you made
15 the argument because --

16 MR. SIDAMON-ERISTOFF: But he denied the
17 Certificate of Occupancy anyway and said no, you
18 need -- we had a special exception before, so you
19 --

20 MS. NAGELHOUT: Well, what we're --

21 MR. SIDAMON-ERISTOFF: -- need another
22 one.

1 MS. MOLDENHAUER: What we're doing now is
2 this Board is going to make a decision right now,
3 and our decision will be written up in an order
4 that will then be able to be taken to Mr. LaGrant
5 and --

6 MR. SIDAMON-ERISTOFF: Okay.

7 MS. MOLDENHAUER: -- indicate to him what
8 the Board's feeling is on this issue. And so, I
9 think what we'll do is I'm going to at this point
10 in time end the hearing; and I'm going to orally
11 enter into deliberation and indicate that I think
12 that this case should be dismissed.

13 There is no -- this case does not --
14 there's no issue that needs to be discussed at
15 this point in time for this case. And so there's
16 no case to be discussed, so there's -- there's no
17 issues that will have any additional points.

18 This is all preliminarily the Board's
19 making a preliminary decision. You're not on the
20 record right now, sir, and so you're not on the
21 microphone. We're not going to be taking any
22 public testimony because this is not before us

1 because there's no relief that's necessary. And
2 so we won't be taking any additional testimony.
3 We've received everything in the record.

4 But as I indicated before, this case does
5 not need relief, and there is existing prior C of
6 Os and there's a continuing nonconforming use
7 which does not need relief from this Board; so I
8 am going to recommend that we dismiss this case
9 for no relief being required.

10 Do I have a second?

11 MS. SORG: Second.

12 MS. MOLDENHAUER: Okay, motion's been
13 made. All those in favor say I.

14 (Respond I.)

15 MR. MOY: Staff would record the vote as
16 4 to 0 to 1. This is on the motion of
17 Chairperson Moldenhauer to dismiss the
18 application not needing relief -- seconded the
19 motion is the Vice-Chair, Ms. Sorg. In support
20 of the motion Mr. Hinkle and Mr. Schlater. No
21 other board members participating. Again, that
22 vote is 4 to 0 to 1.

1 MS. NAGELHOUT: I just want to indicate
2 to Madam Chair that this will be -- we'll write
3 the order. The Board will actually write the
4 order as an order of dismissal which will go to
5 the ZA and will tell him exactly what happened
6 here because this is the final decision. He was
7 right in what he did. He sent you here because
8 he wasn't sure whether the special exception was
9 necessary and then this is the final decision
10 just so you know.

11 (Pause.)

12 MS. MOLDENHAUER: We'll be calling the
13 next case whenever Ms. Bailey -- whenever you're
14 ready.

15 (Pause.)

16 MS. BAILEY: The last case of the day is
17 the application of M. Sikder, and the number is
18 18090, and it's pursuant to 11 DCMR, Section
19 3103.2, for a variance from the lot area and lot
20 width requirements under Section 401, a variance
21 from the lot occupancy requirements under Section
22 403, a variance from the side yard requirements

1 under Section 405, and a variance from the use
2 provisions under subsection 201.1, to allow the
3 construction of a new one-family semi-detached
4 dwelling in the R-1-B District at 3158 Monroe
5 Street, Northeast, Square 4309, Lot 26.

6 MS. MOLDENHAUER: Will the parties please
7 step forward.

8 I believe Ms. James was here from 5-A.
9 We'll wait a moment until she joins us.

10 (Pause.)

11 MS. MOLDENHAUER: Good afternoon. We're
12 just reading through the ANC report, so just give
13 us a moment, and then what we'll do is we'll ask
14 for the parties to be introduced.

15 (Pause.)

16 MS. MOLDENHAUER: Have all board members
17 had a chance to review the record?

18 (No response.)

19 MS. MOLDENHAUER: Then I will now turn to
20 the parties at the table and if you could please
21 -- starting to my left, introduce yourself with
22 your name and home address? Starting on my left.

1 Your microphone is not on. You need to
2 turn your microphone on.

3 MR. SIKDER: Good afternoon, Madam the
4 Chair and Board Members. My name is Mohammed
5 Sikder, and my address is 6660 Tennyson Drive,
6 McLean, Virginia.

7 MS. MOLDENHAUER: Ms. Grant?

8 MS. GRANT: Good afternoon, Board
9 Members. My name is Janae Grant, Advisory
10 Neighborhood Commission Chair of ANC 5A, but I'm
11 here representing single-member District 5A-11 -
12 O- address 2811 Newton Street, Northeast.

13 MS. MOLDENHAUER: Thank you very much.

14 I just need to take a quick break.

15 Sorry. One moment; I'm sorry.

16 (Brief recess.)

17 MS. MOLDENHAUER: I'm terribly sorry
18 about that, and I appreciate everybody's patience
19 in bearing with me for a few moments.

20 Where we are right now is -- just to kind
21 of recap for the record, at the last meeting we
22 provided time for the Applicant to potentially

1 revise his plans and react to some of the
2 concerns of the neighborhood in regards to the
3 character. We have new plans from the Applicant
4 that were received on October 8th.

5 We then have a supplemental OP report
6 which addresses the new plans, which we received
7 on October 26th. And do all parties have a copy
8 of that?

9 MS. GRANT: Yes.

10 MR. SIKDER: Yes.

11 MS. MOLDENHAUER: Okay. ANC and the
12 Applicant are both indicating yes, they have
13 copies.

14 And then we just received a copy of the
15 ANC report which occurred -- the meeting occurred
16 on the 31st -- sorry, the meeting occurred on the
17 27th; the report was done on the 31st; and we
18 received it today -- responding to the last
19 hearing and addressing their new -- their
20 confirmed concerns and voting on continuing to
21 object to the application. So, that's where we
22 stand right now.

1 What we'll do is we will permit the
2 Applicant to present its case in regards to any
3 revisions or any changes, any reactions to the OP
4 report or the ANC notice. And then we'll move
5 forward to the ANC and OP.

6 MR. SIKDER: Yes, we have revised our
7 plans and we tried to accommodate all the
8 concerns we -- I mean, we discussed in the last
9 hearing and highlight some revision as I
10 mentioned -- or I sent the copy to you are -- we
11 basically narrowed our drawings.

12 First of all, before it was a semi-
13 detached, and now we are proposing as a detached
14 single-family -- single-family house. And we
15 reduced from 17 feet wide to 14 feet side house,
16 but we extended a little farther in order to
17 accommodate at least reasonably to make some
18 extra bedroom, which is 54 feet.

19 And we also kept 3 feet the side yard on
20 both side, and that way we can -- we are able to
21 provide more windows on the left-hand side of our
22 house, which is facing to the -- to the neighbor.

1 And the roof, we provided gable roof, and
2 the gutter and downspout on both side. And
3 instead of flat roof, that would be very, very
4 similar characteristic of the other buildings
5 like in 3300 block of Monroe Street.

6 We kept the landscaping. We incorporated
7 three - three-foot side yard at both side and 14-
8 foot wide house and car parking and tried to keep
9 and maintain the similar landscaping as previous
10 -- previously submitted.

11 And I attended the ANC meeting and
12 explained our proposed new design. And they
13 asked me some questions. I tried to explain.
14 And -- and here we are.

15 If you have any further questions, I'll
16 be able to explain.

17 MS. MOLDENHAUER: Do any board members
18 have any questions for the Applicant?

19 MR. SCHLATER: Ms. Chairman.

20 Mr. Sikder, one of the questions I had
21 was on the adjacent lot and your efforts to
22 acquire the lot and perhaps consolidate them into

1 a larger lot that might be in keeping with the
2 size of lots on the block. Can you go through
3 and detail what those efforts were?

4 MR. SIKDER: Yes, I sent a letter to my
5 neighbor. That's quite a long time ago. I mean,
6 I don't remember. Maybe almost like year maybe.

7 And he was asking way high price then --
8 market price. No, first of all, even I -- even
9 if I incorporate the neighboring lot, you still
10 have to come to BZA because that would not
11 confirm 50 feet (Inaudible.) -- 5,000 square
12 feet; but of course, that would make bigger size
13 of the house as -- and because of that I tried to
14 buy this lot so that it would be better, of
15 course. But --

16 MR. SCHLATER: What did you offer for the
17 lot?

18 MR. SIKDER: I don't remember. I was
19 offering about -- I don't remember. It was about
20 twenties or something like that -- around
21 twenties, 20,000, something like that.

22 MR. SCHLATER: Twenty thousand?

1 MR. SIKDER: I think so, yeah.

2 MR. SCHLATER: And what do you think
3 market is for that lot?

4 MR. SIKDER: I mean, at this moment it
5 should be less than that. That's I'm buying.
6 The lot value is very, very significantly lower
7 than -- I mean, people are thinking.

8 I mean, I am buying right now.

9 MR. SCHLATER: How much did you buy the
10 lot -- this lot for?

11 MR. SIKDER: This lot? I think it was
12 something -- I think 10, \$12,000. No, 33, no.

13 It was -- I check my record, I mean, I -
14 no, that's receipt the record up at -- the record
15 -- I bought it from tax sale. Is not -- first of
16 all, I did not buy from the market. I bought
17 from tax sale.

18 MR. SCHLATER: So --

19 MR. SIKDER: I check my record. It was
20 about \$12,000.

21 MR. SCHLATER: It was about 12,000; you
22 bought it from tax --

1 MR. SIKDER: From tax sale.

2 MR. SCHLATER: What's the assessed value
3 of the lot?

4 MR. SIKDER: I mean, assessed values, I
5 don't know. I mean, is the assessed value -- how
6 much is that?

7 Well, assessed value is 33,000, but as
8 you know, assessed value and the market value is
9 big difference. It does not --

10 MR. SCHLATER: Oftentimes it's lower than
11 the market value.

12 MR. SIKDER: Um, lower than? I mean, it
13 was a good price.

14 MS. MOLDENHAUER: I think what Mr.
15 Schlater's saying is sometimes the tax assessed
16 value is lower than the market value.

17 MR. SIKDER: That's not true. I can
18 prove with maybe -- I mean, I can prove it. I
19 mean, out -- 9 out of 10 is not better.

20 MR. SCHLATER: Uh-huh.

21 MR. SIKDER: I mean, land value. I'm not
22 talking about house value but land value. I can

1 tell you -- I can give you -- I have the entire
2 of my -- I have right now big amount of lands I
3 own.

4 MR. SCHLATER: Uh-huh.

5 MR. SIKDER: And I see all of them, and
6 I'm fighting. All of them are -- is much --
7 assessed value is much higher than market value.

8 MR. SCHLATER: I'm sure part of the
9 reason why the market value is low is because you
10 can't build a building on it under zoning
11 regulations.

12 MR. SIKDER: Well, is not even -- not
13 particularly. That might be one reason that the
14 bigger -- if that's the case, that -- you would
15 be surprised. I -- I mean, see, here, of course;
16 but if you went to here -- if land value is not
17 buildable as a matter of right, that price goes
18 even half of that because that has to go to BZA
19 and other stuff.

20 MR. SCHLATER: Uh-huh.

21 MR. SIKDER: But in general, market
22 value, especially in Northeast and Southeast,

1 significantly down because of -- not only because
2 of market but because of some other concern with
3 the D.C. Government -- the permit issue. There
4 are a lot of other issues.

5 MR. SCHLATER: Uh-huh.

6 MR. SIKDER: Nobody wants to because see
7 even Northeast and Southeast, nobody's building
8 new houses other than Government projects.
9 Individual people like me, very few. I would say
10 even -- maybe even zero.

11 MR. SCHLATER: But, Mr. Sikder, I think
12 it would be helpful maybe for the record if you
13 have a copy of that letter that you sent to your
14 neighbor giving what the value was offered for
15 that adjacent lot, it might be helpful.

16 MR. SIKDER: Sure, sure.

17 MR. SCHLATER: It might be helpful for
18 you to provide --

19 MR. SIKDER: Sure.

20 MR. SCHLATER: -- some assessment as to
21 why that would be a market value for the lot.
22 That would be the first thing that would help me

1 --

2 MR. SIKDER: I tell you, I think we have

3 --

4 MR. SCHLATER: -- work through that
5 issue.

6 MR. SIKDER: -- it.

7 I think I sent to the Board also, but I
8 think I have it also. Let me see.

9 Yeah, we -- yes -- yeah, this value is
10 not there. That's true, but we discussed about
11 that, and he was asking -- he was asking -- I
12 think about over 50,000. I said is it way high?
13 I cannot afford it.

14 MR. SCHLATER: Uh-huh.

15 MR. SIKDER: I cannot -- it is not -- it
16 does not -- it does not make me incentive to buy
17 it, then make a house, and, you know, it will not
18 work. I mean, I have no reason to buy extra
19 \$50,000 while I can buy maybe three -- three lots
20 in some other areas.

21 MR. SCHLATER: Correct. I guess the
22 question for the Board to consider is at what

1 price does it then become a hardship on maybe Mr.
2 Sikder to be able to combine these lots.

3 I'm not sure what we've determined in the
4 past, but it's something we'll have to work
5 through.

6 Another question is: In terms of -- how
7 would you describe the built character of this
8 neighborhood in terms of what are the adjacent --
9 what kind of buildings are on these adjacent
10 lots?

11 MR. SIKDER: Yes, definitely I would be
12 able to provide you these pictures. I have about
13 8, 9 pictures I also send to you.

14 These are the 3100 block. You can see --
15 let me see are there extra copies.

16 But I -- I think I sent to --

17 MR. SCHLATER: There's some pictures in
18 there. I've seen some pictures.

19 Do you think the building that's been
20 designed is in keeping with the character of the
21 neighborhood?

22 MR. SIKDER: In my view, the -- the way

1 we designed and it fits exactly. Front view, it
2 -- it matches exactly. Gable roof, two floors,
3 with the step, with the front porch, it matches
4 perfectly. You can see our new design of the
5 front view. It matches exactly the way it is.

6 MR. SCHLATER: Don't -- do the other
7 buildings have -- let's see.

8 MR. SIKDER: This is the --

9 MR. SCHLATER: And your -- the façade on
10 your design here is Hardy plank?

11 MR. SIKDER: Yes.

12 MR. SCHLATER: Is that consistent with
13 the other buildings on the street?

14 MR. SIKDER: No, actually, the other --
15 these are the -- they were vinyl siding.

16 MR. SCHLATER: Okay.

17 MR. SIKDER: But Office of Planning they
18 recommended to put Hardy plank.

19 MR. SCHLATER: Uh-huh.

20 MR. SIKDER: There's a reason we -- that
21 we are designing with Hardy plank.

22 MR. SCHLATER: Okay. And I guess one

1 question I would -- so, maybe the -- so you're
2 saying the architectural character is similar to
3 the other buildings on the street; but if you
4 were to build another house on the adjacent lot
5 to yours which is currently vacant and owned by
6 your next-door neighbor, you'd then have three
7 houses in short succession; would you not?

8 I mean, it would be much more compact
9 development; would you agree with that?

10 MR. SIKDER: Yes, that -- I mean, is --
11 that's true, but is not unusual, I mean, in this
12 -- I mean, we did -- we did. I mean, in this 25
13 feet and then just enlarged that also in 25 feet
14 -- all are the more detached semi -- detached
15 house in our own B zone. I mean, it is compact,
16 but it is -- I mean, not --

17 MR. SCHLATER: If you're not able to
18 build on this lot, what would you do with it?

19 MR. SIKDER: I don't know. I mean, in
20 this market, I cannot sell it. I cannot build
21 it. I don't know what to do. That's definitely
22 (Inaudible.) financial difficulties -- burden on

1 me. I mean, I feel like I've been -- you know, I
2 still have to pay tax. I have to do this.

3 MR. SCHLATER: Okay. Thank you, Mr.
4 Sikder.

5 MS. MOLDENHAUER: Any other Board
6 questions of the Applicant?

7 (No response.)

8 MS. MOLDENHAUER: Seeing none at this
9 time, then what we'll do is we'll turn to any
10 individuals in the audience in support or in
11 opposition.

12 I'm sorry, before we do that, does the
13 ANC have any questions for the Applicant? Any
14 cross-examination for the Applicant?

15 MS. GRANT: Thank you, Madam Chair. I'll
16 make this brief.

17 Actually, um -- can you give this to the
18 Board? That's actually in relation to what Board
19 members later just asked about the look and feel
20 of the other homes on the - Beverley, at the end
21 -- at the end -- at the end, Joel. Joel, at the
22 end. Okay. Excuse me.

1 What board members later just asked in
2 regards to the direct look and feel of the homes.
3 Those are homes -- actually, the burgundy home is
4 actually Mr. Brooks who's at my far left, who's
5 been here before.

6 And I just want to thank my community
7 constituents for just pressing their way each and
8 every time. That being the case, Mr. Sikder, how
9 many times have you been before the Board in
10 terms of variance requests and reliefs within the
11 last year?

12 MR. SIKDER: I do not remember maybe --
13 or six, seven times.

14 MS. GRANT: Great. Have you ever been
15 denied by this Board?

16 MR. SIKDER: I don't remember.

17 MS. GRANT: But you would remember if you
18 weren't able to get your reliefs granted?

19 MR. SIKDER: Yeah, I mean, yeah. I mean,
20 I could not remember everything, but yeah.

21 MS. GRANT: Well, actually, I show that
22 you was here at least five times and then within

1 the last two years a total of 10. And this Board
2 has granted you relief each and every time.

3 That being the case, in this particular
4 instance, seeing that you are a betting man, do
5 you think the Board is entitled to grant you
6 financial forgiveness if it is deemed not
7 possible to build on this land?

8 Because you just mentioned that you would
9 be in a financial hardship. That is not of the
10 Board's, OP's, my community, or the Commission's
11 concern, particularly when you bought the land,
12 as you mentioned last time, full well knowing
13 what you were getting into.

14 MR. SIKDER: What's your question?

15 MS. GRANT: The question is do you think
16 the Board is entitled to grant you financial
17 forgiveness.

18 MR. SIKDER: No, I don't think so.

19 MS. GRANT: Okay. So you're willing to
20 take a loss?

21 MR. SIKDER: Oh, I should -- I mean, I --
22 in my view -- I mean, that's not the correct

1 answer either. You're asking me what is entitle.

2 I'm not, of course -- Board would not look at

3 because of financial reason they are going to --

4 they are going to approve it or not approve it.

5 I don't think so. That's my -- that's my answer.

6 You're saying --

7 MS. GRANT: I find it very shrewd of you

8 to constantly come before the Board with the

9 understanding and thinking that they will

10 constantly grant your application knowing what

11 you're working with and against.

12 MR. SIKDER: That's not -- there's not

13 the issue. The issue is that we have to -- there

14 is certain rules (Inaudible.) the three-prong

15 test. If I can prove it -- I mean, I have to

16 show that the reason and -- and I don't see any

17 reason not to approve it.

18 But of course, Board is Board. I mean, I

19 cannot -- I cannot convince them what to do or

20 not to do; but that's my opinion.

21 MS. GRANT: Madam Chair, can I just go

22 over the three prongs at this time?

1 MS. MOLDENHAUER: Um, you can go over
2 that when I turn to you for your case in chief,
3 but right now it's just a question of asking him
4 questions.

5 So, if you're completed, we'll -- after
6 we go to OP, we'll then turn to the ANC, and
7 they'll have time to address the three prongs and
8 address any of their concerns over the new
9 drawings or Mr. Sikder's ability to prove or not
10 prove the case.

11 MS. GRANT: Well then the final question,
12 Mr. Sikder: These plans -- were they your plans
13 or were they given directly by OP to design?

14 MR. SIKDER: It's my plan.

15 MS. GRANT: These were your plans, okay.
16 I just wanted to be clear on that. Thank you,
17 Madam Chair.

18 MS. MOLDENHAUER: Oh, thank you. Then at
19 this point in time I'll see if there's any
20 individuals in the audience in support or in
21 opposition that would like to testify.

22 Okay, you can come forward and take a

1 seat at the table, and we'll give you each three
2 minutes to testify.

3 MR. TOMLINSON: My name is Joel
4 Tomlinson. I live in the house directly across
5 the street from Mr. Sikder's planned development.

6 It is a lovely neighborhood of Cape Cod
7 houses that are primarily square with pitched
8 roofs. His design is like of a shotgun, very
9 long and skinny, which is totally out of
10 character with the neighborhood.

11 In order to build his house, he will have
12 to remove at least 20 trees, from my count, some
13 of which are actually on the adjacent park on the
14 other side -- park property.

15 I must say that I've always felt like we
16 have zoning boards and stuff to protect people
17 like us, to protect developers from coming in
18 and, you know, building totally out of character
19 properties from the neighborhood.

20 And I'm just afraid that if Mr. Sikder is
21 given his way, it'll open the door for all kinds
22 of development that, you know, where you have one

1 house, there'll be three.

2 I'm very disappointed that the Office of
3 Planning is on board with Mr. Sikder's plan from
4 what I understand.

5 If they were planning to turn our
6 neighborhood into a townhouse development, you
7 know, no one told us about it. I'll be brief,
8 and basically those were the main points that I
9 want to give. Thank you.

10 MS. O'CONNOR: Hello, my name is Margaret
11 O'Connor, and I also live at 3155 Monroe Street,
12 Northeast, which is directly across the street
13 from the property in question.

14 My main objection today is that this lot
15 is only 2,000 square feet, and our zoning is R-1-
16 B in our neighborhood. Everyone else has to have
17 5,000 square feet to build a house. So, this lot
18 is way too small for any kind of a house, even if
19 it is -- it has been modified three or four times
20 now, it still is totally out of character with
21 the rest of the homes on the street

22 Mr. Sikder presented some photographs,

1 but what he didn't tell you was that those are
2 actually not photographs of our block. They're
3 of a block up the street where the houses are
4 different looking than the ones that are on our
5 street. Our street they actually don't look
6 anything like the house that he's proposed to
7 build there because we have larger lots, and his
8 lot is just kind of an oddball one on the end
9 that -- it's right next to National Park Service
10 property. So, I don't understand how he could
11 possibly build there, too, without destroying
12 some of the park.

13 That's about it for me. Thank you.

14 MR. BROOKS: My name is Richard Brooks.
15 I am only -- I am the lot next-door to where Mr.
16 Sikder wants to build his lot.

17 And um -- I'm not good at public
18 speaking, so forgive me.

19 Mr. Sikder's house is -- well, let me
20 start with the taxes, as Mr. Schlater asked about
21 -- asked about. And the tax assessment on my
22 house is for that extra -- basically, it's two-

1 thirds lot. The tax assessment for that is --
2 well, 25 feet, and the tax assessment on that is
3 \$44,000 per year.

4 And so before I got off the -- we were on
5 the phone together for pretty much just -- toward
6 the end of our conversation with Mr. Sikder was -
7 - before I got off the phone, I asked him well,
8 how much -- I said -- I'm sorry. Okay, yeah.

9 MS. MOLDENHAUER: Take your time. It's
10 fine.

11 MR. BROOKS: Okay. It was -- I had asked
12 -- I had asked him well, how much he was going to
13 -- would offer for that lot, and he said \$7,500
14 for that. And I did some research on that and
15 went through my tax assessment on that, and he --
16 he had -- he had offered \$7,500 on that -- on
17 that piece of property.

18 So, you know -- I'm sorry. You know, so
19 there's a big difference on that. So, I just
20 couldn't offer that. I would definitely be
21 taking a loss on that, and so -- and I wasn't
22 going to be taking that. So for him to be

1 offering me that money was to -- I would be
2 taking a loss there.

3 If -- so it was going to be some -- if he
4 builds something on that -- if that house goes up
5 -- definitely going to be taking -- taking a loss
6 on that if the house -- I'm also going to be
7 asking to be -- taking a loss again because if
8 the house is built -- if he builds it, I'm going
9 to take another loss because I'm going to put
10 juniper trees on that side of the lot. So I'm
11 going to have -- money is going to now have to
12 come out of my pocketbook just to cover that side
13 of the house.

14 My wife is in a nursing home now. We had
15 just, you know, retired -- both of us, so I'm
16 going to -- so that's what I'm going to do. If I
17 could build, -- that's my plan for the house if
18 the house is built. So it's going to cost me
19 money.

20 MS. MOLDENHAUER: Mr. Brooks, can I just
21 ask you a quick question? Mr. Sikder indicated
22 that you said you would sell him that lot for

1 \$50,000; is that accurate, or did you ever say
2 that?

3 MR. BROOKS: Oh, 50,000, no.

4 MS. MOLDENHAUER: No.

5 MR. BROOKS: No, no.

6 MS. MOLDENHAUER: What do you think based
7 on the tax assessment that you would be -- if
8 somebody -- maybe not Mr. Sikder -- if someone
9 was willing, what would you think would be the
10 market rate for that lot?

11 MR. BROOKS: The market for that lot?

12 MS. MOLDENHAUER: For your lot.

13 MR. BROOKS: Fifty thousand, -- well --

14 MS. MOLDENHAUER: If you don't know, you
15 don't know. I'm just asking. That's okay.

16 MR. BROOKS: Yeah. I would -- I would
17 take, you know, I would take that if someone was
18 going to buy it.

19 MS. MOLDENHAUER: Okay.

20 MR. BROOKS: You know, that's what --
21 it's the tax assessment on that -- you know, so I
22 would take that. However, because that would be

1 fair market value as far as I'm concerned.

2 MS. MOLDENHAUER: One thing I have a
3 question for you is last time we were talking,
4 you were concerned about looking out of your
5 window in your house and looking onto a
6 windowless side of a house. That was one of the
7 discussions, I think, I remember.

8 And now have you had a chance to look at
9 the new plans with the windows?

10 MR. BROOKS: I did, uh-huh.

11 MS. MOLDENHAUER: Does that seem -- I
12 know that you just said you were still going to
13 want to put up juniper trees to create some
14 privacy and some shading; but do you have any
15 reaction to the new design with the windows on
16 the side?

17 MR. BROOKS: Uh-huh. Juniper trees.

18 MR. MOLDENHAUER: Okay. That's still
19 your reaction? Okay.

20 That's fine. I just wanted to ask.

21 MR. BROOKS: Yes, yes, they would still
22 go up.

1 If you're driving down the street and --
2 yeah, basically, that's what I'd do. It -- it
3 would -- just because the house would be out of
4 place, you know, in that area.

5 You know, if you're driving up Monroe
6 Street, you'll -- you'll come up there, and you
7 would see seven or eight bungalow-style houses,
8 and all of a sudden you see, you know, this
9 house. And it's just -- just -- you know, all of
10 a sudden wide porches and a \$14 -- a 14-foot wide
11 house. It would just catch your eye. And it
12 would just take away from the neighborhood -- the
13 look of the neighbor -- the look of the
14 neighborhood. And I'm sorry. You know,
15 the good look of the neighbor.

16 MS. MOLDENHAUER: Okay, thank you very
17 much, Mr. Brooks.

18 Do any board members have any questions
19 for any of the three witnesses?

20 MR. TOMLINSON: Could I just ask Mr.
21 Sikder if he really thinks --

22 MS. MOLDENHAUER: There's no questions

1 from witnesses.

2 MR. TOMLINSON: Oh, okay. I see.

3 MS. MOLDENHAUER: But if -- witnesses are
4 only permitted three minutes.

5 MR. TOMLINSON: All right.

6 MS. MOLDENHAUER: Witnesses aren't
7 permitted to do cross-examination.

8 MR. TOMLINSON: Okay.

9 MS. MOLDENHAUER: But if you want, you
10 can obviously work with your ANC individual. If
11 she has a question, you can work with her to ask
12 any additional questions.

13 MR. TOMLINSON: Thank you.

14 MS. MOLDENHAUER: You're welcome. I just
15 -- I'm just trying to follow protocol, which is
16 what I require for all meetings.

17 MR. TOMLINSON: Okay.

18 MS. MOLDENHAUER: I'm sorry.

19 But do any board members have any
20 questions for any of the individual witnesses
21 that just testified?

22 (No response.)

1 MS. MOLDENHAUER: Seeing none, Mr.
2 Sikder, do you have any questions for any of the
3 three witnesses that just testified?

4 MR. SIKDER: No.

5 MS. MOLDENHAUER: Ms. Grant, do you have
6 any questions?

7 MS. GRANT: The question would be -- the
8 question, Mr. Sikder, is do you feel that what
9 you've now presented to the community is actually
10 in line with the neighborhood?

11 MR. SIKDER: I would say yes. It is not
12 necessarily next to our proposed house. We are
13 building it -- our address is 3100 -- 3158 Monroe
14 Street. And I took it on 3100 block of Monroe
15 Street -- at least 10 pictures -- at least. And
16 all of them are very similar characteristic; and
17 I do not see any reason it is uncharacteristic
18 and it is way off the character of the
19 neighborhood.

20 MS. GRANT: So, Board Members, if you
21 could indulge me, can I get those pictures back
22 so he can look at it so he can see what we're

1 talking about?

2 (Pause.)

3 MS. GRANT: The first picture, do you
4 know -- can you recognize that -- that home, Mr.
5 Sikder?

6 MR. SIKDER: I -- just photos, but I do
7 not remember the address, and --

8 MS. GRANT: That's next to your property,
9 Mr. Sikder.

10 MR. SIKDER: Oh, yeah, that's fine, yeah.

11 MS. GRANT: Okay.

12 MR. SIKDER: I'm not -- that's exactly I
13 said. It is not necessarily that our design is,
14 I mean, in the same design with the neighboring
15 house. I said in the same block, 3100 block of
16 Monroe Street. That's what I'm -- I took the
17 pictures not 10 blocks away.

18 MS. GRANT: This is 3100.

19 MR. SIKDER: Yeah, this is 3100 also.

20 MS. GRANT: That's the 3000 block of
21 Monroe.

22 MR. SIKDER: I took the address from each

1 house. It is not just -- I took -- maybe these -
2 - maybe in the -- you know, sometimes they cut it
3 and this I took each --

4 MS. GRANT: Interesting you took those
5 homes and not the exact direct homes across the
6 street and on the left side of your property.

7 MR. SIKDER: Yes.

8 MS. GRANT: Was there a reason for that?

9 MR. SIKDER: I mean, as I said that I --
10 as I said that these will not be the same design
11 as the neighboring house, just -- just for the
12 neighbors house but I have the picture, and I
13 have the -- you know, it is very similar. We try
14 to accommodate -- we cannot accommodate all
15 houses. It can be some of them, but that's how -
16 - that's how we designed it at least to --
17 because houses is --

18 MS. GRANT: I believe those homes are
19 three feet?

20 MR. SIKDER: The land is so small we
21 cannot really accommodate like this way; and
22 that's why we are here. And we are trying to

1 rationalize it -- the reason behind it, but at
2 least we are trying to -- some of the houses'
3 design, and I think we came up with this idea.

4 MS. GRANT: I do agree that is why we are
5 here. And as much as possible we're trying to
6 preserve what we have. And I do believe you're
7 not a resident of the District, nor would you be
8 living in this specific property; and so,
9 therefore, not only myself, but these are direct
10 neighbors. Mr. Brooks, you have definitely
11 spoken to him; do you agree?

12 MR. SIKDER: Yes.

13 MS. GRANT: You spoke -- okay.

14 So, then when they issue a concern, it is
15 beyond the fact that when you say I've tried to -

16 - MR. SIKDER: So, what's the --

17 MS. GRANT: I don't think you tried hard
18 enough.

19 MR. SIKDER: Well, what's your question?
20 I am not really understanding.

21 MS. GRANT: I think that was just a
22 response.

1 MS. MOLDENHAUER: Ms. Grant, do you have
2 any further questions?

3 MS. GRANT: For now, no. For Mr. Sikder,
4 no.

5 MS. MOLDENHAUER: Okay. Then what we're
6 going to do at this point in time if board
7 members don't have any questions for any of the
8 witnesses, we'll turn to the Office of Planning.
9 And if you can just address your supplemental
10 report and the revised drawings, that would be
11 great.

12 MR. JACKSON: Good afternoon, Madam
13 Chair, Members of the Board.

14 MS. MOLDENHAUER: Good afternoon.

15 MR. JACKSON: My name is Arthur Jackson.
16 I'm a Development Review Specialist in the D.C.
17 Office of Planning, and I will briefly touch on
18 the key points in our report.

19 In the report we summarized the
20 background of this case, how the Applicant has
21 been before the Board several times and gotten
22 additional guidance on what needs to be done. In

1 response the Applicant revised the plans,
2 proposed a detached building with three-foot side
3 yards on both sides and a flat -- and a gable
4 roof.

5 The resulting design is -- still requires
6 relief, and as such, they requested variance
7 relief from the provisions 401.3, which is the
8 provision having to do with having a
9 nonconforming lot, and with 403.2 for the lot
10 occupancy and the side yard setback.

11 Now previously they only requested the
12 side yard setback and -- but now they need lot
13 occupancy because they're increasing the floor --
14 the footprint of the building to occupy 54
15 percent of the building.

16 We also -- so, because of the
17 (Inaudible.) changes, we revised this -- we
18 reviewed the standard for variance review again.

19

20 We still think the property is unique
21 because it's a rectangular, interior lot, which
22 is the smallest and narrowest on the square. It

1 was created prior to the adoption of the zoning
2 regulations, and -- so that the existing
3 dimensions do not meet the current zoning
4 requirements.

5 The -- in terms of the lot width and
6 area, we know the applicant attempted to purchase
7 additional property, but his proposal was
8 rejected. It's unlikely he could acquire
9 additional property from the Federal park lands
10 to the east, so in that regard, there's no
11 opportunity for him to increase the size of the
12 lot to meet zoning requirements.

13 We note that the eight-foot side yards,
14 if implemented would reduce the width of the
15 building area to 16 -- 16 -- would be four feet,
16 which is not side enough to construct a dwelling.

17 So we can see that the existing property
18 -- with the existing property, it permits a
19 practical difficulty. We note that the previous
20 request for -- to create a semi-detached dwelling
21 is no longer applicable; and we note that the lot
22 occupancy would increase. With the 40 percent

1 lot occupancy it would substantially increase --
2 decrease the floor area available in the
3 building.

4 We note that in the previous application
5 with the semi-detached dwelling at 40 percent lot
6 occupancy would have allowed the Applicant to
7 have 800 -- 800 square feet, and we would support
8 relief so that they -- the new single-family
9 dwelling -- detached dwelling would still have an
10 800 foot footprint; thereby the Applicant would
11 not be losing the potential floor area of the
12 building. Of course, that results in the
13 building that rules (Inaudible.) become longer.

14 Lastly, we looked at the detriment to the
15 public good. We do not think that -- it does not
16 appear that granting this variance will be
17 detrimental to the public good. In fact,
18 allowing construction of a single -- of a one --
19 of one detached single-family dwelling on the lot
20 that's legally nonconforming and otherwise
21 unbuildable would be consistent with the intent
22 of the regulations and with District objectives

1 regarding -- regarding opportunities for infill
2 housing wherever appropriate.

3 We also think that the -- overall this
4 Applicant -- this application is consistent with
5 the intent of the variance provision of the
6 regulations, which would allow use of properties
7 that predate the zoning regulations and are not
8 concerned -- consistent with the current
9 standards.

10 On that basis, we recommend granting the
11 relief as requested.

12 In the interim, between the last hearing
13 we did appear -- appear with the Applicant at one
14 meeting of the ANC single member district and
15 before the copies of the reports to the ANC and I
16 think -- and the Applicant, and, of course, what
17 you have before you now.

18 That concludes the re-summary of our
19 report, and we're available to answer questions.

20 MS. MOLDENHAUER: Thank you very much,
21 Mr. Jackson.

22 One of my questions is based on the

1 continued concern of the neighborhood, do you
2 think that this current design and the layout of
3 a single -- single home -- single-family home
4 that's 14 foot wide as it's shown on these new
5 diagrams, do you think that conforms to the
6 neighborhood and does not create a public
7 detriment?

8 MR. JACKSON: I don't think it would --
9 creates a public detriment. I think the
10 characteristics of the house is reflective of the
11 neighborhood; however, in order for -- I think
12 the -- he would be -- if we went with the 40
13 percent lot occupancy, it would be a smaller
14 footprint, which would be smaller with regard to
15 their adjacent residences, but it would be
16 extraordinarily small at 560 feet.

17 So, I think in light of the limitations
18 of the lot that the Applicant is working with, it
19 would be prudent for -- to allow them to have
20 additional floor area to really provide a -- a
21 more workable floor plan for his -- his lot,
22 which would be the 54 percent that we are

1 supporting.

2 So, the initial application from the
3 Applicant we were willing to support the side
4 yard setback, but we told them they had to be 40
5 percent lot occupancy. We wouldn't support any
6 variation from the lot occupancy requirement.
7 But, again, that was when he was doing a semi-
8 detached dwelling.

9 Now that he's doing the attached dwelling
10 and has moved it back from the three feet from
11 the other side yard, we think it's prudent to
12 allow them to continue to have what would be
13 equivalent to the 40 percent lot occupancy you
14 had before by allowing him to extend the
15 building.

16 And I would note if you -- if you look at
17 your previous application -- I'm not sure if you
18 have it in your packet -- the previous
19 application, our first application? Our first
20 report -- OP report.

21 On page 3 there is -- Figure 2 is a map
22 of the Square. I'll let you turn to that.

1 Again, that's the first OP report, page 3, Figure
2 2, which would be a -- I guess the Applicant
3 might not -- the Applicant may not have it, but
4 it shows the Square of the lot. And this points
5 up the uniqueness of this property.

6 I think there was some concern that there
7 be -- there would be a sudden explosion of small
8 properties being developed with rowhouses on --
9 just narrow houses on the property; but that
10 would not be the case because, as you can see,
11 between Clinton -- sorry.

12 Between Clinton Street and Monroe Street
13 and Newman Street and Eastern Avenue there are --
14 this is the narrowest lot on the Square, again,
15 unique and of course just the size and dimension.
16 All the other lots are much longer and wider.

17 I would also note that the character of
18 this house is similar to some houses on Monroe
19 Street and actually, there are similar houses
20 across the alley on Newton Street.

21 So, I think given the circumstances and
22 the existing -- what the Applicant has to work

1 with, I'm not sure what else he could do to make
2 this building more compatible because he can't
3 make it wider.

4 It is a two-story building with a walkout
5 basement which I wanted to clarify because his
6 application continues to say three stories. It's
7 two stories, but you have a walkout basement --
8 just as the houses across Newton Street are.

9 And it's in a rather unique circumstance
10 in terms of site because I'm not sure if the
11 other properties drop off as fast toward the
12 alley as his property. Note the alley that comes
13 from --runs between Eastern Avenue and Clinton --
14 Clinton Street? It's - the reason it doesn't
15 drop off as fast on the other properties whereby
16 there're more walkout basements there is because
17 there is -- you have a longer run from the front
18 of the property to the alley. There is a less --
19 there's less of a slope.

20 So in this case this property will have a
21 shorter run, but the slope is still as -- the
22 slope is much deeper. That -- again, that

1 results in him having a walkout basement, which
2 is -- which is somewhat different, but it's just
3 a factor that's directly related to existing
4 conditions which are on the property.

5 MS. MOLDENHAUER: Thank you. Do any
6 other board members have questions for OP?

7 MR. SCHLATER: Mr. Jackson, is there ever
8 a point at which a lot gets too small in a
9 district like this where you shouldn't be putting
10 a building on it from OP's perspective?

11 MR. JACKSON: The -- I would say there
12 probably is, but I don't think this is -- this is
13 it.

14 Now, we have had applications that have
15 come in, and we have not been able to support the
16 relief that's been requested, but -- and, in
17 fact, Mr. Sikder's come forward with applications
18 that we just said we could not support the relief
19 he was asking; but to my -- I'm not sure if I've
20 seen any application that's come in that -- where
21 we could not support it that went forward. So, I
22 would say that lots came in that we -- needed so

1 much relief that we could not support it -- have
2 not come to the Board.

3 MR. SCHLATER: Cause we do have a lot of
4 relief being asked for here. If it's lot area,
5 lot width, lot occupancy, side yard.

6 MR. JACKSON: Well, remember that the --

7 MR. SCHLATER: It seems to indicate that
8 this lot is having difficulty conforming with the
9 character of the zoning district.

10 MR. JACKSON: Well, let's understand that
11 the lot width and lot area are existing
12 conditions.

13 MR. SCHLATER: I'm fully aware of that.
14 And Mr. Sikder was aware of that when he
15 purchased it.

16 MR. JACKSON: Sure. Well, we -- as far --
17 - our understanding is that there is no provision
18 that actually relates to preexisting conditions.

19 And -- but in this case the preexisting
20 conditions predate our regulations, which gives
21 it a unique status.

22 So, and --

1 MR. SCHLATER: So, any lot that existed
2 before 1958 should be built upon?

3 MR. JACKSON: Well, they can -- they can
4 come forward and make -- if they can make the
5 case.

6 MR. SCHLATER: Okay. Do you think this
7 is a close call or is this -- do you think this
8 is pretty standard case?

9 MR. JACKSON: I wouldn't say any of our
10 cases are standard, but I would say in this case
11 we have a rectangular lot in a residential
12 district; the Applicant wants to build a
13 residential use that's a -- and now that's
14 allowed in the district, and what's limiting him
15 is the lot width.

16 And under 301.3 through -- 3103.2 respect
17 to variances, the Board has the power to grant
18 variances where it's -- quote -- where by reason
19 of exceptional narrowness, shallowness, or shape
20 of the specific property. This is right out of
21 the book.

22 MR. SCHLATER: I think there's no -- I

1 agree with you that I think that first prong,
2 unique circumstances, we've got a very narrow
3 lot. I think we can all agree with that.

4 One question is does the mere attempt of
5 the Applicant to purchase the neighboring lot --
6 is that enough of an effort, or does it have to
7 be a market value? Does it have to be an attempt
8 to purchase it on market value?

9 MR. JACKSON: We, traditionally, do not
10 get in the process of examining whether or not
11 the Applicant made the economic -- the
12 reasonableness of their proposal or their pitch.

13 MR. SCHLATER: So, if you walk next door
14 to you and you have a \$20 bill in your pocket,
15 and you say I want to buy this for \$20, that's
16 sufficient to sort of build that argument?

17 MR. JACKSON: I wouldn't say. I haven't
18 -- no case has come before me with that standard;
19 but I will say that the -- we -- if this was --
20 if this lot had been owned by the Applicant --
21 that he had owned both lots to begin with, we
22 would have encouraged him to combine the lots to

1 reduce the amount of relief.

2 In this case he does not own the lot, and
3 he made an offer. It was not accepted. The
4 existing owner does not appear to be willing to
5 sell it for what it was offered for. So, we just
6 take those circumstances as they stand.

7 MR. SCHLATER: Okay. Thank you, Mr.
8 Jackson.

9 MS. MOLDENHAUER: Any other questions
10 from the Board?

11 (No response.)

12 MS. MOLDENHAUER: Seeing no other
13 questions from the Board, Mr. Sikder, do you have
14 any questions for OP?

15 MR. SIKDER: No.

16 MS. MOLDENHAUER: Ms. Grant?

17 MS. GRANT: Yes, Madam Chair, do I get to
18 read my statement, or do I just go into the
19 questions?

20 MS. MOLDENHAUER: Um, right now it's
21 questions for OP and then after OP, an
22 opportunity for you to go through anything you

1 have in regards to your statements, your case in
2 chief.

3 MS. GRANT: Thank you, Madam Chair.

4 Just -- I need to make a correction.

5 According to OP's 26 dated -- October 26 dated
6 recommendation there has to be some corrections.

7 It says just prior to the scheduled prior
8 hearing on August 3rd they expressed concern that
9 the neighboring property owners in the ANC did
10 not have the opportunity to review the revised
11 plans before the hearing. That was not the case.

12 The case was why --

13 MS. MOLDENHAUER: Ms. Grant, can I just
14 ask you to step a little further back --

15 MS. GRANT: Oh, I'm sorry.

16 MS. MOLDENHAUER: -- from your mike. It
17 will allow us to hear you better. It's
18 reverberating.

19 I appreciate it. Please go ahead.

20 MS. GRANT: Okay. So the reason August
21 3rd's case came to be was because we didn't have
22 a quorum on the 27th. So, I think OP fully knew

1 that, and I just am surprised that they would
2 write this erroneous statement.

3 And then also, it says that the hearing
4 was then rescheduled -- I'm sorry. It then later
5 says that the rescheduled public hearing where
6 the neighbors expressed concerns, where the Board
7 encouraged the semi-dwelling detached -- let's be
8 clear.

9 Had OP come to the community in the first
10 place, we would have told you, oh, heck no, we
11 are not allowing for a semi-detached. So that
12 should not have been also put in this record.
13 And, again, that is erroneous on OP's part.

14 Now, just having to clear up the
15 corrections because this is a written document,
16 and it's going to go into the record, that being
17 the case, I appreciate Mr. Arthur's -- just
18 personal involvement in this. I mean he's
19 correcting Mr. Sikder in terms of Mr. Sikder's
20 own property, how many feet and what have you. I
21 really appreciate your involvement. I wish you
22 gave 5A that level of input and concern.

1 That being the case, can you please
2 explain how from the last case you were vying for
3 support for a semi-detached and now we have a
4 single-family home? How did the rationalization
5 come about to change?

6 MR. JACKSON: The Board gave strong
7 indications to the Applicant that they were
8 interested in seeing changes made that would
9 address concerns raised by the community and that
10 the key issues that seemed to be coming out of
11 that meeting were the fact that it was a semi-
12 detached home, and that it had a flat roof, and
13 they -- and some other elements of design.

14 And the general guide that was given to
15 the Applicant was that they needed to come back
16 with something that was more -- more in tune with
17 the character of the neighborhood.

18 And so we tried to assist the Applicant
19 to -- to make the changes necessary to address
20 the Board's concerns.

21 MS. GRANT: Okay. And I appreciate that
22 because it wasn't the Board who actually wrote

1 the write-up, it was OP who wrote the write-up in
2 terms of the semi-detached.

3 And I just want to be clear, OP is not in
4 the zoning position to be rezoning homes;
5 correct?

6 MR. JACKSON: Absolutely.

7 MS. GRANT: Okay. Thank you. So as long
8 as OP would state in its proper genre, that would
9 be great.

10 In the OP report you said you were not
11 willing to grant the Applicant more lot occupancy
12 -- I'm sorry, this is in referral to the last
13 report.

14 OP does not support granting an increase
15 in the allowable lot occupancy to 50 percent
16 because the application did not adequately
17 explain how it couldn't meet the 40 percent.

18 MR. JACKSON: Right.

19 MS. GRANT: So, that being the case -- we
20 started at 50 and now we're asking and we -- OP
21 approves to go beyond the 40 percent to 54 in
22 terms of lot occupancy? Can you please explain

1 this now new conclusion, considering we still
2 have the 800 square feet that OP continues to
3 write up in this report?

4 MR. JACKSON: Well, the Applicant -- the
5 recent proposal the Applicant came forward with
6 was with a semi-detached dwelling. That is, it
7 has open -- a yard on one side, but it's built up
8 to the property line on the other.

9 The guidance given by the Board was that
10 they were -- they wanted to see a single-family -
11 - that they were not -- the existing -- the
12 current proposal at that time was not consistent
13 with the character of the neighborhood, so they
14 re-encouraged him having a semi-detached
15 dwelling.

16 In order to have a semi-detached
17 dwelling, of course, you have to have a side yard
18 on both sides of the building. You have a side -
19 -

20 MS. GRANT: And you knew that; right?

21 MR. JACKSON: Excuse me. Let me finish
22 my answer.

1 If we have a side yard on both sides of
2 the building, they you're -- and you keep lot
3 occupancy at 40 feet, you substantially reduce
4 the allowable area of the building.

5 That is because if you have a side yard
6 less than three feet, it's added into the
7 building area. And building area is what
8 determines lot occupancy.

9 So, in essence, if you have two side
10 yards of three feet on -- next to the 14-foot
11 building, he's -- the calculation of his lot
12 occupancy is the same as if he had a 20-foot wide
13 building on the lot.

14 So, in order -- that reduced his allow --
15 that approximately reduced his building footprint
16 to around 560. We felt that the Applicant was
17 asking to -- that they be allowed to continue to
18 have the 800 square feet because it was a more
19 useable area for interior -- interior -- for the
20 use of the interior of the building.

21 So in order for him to keep the 800
22 square feet -- because the building got narrower

1 -- it needed to get longer. If it gets longer,
2 you still have those three-foot side yards. So
3 even though the building got longer and narrower,
4 you still had to calculate it as if it's a 20-
5 foot wide building that occupies the entire lot.
6 That's why the lot occupancy increased to 54
7 percent.

8 So, he still has the same building
9 interior area of 800 square feet, but he has a
10 much higher lot occupancy because you have to add
11 the three-foot side yards to the building -- to
12 the actual building footprint to figure out -- to
13 calculate the lot occupancy.

14 That is why we're supporting the -- in
15 this case -- in this -- under this scenario the
16 increased lot occupancy to 54 percent.

17 MS. GRANT: I actually in referenced the
18 three-foot side yards in the last case, too,
19 again keeping with the lot occupancy at 40.

20 I just find it interesting that OP is
21 going over and above to change what the Applicant
22 has requested. So, would you say that the

1 variances are mutually exclusive of one another?

2 MR. JACKSON: Well, I guess the other
3 point to make is if -- if you calculate the
4 amount of area they're actually putting in the
5 back of the building, it's exactly equal to the
6 three-foot side yard they're having to add to
7 their building. So, in other words, if you -- by
8 adding the three-foot side yard on the western or
9 east side of the building, they're losing a
10 certain amount of square footage. That square
11 footage is added -- is actually being moved
12 around and added on to the end of the building;
13 hence, it gets longer.

14 Once it gets longer, you still have to
15 add in that three-foot side yards. So, it's --
16 they're all connected.

17 MS. GRANT: So, he had it already?

18 MR. JACKSON: It's -- he had the same
19 square -- he had the same square footage in terms
20 of footprint he had in the previous application.

21 MS. GRANT: Again, is OP in the position
22 of going over and above in terms of the request

1 that the Applicant is seeking, or is OP inputting
2 its own personal concerns into this? I don't
3 think you're the ones building the home.

4 MR. JACKSON: I think you misunderstand.
5 I think this is the Applicant's request.

6 MS. GRANT: So, then can you just read
7 the very last line off of your report, right
8 above where it says detriment to the public good?

9 MR. JACKSON: This is consistent with the
10 District -- with District objectives to provide
11 opportunities for infill housing where
12 appropriate.

13 MS. GRANT: Right. So -- no, I'm talking
14 about -- well, let me read it for you.

15 MR. JACKSON: Okay.

16 MS. GRANT: The narrow width -- the
17 narrow lot width -- and it ends with only allow a
18 new one-family dwelling that would not only be
19 unusually narrow but very small.

20 So, in essence, OP wrote in its own
21 report that outside of going to the 54 percent
22 lot occupancy, the actual applicant can build a

1 home and, in fact, a new one-family dwelling,
2 however, at -- OP continues to inject all its own
3 adjectives by saying that it would not only be
4 unusually narrow but very small.

5 So, I -- per your report, Mr. Jackson --
6 this is your writing; correct?

7 MR. JACKSON: That's correct.

8 MS. GRANT: Okay So, then you said that
9 outside of him requesting or needing the extended
10 relief, he could, in essence, build this one-
11 family dwelling; it's just small? It's just
12 small; correct?

13 MR. JACKSON: Well, he actually --

14 MS. GRANT: It's a yes or no.

15 MR. JACKSON: No. The correct -- the
16 correct answer, though, is he could -- he could
17 do it with a 40-percent lot occupancy; but it
18 would be --

19 MS. GRANT: This is your report; right?

20 MR. JACKSON: -- a three-story -- well,
21 look at -- I want to reference you to the
22 previous --

1 MS. MOLDENHAUER: Ms. Grant, I just ask
2 that you allow Mr. Jackson to respond to the
3 question.

4 MR. JACKSON: Yes, just for sake of
5 information, note in the previous paragraph I
6 talk about how normally the applicant would have
7 the option to build a third floor to gain the
8 area -- floor area he lost. So it would be a
9 three-story single-family dwelling that would
10 maintain the 40-foot -- percent lot occupancy.

11 However, the three-story dwelling with a
12 basement in that area would be out of character;
13 and given the direction from the Board that the
14 building had to be more into character, that was
15 not really seen as an option that would be
16 plausible in this instance.

17 So, although he has an option to achieve
18 the three-story -- the -- could retain the area,
19 which is to build a third floor over the existing
20 three -- two floors, doing so would be
21 inconsistent with the character of the area.

22 So, given that circumstance, that's why

1 we supported -- that's the additional reason why
2 we supported the 54 percent.

3 MR. GRANT: Do you live in the District,
4 Mr. Jackson?

5 MR. JACKSON: No, I live in --

6 MS. GRANT: Okay.

7 MR. JACKSON: -- Maryland.

8 MS. GRANT: I just find it interesting
9 that you're -- again going over and above for the
10 Applicant in terms of I think you mentioned --
11 which was extremely irrelevant that the interior
12 lot size is the smallest, but it's not unique
13 because right next door is Mr. Brooks' lot. And
14 you mentioned -- and you showed in your own
15 diagram in terms of the other report that there
16 are quite a few available but nonconforming lots
17 all throughout the District. This just happens
18 to be a small sample size.

19 So, is unique one or is unique not one?
20 I need to understand your definition of unique.

21 MR. JACKSON: Well, the advantage that
22 Mr. Brooks' lot has is that it's five feet wider.

1 So, on that Square -- now we're just talking
2 about the Square. On that Square this is the
3 smallest lot, and Mr. Brooks' comes in a close
4 number two.

5 MS. GRANT: Maybe you could have helped
6 him pick another lot since you're so involved in
7 this case; but since there are other lots out
8 there, it doesn't really meet the uniqueness
9 because we can't go back prior to 1926. We just
10 can't. I don't think we could. I mean, I don't
11 know about any time capsule like that; but that -
12 - since that's the case, I did also have the same
13 question that Mr. Schlater asked.

14 And the question was: Is there such a
15 thing as excessive relief? When does OP draw the
16 line?

17 MR. JACKSON: Well, it -- we review cases
18 on a -- of course, on a case-by-case basis. And
19 in this instance the request for relief did not
20 seem excessive.

21 Initially, we requested that they --
22 again, we held them to the 40-percent lot

1 occupancy in which case they only need side yard
2 setback relief and relief from the standards for
3 minimal lot size and width.

4 But with the changes that have been --
5 Applicant and having some questions they make and
6 the goals they're trying to achieve with the
7 modifications, we think the relief that's being
8 requested now is appropriate.

9 MS. GRANT: Okay. I'm glad you said that
10 -- 40 percent, not 54; correct?

11 MR. JACKSON: Fifty-four.

12 MS. GRANT: That's not what he originally
13 requested, which is a change.

14 MR. JACKSON: No, he requested 54.

15 MS. GRANT: It was 50 originally, Mr.
16 Jackson. Stick to the facts.

17 And then it became 54 per your input
18 because you're telling me that based on the fact
19 that it would just be narrow or very small.

20 MS. MOLDENHAUER: Ms. Grant, I --

21 MS. GRANT: That's the --

22 MS MOLDENHAUER: I just -- we need to

1 maintain a certain level of decorum and
2 questions. And if you have a question for him --
3 if you want to articulate that you think there's
4 an inaccuracy, you can do that during your case
5 when you're able to argue and make arguments; but
6 right now in regards to -- I think if you have
7 any other questions for Mr. Jackson, as long as
8 they're questions and not maybe assertions or
9 challenges that you can present in your case.

10 So, if you -- do you have any other
11 questions for Mr. Jackson?

12 MS. GRANT: Not right now. I do, but I
13 may hold onto that.

14 Okay. No, Madam Chair.

15 MS. MOLDENHAUER: Okay. Are there any
16 additional questions that were brought up from
17 maybe Ms. Jackson's -- Ms. Grant's cross-
18 examination of Mr. Jackson?

19 (No response.)

20 MS. MOLDENHAUER: Seeing none, then thank
21 you both. At this point in time we'll turn to
22 Ms. Grant to present the ANC's case.

1 MS. GRANT: Again, good afternoon. Janae
2 Grant on behalf of 5A-11.

3 Our ANC met on Wednesday, the 27th at our
4 Commission, and our Commission heard and voted on
5 the continuation of this case at 3158 Monroe
6 Street in which the Applicant is seeking
7 significant relief.

8 While the specifics of the request have
9 not changed in terms of relief being sought by
10 the Applicant, what has since transpired has been
11 an atrocious breach of due diligence forthcoming
12 from the Office of Planning as well as the Board
13 of Zoning Adjustments.

14 On the 21st between OP and BZA they gave
15 the Applicant an unfair advantage in terms of
16 cooperating and in trying to build his case on
17 his side in that we were actually going to
18 consider a semi-detached in an R-1-B zone when
19 that's not the case, but it was fully up and down
20 in OP's report.

21 Again, OP did not reach out to the
22 community or the Commission -- not once. The

1 reason they came out was because I requested them
2 to actually explain their reasoning and their
3 viewpoints; but yet -- and still, at our meeting
4 on the 12th of October, OP stood full well to say
5 that their premise was that Mr. Sikder could
6 build a semi-detached in the hopes that the lot
7 is not vacant because Mr. Jackson just expressed
8 that because it actually belongs to Mr. Brooks.
9 They were hoping to build two semi-detached homes
10 in an R-1-B zone, which is why I had to ask the
11 question if OP thought they were zoning.

12 So, let the record show that at the time
13 Chairperson Moldenhauer stated that right now the
14 way these plans are drawn, the relief would
15 require a higher standard because, again, a
16 detached home is not permitted in R-1-B zone.

17 Furthermore -- I believe it was Mr.
18 Turnbull who had asked the question to OP in
19 which OP then later said it is a semi-detached
20 structure. We're not encouraging it one way or
21 the other. We don't make the decision. We just
22 do the recommendation.

1 I wish someone told that to Mr. Jackson.

2 So, in addition to recognizing some
3 concerns with the current application and being
4 persuaded by the ANC's very strong arguments as
5 well as on behalf of the opposition parties, the
6 Chair actually chose not to deny the request of
7 the ANC's great weight but instead, chose to say
8 to the Applicant, obviously I can't tell you what
9 to do; but I can give you some inclination as to
10 the way the Board would potentially be ruling --
11 you know, if these things were not revised.

12 Again, noting the unfair advantage given
13 to the Applicant in the face of the community and
14 the Commission, specifically the Applicant is
15 still seeking its variance relief.

16 The Commission voted to not support the
17 variance. There was a quorum held of 8 approve,
18 no dissensions, no abstentions were had. I am in
19 the authority to take this matter up on behalf of
20 the Commission.

21 Knowing that the Applicant has not once
22 yet been denied within its last 10 cases before

1 this Board, he's actually had the opportunity to
2 make a mockery of the community and the District.
3 Though it's particularly in Ward 7 and 8, we're
4 not trying to have that over here in our homes in
5 Ward 5 at all.

6 And I'm disappointed at the Board for
7 continuing to allow for the erosion of these
8 neighborhoods instead of using their just powers
9 to actually preserve these communities.

10 In addition, this is new to the report --
11 which you have it -- because I was waiting for
12 DDOT to express its concern. So, in speaking
13 with DDOT's arborist, Mr. Earl Eutsler --
14 unfortunately, OP also didn't extend its powers
15 to seek other D.C. agencies. Had they did so,
16 DDOT UFA would have cited against what OP has so
17 strongly taken to the mantle to approve.

18 And so, Mr. Earl's position, the
19 arborist, said that we would be losing a national
20 heritage of trees that help shape and define the
21 neighborhood on both sides of the street and the
22 adjoining block, particularly the nice mature

1 trees that are of elm, red oak, cherry, and a few
2 maple trees, if this development were to take
3 place.

4 As we see, the Urban Forest Preservation
5 Act has a protection in the District regarding
6 trees that are right at 18 inches wide, and so
7 the Applicant would actually have to pay into
8 this tree fund or replace the trees that they're
9 going to cut down. And right now there's a
10 minimum of six that exceed the 18 inch wide in
11 diameter.

12 He also shared and expressed that the
13 trees act as a buffer. I thought I mentioned
14 that last time. They also provide quiet road
15 noise and aid in traffic calming as one enters
16 this forested area.

17 Lastly, this would go against D.C.'s own
18 initiative that I think you-all know of in us
19 trying to reach our 40-percent tree canopy by
20 2035.

21 So, regarding the prongs of this specific
22 case, again, the community still does not endorse

1 this development. There is no uniqueness
2 regarding this property. As Mr. Jackson stated,
3 there are quite a few lots in and around the
4 area.

5 And since Mr. Sikder happens to be a
6 unique finder in terms of building on infills and
7 nonconforming lots, you know, what -- since he
8 hasn't been denied by this Board, I guess he
9 chose again to try his luck to come before this
10 Board.

11 Henceforth, there's no practical
12 difficulty in terms of Mr. Sikder. He's very
13 shrewd in what he does; however, in buying these
14 inexpensive lands, it is not at the helm of this
15 Board or any D.C. agency to, again, grant this
16 man financial forgiveness if he is unable to
17 build adequately upon this lot.

18 It stated in the record from OP that
19 keeping a 40-percent lot occupancy which would
20 thus provide a 560-square foot footprint, is not
21 a concern because the Applicant knew full well
22 what he was getting into before and after he

1 purchased the land, which is why I guess he chose
2 to try to seek a venture with Mr. Brooks.

3 Finally, the detriment to the community
4 is the fact that if he is allowed to build what
5 he proposes, it will stall future sales on this
6 block regarding the current owners' purchase
7 power, as this home would significantly stand out
8 from all sides, Lot 26 poses more of a hardship
9 on the block by changing up the neighborhood
10 layout than if it was just left alone.

11 The real value of building a home on this
12 small lot just arose and decreases the property
13 value. It also erodes and decreases the
14 community's input and citizen participation in
15 terms of trust and accountability as it relates
16 to the entities of OP and BZA, which I think you
17 also heard from one of my constituents.

18 Therefore, due to the overwhelming
19 variance needs, which I think Mr. Jackson didn't
20 want to state that maybe this is one of the very
21 few first cases that are extremely excessive; but
22 I don't think he wants to commit to that because

1 that would be on public --

2 So, to adequately comply, both the
3 community and the Commission stand in agreement
4 and again ask the Board to grant the ANC's great
5 weight.

6 And in conclusion with keeping with the
7 ample side yards, rear yards, front of the
8 Woodridge Community, to deny this case. Thank
9 you, Madam Chair.

10 MS. MOLDENHAUER: Thank you very much.
11 Do any board members have any questions for Ms.
12 Grant?

13 (No response.)

14 MS. MOLDENHAUER: Ms. Grant, before, when
15 Mr. Sikder was testifying, it seemed as though
16 you had a copy of some of the tax assessments?

17 MS. GRANT: Correct.

18 MS. MOLDENHAUER: What are some -- just
19 in general if you know off the top of your head,
20 what are some of the properties being assessed at
21 in the area -- like some of the neighboring
22 properties, including the land and improvement?

1 I'm just curious.

2 MS. GRANT: Madam Chair, without
3 disclosing it publicly on the record, you can
4 look at these copies. I don't want to tell them
5 --

6 MS. MOLDENHAUER: Oh, that's fine.
7 Actually, do you want to provide them to Ms.
8 Bailey? She'll provide them to us and we can
9 just take a look at them for the record. That's
10 absolutely fine.

11 I don't have any other questions. That
12 was just kind of a specific question I had. Do
13 any board members have any other questions?

14 MS. SCHLATER: Ms. Grant, what's the name
15 of -- what would you call the neighborhood this
16 resides in? Woodridge?

17 MS. GRANT: Correct. Excuse me.

18 MR. SCHLATER: That's good. Thank you.

19 MS. MOLDENHAUER: Any other questions
20 from the board members of Ms. Grant?

21 (No response.)

22 MS. MOLDENHAUER: Seeing none, Mr.

1 Sikder, do you have any questions for Ms. Grant?

2 MR. SIKDER: No.

3 MS. MOLDENHAUER: No, okay. Then at this
4 point in time, Mr. Sikder, do you have -- thank
5 you very much, Ms. Grant.

6 Do you have any conclusion -- concluding
7 statements, Mr. Sikder?

8 MR. SIKDER: Yes. I believe we passed
9 three-prong test and we tried to design our
10 project to accommodate most of the concerns of
11 the neighbors. And this probably will contribute
12 to the continued improvement of Woodridge area by
13 developing one of the many vacant infill lots.
14 The improvement of this infill lot would be for
15 the public good as it would remove a vacant
16 property and prevent the use of the property in
17 negative purposes.

18 And I wish this case would be approved.
19 Thank you.

20 MS. MOLDENHAUER: Thank you very much.
21 At this point in time what we're going to do is
22 we're going to take probably about like a --

1 let's say a half hour break. If we come -- we
2 can maybe come back a little early, but -- so
3 we'll reconvene at 4:00 o'clock to make a
4 decision on this case. That way people don't
5 have to wait and come back for a final decision.

6 So we'll take a break, and we'll be back
7 around 4:00 o'clock to make a final decision on
8 this case.

9 (Brief recess.)

10 MS. MOLDENHAUER: Okay, good afternoon.
11 Right now we have concluded the hearing for
12 Application Number 18090 and we are going to
13 start deliberation. During deliberation we do
14 not take any testimony, nor do we hear from any
15 individuals. It's just a simple discussion
16 amongst the Board members.

17 That being said, I will turn to Konrad to
18 start us off, since -- unless --

19 MR. SCHLATER: Thank you, Madam Chair,
20 that's fine. I would be happy to lead us off.

21 I don't think the Applicant has met its
22 burden. I do agree that it's met the first prong

1 on the unique conditions or circumstance.

2 I do not believe it is proven a practical
3 difficulty, nor do I believe that it's proven
4 that this home would not be a detriment to the
5 public good. I'm happy to go into it a little
6 bit further if you'd like, but that's pretty much
7 where I'm at right now.

8 I just happen to think that in this
9 circumstance this building on this lot is not
10 workable, and it fails to meet those two prongs.

11 I would say that I am, in general, very
12 much supportive of building on infill lots. I
13 think it's an important policy objective of the
14 District. I think it's good to build the tax
15 base. It's good to get rid of vacant lots when
16 at all possible. And I think it's good to invest
17 in neighborhoods.

18 But in this particular case I think the
19 amount of relief that's being asked for is too
20 great, and I'm not comfortable granting it.

21 MS. MOLDENHAUER? Thank you, Mr.
22 Schlater. And one of the reasons why I wanted to

1 start off with you because I know that -- I think
2 different members of the board are differing in
3 their deliberation; and so, based on your
4 statements, I'm going to present my opinion on
5 the case and my differing views on the standards.

6 In this case we're looking at a variance
7 standard which is a three-prong test. And I feel
8 as though the Applicant satisfies the three
9 prongs.

10 All -- the uniqueness is based on the
11 narrowness of the lot. As the Office of Planning
12 articulates, this is the narrowest lot in the --
13 in the Square with the neighboring parcel owned
14 by Mr. Brooks being the second narrowest. Based
15 on that, you know, as Mr. Schlater concurs, it
16 satisfies the first prong.

17 In regards to the second prong, practical
18 difficulty, I think that the narrowness of the
19 lot and the size of the lot inherently creates a
20 practical difficulty in order for the Applicant
21 to build in conformity with the zoning
22 regulations.

1 Based on that I then go to the question
2 of does this create a detriment to the public
3 good, and I think that this is where, in my view,
4 I've been, you know, more racking my brain on
5 this case.

6 And so the question is, you know, does
7 this create a public detriment. There's been
8 many statements and documentation provided by the
9 ANC, by the neighbors; and I think that some of
10 the areas that I have a problem with is I confirm
11 with Mr. Schlater in my encouragement of infill
12 development of enhancing the District by
13 providing additional development throughout the
14 area. And while still trying to conform with the
15 character and integrity of neighborhoods and
16 trying to, when possible, make sure that
17 developers or make sure that builders are working
18 with and hearing the community.

19 And I think that in this case Mr. Sikder
20 did modify his plans. The initial plan I thought
21 obviously would not have conformed with the
22 character. I think that he modified the roof

1 structure to conform in that regard. I think
2 that while there are -- and we have these
3 pictures from -- the ANC presented today of Mr.
4 Brooks' property, which is a one-story property
5 that's -- was described by Mr. Brooks and by the
6 other -- Ms. O'Connor and other individuals; but
7 there are -- the city is made up of many
8 differing properties.

9 And you have, I think, a variety of
10 properties that one property may not always look
11 exactly like the other. The City is not made up
12 of a cookie cutter development so much every
13 property is exactly similar to that.

14 On the page 2 of the diagram that was
15 provided, which says to the left of Mr. Brooks'
16 property, Exhibit A -- two houses from Mr. Brooks
17 there's a blue house which shows, I think, a
18 quite long depth of a house with many additions
19 and quite high density which is then just, I
20 guess, three houses from this applicant's
21 property. And I think that this design is
22 similar in character to that property in the

1 blue.

2 You know, that being said, is it
3 identical to properties on the street? No, but
4 it has its own unique character; and I think that
5 it definitely tries to conform with those.

6 Ms. Brooks brought up the issue of having
7 to cut down the trees. I'm sorry -- Ms. Brooks.
8 I'm sorry, Ms. Grant brought up the issue of
9 trying to cut down the trees and DDOT's
10 discussion in that regard. We have different
11 zoning requirements where there are tree overlays
12 and tree requirements; and this property is not
13 within one of those, unfortunately.

14 We had a case this morning in which we
15 indicated that, you know, there's certain areas
16 in the city which don't have certain tree
17 overlays, which require for zoning purposes trees
18 to be maintained. And because of that, obviously
19 the Urban Forest Preservation Act is something
20 that governs the District, but it's not something
21 that we would have to follow.

22 And if Mr. Sikder would have to pay for

1 certain removal of the trees, that's not
2 something we would look at. We just simply look
3 at the relief and whether that relief can be
4 maintained based on our zoning requirements.

5 And I think that with the National Park
6 next door that there still would be sufficient
7 amount of tree covering and foliage and that same
8 feeling that you're going to get, you just won't
9 get it on the individual private property that's
10 owned by Mr. -- by the Applicant.

11 That being said, I do find that, you
12 know, following some of these reviews and some of
13 these changes that the Applicant has tried to
14 conform with the character of the community and
15 that this would not create a public detriment to
16 the community or to the zoning plan.

17 That being said, I'll open it up for
18 other deliberations from our other board members.

19 MR. HINKLE: Thank you, Madam Chair. I
20 would like to associate my thoughts with you and
21 your analysis. I do think there's a practical
22 difficulty here in terms of building on this lot

1 which is narrow and is limited in its size
2 compared to the other lots in the neighborhood.

3 I also think, as you mentioned, that, you
4 know, the Applicant has made an attempt to try to
5 design a house that is within the character of
6 the neighborhood. And while the design does not
7 match the houses on the specific street, there
8 certainly has been some attempt to try to satisfy
9 some of the concerns that have been expressed by
10 the neighborhood.

11 So I'm inclined to support this
12 application.

13 MS. SORG: Um, thank you, Madam
14 Chairwoman. I -- in general I agree with a lot
15 of
16 the points that you -- that you make and, in
17 specific, some of your arguments I agree with;
18 but I think in this case I come down leaning a
19 little bit more towards the reasoning put forward
20 by Mr. Schlater.

21 And just a couple of additional items
22 that I wanted to point out -- and I, too, see

1 that there is -- the first prong of the test is
2 met in terms of uniqueness based on the -- the
3 exceptional narrowness and topography of the land
4 here. That's clear to me.

5 But I also agree that the Applicant has
6 not met the second prong of the test in practical
7 difficulty. In particular, I think that he has
8 not met this in my opinion because I don't
9 believe that opportunities to enlarge the lot
10 have been sufficiently explored by the Applicant.

11 So, whereas I think there may be a
12 practical difficulty here, to me it's not clear
13 that it's -- it's not been presented here in a
14 convincing enough way.

15 I also think that there are some issues
16 with regard to the detriment to the public good
17 by constructing the plans that Mr. Sikder has
18 presented, including, you know, amassing that to
19 me does not seem compatible with some of the
20 surrounding houses. As well, the -- I haven't
21 seen, for example, a lot of thought that goes
22 along with preserving a tree canopy and looking

1 at the public spaces in the neighborhood.

2 But like -- you know, as I would also
3 echo what I think everybody else on the Board has
4 said, which is that in general I also am very
5 much in favor of putting vacant lots back into
6 good use; but I don't think that here is a very
7 specific case in which this is not an interior
8 lot. It's an end lot, and it abuts Federal
9 parkland.

10 And while I think that there is
11 conceivably a plan that could work on this -- on
12 this lot, I certainly don't think that the
13 application -- Applicant has exhausted that or
14 the ability to enlarge the lot itself. Thank
15 you.

16 MS. MOLDENHAUER: Is there any further
17 deliberation from any other board members?

18 (No response.)

19 MS. MOLDENHAUER: Seeing none, then I'll
20 put forward a motion, a motion to approve
21 Application Number 18090 for a variance relief.
22 Motion has been made; is there a second?

1 MR. HINKLE: Second.

2 MS. MOLDENHAUER: All those in favor say
3 I.

4 (Respond I.)

5 MS. MOLDENHAUER: All those opposed?

6 (Respond no.)

7 MS. MOLDENHAUER: That motion would --
8 Mr. Moy?

9 MR. MOY: Madam Chair, the staff would
10 record the vote as 2 to 2 to 1. That was on the
11 motion of the Chair Ms. Moldenhauer to approve
12 the application for the variances requested,
13 seconded by Mr. Hinkle. We have two members, Mr.
14 Schlater and Ms. Sorg, opposed to the motion, and
15 no other board member participating. So, again,
16 the final vote is 2 to 2 to 1, which means that
17 the motion would fail for lack of a majority
18 vote.

19 MS. MOLDENHAUER: Are there any other
20 motions?

21 MR. SCHLATER: I'd be happy to make a
22 motion to deny. I move that we deny BZA

1 Application 18090.

2 MS. SORG: Second.

3 MS. MOLDENHAUER: Motion's been made and
4 seconded. All those in favor say I.

5 (Respond I.)

6 MS. MOLDENHAUER: All those opposed?

7 (Respond Nay.)

8 MR. MOY: Staff would record the vote as
9 2 to 2 to 1. This is on the motion of Mr.
10 Schlater to deny the application for the
11 variances requested, seconding the motion Ms.
12 Sorg. We have Ms. Moldenhauer and Mr. Hinkle
13 opposed to the motion. So the motion would fail
14 for lack of a majority vote.

15 MS. MOLDENHAUER: Okay. Based on our
16 regulations, Section 3125.1, the regs indicate
17 that we need a majority to make any decision or
18 take any action. So, without having a third
19 mayoral appointee which we -- we're waiting to
20 have the Mayor, hopefully, following January
21 elect a Mayoral appointee. And once that
22 happens, we will then be able to revisit this

1 case and have a vote in which that vote can then
2 break, hopefully the two to two tie.

3 So what we'll do is we will stay this
4 decision until we have a third mayoral appointee
5 from the District and, unfortunately, that is all
6 we can do; and we'll just have to simply wait
7 until we have another member to participate in
8 this case.

9 MR. SCHLATER: Madam Chair, I just -- to
10 put an idea out there, there may well be a
11 mechanism where a case like this -- where the BZA
12 is split could be punted up to the Zoning
13 Commission as an alternative -- something to
14 consider.

15 MS. MOLDENHAUER: I think we've had other
16 cases where we've considered that and think it's
17 just stayed here and waited for the final mayoral
18 appointee. So, I think that's that.

19 If -- obviously, the Applicant can deem
20 to do whatever he wishes with the application in
21 regards to withdrawing the case or resubmitting
22 it or something to that effect; but right now

1 this application is stayed. We cannot make any
2 decision on it. We cannot take any action on it.
3 Right now it will simply stay until we have an
4 additional mayoral candidate who will read the
5 entire record and then we'll come back and
6 re=deliberate on the case once we have an
7 additional member.

8 Thank you very much. That concludes
9 today's hearings; and we'll reconvene next
10 Tuesday.

11 (Whereupon, at 4:29 p.m., the Weekly
12 Board of Zoning Adjustment Meeting was
13 adjourned.)

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