

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment  
441 4th Street, N.W.  
Washington, D.C. 20001

PUBLIC MEETING AND PUBLIC HEARING  
January 4, 2011  
Start: 9:47am - End: 1:40pm

Second Floor Hearing Room, Suite 220 South  
Washington, D.C. 20001

Board Members

Meridith Moldenhauer - Chairperson  
Nicole Sorg - Vice Chairperson  
Jeffery L. Hinkle - NCPC  
Michael G. Turnbull - Architect  
Greg Selfridge - Zoning Commission  
Clifford Moy - Secretary  
Beverley Bailey - Office of Zoning  
Mary Nagelhout - Office of the Attorney General  
John Nyarku - Office of Zoning

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

2 CHAIRPERSON MOLDENHAUER: This meeting  
3 will please come to order good morning ladies and  
4 gentleman. This is the January 4, 2011, Public  
5 Meeting of the Board of Zoning Adjustments for  
6 the District of Columbia. My name is Meredith  
7 Moldenhauer, Chairperson, joining me today to my  
8 left is Vice Chair Nicole Sorg, Mayoral  
9 Appointee, to my right is Jeffrey Hinkle,  
10 Representative of the National Capital Planning  
11 Commission and then to my left is Anthony Hood,  
12 Zoning Commissioner. Copies of today's meeting  
13 agenda are available to you and are located to my  
14 left in the wall bin near the door. We do not  
15 take any public testimony at our meetings unless  
16 the Board asks someone to come forward. Please  
17 be advised this proceeding is being recorded by a  
18 court reporter and is also being webcast live,  
19 accordingly we must ask you to refrain from any  
20 disturbing noises or actions in the hearing room.  
21 Please turn off all cell phones and beepers at  
22 this time. Mr. Secretary, do we have any

1 preliminary matters?

2           SECRETARY MOY: Yes we do Madam Chair but  
3 we'll address all those cases in the morning but  
4 certainly none for the Special Public Meeting.

5           CHAIRPERSON MOLDENHAUER: Well then let's  
6 proceed with the agenda I think we only have one  
7 item on the agenda.

8 **Appeal No. 17109**

9           MR. MOY: Yes good morning Madam Chair,  
10 Members of the Board and Happy New Year. That  
11 case for Board action is the Board's own motion  
12 to issue the proposed order for exceptions. This  
13 is to the re-man of appeal No. 17109 of Kalorama  
14 Citizens Association or (KCA) pursuant to;  
15 Section 10(d) of the District of Columbia  
16 Administrative Procedures Act. D.C. Official  
17 code Section 1-509(d). The original appeal Madam  
18 Chair was filed by KCA which was pursuant to 11  
19 DCMR 3100 and 3112 from the administrative  
20 decision of David Clarke, Director of the  
21 Department of the Consumer Regulatory Affairs  
22 from the issuance of Building Permits Nos.

1 B455571 and B455876, dated October 6, 2003, and  
2 October 16, 2003, respectively to Montrose LLC,  
3 to adjust the building height to 70 feet and to  
4 revise the penthouse roof structure plans to  
5 construct a five-story apartment building in the  
6 R-5-D District, on remand from the courts, the  
7 only issue to be decided is the Appellant's  
8 allegation that the permits authorized the  
9 construction of a building in violation of the  
10 floor area ratio or (FAR) requirements of the  
11 Zoning Regulations because DCRA failed to include  
12 the top story when calculating FAR. The subject  
13 property is located at 1819 Belmont Road, N.W.  
14 (Square 2551, Lot 45). That complete Staff's  
15 briefing Madam Chair.

16 CHAIRPERSON MOLDENHAUER: Thank you very  
17 much and based on our requirement since this  
18 order has been finalized and none of the Board  
19 Members have participated in that July 20<sup>th</sup>  
20 deliberation had personally heard the evidence  
21 presented before this hearing on that appeal were  
22 required to submit the draft order for exceptions

1 to all parties. That being said all of the Board  
2 Members today have read and reviewed the draft  
3 order and now what we'll do is we will vote to  
4 send out the draft order for exceptions and we  
5 will with the proposed order for an exception  
6 dates of filing and serving all members by  
7 February 4<sup>th</sup> and then filing responses to the  
8 exceptions by February 22<sup>nd</sup>. So I will submit a  
9 motion to send the draft proposed order to all  
10 parties with the dates that I just read, motion  
11 has been made is there a second?

12 MS. SORG: Second.

13 CHAIRPERSON MOLDENHAUER: Motion has been  
14 made and seconded, all those in favor say aye.

15 CHORUS: Aye.

16 MR. MOY: Staff would record the vote as  
17 4 to 0 to 1. This on the Chairperson's motion Ms.  
18 Moldenhauer to issue the proposed order for  
19 exceptions seconded by the Vice Chair Ms. Sorg,  
20 also in support of the motion Mr. Hinkle and Mr.  
21 Anthony Hood. No other Board Members  
22 participating, so again the final vote is 4 to 0

1 to 1. The two dates again Madam Chair to submit  
2 comments for exceptions is February 4' 2011, any  
3 responses by February 22, 2011.

4 CHAIRPERSON MOLDENHAUER: Thank you very  
5 much Mr. Moy I believe that concludes our Morning  
6 Public Meeting.

7 **Public Hearing Begins**

8 CHAIRPERSON MOLDENHAUER: This hearing  
9 will please come to order, good morning ladies  
10 and gentleman, this is the January 4, 2011,  
11 Public Hearing of the Board of Zoning Adjustments  
12 for the District of Columbia. My name is  
13 Meredith Moldenhauer, Chairperson. Joining me  
14 today to my left will be Nicole Sorg, Vice Chair,  
15 to my right is Jeffrey Hinkle, Representative of  
16 National Capital Planning Commission, and to my  
17 left Representative of the Zoning Commission  
18 Anthony Hood. Copies of today's meeting agenda  
19 are available to you and are located to the left  
20 in the wall bin near the door. Please be advised  
21 this proceeding is being recorded by a court  
22 reporter and is also being webcast live.

1 Accordingly we must ask you to refrain from any  
2 disturbing noises or actions in the hearing room.  
3 When presenting information to the Board please  
4 turn on and speak into your microphone first  
5 stating your name and home address. When you are  
6 finished speaking please turn off your microphone  
7 so that your microphone is no longer picking up  
8 sounds or background noise. All persons planning  
9 to testify either in support or in opposition are  
10 to fill out two witness cards these cards are  
11 located to my left on the table near the door and  
12 on the witness tables. Upon coming forward to  
13 the Board please give both cards to the court  
14 reporter sitting to my right, the order of  
15 procedure for special exceptions and variances  
16 are as follows: The order of procedures for  
17 appeals and applications for appeals are as  
18 follows: 1. Statement of the Appellant and  
19 Appellant's witnesses. 2. The Zoning  
20 Administrator or other government officials. 3.  
21 Case of the owner, lease or operator of the  
22 property involved or intervener if not the

1 Appellant. 4. Other interveners involved in the  
2 case. 5. ANC within which the property is  
3 located. 6. Rebuttal and closing statements of  
4 the Appellant. Pursuant to Section 3117.4 and  
5 3117.5 the following time constraints will be  
6 maintained: The Appellant, persons and parties  
7 except an ANC in support and including witnesses  
8 will be permitted 60 minutes collectively. The  
9 Appellees persons and parties except an ANC in  
10 opposition including witnesses will be given 60  
11 minutes collectively. Individuals will be given  
12 3 minutes and organizations will be given 5  
13 minutes. These time restrictions do not include  
14 cross examinations or questions from the Board.  
15 Cross examination is permitted by the Appellant  
16 or the parties and the ANC within which the  
17 property is located is automatically a party to a  
18 special exception or variance case. Nothing  
19 prohibits the Board from placing reasonable  
20 restrictions on cross examination including time  
21 limitations, and limitations on the scope of  
22 cross examination. The record will be closed at

1 the conclusion of each case except it will remain  
2 open for any materials specifically requested by  
3 the Board. The Board and the staff will specify  
4 at the end of each hearing exactly what is  
5 expected and the date when the person must submit  
6 this documentation to the Office of Zoning. After  
7 the record is closed no other information will be  
8 accepted by the Board. The Sunshine Act requests  
9 that the public hearing on each case be held in  
10 the open before the public. The Board may  
11 consistent with its rules and procedures and the  
12 Sunshine Act enter into Executive Session during  
13 or after a hearing on a case for purposes of  
14 reviewing the record or deliberating on a case.  
15 The decision of the Board as in these contested  
16 cases must be based exclusively on the record, to  
17 avoid any appearance to the contrary the Board  
18 requests that persons present not engage the  
19 members of the Board in conversation. Please  
20 turn off all beepers and cell phones at this time  
21 as to not disturb these proceedings. At this  
22 time the Board will consider any preliminary

1 matters, preliminary matters relate to whether a  
2 case should or will be heard today such as a  
3 request for postponement, continuance or  
4 withdrawal or whether proper or adequate notice  
5 of a hearing was given. If you are not prepared  
6 to go forward today now is the time to raise such  
7 a matter. Mr. Secretary, do we have any  
8 preliminary matters?

9 MR. MOY: Madam Chair the applications  
10 before the Board there are motions, shall we say  
11 telescoping motions certainly to Appeal No. 18151  
12 this morning and, but I will announce that  
13 Application No. 18155 of Milton Chinberg(ph sp)  
14 has been withdrawn.

15 CHAIRPERSON MOLDENHAUER: Thank you then  
16 before we precede all individuals wishing to  
17 testify before the Board please stand and we will  
18 administer the oath.

19 MR. MOY: Couldn't hear but Mr. Moy  
20 administered the oath.

21 CHAIRPERSON MOLDENHAUER: Thank you Mr.  
22 Moy we can call the first case then.

1 **Application No. 18153**

2 MR. MOY: Application No. 18153 of Julie  
3 Norton pursuant to 11 DCMR 3104.1 for a special  
4 exception to allow an addition to an existing one  
5 family row dwelling under Section 223, not  
6 meeting the lot occupancy Section 403, a non-  
7 conforming structure Section 2001.3 requirements  
8 in the DC/R4 District at premises 1461 S Street,  
9 N.W., (Square 206, Lot 25). Madam Chair there is  
10 the applicant's request to amend their  
11 application from Section 202.10 which is  
12 identified as "Exhibit 31" in your case folders.  
13 Let me take that back, let me restate that, the  
14 applicant's request to amend is from the off  
15 street parking requirements Section 2101.1  
16 identified in your case folders as "Exhibit 23".

17 CHAIRPERSON MOLDENHAUER: Thank you, if  
18 the parties could introduce themselves first for  
19 the record. Please go ahead.

20 MR. LAWLER: My name is Steven Lawler  
21 with Lawler Architects.

22 MS. NORTON: I'm Julie Norton, the home

1 owner.

2 CHAIRPERSON MOLDENHAUER: Okay good  
3 morning, actually if you could both identify your  
4 home address or business address for the purposes  
5 of the record as well thank you.

6 MS. NORTON: 1461 S Street, N.W.

7 MR. LAWLER: 120 4<sup>th</sup> Street, S.E.

8 CHAIRPERSON MOLDENHAUER: So in reviewing  
9 this application there's two issues before we get  
10 started. One which is the fact that there was  
11 the change in the relief that was sought,  
12 typically when sometimes if someone will submit  
13 notice for a variance then they'll reduce the  
14 standard to a special exception we may not  
15 require re-noticing but since the standard that  
16 you're submitting has increased even though you  
17 have gone and submitted a lot of, a lot of due  
18 diligence trying to, you've informed the ANC,  
19 you've informed the DuPont Circle Conservancy and  
20 you have posted for that, we still feel that out  
21 of an abundance of caution we need to re-notice  
22 to all of the individuals in the 200 feet

1 circumference to have that notification of the  
2 variance. That being said that may be effective  
3 or that may change based on my next comment. My  
4 next comment is that after having reviewed this  
5 case and what we'll do, I'm going to present you  
6 an opportunity to kind of go through and talk  
7 with us a bit but reviewing the case file I think  
8 all of the Board Members in reviewing the Office  
9 of Planning report, have you both had a chance to  
10 review the Office of Planning report? You can  
11 just acknowledge that on the record.

12 MR. LAWLER: Yes.

13 CHAIRPERSON MOLDENHAUER: Thank you, I  
14 think that it's very challenging for this  
15 application to satisfy the variance standard.  
16 One thing I'd like to see if you could maybe talk  
17 a little bit about the issue of whether or not  
18 without having that public access for access to  
19 the garage currently. Right now, your using  
20 public space to access the garage is that  
21 correct?

22 MR. LAWLER: Yes, there's a parking kind

1 of pad in front of the existing garage that's  
2 right.

3 CHAIRPERSON MOLDENHAUER: Which is  
4 helping provide you access instead of having to  
5 gain access through the alley.

6 MR. LAWLER: That's right because the  
7 alley is only 10 feet wide.

8 CHAIRPERSON MOLDENHAUER: Okay, but I  
9 guess one of our questions would be if you were  
10 no longer using that public space is it possible  
11 or is it not possible to gain access to the  
12 garage even for a single car?

13 MR. LAWLER: In order to gain access from  
14 that garage from the alley the garage would need  
15 to be increased in size to push us over the 70%  
16 special exception size. Additionally negotiating  
17 a turn from a 10 foot alley is extremely  
18 difficult so that garage would, the garage itself  
19 would have to be part of the turning radius of  
20 the alley because 10 feet is like the width of a  
21 normal parking stall in a mall or in a parking  
22 lot. There's very little negotiation room

1 because we have a hard edge of a building  
2 directly in back of our lot whereas the other  
3 buildings along the alley have all been set back  
4 and have all soft edges, so the alley actually  
5 expands as it goes towards 14<sup>th</sup> Street where at  
6 15<sup>th</sup> Street where we are we have a hard building  
7 right up against the alley, so there's no soft  
8 edge or gravel or shoulder or anything like that,  
9 it's a 10 foot alley period.

10 CHAIRPERSON MOLDENHAUER: Okay, if you  
11 want to demonstrate that, that would be...

12 MR. LAWLER: Here is 15<sup>th</sup> Street on the  
13 bottom if you look at your sheet C2, 15<sup>th</sup> Street  
14 is at the bottom of the drawing here. The alley  
15 that connects 15<sup>th</sup> Street to 14<sup>th</sup> Street runs East-  
16 West. The current garage is, you know, if we  
17 were to make a garage that is large enough in  
18 order to satisfy the D.C. Parking requirements of  
19 a 9 x 19 stall it is nearly impossible to turn  
20 into this garage from the alley because of the  
21 alley's width. As you go further down the alley  
22 the width of the alley gets wider, so at the end

1 of this building lot here which is on 15<sup>th</sup> Street,  
2 the alley begins to get wider and the garages are  
3 set back from the alley face. The other  
4 complication is that if we expand this garage so  
5 that when you come in from the alley into the  
6 front the size of the garage is going to have to  
7 increase to 20 feet in order to enclose the car.  
8 That 20 foot depth will push the overall lot  
9 coverage over 70%, so 72% approximately.

10 CHAIRPERSON MOLDENHAUER: Did the  
11 applicant look into potentially, I know that HPRB  
12 is requesting that you guys obviously remove the  
13 concrete surface but had you looked into  
14 potentially coordinating or working with OP HPRB  
15 to provide some sort of paver and to continue to  
16 use that public space and rent that public space  
17 to gain access as you are currently gaining  
18 access?

19 MR. LAWLER: That is our, I guess if you  
20 want to call it our fall back, this project just  
21 briefly has been in the process for about a year  
22 and we have been working to satisfy the historic

1 preservation requirements, our first scheme,  
2 you're looking a completely redone second scheme.  
3 Our first scheme was approve by the DuPont  
4 Circle Conservancy, the neighbors and the ANC 2-B  
5 unanimously and the Historic Preservation  
6 rejected it. We were going to add a third floor  
7 and be fully compliant in every zoning capacity.  
8 The current building is non-conforming it's over  
9 60% but the proposed solution was going to add  
10 more space to the house and be fully compliant.  
11 HPRB rejected that on a 5 to 2 and so we went  
12 back to the drawing board in order to get the  
13 additional space that was required we filled in  
14 the dog leg and you know turned what was a garage  
15 into an accessory, was an accessory building but  
16 using it for the home office where my client  
17 works from. In trying to satisfy the  
18 requirements for Historic Preservation which they  
19 have a strong interest in removing this parking  
20 pad which is in public space, their drive was to,  
21 the Historic Preservation they weren't as  
22 concerned about parking as I know zoning is

1 concerned about parking however we're required to  
2 kind of balance the needs of both. So what we  
3 proposed to them was to turn this into a building  
4 that did not have parking and to continue to use  
5 this parking pad which has been used, when my  
6 client bought this property the parking pad had  
7 been used as a parking space for decades. When  
8 they bought the property it was represented as a  
9 parking space and so when we applied for the  
10 variance for lot coverage we had no idea that  
11 this was no longer an allowable parking solution  
12 or a legal parking spot.

13 CHAIRPERSON MOLDENHAUER: A couple of  
14 different questions and a couple different points  
15 maybe. One is that you could, potentially or  
16 modify looking at your application continue to  
17 keep one outdoor parking pad to satisfy the  
18 requirement and work with OP to get some sort of  
19 relief to make sure they sign off on that. What  
20 you could do is you would apply for a variance so  
21 just simply locate the parking off site even  
22 though it's going to be right next to your

1 property not on your lot and then apply for a  
2 variance for those purposes which would have less  
3 of a stringent standard and I think that would be  
4 something that we would be willing to take a look  
5 at. The other question is the unit right now or  
6 the property right now is considered a flat.  
7 Because it's a flat is the reason for why it  
8 requires the one parking space. This was  
9 considered a single family home and I don't know  
10 what the purposes are for the applicant or the  
11 use of the house, but looking at the plans it was  
12 described as an in-law suite and so if it's not  
13 being used as an actual rental property the  
14 applicant can work with your agent and determine  
15 whether you want to reclassify the property as a  
16 single family home. If it's a single family home  
17 there's no parking requirement. So that can be  
18 something that you can look at.

19 MR. LAWLER: Which agent are you  
20 referring to?

21 CHAIRPERSON MOLDENHAUER: Yourself if you  
22 want to obviously work with her in that regard.

1 What I'm thinking is that right now there needs  
2 to be some review of the application and it needs  
3 to be re-noticed, and we need to give it 45 days.  
4 If you give the 45 day period you may then want  
5 to re-evaluate how the case is presented in  
6 regards to this variance. I think there are a  
7 couple of different options as I was saying  
8 either one presenting a variance for off street  
9 parking and continuing to look at the parking pad  
10 and public space or to potentially, I think that  
11 the question is as OP states in their report,  
12 this is a question of is it possible, I know that  
13 you were saying that you would obviously need to  
14 potentially expand the garage, but the question  
15 is, is that a choice that you're making? I think  
16 that's one of the problems that we're looking at.  
17 Is it a choice to either have an office or  
18 having parking? If you had the choice to  
19 potentially change around the design and satisfy  
20 the parking requirement then we were going to  
21 have a really hard time satisfying the variance  
22 standard versus the fact that it's a physical

1 constraint on the site which is not going to  
2 permit that. It is a unique aspect to the site  
3 that is not going to permit parking to exist.  
4 That being said if you want to, what we can do is  
5 you can, you can answer any questions, you can  
6 address the Board in any and any Board Members  
7 can jump in and add any additional comments that  
8 they have, that might provide some additional  
9 insight to the applicant. Why don't we do that  
10 right now, do any Board Members have any  
11 additional comments?

12 MR. LAWLER: Ma'am can I ask one question  
13 first, to get back to what you were saying about  
14 a single family residence versus a flat. How  
15 would that change, how would we go about I guess  
16 executing that direction or going in that  
17 direction?

18 CHAIRPERSON MOLDENHAUER: I couldn't  
19 advise you on that specifically but you can go to  
20 the Office of Zoning and somebody at the Office  
21 of Zoning after today's hearing could walk you  
22 through the different options and could work with

1 you on that. Obviously what we're trying to do  
2 is we're looking at the application and sometimes  
3 you look at the application and say there's just  
4 no way to grant this but sometimes you try to see  
5 if there's other ways or other aspects where you  
6 can look at the application and see a way that  
7 maybe it could be approved but we can't obviously  
8 provide specific advice but you can obviously go  
9 to the office, go across the hall and someone  
10 will walk you through that and Cliff would  
11 definitely help you with doing that. Then what  
12 you can do is we can then re-notice the  
13 application whether it's maintaining the current  
14 application with the additional variance the way  
15 it is right now before us and re-noticing that  
16 for 45 days or whether it is potentially  
17 modifying your application in some way or your  
18 plans in some way to either show parking or to  
19 show some other type of variance request that  
20 you're going to be seeking. Then you can come  
21 back before the Board and hear the case once the  
22 notice requirement is satisfied.

1           MR. LAWLER: What if we with the variance  
2 component of this application put aside for a  
3 second.

4           CHAIRPERSON MOLDENHAUER: We could hear  
5 the 223 today.

6           MR. LAWLER: I would like to go ahead  
7 with the 223 as a special exception request.

8           MS. NORTON: I'm just a little confused;  
9 this is single family residence my mother and my  
10 uncle live in the basement so it's not a rental  
11 property. So if we reclassify it as a single  
12 family home this parking situation will go away,  
13 is that what you mean?

14          CHAIRPERSON MOLDENHAUER: The parking  
15 requirement, and OAG can confirm for me, but the  
16 parking requirement is part of 2001.1 the  
17 regulations require one space for each two  
18 dwelling units in a flat use. So since this is  
19 considered, and I don't know how you bought the  
20 property but you bought the property as a flat.  
21 Whether your using it in that way or not right  
22 now based on documentation I have before me that

1 you have a two-story dwelling which is a flat  
2 with a one unit in the basement. So whether  
3 you're using it for your in-laws and not renting  
4 it, that's a question you need to review. There  
5 are a lot of implications if you go to a single  
6 family home.

7 MS. GLAZER: I don't know if the Board  
8 got to the issue that OP raised and that OAG  
9 discussed with the Board about relief from the  
10 2100.10?

11 CHAIRPERSON MOLDENHAUER: 2100.10 is also  
12 a statement which says that since the house was  
13 built and it's pretty much grandfathered for  
14 having not requiring parking at the time it was  
15 built but since parking did exist at that time if  
16 you remove the parking..

17 MS. GLAZER: If they change it to..

18 CHAIRPERSON MOLDENHAUER: If you remove  
19 the parking you have to maintain the parking that  
20 previously existed. You have to keep what you  
21 have but it's based on the requirement under the  
22 regulations and if this was a single family home

1 where there are no requirements then again I  
2 think this needs to be reviewed in more depth.

3 MR. JACKSON: Madam Chair, I'm sorry...

4 CHAIRPERSON MOLDENHAUER: Please if you  
5 can chime in.

6 MR. JACKSON: Happy New Year, my name is  
7 Arthur Jackson, with the Office of Planning. I  
8 just wanted to note that there is in all  
9 Districts of the regulations for one family  
10 dwelling you need to have one parking space.  
11 What happens with a flat is the requirement does  
12 not increase, so if they have a flat on the  
13 property that doesn't require them to add an  
14 additional parking space but there is a minimum  
15 requirement of one parking space currently in the  
16 regulations for a single family dwelling. Now to  
17 reference the OP report was just saying based on  
18 what the use is classified as this is the  
19 requirement. So in light of the condition to  
20 retain the existing parking onsite inline with  
21 the existing requirement they still only need to  
22 have one space. So for example the garage was

1 designed for two spaces, they don't have to keep  
2 to spaces, just one. I just want to make that  
3 clarification.

4 MS. GLAZER: Madam Chair obviously  
5 there's some confusion, I think OAG will have to  
6 consult further with the Board on this legal  
7 issue and I'll leave it at that.

8 CHAIRPERSON MOLDENHAUER: I think what we  
9 have to do here no matter what this needs to be  
10 if the variance goes forward it needs to be  
11 addressed. You have the option if you want to  
12 move forward on the 223 this morning. That being  
13 said if plans do change, if they decide to modify  
14 the plans at all that 223 is locked in with the  
15 current design, so if you end up having to modify  
16 anything you then would have to come back before  
17 the Board again, so it might be beneficial to  
18 still wait and not move forward on the 223 today  
19 and that way we can obviously, you can re-notice  
20 the entire application. We're talking about just  
21 simply 45 days, we're talking about a March 1<sup>st</sup>  
22 hearing, we could squeeze you in for March 1<sup>st</sup>.

1 Why don't we do that, are you both available for  
2 March 1<sup>st</sup>?

3 CHAIRPERSON MOLDENHAUER: I understand  
4 but we have, you do have the requirement to  
5 notice all of the individuals in your surrounding  
6 community and no matter what the currently  
7 application has an additional relief which is  
8 your variance parking relief and since you did  
9 not notice those individuals we have to go back  
10 and we have to notice those individuals which is  
11 a 45 day notice period, which would be February  
12 22<sup>nd</sup> but providing you may be a week or so to  
13 figure out exactly what you want to do we're  
14 talking about a March 1<sup>st</sup> deadline.

15 MS. NORTON: Can you tell me how to do  
16 this because I'm lost.

17 MR. LAWLER: Additionally when we found  
18 out that we needed to amend our application I  
19 talked to Mr. Nero in the Zoning Office and asked  
20 him that question specifically if we would need  
21 to change the posting or do some other aspect,  
22 some other administrative aspect to satisfy the

1 requirements and he said no and he gave me new  
2 text to put on the sign for the posting, we  
3 complied fully with the posting and the sign out  
4 front with the amended application, furnished  
5 photographs, we did everything that we were told  
6 to do, and if they had told us that we needed to  
7 reissue letters to all the surrounding people  
8 then we of course would have waited we wouldn't  
9 have wasted your time or ours in coming here  
10 today.

11 MS. NORTON: Additionally we also got our  
12 immediate neighbors, from them we have letters.  
13 We did go back to the neighbor immediately and  
14 inform them that the parking issue had come up  
15 and got letters of support regarding that as  
16 well, I just feel like we have made every good  
17 faith effort that we could possibly make.

18 CHAIRPERSON MOLDENHAUER: I understand  
19 the fact that you have and you did go and you did  
20 modify your posting however not everybody  
21 observes postings which is why we have to send  
22 out the 200 foot notice requirement. I don't

1 know what Mr. Nero told you but obviously the  
2 decision is with the Board. Mr. Hood who was  
3 before the Zoning Commission last night had a  
4 situation where if someone may not have attended  
5 an ANC meeting but did have some concerns we  
6 actually even just this morning received a letter  
7 just so that your on notice of this, I'm sure  
8 you'll get a copy of this later on today. But  
9 this is from a Kathleen Andrews indicating that  
10 she objects and recommends denial of the  
11 application, who indicated that she's a neighbor  
12 on 15<sup>th</sup> and Swann, she doesn't provide her  
13 specific address. We are required to make sure  
14 that the posting occurs and at an abundance of  
15 caution that has to occur. It's required by the  
16 statute and if somebody may not have attended the  
17 ANC meetings or may not have seen your modified  
18 posting because they say oh well I got the letter  
19 already and the letter said this and I'm fine  
20 with that but all of a sudden now there's the  
21 additional information on the parking, and the  
22 public needs to be informed of that. So I'm

1 sorry if Mr. Nero pointed you in the direction  
2 where obviously the Board is different from that  
3 but the Board is going to be the final decision  
4 maker and I think all Board Members and if  
5 anybody wants to jump in.

6 MR. HOOD: I would agree with your  
7 assessment actually in this situation and  
8 especially in lieu of what we've seen with  
9 Kathleen Andrews who obviously is one of the  
10 neighbors. I think the, and it's very  
11 unfortunate and I understand that this applicant  
12 has been through a lot but we also have  
13 requirements, and I'm not sure how far they've  
14 been working with Office of Planning and I would  
15 agree to you not giving them insight on how to  
16 move with this case because typically you have to  
17 make a decision on it so you can advise them,  
18 cause a lot of times if you advise them they'll  
19 come back down and say oh this is what you told  
20 me to do, so I think to work with Office of  
21 Planning is exactly the way to proceed, I'm  
22 sorry, from my standpoint I'm sorry that you had

1 to go through this but there are regulations with  
2 HPRB and there are regulations in the Zoning that  
3 you have to deal with, it's probably doable, Mr.  
4 Jackson is great he gets it done I've been here  
5 13 years I wouldn't say that if it's not true.  
6 That little more time may be able to get you to  
7 achieve what you're trying to get, thank you.

8           CHAIRPERSON MOLDENHAUER: So thank you,  
9 with that being said what we're going to do is  
10 we're going to postpone this to March 1<sup>st</sup>, the  
11 Zoning Office will issue, you don't have to issue  
12 the notices the Zoning Office will reissue the  
13 notices. All you have to do is work with them to  
14 confirm what the relief that is being sought is  
15 requested is on the notification. So that being  
16 said we'll put this case on for, I think it's the  
17 morning.

18           MR. LAWLER: Excuse me for one second may  
19 I speak with my client for one moment?

20           CHAIRPERSON MOLDENHAUER: Sure.

21           MR. LAWLER; Excuse me I have one  
22 additional question and that is if we chose to go

1 ahead on the 223 special exception application  
2 and there is some additional space required but  
3 still under the 70% threshold so right now we're  
4 requesting a 67% lot occupancy if we went up to  
5 say 70% would that trigger a revisit back here?

6 CHAIRPERSON MOLDENHAUER: Any change in  
7 the plans would trigger that fact that you'd have  
8 to come back before the Board. Even the smallest  
9 change, the plans that you would present today  
10 would have to be built as they are shown on the  
11 plan. If you change it in anyway then obviously  
12 you'd have to come back, so that's one of the  
13 reasons why we'd recommend to hold off, because  
14 if you do want to tweak the plans slightly to try  
15 to accommodate or to revisit the parking the  
16 issue we think it's best to hold off.

17 MR. LAWLER: So it would only if we  
18 change the plans in anyway as it relates to  
19 zoning if there's not zoning change we wouldn't  
20 be required to come back.

21 CHAIRPERSON MOLDENHAUER: If the plans  
22 change in anyway our approval is subject to plans

1 presented before us. So if the plans are changed  
2 exteriorly, if they're changed then you have to  
3 come back before us.

4 MS. NORTON: Can you rule on just the  
5 plan of the main house and rule the garage and  
6 parking situation as a separate matter.

7 CHAIRPERSON MOLDENHAUER: To try...

8 MS. NORTON: I'm just begging you because  
9 I have been going through this for so long and  
10 we're going to lose another couple months when we  
11 could at least be planning the residence, at  
12 least finishing the drawing for the residence.

13 MS. SORG: I think I'll just jump in,  
14 unfortunately, I understand your situation and we  
15 are believe me all very sensitive to it, but as  
16 the Chair is indicating is what we vote on is a  
17 set of plans so the set of plans that's in our  
18 file that we vote on has to be what the order is  
19 for, so if you wanted to just to the house we  
20 would have to have plans with just the house  
21 unfortunately.

22 CHAIRPERSON MOLDENHAUER: I understand

1 the fact that there is obviously time delay but  
2 what we're trying to do is we're trying to make  
3 this as expedite as possible when you come back  
4 obviously, you know we can handle the case we'll  
5 address all the issues at that one day. You can  
6 even at that time request a bench decision and so  
7 that way I can potentially speed things up.  
8 That's all I can provide in regards to trying to  
9 alleviate the delay. That being said I think  
10 we're going to put this on for the afternoon of  
11 March 1<sup>st</sup> so it will be the third case in the  
12 afternoon, our afternoon starts at 1 o'clock on  
13 March 1<sup>st</sup>. That will give you enough time to  
14 notice and to satisfy the 45 day requirement.  
15 Thank you and I apologize for the delay, I  
16 understand your frustration but when you come  
17 back on the 1<sup>st</sup> hopefully we can wrap this up and  
18 you can move forward.

19 MR. LAWLER: Do we need to go back to the  
20 Office of Zoning to re-file? What do we need to  
21 do from an administrative perspective to meet the  
22 March 1<sup>st</sup> deadline?

1           CHAIRPERSON MOLDENHAUER: You need to  
2 obviously work with your client and figure out  
3 what you want to do, if you're not going to  
4 change the plans or the relief that's being  
5 currently requested you just simply need to  
6 notify them and say please send out the 45 day  
7 notice. If you are going to work with OP and  
8 potentially make some changes you have to do that  
9 within the next week or so and then as soon as  
10 you finalize those changes get that information  
11 out to the Office of Zoning so that they can send  
12 out potentially a different relief that's being  
13 requested if that changes at all today.

14           MS. NORTON: I'm not trying to be  
15 difficult but I still don't you mentioned some  
16 guidance or that you had to figure things out  
17 among yourselves I mean are we going to get the  
18 benefit of your opinion on this so that we can  
19 factor that into how we chose to proceed. Maybe  
20 Steve knows what to do but I don't know what to  
21 do.

22           MR. MOY: Madam Chair with my help, after

1 today's hearing I can get together with the  
2 parties and we can discuss.

3 MS. NORTON: We have been in this zoning,  
4 HPRB purgatory for a year.

5 CHAIRPERSON MOLDENHAUER: I understand  
6 but this is the first time that you guys are  
7 before us. Again we understand, as Chairman Hood  
8 was indicating we understand the delay but this  
9 is the first time this case is before us, this is  
10 the first time that we're reviewing it and so I  
11 understand the timeframe it takes to go through  
12 all the other branches but we're looking at it  
13 fresh today. I know it's been going on we don't  
14 see the timeframe before us, we're just looking  
15 at it from today forward and we're trying to  
16 address this as quickly as we can. Thank you  
17 very much. We'll call the next case for the  
18 morning.

19 **Appeal No. 18151**

20 MR. MOY: Yes that would be Appeal No.  
21 18151 of VanNess South Tenants Association  
22 pursuant to 11 DCMR 3100 and 3101 from an August

1 13, 2010, decision by the Director of the  
2 Department of Consumer and Regulatory Affairs to  
3 grant building permit No. B1009105 allowing the  
4 renovation of an existing apartment building for  
5 dormitory use for the University of the District  
6 of Columbia Students in the R-5-D District at  
7 premises 3003 VanNess Street, N.W. the property  
8 is in (Square 2049, Lot 806).

9 CHAIRPERSON MOLDENHAUER: Good morning,  
10 how is everyone doing? What we'll do is we'll  
11 start off on my right and we'll do introductions  
12 down the table indicating your name and home  
13 address please or office address.

14 MR. SURBIAN: Assistant Attorney General  
15 Jay Surabian on behalf of DCRA and do you need my  
16 address? 1100 4<sup>th</sup> Street, S.W., Washington, D.C.

17 MR. KOPECKY: David Kopecky, Assistant  
18 General Manager of Archstone VanNess 3003 VanNess  
19 Street, N.W.

20 MR. BROWN: Patrick Brown on behalf of  
21 the property owners Smith Property Holding  
22 VanNess 1620 L Street, N.W. Washington, D.C.

1 MS. PERRY: Karen Perry I'm a resident at  
2 3003 VanNess Street.

3 MS. PRINCE: Allison Prince of Goldstein  
4 and Storr's on behalf of the University of the  
5 District of Columbia.

6 MR. AVITABILE: Dave Avitabile also with  
7 Goldstein and Storrs on behalf of the University  
8 of the District of Columbia.

9 CHAIRPERSON MOLDENHAUER: Okay we have a  
10 couple of preliminary matters in this case. One  
11 are the request for intervener obviously both  
12 interveners are recognized as integral parties in  
13 this case so we will just, I see a consensus of  
14 the Board Members and we'll address that grant  
15 intervener status, everybody both the Smith  
16 Properties and UDC and we'll move forward now  
17 that all individuals are parties to the case what  
18 we'll do is we'll address the first motion. Ms.  
19 Perry I'll turn to you to articulate the request  
20 for postponement and then I'll turn to the other  
21 parties. We obviously already have written  
22 motions from everybody addressing potential

1 request for postponement then opposition but  
2 we'll hear about, lets' say we'll try to keep  
3 everybody to maybe a 5 minute statement on the  
4 issue and then we'll address that and either move  
5 forward or determine on how we move forward for  
6 the day, so Ms. Perry.

7 MS. PERRY: Hi Ms. Moldenhauer and  
8 Members of the Board. I'm actually here by  
9 default, I was here actually for the Milton  
10 Shemberg case as the ANC Commissioner which I'd  
11 found out here that it was withdrawn today, so  
12 that's why I was going to be here to begin with,  
13 so I was asked just to come here and represent  
14 Mr. Letterer at the same time. From what I  
15 understand in speaking with him, he's a single  
16 practitioner, they had this change in the order  
17 which I think Ms. Prince pointed to yesterday but  
18 I spoke to him last night after I read that and  
19 he told me that what he's doing is he's tied up  
20 in preliminary motions, there's discovery going  
21 on in the case, there also before the licensing  
22 board and the governor who's in favor of it and

1 he's representing the union and that he just  
2 could not be here today to represent the tenant  
3 association. One of the other witnesses that  
4 they had just couldn't take off more time from  
5 work after the holidays. That's all I really can  
6 say because I wasn't a party to the case, it did  
7 not come to the ANC by anybody but since I was  
8 going to be here. I heard there was prehearing  
9 motions, he told me, discovery witness  
10 preparation going on and that he's back and forth  
11 to Vermont. One other thing I don't think UDC is  
12 prejudiced in anyway because they are continuing  
13 to rent apartments at VanNess South, so it's not  
14 like the 21 apartments, the appeal has prejudiced  
15 them in anyway they do have more apartments there  
16 and are continuing to rent.

17 CHAIRPERSON MOLDENHAUER: Thank you Ms.  
18 Perry, Mr. Brown?

19 MR. BROWN: I think the point I focused  
20 in on in my opposition to the continuance is that  
21 this appeal is not being brought by Mr. Letterer  
22 personally but being brought on behalf of a well

1 established organization. Mr. Letterer is not  
2 their counsel he's just a member of that  
3 organization he hasn't held himself out as their  
4 counsel so whether Mr. Letterer is available or  
5 unavailable which is not entirely clear to me and  
6 certainly he had more notice than he gave any of  
7 us about this. The VanNess South Tenants  
8 Association should have the ability and has the  
9 ability and the responsibility to move forward in  
10 his absence and as a result of this occurring at  
11 the last minute besides the prejudice of having  
12 this hanging over my clients head and UDC and  
13 DCRA we're all here this morning, I'm here, Mr.  
14 Kopecky's here one of the other officials from  
15 the property owner is here and that's an  
16 extensive expenditure of resources that is in  
17 fact prejudicial to everybody involved. This is  
18 I think a relatively simple case and VanNess has  
19 the obligation to move forward now, not three  
20 months from now which is entirely unreasonable  
21 and excessive as I pointed out. If in fact you  
22 felt a need to postpone it looking at your

1 calendar January 11<sup>th</sup>, next Tuesday looks light,  
2 this is not a big case that would be less  
3 prejudicial to move forward quickly but I think  
4 this is certainly a basis for moving forward  
5 today.

6 CHAIRPERSON MOLDENHAUER: Thank you, Mr.  
7 Surabian.

8 MR. SURABIAN: I think, I have the Deputy  
9 Chief Building Inspector here and the Zoning  
10 Administrators coming in a moment and I think the  
11 most efficient thing would be to move forward  
12 today but I don't have a strong formal objection  
13 to one way or the other.

14 CHAIRPERSON MOLDENHAUER: Thank you, Ms.  
15 Prince.

16 MR. AVITABILE: You know I think our  
17 letter spoke for itself it's really more, it's  
18 the fact that Mr. Letterer obviously knew well  
19 ahead of time and didn't actually chose to  
20 inform us until after all of the other parties  
21 had taken the time to prepare their prehearing  
22 statements and filed them, it was only at that

1 point that he thought to say hey, by the way I  
2 can't be there. There's prejudice to our client  
3 and the fact that we have to wait three more  
4 months, they have to pay for us to come back  
5 again, Archstone has to pay for their attorney's  
6 to come back again but I think it's also a, it's  
7 an issue of common courtesy, and I think we  
8 thought it was important that the Board  
9 understand that we all should have known this  
10 ahead of time, instead he waited until after, as  
11 I said, we showed our cards and then decided to  
12 let us all know that he wasn't going to show up  
13 today. I understand that he's busy, we're all  
14 busy too and particularly given the time of year  
15 I think it would have been a nice courtesy to  
16 extend it to everyone else. So given that I  
17 don't see why they should benefit from a two to  
18 three month delay where we all have to wait in  
19 limbo and wait for this matter which is otherwise  
20 a very simple matter as resolved.

21 CHAIRPERSON MOLDENHAUER: Thank you I  
22 appreciate everybody taking the time to go

1 through and orally discuss the motions, as I said  
2 I think the motions had been fairly well briefed  
3 in writing. What we'll do is I think we will  
4 just finally deliberate on this right now and  
5 make a decision, while I am definitely frustrated  
6 not just that there was a late notice for  
7 postponement but also that unfortunately the  
8 Appellant has no one really here on their behalf.  
9 Ms. Perry I appreciate your attending today but...

10 MS. PERRY: I'm here by default I was  
11 here for another case.

12 CHAIRPERSON MOLDENHAUER: And I recognize  
13 that...

14 MS. PERRY: I feel just as bad that I  
15 didn't know my other case had been cancelled; I  
16 could have slept in this morning. I came here a  
17 month ago as many of you know and we were here  
18 our ANC was prepared to go forth with testimony  
19 and had a lot of witnesses here with us and he  
20 postponed the Adams case at the request of the  
21 developer at the last minute. So I feel their  
22 frustration but you'd have to know Brian Letterer

1 to understand.

2 CHAIRPERSON MOLDENHAUER: Again as I said  
3 just so that Mr. Letterer or anybody else from  
4 the Appellant can review this testimony I'm  
5 definitely just saying that I find it very  
6 disheartening that no one came as somebody that's  
7 actually asserting a claim that no one, anybody  
8 in a large association such as that would be  
9 present.

10 MR. PERRY: Mr. Brown characterized it as  
11 a large association it really isn't. It's a six  
12 or seven member board, everybody that works;  
13 Brian is the only attorney on the board.

14 CHAIRPERSON MOLDENHAUER: But it is a six  
15 member board where somebody could attend today.  
16 So you are on the board okay.

17 MS. PERRY: I excused myself in this case  
18 because I'm also the ANC Commissioner and not  
19 knowing whether people would bring it to the ANC  
20 I just, I try to stay as neutral as I can.

21 CHAIRPERSON MOLDENHAUER: Well that being  
22 said I think that without having, needing the

1 Appellant to be present obviously while the  
2 request for a March or April time frame is  
3 absolutely unreasonable what we'll do is I think  
4 we'll identify, look at the party's and see if  
5 either February 1<sup>st</sup> or February 8<sup>th</sup> is available  
6 for either party. Let me know if that date is  
7 inconvenient for everybody.

8 MR. BROWN: Madam, Chairman not to be  
9 difficult or more difficult than I already am  
10 that's a month, we've got dates, I know your not  
11 meeting on the 18<sup>th</sup> but you've got dates on the  
12 11<sup>th</sup> and the 25<sup>th</sup> of this month, that would  
13 certainly be a better scheduling compromise.

14 CHAIRPERSON MOLDENHAUER: The letter from  
15 MR. Letterer indicated that he was going to be  
16 busy the first two weeks of January which would  
17 take out the 11<sup>th</sup>, then we have no hearings on the  
18 18<sup>th</sup> or the 25<sup>th</sup> and then the 25<sup>th</sup> is actually  
19 quite full in the afternoon, we have nothing  
20 going on that morning. So I'm providing the next  
21 most reasonable date for our calendar which would  
22 be February 1<sup>st</sup> or February 8<sup>th</sup>.

1           MR. BROWN: But following up on your  
2 comments I think you recognize that VanNess  
3 Tenants Association is not just Mr. Letterer.

4           CHAIRPERSON MOLDENHAUER: I do however he  
5 is someone that is representing himself to be  
6 their spokesperson obviously maybe not  
7 specifically their counsel but he is an attorney  
8 and so recognizing that I think that we're  
9 looking at either the February 1<sup>st</sup> or February 8<sup>th</sup>,  
10 is there any conflict on those specific dates for  
11 any of the parties?

12           MR. AVITABILE: February 1<sup>st</sup> works for  
13 us, there is a conflict on the 8<sup>th</sup>.

14           MR. BROWN: February 1<sup>st</sup> will work.

15           MR. SURABIAN: February 1<sup>st</sup> is fine.

16           CHAIRPERSON MOLDENHAUER: Okay, Ms. Perry  
17 did Mr. Letterer provide you with any dates, he  
18 indicated in his letter that he was going to do  
19 that, so then this will be scheduled for the  
20 afternoon February 1<sup>st</sup>, we'll be the first case in  
21 the afternoon.

22           MR. AVITABILE: Chairperson Moldenhauer

1 one additional question which is regarding  
2 VanNess South Tenants Association failed to file  
3 any prehearing statement any additional evidence  
4 they were required to do that 14 days prior to  
5 the original hearing. What we're a little  
6 concerned about is that they're going to drop  
7 something at the last minute. The burden of  
8 proof is on them and they've already missed their  
9 deadline, they were supposed to meet. So I guess  
10 we want a sense from the Board at least of what  
11 you expect from them so that we can plan our  
12 schedules in terms of when we need to be prepared  
13 to file a response if any?

14 CHAIRPERSON MOLDENHAUER: Yeah, I  
15 appreciate that, what we'll do is I will indicate  
16 that while I'm not going to grant any relief if  
17 they want to file something and request relief  
18 from the deadline they've already missed which  
19 they'd have to actually do and provide good cause  
20 as to why they missed the prior deadline. That  
21 would have to be filed by Friday, January 14<sup>th</sup> and  
22 that would provide sufficient timeframe for any

1 parties to file any responses so we would have  
2 time to review that before the hearing on the  
3 first.

4 MR. BROWN: Madam Chair responses will be  
5 due seven days before the hearing, so that would  
6 be Tuesday the 25<sup>th</sup>.

7 CHAIRPERSON MOLDENHAUER: Yes, okay so  
8 everyone understands the timeframes, I'll ask Ms.  
9 Perry to provide that information back to..

10 MS. PERRY: I'm just not clear on one  
11 thing, they have to file a prehearing statement,  
12 or they were supposed to?

13 CHAIRPERSON MOLDENHAUER: They're  
14 required to and they are required to identify all  
15 information that they will be presenting. Now  
16 since they failed to do that they're actually  
17 going to have to seek relief from that missed  
18 deadline, now I'm not telling you right now  
19 whether I'm going to grant that relief or not but  
20 you need to provide good cause and explain to us  
21 why you've missed that and then request that  
22 obviously that information be admitted to the

1 record.

2 MS. PERRY: Okay.

3 CHAIRPERSON MOLDENHAUER: Then assuming  
4 that you do that articulating timeframes for  
5 responses for everybody so the Board has enough  
6 time to do that prior to meeting. That being  
7 said I think this should be able to be taken care  
8 of quite swiftly on the first and we will see  
9 everybody back here on the afternoon of the  
10 first. I just want to make sure that Ms. Perry  
11 that you understand that the Board absolutely  
12 wants to see a prehearing statement, yes they  
13 have to do that, so the only issue that I'm  
14 saying is that I also want to see good cause as  
15 to why it was late, OAG is just making sure that  
16 I'm very clear because we want to understand what  
17 the case is before we get in and have to go  
18 through everything so I just want to make sure  
19 that that is clear on the record and there is no  
20 confusion.

21 MS. PERRY: I promise I will relay the  
22 message as strongly as possible. I'm not

1 thrilled either with being here.

2 MR. BROWN: Looking ahead slightly  
3 defensive posture but I want to guard against the  
4 possibility that we find a recurrence of this  
5 scheduling conflict for Mr. Letterer.

6 CHAIRPERSON MOLDENHAUER: Someone must be  
7 present on February 1<sup>st</sup> and this case will go  
8 forward on February 1<sup>st</sup> whether for some reason  
9 there's a conflict, I'm looking to the  
10 association to have somebody present and prepared  
11 their case in some which way or form so that is,  
12 thank you for letting me clarify that on the  
13 record.

14 MR. BROWN: Thank you.

15 CHAIRPERSON MOLDENHAUER: So this case is  
16 then concluded and that will conclude our morning  
17 for today at an early time.

18 MS. PERRY: Can I just ask one question  
19 it has nothing to do with this case. Why did the  
20 Shemberg case get withdrawn?

21 CHAIRPERSON MOLDENHAUER: If you can ask  
22 that off the record to Mr. Moy on the side, thank

1 you very much.

2 **Afternoon Session**

3 CHAIRPERSON MOLDENHAUER: This hearing  
4 will please come to order, good afternoon ladies  
5 and gentleman, this is the January 4, 2011,  
6 Public Hearing of the Board of Zoning Adjustments  
7 for the District of Columbia. My name is  
8 Meredith Moldenhauer, Chairperson. Joining me  
9 today to my left will be Nicole Sorg, Vice Chair,  
10 to my right is Jeffrey Hinkle, Representative of  
11 National Capital Planning Commission, and to my  
12 left Representative of the Zoning Commission  
13 Anthony Hood. Copies of today's meeting agenda  
14 are available to you and are located to the left  
15 in the wall bin near the door. Please be advised  
16 this proceeding is being recorded by a court  
17 reporter and is also being webcast live.  
18 Accordingly we must ask you to refrain from any  
19 disturbing noises or actions in the hearing room.  
20 When presenting information to the Board please  
21 turn on and speak into your microphone first  
22 stating your name and home address. When you are

1 finished speaking please turn off your microphone  
2 so that your microphone is no longer picking up  
3 sounds or background noise. All persons planning  
4 to testify either in support or in opposition are  
5 to fill out two witness cards these cards are  
6 located to my left on the table near the door and  
7 on the witness tables. Upon coming forward to  
8 the Board please give both cards to the court  
9 reporter sitting to my right, the order of  
10 procedure for appeal applications are as follows:  
11 1. Statement of the Appellant and the Appellant's  
12 witnesses. 2. The Zoning Administrators Case  
13 3. The case of the owner, leasee, and operator of  
14 the property involved, intervener, if not the  
15 Appellant. 4. Other interveners in the case if  
16 permitted by the Board. 5. The ANC on which the  
17 property is located. 6. Rebuttal and closing  
18 statements from the Appellant. Pursuant to  
19 Section 3117.4 and 3117.5 the following time  
20 constraints will be maintained: The Appellant,  
21 persons and parties except an ANC in support and  
22 including witnesses will be permitted 60 minutes

1 collectively. The Appellees persons and parties  
2 except an ANC in opposition including witnesses  
3 will be given 60 minutes collectively.  
4 Individuals will be given 3 minutes and  
5 organizations will be given 5 minutes. These  
6 time restrictions do not include cross  
7 examinations or questions from the Board. Cross  
8 examination is permitted by the Applicant or  
9 parties and the ANC within which the property is  
10 located is automatically a party to a special  
11 exception or variance case. Nothing prohibits  
12 the Board from placing reasonable restrictions on  
13 cross examination including time limitations, and  
14 limitations on the scope of cross examination.  
15 The record will be closed at the conclusion of  
16 each case except it will remain open for any  
17 materials specifically requested by the Board.  
18 The Board and the staff will specify at the end  
19 of each hearing exactly what is expected and the  
20 date when the person must submit this  
21 documentation to the Office of Zoning. After the  
22 record is closed no other information will be

1 accepted by the Board. The Sunshine Act requires  
2 that the public hearing on each case be held in  
3 the open before the public. The Board may  
4 consistent with its rules and procedures and the  
5 Sunshine Act enter into Executive Session during  
6 or after a hearing on a case for purposes of  
7 reviewing the record or deliberating on a case.  
8 The decision of the Board as in these contested  
9 cases must be based exclusively on the record, to  
10 avoid any appearance to the contrary the Board  
11 requests that persons present not engage the  
12 members of the Board in conversation. Please  
13 turn off all beepers and cell phones at this time  
14 as to not disturb these proceedings. The Board  
15 will make every effort to conclude the Public  
16 Hearing as near as possible to 6 pm if the  
17 afternoon cases are not completed at 6 pm the  
18 Board will assess whether it can complete the  
19 pending case or cases remaining on the agenda.  
20 At this time the Board will consider any  
21 preliminary matters, preliminary matters relate  
22 to whether a case should or will be heard today

1 such as a request for postponement, continuance  
2 or withdrawal or whether proper or adequate  
3 notice of a hearing was given. If you are not  
4 prepared to go forward today now is the time to  
5 raise such a matter. Mr. Secretary, do we have  
6 any preliminary matters?

7 MR. MOY: Good afternoon Madam Chair and  
8 Members of the Board, yes there are, there are  
9 motions to dismiss as well as other shall we say  
10 telescoping motions as the only case for the  
11 afternoon Staff would suggest that you take it up  
12 when the case is called.

13 CHAIRPERSON MOLDENHAUER: Thank you then  
14 what we'll do all individuals wishing to testify  
15 before the Board please stand and the oath will  
16 be administered.

17 MR. MOY: Oath given by Mr. Moy.

18 CHAIRPERSON MOLDENHAUER: We can call the  
19 first case and the parties can step forward to  
20 the table.

21 **Appeal No. 18154**

22 MR. MOY: That case would be Appeal No.

1 18154, this is the appeal of the Capital Hill  
2 Restoration Society pursuant to 11 DCMR 3100 and  
3 3101 from an October 13, 2010, decision by the  
4 Department of Consumer and Regulatory Affairs to  
5 grant a building permit, BLDG Permit No. B1008586  
6 under the Fair Housing Act, allowing an addition  
7 to a one family Row Dwelling in the R-4 District  
8 at premises 1363 Massachusetts Avenue, S.E.  
9 (Square 1037, Lot 73)

10 CHAIRPERSON MOLDENHAUER: We'll start off  
11 to my left if all the parties at the table can  
12 introduce themselves stating their name and home  
13 address please.

14 MR. GARRISON: My name is David Garrison  
15 I'm the Chair of ANC 6-B, I live at 8 4<sup>th</sup> Street,  
16 S.E.

17 MR. O'DONNELL: I'm Mark O'Donnell the  
18 next door neighbor at 1359 Massachusetts Avenue,  
19 S.E.

20 MR. PETERSON: I'm Gary Peterson; I'm  
21 Chair of the Capital Hill Restoration Society and  
22 will be representing the Society today.

1 MR. LEGRANT: Matthew LeGrant, I'm the  
2 Zoning Administrator with the Department of  
3 Consumer and Regulatory Affairs.

4 MR. SURABIAN: Assistant Attorney General  
5 Jay Surabian, on behalf of DCRA.

6 MS. BOLLING: Good afternoon Madam Chair,  
7 Board Members, Melinda Bolling, DCRA General  
8 Counsel.

9 CHAIRPERSON MOLDENHAUER: Thank you we  
10 have a preliminary matter in this case as Mr. Moy  
11 indicated, a preliminary matter is a motion  
12 before us, motion to dismiss. Before we hear any  
13 testimony the Board will first deliberate on this  
14 motion and discuss the pertaining issues. We  
15 have a question as to whether or not we have  
16 jurisdiction, so obviously I think that's the  
17 major issue that I see in the motion to dismiss,  
18 that was raised in a question that obviously, I  
19 have reviewed as to whether or not we have the  
20 ability to review this case at all. The Board's  
21 jurisdiction is limited and so one thing that I  
22 did is I took a look at an old case that was

1 provided to us which is Appeal No. 03-001 and  
2 this was a case which I think addressed a similar  
3 issue as to whether or not in that case whether  
4 the Board had the subject matter jurisdiction to  
5 address a, in this case a notice of infraction  
6 here dealing with a permit and FHA approval. In  
7 that case what was determined was that the  
8 Board's jurisdiction is only limited to reviewing  
9 administrative decisions based in whole or in  
10 part upon the zoning regulations or MAPS and that  
11 we do not have the authority to hear any type of  
12 case that arises out of a reference to or in  
13 regards to the Zoning Act. In this case before  
14 us today, this has to do with the Zoning Act and  
15 FHA and so based on my review and following this  
16 courts appeal case I would conclude that we do  
17 not have the jurisdiction and that the Board is  
18 not empowered to create jurisdiction where there  
19 is none. That is something that we have  
20 evaluated in other cases and so if we lack  
21 jurisdiction we can't even look to any of the  
22 other issues that were raised both in the motion

1 to dismiss and on the merits. That being said  
2 I'll open up the floor to any other Board Members  
3 for them to touch upon this issue.

4 MS. SORG: Thank you Madam Chair, I also I  
5 agree with your analysis of the motions that have  
6 been submitted and I don't think I would have  
7 anything else to add.

8 CHAIRPERSON MOLDENHAUER: Since we don't  
9 have jurisdiction I'm not going to open up the  
10 floor for any additional discussion on the issue  
11 since obviously we can't get into the merits of  
12 the case so what I'm going to do I'm going to  
13 submit a motion to the Board Members a motion to  
14 deny this appeal for lack of subject matter  
15 jurisdiction, a motion has been made is there a  
16 second?

17 MS. NAGLEHOUT: Madam Chair I believe  
18 you'd be dismissing.

19 CHAIRPERSON MOLDENHAUER: I'm sorry,  
20 thank you a motion to dismiss the case for a lack  
21 of subject matter jurisdiction. A motion has  
22 been made is there a second?

1 MS. SORG: Second.

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

4 CHORUS: Aye.

5 MR. MOY: Staff would record the vote as  
6 4 to 0 to 1, this is on the motion of the  
7 Chairperson Ms. Moldenhauer to dismiss the appeal  
8 for lack of jurisdiction, second the motion Ms.  
9 Sorg the Vice Chair, also in support of the  
10 motion Mr. Hinkle and Mr. Hood. No other Board  
11 Members participating, so again the final vote is  
12 4 to 0 to 1.

13 CHAIRPERSON MOLDENHAUER: Thank you and  
14 obviously we have only the ability to vote on  
15 those things that we have jurisdiction on I hope  
16 that obviously the parties can pursue the case in  
17 a forum. Thank you very much for coming down  
18 today and this case has been dismissed. We have  
19 one more matter before us this afternoon which is  
20 to address the issues of Chairmanships and Vice  
21 Chairmanships, so what I'll do is we have to  
22 present a nomination for Chair and I'll open up

1 to the Board Members for any nominations.

2 MS. SORG: Thank you Madam Chair I would  
3 be pleased to nominate Meredith Moldenhauer for  
4 the position of Chair and also would note that it  
5 has been a pleasure working with you in that  
6 capacity so far.

7 CHAIRPERSON MOLDENHAUER: Thank you very  
8 much. So there's a nomination is there any other  
9 nominations?

10 MR. HOOD: Madam Chair I would just like  
11 to I don't know if this is appropriate but I  
12 would like to agree with Vice Chair, Ms. Sorg and  
13 also mention that we can do it in one motion. I  
14 would also in that motion like to further  
15 (inaudible) amendment to nominate Nicky Sorg for  
16 Vice Chairperson, we can do it all in one motion.

17 CHAIRPERSON MOLDENHAUER: Absolutely I  
18 would second that motion to nominate Ms. Sorg,  
19 she's done a great job so then I'll submit a  
20 motion to confirm or appoint myself as Chair and  
21 Ms. Sorg as Vice Chair. A motion has been made  
22 is there a second?

1 MR. HINKLE: Madam Chair I'll second  
2 that.

3 CHAIRPERSON MOLDENHAUER: Fabulous thank  
4 you very much, all those in favor say aye.

5 CHORUS: Aye.

6 MR. MOY: Staff would record the vote as  
7 4 to 0 to 1 this is on the motion of the Chair  
8 Ms. Moldenhauer for the Chairmanship and the Vice  
9 Chairpersonship in this case, that second motion  
10 was Mr. Hinkle support of that motion Ms. Sorg  
11 and Mr. Hood again 4 to 0 to 1, congratulations.

12 CHAIRPERSON MOLDENHAUER: Thank you very  
13 much, congratulations Ms. Sorg.

14 MS. SORG: Thank you and to you also.

15 CHAIRPERSON MOLDENHAUER: Then that  
16 concludes our business for today and we will  
17 reconvene next Tuesday, thank you.

18 END 1:40

19 llz

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