

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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

PUBLIC MEETING AND PUBLIC HEARING
March 8, 2011
Start: 9:51am - End: 3:13pm

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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P R O C E E D I N G S

CHAIRPERSON MOLDENHAUER: This meeting will please come to order good morning ladies and gentleman. This is the March 8, 2011, Public Meeting of the Board of Zoning Adjustments for the District of Columbia. My name is Meredith Moldenhauer, Chairperson, joining me today to my left is the Vice Chairperson Nicole Sorg, Mayoral Appointee, to her left is Peter May, Representative of the Zoning Commission, and to my right is Jeffrey Hinkle, Representative of the National Capital Planning Commission. Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door. We do not take any public testimony at our meeting unless the Board asks someone to come forward. Please be advised this proceeding is being recorded by a court reporter and is also being webcast live, accordingly we must ask you to refrain from any disturbing noises or actions in the hearing room. Please turn off all cell phones and beepers at this time. Mr. Secretary,

1 do we have any preliminary matters?

2 SECRETARY MOY: Good morning Madam Chair,
3 yes we do it's for the second case for decision
4 this morning but Staff would suggest that we
5 address those preliminary matters when I call the
6 case.

7 CHAIRPERSON MOLDENHAUER: Thank you then
8 we can go forward with the agenda.

9 **Application No. 18166**

10 MR. MOY: The first application for Board
11 Action is Application No. 18166 this is of the
12 Government of the District of Columbia,
13 Department of Housing and Community Development
14 pursuant to; 11 DCMR 3103.2 for a variance from
15 the lot area and lot width requirements under
16 Section 401, the variance from the lot occupancy
17 requirements under Section 403 and a variance
18 from the rear yard requirements under Section
19 404. The Application was also amended to add
20 Zoning Relief from the off street parking
21 requirements under Section 2101.1 and this relief
22 is to allow the construction of a flat, a two

1 family dwelling in the R-4 District at premises
2 501 Rhode Island Avenue, N.W., (Square 475, Lot
3 33). As the Board will recall this application
4 was convened in a special meeting on February 15,
5 2011, the Board continued with this deliberation
6 to allow the Applicant to submit additional
7 information, the Applicant did so Madam Chair and
8 that filing is identified in your case folders as
9 "Exhibit 36". The Board is to act on the merits
10 for the request of the multiple variances zoning
11 relief that completes the Staff's briefing Madam
12 Chair.

13 CHAIRPERSON MOLDENHAUER: Thank you, as
14 stated earlier I have recuse myself from this
15 case so I'll turn to Ms. Sorg to handle the
16 deliberations.

17 MS. SORG: Thank you Madam Chair, I think
18 that in this case as was mentioned in the
19 introduction we heard the case and received the
20 submissions that we were looking for so I can
21 start off our deliberation and then we'll turn
22 over to other Board Members for their comments.

1 To me this case really with regard to our
2 variance test was lacking after our understanding
3 at the hearings only a little bit in the sense
4 that I think that the first and second prongs of
5 the variance test are fairly easily satisfied
6 based on the, you know, extremely, you know, I
7 think uniqueness and difficulty of the property
8 it's dimensions, and topography in this area. I
9 think that the relief that the Applicant is
10 request mainly associated with, you know, lot
11 occupancy in the rear yard, directly from the
12 uniqueness from this property. In the hearing we
13 heard from a couple of neighbors and in specific
14 one of the adjacent neighbors who had some
15 concerns about the property, I think actually
16 similar to where we were as a Board in the end.
17 They were looking in some cases for more
18 information from the Applicant and as I recall in
19 the record we got confirmation from the Applicant
20 that they would continue to work with the
21 neighbors. There were some questions about
22 access and property lines and so forth. The

1 specificity of those concerns regarding the
2 construction and regarding permitting and so
3 forth are in my opinion a little bit beyond what
4 we're looking at here, but I think it was a good
5 forum for the neighbors to show their concerns
6 and also for us to understand what the nature of
7 those concerns were. For me based on the filings
8 that we received after the last hearing which
9 includes things that we requested like site
10 plans, more complete although not, more complete
11 building plans, photographs of the rear area, I
12 think it's the south wall and the south property
13 line on the side, what that looks like regarding
14 the neighboring properties, the windows and the
15 access and so forth there, to me filled out my
16 analysis of the case through the third prong and
17 I'm given in this case to understand at this
18 point that the relief that the Applicant is
19 requesting can in fact be granted without
20 substantial detriment to the neighbors and the
21 neighborhood and that is where I am at the case
22 now I'll open it up for my fellow Board Members,

1 if there are any comments.

2 MR. HINKLE: Yeah well thank you I agree
3 with your analysis, I do think that the Board had
4 requested additional information and we received
5 a lot in supplemental information, is it
6 sufficient for this case, yes, I believe so. But
7 as you said I do think that they have met the
8 first and second prong it's the third prong that
9 we're interested in and how this relief would
10 impact not only the neighbors but the
11 neighborhood and the city as well. So we
12 received plans, we received what we requested. I
13 still have questions in terms of how the
14 staircase between the first floor and the
15 basement can work, I believe there's not enough
16 head room but that would be something that could
17 be addressed in the permitting process. But we
18 did receive information in terms of how it
19 impacts the adjacent building in terms of does it
20 cover up windows, does it cover up doors, it does
21 cover up two windows, I think we heard from the
22 neighbor that, that's okay, he just wanted to

1 know what the impact was that was being proposed.
2 So other than that I will say I'm in support of
3 this application.

4 MS. SORG: Thank you Mr. Hinkle, any
5 other comments?

6 MR. MAY: Yeah, I think that some of the
7 aspects of this case are very clear right from
8 the beginning, the site is very small and it's
9 constricted, and its oddly shaped and so on so
10 that makes a lot of the test without too much
11 effort. There were definitely questions of this,
12 I think most of the questions came from the fact
13 that the Application itself was not very
14 thorough, you know getting an application without
15 a site plan, without some critical views of the
16 site just makes it harder and take longer and so
17 on and I think that the Applicant should learn
18 something from this process because we very
19 easily could be sending it back at this moment
20 saying you know what there's just not enough
21 there yet. It's sufficient at this moment but
22 sort of barely sufficient. I think there is a

1 question that remains with regard to the second
2 floor deck, I don't know Mr. Hinkle you didn't
3 raise that issue in particular but I know that
4 the second floor deck technically would
5 contribute to the lot occupancy so the lot
6 occupancy calculation may not be correct in the
7 record the way we have it, I'm not sure if we can
8 get clarity on that from, maybe from the Office
9 of Planning or something but there is an open
10 question with that, or it may be that if we
11 approve it, that this lot occupancy the second
12 floor deck won't be allowed because it wasn't
13 included in the calculation. As for some of the
14 other questions like the impact of this project
15 on the neighbors windows, you know that, those
16 windows are fronting onto somebody else property
17 so there's not a right to have those, so those
18 can be covered up, that happens with some
19 frequency, it may be unfortunate for the neighbor
20 but there's no real absolute right to that
21 property. I will also say that there's some
22 aspects of the design of this unit that I think

1 needs serious work and the Applicant would do
2 well to look very carefully at how the front of
3 this building is going to look, the use of Hardy
4 panel and steel tube as a façade is questionable
5 at best so, but it doesn't go to the issue that
6 we have to decide here I would just encourage
7 some strong examination of the plans for the
8 building and the design of the elevation. The
9 plans, Board Member Hinkle raised the issue of
10 the interior design and layout and the room for
11 the stairs and so on, I think that's only the
12 beginning of their problems, there's some pretty
13 basic issue with the design of these units and
14 how they're laid out and I think needs some
15 serious consideration, again beyond what our
16 mandate is here, but I cannot just let it go, I'm
17 just not the type to let it go, what can I say.
18 Nonetheless I think the case has been made that
19 the relief is appropriate. I would prefer to
20 know definitively what the lot occupancy is on
21 the assumption that the second floor deck
22 contributes to it, so I'm not sure how best to

1 get to that answer.

2 MS. SORG: Thank you Mr. May, well first
3 to some of the issues, I agree with some of the
4 issues that you and Mr. Hinkle bring up and I
5 also agree with your assessment that issues of
6 code violations and of construction and so on and
7 so forth will be brought up through the
8 permitting process if they end up back here
9 requiring a minor modification then that's, if
10 that's what goes on, then that's what goes on.
11 With regard to the question about the lot
12 occupancy and how it's impacted by the second
13 floor deck, I think you know this is a self
14 certified application so we take the numbers that
15 we have in front of us, also I think in OP's
16 report and in their testimony, you know, we
17 didn't get any question about the degree of
18 relief necessary for the lot occupancy there so I
19 would be, especially based on the fact that it is
20 a self certified application, you know, we I
21 think are best to look at what's in front of us
22 and the discussions that we've had that are on

1 the record. So I would be in favor of moving
2 forward today on this case.

3 MR. MAY: I would agree we move forward I
4 guess the question I have is since this is self
5 certified if in fact the deck contributes to lot
6 occupancy in the decision on this doesn't
7 necessarily support that inclusion in lot
8 occupancy they'd have to come back for a minor
9 modification, is that what it boils down to?

10 MS. SORG: Yeah, if it turns out that
11 there would be, if the application were to be
12 approved and they were turned up later on in
13 their process to be outside of the degree of
14 relief which is 18.7% of lot occupancy then they
15 would either have to make some changes or come
16 back to us, so what we are looking at here is the
17 degree percentage of lot occupancy and things
18 that fall outside of that would not be included,
19 I think.

20 MR. MAY: Okay.

21 MS. SORG: Is there any further
22 deliberation?

1 MR. HINKLE: So for clarification if what
2 we see in the plans is not a lot occupancy of
3 78.7% which is what I'm reading in the OP report
4 then they would need to come back to us, is that
5 clear?

6 MS. SORG: Yes, you know, as a Board we
7 vote on plans and, you know, degrees of relief
8 requested that are in front of us and on these
9 types of self certified applications and those
10 application that are approved when they later on
11 in the building process, because, you know, we
12 see applications and plans for projects, you
13 know, fairly early on, often and so there are
14 some changes that can happen and if those changes
15 fall outside of the relief that we grant, you
16 know, we tend to see people back here.

17 MR. HINKLE: Okay, thank you.

18 MS. SORG: If there's anything further,
19 if there's nothing further then I would like to
20 submit a motion in this case Application No.
21 18166 to approve, rather to approve Application
22 18166 for a variance relief under 401 for lot

1 width 403 for lot occupancy, 404 for rear yard
2 relief as well as under 401 lot area and parking
3 under 2101 at 501 Rhode Island Avenue, N.W.

4 MR. MAY: Second.

5 MS. SORG: A motion has been made and
6 seconded, all those in favor say aye.

7 CHORUS: Aye.

8 MR. MOY: The vote is 3 to 0 to 2, this
9 is on the motion of Vice Chair Ms. Sorg, to
10 approve Application 18166 for the multiple
11 variance relief requested, seconded the motion
12 Mr. Peter May, in support of the motion Mr.
13 Hinkle. This is also attended to the revised
14 plans; this is for the record for revised plans
15 that were attached to "Exhibit No. 36". So again
16 the final vote is 3 to 0 to 2 to approve.

17 MS. SORG: Thank you Mr. Secretary and
18 also can we make a summary order in this case?

19 MR. MOY: Yes, thank you Madam Chair.

20 **Application No. 18169**

21 MR. MOY: The next and last Board Action
22 for decision is Application No. 18169, this is of

1 Kyle and Laura Yost, pursuant to 11 DCMR 3103.2
2 and 3104.1 for a special exception to allow a
3 rear addition and accessory garage serving and
4 existing one family semi-detached dwelling under
5 Section 223 not meeting the lot occupancy Section
6 403, and side yard Section 405 requirements, and
7 a variance from the area alley centerline garage
8 setback requirements under (Subsection 2300.2,
9 sub B) in the R-3 District, this is at premises
10 3411 Prospect Street, N.W., the property is
11 located in (Square 1221, Lot 831). On February
12 15, 2011, the Board completed testimony, closed
13 the record and scheduled its decision on March 8,
14 2011. The Board requested additional information
15 to supplement the record from the Applicant that
16 filing from the Applicant is in your case folders
17 Madam Chair dated March 3, 2011, identified as
18 "Exhibit 41". Finally Madam Chair we have a
19 preliminary matter in that the party opponents
20 filed a response dated March 4, 2011, and that
21 filing is identified as "Exhibits 41 and 43",
22 other than that the Board is to act on the merits

1 of the special exception relief under Section 223
2 not meeting the lot occupancy, side yard
3 requirements and the variance from the alley
4 centerline garage setback requirements under
5 (Subsection 2300.2, Sub B) and that completes the
6 Staff's briefing Madam Chair.

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much Mr. Moy and as indicated we have a
9 preliminary matter in this case, we had left the
10 record open specifically for the submission from
11 the Applicant but we did have a party status
12 individual in this case Mr. Thomason and Mr.
13 Thomason submitted a documentation our "Exhibit
14 No. 42 and 43" requesting his opportunity to
15 respond to that submission and I think that while
16 we did not specifically leave the record open for
17 that as a party status individual he did have the
18 right to at least respond to any additional
19 submissions that were made and so that being said
20 I will waive our requirements and obviously admit
21 that into the record and we've already reviewed
22 that as part of our deliberation for this

1 morning, so that handles the preliminary matter,
2 so now we'll just get into deliberation. At
3 this hearing we went through the two different
4 types of relief that are being sought here.
5 First is a special exception to allow a rear
6 addition under 223, and then in regards to lot
7 occupancy and side yard, and then the second one
8 is a variance to allow the construction of a
9 garage to be set back from the alley centerline
10 requirements under 2300.2B. So I'll start off
11 with the 223 relief, in this case as stated
12 earlier we had a party opponent who presented
13 arguments going towards the prongs of effecting
14 light and air and effecting I think most, not
15 really a privacy but more of use and enjoyment,
16 and so as a 223 case those are our major issues
17 that we have to look at, but we have to look at
18 them in the guise of do they not unduly effect
19 those things. Then the question is well, what
20 exactly rises to the level of unduly effecting
21 potentially light and air of the neighboring
22 property, or unduly compromising the use and

1 enjoyment of the neighboring property. That
2 being said we have letters of no support from the
3 ANC and from the Citizens Association of
4 Georgetown, both of those address, or rather they
5 reference their lack of support due to concerns
6 with increased density and loss of open space, to
7 me that doesn't really go to the issue of what a
8 223 should be evaluated under. As I said we're
9 really looking at aspects of reduction of light
10 and enjoyment or reduction of potentially use and
11 privacy of the neighboring property, so while we
12 will definitely be giving the ANC letter great
13 weight, our "Exhibit No. 23" satisfies our
14 requirement, I find that their rationale that is
15 at least articulated in the resolution is lacking
16 for me to really rely upon in great weight in
17 regards to the standard that we have to apply it.
18 That being said I then go to arguments that were
19 made by both the Applicant and then the counter
20 arguments made by Mr. Thomason during the
21 hearing, and I think that the Applicant
22 supplemented their documentation with the new

1 diagrams, the new submissions which I think
2 helped provide better clarity as to how exactly
3 this addition was going to potentially effect the
4 neighboring property and the light and air in
5 that regard, and I think that was very helpful to
6 me in looking at this and to seeing potentially,
7 you know what portion of property, 3413 Prospect
8 Street would potentially have increased shade or
9 less light due to this addition. I think that
10 you know looking at page four of the supplemental
11 submission that we received from the Applicant I
12 think that it shows a very small area in the rear
13 that's going to be newly shaded in, it's pretty
14 much between the tree shade and where the trellis
15 is. To me I think that in comparison to the
16 degree of shade that already exists in the back
17 of this neighboring property that addition is
18 quite small and then in my mind I don't believe
19 that it rises to a level of unduly effecting.
20 Those are, it's hard, to try to say well when
21 does something rise to the level of unduly
22 effecting and when does it not? But I think in

1 looking at this I don't think that it does,
2 especially then looking at potentially what Mr.
3 Thomason presented to us in his regard, he
4 presented us documentation stating that it was
5 going to create some additional challenges in
6 planting or providing some additional flowers in
7 his backyard, obviously there's different types
8 of flowers that can grow in different atmospheres
9 but I think it's not going to stop him from being
10 able to create a beautiful garden, it may be more
11 challenging but I think that there still is a
12 substantial amount of light in that back area and
13 the amount that's potentially going to be changed
14 is a smaller degree. That being said I think
15 that because especially this is a 223 standard
16 Office of Planning in our "Exhibit 26" is in
17 support of this, I see really no problem with the
18 223 case. I'll stop there and then look for
19 additional deliberation.

20 MR. HINKLE: No I completely agree with
21 your analysis on the 223 case. I think we
22 received sufficient documentation that while

1 there is some additional shade on the property
2 adjacent to what's being proposed, I don't think
3 it's a significant impact, so I'm completely in
4 agreement with your analysis on the 223.

5 CHAIRPERSON MOLDENHAUER: Then we go onto
6 the area variance for the garage in regards to
7 the alley line, center alley line setback. Here
8 we have a case where it's a variance, it's not a
9 223, it's a higher standard and Office of
10 Planning is in support, we have a letter, our
11 "Exhibit No. 37" from the Commission of Fine Arts
12 indicating that they have no objection to it,
13 articulating the reason being the Magnolia Tree
14 desiring that to be maintained and thus creating
15 a unique circumstance where there would be a
16 practical difficulty in rehabbing the garage.
17 Now in this case I do have some reservations, I
18 always find that a variance standard is a very
19 high standard and that it must be proven to all
20 of the prongs, and I think here I have a question
21 as to whether or not the Magnolia Tree
22 potentially may be in and of itself may satisfy

1 the first prong but then is there really a
2 practical difficulty here in regards to
3 potentially, you know, they could rehab the
4 garage as it currently exists, do they need to
5 actually enlarge the garage does that rise to the
6 level of a practical difficulty needing to get a
7 legal space and they currently don't have a legal
8 space in that location. We don't really have
9 significant direct opposition to the garage, a
10 lot of what Mr. Thomason as a party opponent was
11 arguing was more towards the back area than the
12 garage issue, we did have some statements from
13 neighboring properties, the property directly
14 across the alley that there was going to be some
15 challenges there, but we do then have in the new
16 submissions from the Applicant some letters of
17 support from individuals that are, not directly
18 across but cattycorner from them in the alley
19 indicating that they are in support of that. I'm
20 not going to go any further I'm going to see if
21 there's any additional deliberation, if you have
22 any additional insights as to provide me a better

1 perspective to view this variance standard.

2 MR. HINKLE: Yeah, thank you Madam Chair,
3 we did hear from the Old Georgetown Board and
4 there is some concern about preserving the
5 existing Magnolia Trees on the property and what
6 we did hear in testimony as well as in our
7 written record is that to expand the garage
8 towards the Magnolia Trees would be difficult in
9 terms of preserving those trees, thus the
10 Applicant had looked at expanding towards the
11 alley way, and my understanding is that the
12 existing garage is just over 18 feet and I'm not
13 quite sure what the requirement for a legal space
14 is but I believe it's 19 or so. So the
15 application is looking at expanding the garage to
16 just over 20 feet and that would expand it into
17 the alley way, for me I think the practical
18 difficulty really is expanding it into the garage
19 towards the tree, we heard from the Old
20 Georgetown Board that the preference would be to
21 go the other direction. We have heard from the
22 Applicant that there is an existing pole,

1 telephone pole that's actually at the property
2 line which is an additional four feet from what
3 the garage would be expanded to. So the effective
4 expansion would not effect what is the dimension
5 of the alley, the width of the alley. So I think
6 there is some issues in terms of can they expand
7 towards the yard, I don't think so because it
8 would impact the Magnolia Tree, can they go into
9 the alley, yes they can, would that negatively
10 impact the alley, the width of the alley, no
11 because there's an existing telephone pole. I'm
12 not sure how you feel about that.

13 CHAIRPERSON MOLDENHAUER: I still think
14 that it's a very weak case but as you were
15 talking I was thinking about the fact that the
16 Applicant's Attorney did mention on several
17 occasions at the hearing about the case law which
18 supports the fact that the degree of relief also
19 then effects the degree of the standard and so
20 here I think that we can probably apply that. I
21 was looking in the prehearing statement
22 submission and I don't see that case quoted

1 otherwise I would quote it, but it is applicable
2 here, I mean we're talking about 12 feet, we're
3 talking about a very, very minimal relief that's
4 being requested here even though it is a variance
5 standard I think that based on that, taking that
6 into consideration and taking the fact that I
7 think the Old Georgetown Board identified these
8 are the only two Magnolia Trees on the block that
9 provide shade so while I think it's a very weak
10 case I think it does satisfy the standards in the
11 regard because the Magnolia Trees are identified
12 by the CFA, they're identified by OP and that,
13 you know, if it satisfies, if you looked at that
14 then it would satisfy the other two prongs of the
15 test.

16 MR. HINKLE: I think we're looking at a
17 difference of 1 foot 8.5 inches in this case and
18 for me that's not a significant impact in this
19 alley way it takes the garage door up to what's
20 adjacent, on the adjacent property.

21 CHAIRPERSON MOLDENHAUER: I agree with
22 you, I think that you have identified some of the

1 stronger arguments here, so that being said is
2 there any further deliberation on this case?
3 Seeing none, then I will submit a motion, a
4 motion to approve Application 18169 pursuant to
5 11 DCMR 3103.2 and 3104.1 for special exception
6 to allow a rear addition and accessory garage
7 serving an existing one family semi detached
8 dwelling under Section 223 not meeting the lot
9 occupancy under 403, side yard under 405,
10 requirements and a variance from the alley
11 centerline garage setback requirement under
12 (Subsection 2300.2B) a motion has been made is
13 there is a second?

14 MR. HINKLE: Second.

15 CHAIRPERSON MOLDENHAUER: A motion has
16 been made and seconded, all those in favor say
17 aye.

18 CHORUS: Aye.

19 CHAIRPERSON MOLDENHAUER: Mr. Moy do we
20 have an absentee ballot?

21 MR. MOY: Yes Madam Chair, we have an
22 absentee vote from another participant on this

1 application from Mr. Anthony Hood and his
2 absentee vote is to approve with such conditions
3 as the Board may impose, so that would give a
4 final resulting vote of 3 to 0 to 2 on the motion
5 of the Chair to approve the application per the
6 special exception and variance relief, seconded
7 by Mr. Hinkle and of course in support of the
8 motion Mr. Hood, no other Board Members
9 participating, so again it's 3 to 0 to 2.

10 CHAIRPERSON MOLDENHAUER: Thank you very
11 much Mr. Moy. I believe that then concludes our
12 morning decision and public meeting.

13 MR. MOY: Yes Ma'am.

14 **A.M. Session**

15 CHAIRPERSON MOLDENHAUER: This hearing
16 will please come to order, good morning ladies
17 and gentleman, this is the March 8, 2011, Public
18 Hearing of the Board of Zoning Adjustments for
19 the District of Columbia convening under the Act
20 of a Chancellery Application pursuant to the
21 Foreign Missions Act and Chapter 10 of the Zoning
22 Regulations, my name is Meredith Moldenhauer,

1 Chairperson, joining me today to my left is the
2 Vice Chair Nicole Sorg, also joining me to my
3 left is Peter May, Representative of the U.S.
4 National Park Service and to my right Federal
5 Representative Marcella Costa, representing the
6 National Capital Planning Commission. Copies of
7 today's meeting agenda are available to you and
8 are located to my left in the wall bin near the
9 door. Please be advised this proceeding is being
10 recorded by a court reporter and is also being
11 webcast live. Accordingly we must ask you to
12 refrain from any disturbing noises or actions in
13 the hearing room. When presenting information to
14 the Board please turn-on and speak into your
15 microphone first stating your name and home
16 address. When you are finished speaking please
17 turn-off your microphone so that your microphone
18 is no longer picking up sounds or background
19 noise. All persons planning to testify either in
20 support or in opposition are to fill out two
21 witness cards these cards are located to my left
22 on the table near the door and are also on

1 witness tables. Upon coming forward to speak to
2 the Board please give both cards to the court
3 reporter sitting to my right. The order of
4 procedures for Foreign Mission Cases is as
5 follows: 1. Statement of the Applicant and
6 Applicant's Witnesses. 2. Government Reports
7 including the United States Secretary of State
8 and the District of Columbia Office of Planning
9 on behalf of the Mayor. 3. Reports and
10 recommendations of other public agencies. 4.
11 Reports of the ANC. 5. Persons in support. 6.
12 Persons in opposition. Please note that request
13 for party status in a Chancellery Application are
14 not applicable because it is a rule making
15 proceeding. The following time constraints will
16 be maintained; the Applicant including witnesses
17 will be given 60 minutes to present its case.
18 Persons testifying whether in support or in
19 opposition will be presented 3 minutes each
20 except for an ANC, these time constraints do not
21 include time during which questions from the
22 Board and the Board my place further reasonable

1 restrictions on or permit additional time for
2 testimony as it deems appropriate. Because this
3 is a rule making procedure, there is no parties
4 and therefore there is no cross examination. The
5 record will be closed at the conclusion of each
6 case except it will remain open. The record will
7 be closed at the conclusion of each case except
8 for any materials specifically requested by the
9 Board. The Board and the Staff will specify at
10 the end of each hearing exactly what is expected
11 and the date when the person must submit this
12 evidence to the Office of Zoning. After the
13 record is closed no other information will be
14 accepted by the Board. The Sunshine Act requires
15 that a public hearing on each case be held in the
16 open before the public. The Board may consistent
17 with its rules and procedures and the Sunshine
18 Act enter into Executive Session during or after
19 a public hearing on a case for purposes of
20 reviewing the record or deliberating on a case.
21 The decision of the Board in these legislative
22 proceedings must be based exclusively on the

1 public record, to avoid any appearance to the
2 contrary the Board requests that persons present
3 not engage the members of the Board in
4 conversation. Please turn off all beepers and
5 cell phones at this time as to not disturb these
6 proceedings. At this time the Board will
7 consider any preliminary matters, preliminary
8 matters relate to whether a case should or will
9 be heard today such as a request for
10 postponement, continuance or withdrawal or
11 whether proper or adequate notice of a hearing
12 was given. If you are not prepared to go forward
13 today or you believe that the Board should not
14 proceed, now is the time to raise such a matter.
15 Mr. Secretary, do we have any preliminary
16 matters?

17 MR. MOY: There are no preliminary
18 matters at this time Madam Chair.

19 CHAIRPERSON MOLDENHAUER: Thank you then
20 we can call the first case.

21 **Application No. 18162**

22 MR. MOY: The first case would be

1 Application No. 18162 of the Embassy of the
2 Republic of Congo, this is pursuant to 11 DCMR
3 1002, 350.6, and Section 206 of the Foreign
4 Missions Act to allow the location of a Chancery
5 in the DC/R5-D District at premises 1720 16th
6 Street, N.W., (Square 178, Lot 800). Madam Chair
7 this is a continued hearing from February 8,
8 2011.

9 CHAIRPERSON MOLDENHAUER: Thank you the
10 parties can please step forward.

11 MR. BROWN: Good morning Madam Chair and
12 Members of the Board, I'm Patrick Brown from
13 Greenstein, DeLorme and Luchs on behalf of the
14 Republic of Congo, to my left Ambassador Mombouli
15 and to my right Emily Eig from Traceries. I'd
16 like to defer to Mr. Ambassador for some brief
17 remarks and then quickly focus in on the case and
18 I think there have been some positive and
19 substantial developments in the last hour or so
20 this morning which should make our mission
21 quicker and simpler, so Ambassador.

22 AMBASSADOR MAMBOULI: Thank you Mr.

1 Patrick, Madam Chairperson thank you very much,
2 Members of the Board, good morning and thank you
3 again for allowing me the opportunity to present
4 a case of the Republic of Congo. As you know we
5 have been interested to purchase the building in
6 question on 16th Street since October 2010, so the
7 process has been going on now almost for 6
8 months, and our interest is still the same,
9 because of all the direction that we had during
10 our last hearing when we left here we decided to
11 withdraw our request for the driveway which was
12 the argument for opposition (inaudible) who
13 didn't want to hear about it and with that
14 consideration however our interest for the
15 building remains the same we are here today to
16 redirect that request. You will here a Member of
17 the Board, Madam Chair, some opposition here but
18 I think at this point opposition that you hear
19 here will not be based on the facts, DuPont
20 Circle Conservancy sent you a letter that I have
21 a copy here saying that they don't think that the
22 2 million dollar will not be enough to preserve

1 the property or to renovate the property, it's
2 just I think afraid talk because it is not based
3 on specific argument, it's not based on specific
4 facts, our number of 2 million dollar for
5 (inaudible) it's based on the estimate that we
6 requested from a reputable company that are based
7 here in Washington and have experience in
8 renovating historical building or other office
9 building in Washington D.C. So basically the
10 opposition that you hear from people here will be
11 based a little bit on emotions but not really on
12 the facts like I said I will therefore request
13 that the Board calmly allow us to purchase and
14 acquire this property, it will be preserved, we
15 understand that it's an historical building, we
16 like it that's why we are spending million of
17 dollars to buy it, we will preserve it and we
18 will make it even nicer. At this point the
19 properties vacant, people who purchased it before
20 already left the property its on short sale
21 process and that short sale contract is ending
22 very soon in less than a week so we have kindly

1 requested that the Board support this
2 application, approve this application and to
3 really not consider opposition that are mainly
4 based on emotions but not facts. Thank you very
5 much Madam Chair, thank you very much Members of
6 the Board.

7 MR. BROWN: There's certainly no need to
8 begin where we started, at the conclusion of the
9 last hearing there were several issues of
10 remaining outstanding, the first was the driveway
11 being proposed from Riggs Place, that as you see
12 on the plans and in the correspondence and in my
13 supplemental submission has been withdrawn so
14 that the property, the streetscape of this
15 property remains in it's existing condition on
16 Riggs Place and on the 16th Street façade no
17 interference in the improvements that are there
18 or the metro bus stop or no new curb cuts. The
19 other historic preservation issue which was being
20 requested and still is and shown on the plans is
21 the entrance to the rear parking area from the
22 alley and I'll defer to Ms. Eig on that issue

1 specifically and then the last issue was the
2 question of valet parking for the very limited
3 special events and diplomatic functions proposed
4 from the site. This morning I and Mr. Moy and Mr.
5 Jackson received an email from Jeff Jennings at
6 DDOT indicating that based on the information we
7 provided for accommodating off street parking for
8 valet parking events, the DDOT was supporting the
9 application and then in turn stilling Mr.
10 Jacksons thunder slightly he has concluded based
11 on that information that the application is now
12 in the "municipal interest", again that all
13 occurred through the offices of email which we
14 can't escape but we can benefit from sometimes.
15 So I think unless the Board has other questions
16 the sole issue that I think worthy of our
17 attention involves the penetration of the rear
18 wall and the four parking spaces from the alley.
19 With that Ms. Eig put a report in to our
20 supplemental submission but I'll defer to her on
21 that issue and any questions the Board may have.

22 MS. EIG: Good morning I'm Emily Hotaling

1 Eig, the report that I put together for your
2 benefit was based on addressing this issue of the
3 appropriateness of cutting through the back wall
4 to create an opening for parking in the rear yard
5 of the property and in the report which you all
6 have a copy of I understand that there are
7 photographs that essentially the rear wall is at
8 the section that is being proposed for
9 penetration is a new wall, the wall was
10 constructed in the recent past, it's obvious from
11 the brick and you can even see that the bricks
12 have holes in them which is a very contemporary
13 idea to prove materials, so cutting through that
14 wall, as I think you know the Historic
15 Preservation Review Board also did not have a
16 problem with cutting that opening into the rear
17 wall. There was a suggestion made of keeping the
18 rear wall and instead going through the existing
19 garage door that is on the alley and then cutting
20 through the garage and while on the surface that
21 sounds like a good solution, the fact is that the
22 garage is an original element of the building and

1 that garage wall that would be cut is original
2 wall. The garage door that is there is not an
3 original door, the garage is entered from the
4 door, was entered from the door that is on the
5 side street. So if you use the garage door there
6 you would then have to cut through the original
7 door. It might be better to close off that
8 garage door and put an opening in the non-
9 original wall, because you can always build the
10 wall back but you can't put back the original
11 material, so that is the basis of that assessment
12 which was not in my report, because I didn't
13 consider it as an appropriate solution to the
14 problem. The parking on the rear yard, the rear
15 yard there is a photograph there, it has been
16 landscaped in the fairly recent past and well of
17 course we prefer not to ever have to park in the
18 rear yard, we know that there's minimal, this is
19 the only change that will take place to the
20 exterior that is not in the pure rehabilitation
21 of the building and there would be a gate to the
22 parking and it would keep parking off the street

1 for this use, so it's not a preservation issue
2 it's a different issue. So generally that this
3 makes a much nicer presentation without the
4 benefit of the new driveway being put in at all,
5 we have very minimal changes to the exterior of
6 the building and the changes that take place will
7 not effect any historic fabric.

8 CHAIRPERSON MOLDENHAUER: Do Board
9 Members have any questions for Ms. Eig or any
10 other?

11 MR. MAY: Yeah, I'm just looking at the
12 rear wall I'm a little confused about what I'm
13 looking at and so on the third page of your
14 report we have figure one it says view of non-
15 original rear wall looking northeast so that's
16 the...

17 MS. EIG: That's the above it printed
18 out, it's the top picture is the new portion of
19 the wall, the bottom picture, the caption that
20 came on page 4 and that's the portion of the wall
21 that is original, that is to if we looked at the
22 back would be to the right of that garage door

1 opening whereas the picture on the top is to the
2 left.

3 MR. MAY: Got it, okay.

4 MS. EIG: Sorry about that print out.

5 MR. MAY: That's okay, and it looks like
6 there's some sort of an eave that's overhanging
7 on the top picture and eave that's overhanging
8 where the entrance gate, where the personnel
9 entrance gate is, am I understanding that
10 correctly?

11 MS. EIG: I think its not, if you look at
12 the lower picture that is the little edge of that
13 there's that blue...

14 MR. MAY: Oh it's just a garage, a roll
15 up door or something.

16 MS. EIG: It's just a very, it's right up
17 against that, it's just painted that blue color
18 as is the, the gate that's there has been
19 completely obscured with some kind of a plywood
20 that's been painted or something like that, so
21 you can't see into the garage there.

22 MR. MAY: Okay so this, the rear wall is

1 very recent vintage.

2 MS. EIG: Yes.

3 MR. MAY: Okay and then on page 5; figure
4 4, where the wall at the rear of the building is
5 the brown brick to the right and then the north
6 side wall is that red brick that's what borders
7 the neighbor's property.

8 MS. EIG: Exactly, I was just showing how
9 they constructed it there and...

10 MR. MAY: Alright and then the last
11 question is on page 6 non-original east wall.

12 MS. EIG: It's a very, it's just, that's
13 not being touched at all, just wanted to show
14 that that's another place, the fact is that
15 brick, it's hard to see in this photograph but
16 that was done at some later point, it's just
17 another...

18 MR. MAY: And that's the little gate
19 that's to the north of the house at the rear yard
20 there.

21 MR. EIG: It wouldn't be touched in this
22 proposal.

1 MR. MAY: Too bad.

2 MS. EIG: Would you like it to be
3 repaired?

4 MR. MAY: Well the arch there is poorly
5 done, so.

6 MS. EIG: Yeah it looks like it was not
7 just built but then repainted at sometime so I
8 think that would fall under the rehabilitation
9 rather than the issues that I was looking at.

10 MR. MAY: It's a side note..

11 MS. EIG: Yes the wall is in poor
12 condition all the way around it really needs to
13 be attended to.

14 MR. MAY: Okay, then I just had a
15 question about the valet parking situation you
16 gave us some information about opportunities for
17 valet parking, where the vehicles could go at the
18 various parking lots in the area and maybe I
19 missed it but I didn't see an indication that
20 you've added those locations with the valet
21 companies and they say those could work?

22 MR. BROWN: And we did not do that I think

1 a point that's developed in my discussion with
2 Mr. Jennings with DDOT and clearly I think his
3 preference was the Spanish Rights Temple...

4 MR. MAY: Scottish.

5 MR. BROWN: Scottish rights excuse me, it
6 was referring a Spaniard case before the FMBZA
7 his preference given proximity was the Scottish
8 Right facility and through pictures and other
9 discussion there are at least 33 parking spaces
10 there, the significance of the Spanish Chancery
11 case was that the Board acknowledged that as an
12 off street valet parking venue for valet parking,
13 whether that would be available on any given
14 night is something that we would have to look far
15 and in the future when they're scheduling and
16 event but I think there are enough resources in
17 the immediate area. Mr. Jennings made it clear
18 that whatever permit application was submitted
19 for valet parking would be judged at that time
20 based on the specific circumstances so we didn't
21 think it was necessary or appropriate to go...

22 MR. MAY: Are you aware that whoever's

1 responsible for the Scottish Right Temples are
2 actually does this?

3 MR. BROWN: They did it in the case of
4 the Spanish..

5 MR. MAY: They agreed to it, was that
6 part of the case?

7 MR. BROWN: Yes it was referenced in the
8 decision that that was one of the available
9 parking resources whether it would be used on any
10 given time we..

11 MR. MAY: Just so we know that there is
12 some willingness on the part of the people
13 responsible for that parking lot to engage in
14 some kind of an arrangement.

15 MR. BROWN: That was the understanding in
16 the earlier Spanish case as well as with DDOT.

17 MR. MAY: Alright, thanks.

18 CHAIRPERSON MOLDENHAUER: Any additional
19 questions from Board Members?

20 MR. BROWN: And I think through the first
21 hearing as well as this morning we've gone
22 through the six criteria and effectively

1 satisfied all six. I would like to conclude with
2 a point that Mr. Ambassador made is that the
3 short sale window of opportunity for this
4 property is about to close I believe on the 11th,
5 which is Friday, so that in keeping with the
6 Boards commitment earlier we'd like to take
7 advantage for the opportunity for a bench
8 decision today so that the short sale opportunity
9 is not lost and the other implications for the
10 property and for the Republic of Congo.

11 CHAIRPERSON MOLDENHAUER: At this point
12 I'm just going to turn to see if there are any
13 additional comments based on the revisions from
14 the U.S. Secretary of State if there aren't we
15 don't need to call you I just want to make sure
16 to give everyone an opportunity. I'll now turn
17 to the Office of Planning to see if there's any
18 additional updated submissions that they need to
19 present.

20 MR. JACKSON: Madam Chair thank you, my
21 name's Arthur Jackson of the Office of Planning,
22 I just wanted to step through our earlier support

1 to highlight the issues that have been updated
2 with respect to submissions and actions on the
3 part of the Applicant, initially we said that we
4 could not make a recommendation at that time
5 because we needed more complete information about
6 provisions of off street parking for events at
7 this location in light of what the Department of
8 Transportation indicated in their email and in
9 conversations with the Office of Planning they
10 are satisfied that there are available resources
11 identified and that the Applicant going through a
12 licensed vendor for valet parking did have
13 potential to find locations for parking for their
14 events. The Applicant also indicated that
15 instead of the 12 events that previously had been
16 indicated there will be 2 to 3 a year for up to
17 50 people so that addressed the issue of off
18 street parking for those events. In terms of the
19 explanations of the criteria not previously
20 addressed in the 1002 of the Zoning Regulations
21 the Representative of the Department of State
22 addressed those issues during the last hearing in

1 terms of modifying the plans to address concerns
2 mentioned by the Historic Preservation Office the
3 Applicants have made the changes necessary to
4 address those concerns. In light of all of that
5 and the fact that the Department of
6 Transportation is satisfied that the parking
7 issue could be addressed we can now make a
8 recommendation that in line with this application
9 being consistent with the municipal interest with
10 regard to both the use and the proposed changes
11 that have been presented and so we recommend
12 approval at this time.

13 CHAIRPERSON MOLDENHAUER: Thank you very
14 much do Board Members have any questions for the
15 Office of Planning or Mr. Jackson? Seeing none
16 thank you for your updated report. Are there any
17 other individuals in the audience from any
18 government agencies that would need to present?
19 I don't see anybody, is there anybody present
20 from the ANC that would like to present testimony
21 based on the changes that have occurred? Seeing
22 none, are there any individuals in support or in

1 opposition of this case? Seeing one individual
2 if you could step forward. You will be proved
3 three minutes.

4 MR. BOWER: Good morning Madam Chair and
5 Members of the Commission, I'm Tom Bower, I'm
6 Vice President of the DuPont Circle Conservancy,
7 first we do want to thank the Ambassador and the
8 Republic of Congo for the changes that they've
9 made up to now we greatly appreciate that things
10 have been dramatically improved since the first
11 application. In the interest of time most of the
12 statements we've heard you've repeated so I'm not
13 going to repeat them. Our concern is primarily
14 about the future and the membership of the
15 organization has a number of architects and real
16 estate professionals and one of the things you
17 know if you live in the Soric House is it's an
18 open ended wallet and we were not aware that the
19 estimate was professionally based on a 2 million
20 dollar expense but among their general concern
21 was that might, or might not be adequate so that
22 was as much a caution to the purchaser that these

1 homes are wonderful and that home is particularly
2 wonderful but if you even walk by it, it needs a
3 tremendous amounts of work, so if there are
4 professional estimates that seem to belay the
5 concern we wish the Republic of Congo all the
6 best but we have to add that caution, we remain
7 opposed just because we think that it will be a
8 major problem.

9 CHAIRPERSON MOLDENHAUER: Anything
10 further?

11 MR. BOWER: No.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much Mr. Bower for coming down. That being said
14 then at this point in time there are no
15 additional individuals in the audience and so we
16 will conclude this hearing and we will enter into
17 deliberation. I will start us off, we have our
18 criteria under 206D of the Foreign Missions Act
19 and this case is to, I'll review that, we have
20 criteria one which addresses whether or not the
21 Foreign Mission assists the U.S. Government in
22 maintaining a diplomatic relationship with

1 international communities, we had a testimony
2 from the U.S. Secretary of State that they are in
3 support of that and so we rely upon that and move
4 forward. Next our second criteria is determining
5 whether or not there's any effect or aspect of
6 this property which would effect the historic
7 preservation for the District of Columbia and
8 that aspect we look to the Office of Planning,
9 we've looked to HPO in their reports, we've heard
10 testimony from Ms. Eig and I think that in my
11 opinion the removal of the initial curb cuts and
12 the front drive way is a huge aspect in regards
13 to alleviating a lot of the concerns in that
14 regard, then the second question would be
15 potentially the new entrance into the rear of the
16 property, while I do think that it does, it's a
17 loss to lose that rear garden area for historic
18 preservation purposes I don't think that based on
19 testimony we've heard today in reviewing the
20 record from HPO and from the other submissions we
21 have it arises to a level where it would be
22 something where it would potentially stop us from

1 being able to support the application. Next we
2 look at the question of adequacy of parking and
3 we look to the Secretary of State for that issue
4 and there's no concerns for security purposes for
5 parking that was something initially discussed in
6 regards to the potential driveway issue but that
7 was not something that there was any issue with
8 and so we then another question which has kind of
9 come up under the issue of parking has been the
10 issue for valet parking and we've heard testimony
11 today both from the Office of Planning relaying
12 information from DDOT and that agency that they
13 are satisfied with the current submission and
14 that the applicant will look towards providing
15 valet parking at locations such as the S.
16 Scottish Right, we did have some questions from
17 Board Members trying to see if the Embassy of
18 Congo, or the Republic of Congo has kind of gone
19 into some additional questioning with valet
20 companies or with the Scottish Right, they
21 haven't but it seems as though we're relying upon
22 the fact that at least it's there and that

1 there's an update potentially about 33 parking
2 spaces there to provide sufficient valet parking.
3 That being said we then look to the extent to
4 which the area is capable of providing adequate
5 protection, and we look to the U.S. Department of
6 State and heard testimony and that criteria is
7 satisfied, we then look to the municipal interest
8 as determined by the Mayor and we look to the
9 Office of Planning and as we just heard from Mr.
10 Jackson with his revised in additional
11 deliberation and discussion that that is
12 satisfied and then we look to the Federal
13 interest as determined by the Secretary of State
14 and we have written submissions and we had oral
15 statements indicating that they were in support.
16 That being said we have heard some level of
17 opposition to this case both at the prior hearing
18 and at this hearing including the recent
19 discussion from Mr. Bower the DuPont Circle
20 Conservancy and other local organizations about
21 their concerns. While I wholly agree with the
22 issue of living in an old house costs money, I

1 live in a 133 year old house and I know it costs
2 money but I think, unfortunately it's not
3 something that we have the ability to evaluate a
4 case on. I definitely loving my city and I know
5 that the Republic of Congo will love being in the
6 city as well and we'll take care of this
7 beautiful historic property to the best of their
8 ability we can't look at that as a factor in
9 evaluating a case like this. That being said I
10 think that a lot of the other concerns that are
11 in the record have been adequately addressed in
12 regards to the fact that the withdrawal of the
13 driveway and based on the support of Historic
14 Preservations and support of OP so that being
15 said I see no issue with this application and I
16 would be in support of not disapproving this
17 case. I'll open up the floor to any additional
18 deliberation.

19 MR. MAY: I would agree Madam Chair with
20 your analysis across the Board, I would say that
21 the issue of the ongoing, or the future
22 renovation and then ongoing maintenance of the

1 property is a question of municipal interest but
2 we look to the Office of Planning to make the
3 determination about whether they are comfortable
4 proceeding with this and since they're
5 recommending approval I don't see any reason why
6 we would not. I would just want to register my
7 own concern that not knowing anything about the
8 condition of the building 2 million may not be
9 adequate I mean this is a very large building it
10 looks like it's in the neighborhood of 10,000
11 square feet, 2 million dollars, 200 dollars a
12 square foot for a major renovation if that's
13 what's in store 200 dollars a square foot isn't
14 going to be enough, now maybe its mostly exterior
15 work and then inside is less significant, I just
16 would want to express my own concern that I t
17 just doesn't sound, like it's a generous budget
18 and I would be concerned about whether your going
19 to have enough to do it with that amount of
20 money, again not knowing the scope it may be
21 plenty of money, I'll just register that. Again,
22 it all goes back to the Office of Planning and

1 what they have to say and since they believe this
2 is in the municipal interest I think that's the
3 threshold that had to be met. So that's it
4 otherwise I would agree with your analysis and
5 would support not disapproving this, is that the
6 right wording, whatever it is.

7 CHAIRPERSON MOLDENHAUER: Yes, any other
8 individuals want to weigh in on this case seeing
9 none then I would support a motion to not
10 disapprove Application No. 18162 on behalf of the
11 Embassy of the Republic of Congo, motion has been
12 made is there a second?

13 MR. ACOSTA: Second.

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

16 CHORUS: Aye.

17 MR. MOY: Staff would record the vote as
18 4 to 0 to 1; this is on the motion of Ms.
19 Moldenhauer the Chairperson to not disapprove
20 Application No. 18162 of Humberto T. Gonzalez and
21 Francisco H. Gonzalez on behalf of the Embassy of
22 the Republic of Congo, seconded motion Mr.

1 Acosta, in support of the motion Ms. Sorg and Mr.
2 Peter May, no other Board Members are
3 participating, again the final vote is 4 to 0 to
4 1.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much Mr. Moy and seeing that there was no formal
7 opposition I think we can have a summary order be
8 issued, no summary orders? Okay, so..

9 MS. NAGELHOUT: It's a rule making so
10 I'll direct a notice of the usual order.

11 CHAIRPERSON MOLDENHAUER: Just trying to
12 make sure that we provide it as timely as
13 possible, thank you, thank you very much.

14 **Morning Session**

15 CHAIRPERSON MOLDENHAUER: This hearing
16 will please come to order, good morning ladies
17 and gentleman, this is the March 8, 2011, Public
18 Hearing of the Board of Zoning Adjustments for
19 the District of Columbia, my name is Meredith
20 Moldenhauer, Chairperson, joining me today to my
21 left is the Vice Chair Nicole Sorg,
22 Representative of the Zoning Commission is Conrad

1 Schlater to her left and to my right is Jeffrey
2 Hinkle, Representative of the National Capital
3 Planning Commission. Copies of today's meeting
4 agenda are available to you and are located to my
5 left in the wall bin near the door. Please be
6 advised this proceeding is being recorded by a
7 court reporter and is also being webcast live.
8 Accordingly we must ask you to refrain from any
9 disturbing noises or actions in the hearing room.
10 When presenting information to the Board please
11 turn-on and speak into your microphone first
12 stating your name and home address. When you are
13 finished speaking please turn-off your microphone
14 so that your microphone is no longer picking up
15 sounds or background noise. All persons planning
16 to testify either in support or in opposition are
17 to fill out two witness cards these cards are
18 located to my left on the table near the door and
19 are also on witness tables. Upon coming forward
20 to speak to the Board please give both cards to
21 the court reporter sitting to my right. The order
22 of procedures for special exceptions and

1 variances are as follows: 1. Statement of the
2 Applicant and Applicant's Witnesses. 2. Parties
3 and persons in support. 3. Parties and persons in
4 opposition. 4. Government Reports including
5 Office of Planning and Department of
6 Transportation. 5. Reports from the ANC. 6.
7 Rebuttal and closing statements of the Applicant.
8 Pursuant to Section 3117.4 and 3117.5 the
9 following time constraints will be maintained,
10 the Applicant/Appellant persons and parties
11 except an ANC in support including their
12 witnesses will be given 60 minutes collectively.
13 The Appellees persons and parties except an ANC
14 in opposition including witnesses will be given
15 60 minutes collectively. Individuals will be
16 given 3 minutes and associations or organizations
17 will be given 5. These time restrictions do not
18 include cross examinations or questions from the
19 Board. Cross examination of witnesses is
20 permitted by a party or an Applicant. The ANC
21 within which the property is located is
22 automatically a party to a special exception or

1 variance case. Nothing prohibits the Board from
2 placing reasonable restrictions on cross
3 examination including time limitations or
4 limitation on the scope of cross examination.
5 The record will be closed at the conclusion of
6 each case except for any materials specifically
7 requested by the Board. The Board and the Staff
8 will specify at the end of each hearing exactly
9 what is expected and the date when the material
10 must submitted to the Office of Zoning. After the
11 record is closed no other information will be
12 accepted by the Board. The Sunshine Act requires
13 that a public hearing on each case be held in the
14 open before the public. The Board may consistent
15 with its rules and procedures and the Sunshine
16 Act enter into Executive Session during or after
17 a public hearing on a case for purposes of
18 reviewing the record or deliberating on a case.
19 The decision of the Board as in these contested
20 cases must be based exclusively on the public
21 record, to avoid any appearance to the contrary
22 the Board requests that persons present not

1 engage the members of the Board in conversation.
2 Please turn off all beepers and cell phones at
3 this time as to not disturb these proceedings.
4 At this time the Board will consider any
5 preliminary matters, preliminary matters relate
6 to whether a case should or will be heard today
7 such as a request for postponement, continuance
8 or withdrawal or whether proper or adequate
9 notice of a hearing was given. If you are not
10 prepared to go forward today or you believe that
11 the Board should not proceed, now is the time to
12 raise such a matter. Mr. Secretary, do we have
13 any preliminary matters?

14 MR. MOY: Not at this time Madam Chair.

15 CHAIRPERSON MOLDENHAUER: Thank you, then
16 all individuals wishing to testify today please
17 stand and take the oath.

18 MR. MOY: Do you solemnly swear or affirm
19 that the testimony you're about to present at
20 this preceding is the truth, the whole truth and
21 nothing but the truth. You may consider yourself
22 under oath.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much Mr. Moy and we can all our first case.

3 **Application No. 18177**

4 MR. MOY: That would be Application No.
5 18177, of Kevin and Kristie Hassett, pursuant to
6 11 DCMR 1515.1 and 3104.1 for a special exception
7 to allow a one story rear addition to an existing
8 one family detached dwelling, not meeting the lot
9 occupancy requirements under (Subsection 1513.1)
10 in the TSP/R-1-B District at premises 2811 34th
11 Place, N.W. property is located in (Square 1941,
12 Lot 7), there is a request for proponent party
13 status request Madam Chair.

14 CHAIRPERSON MOLDENHAUER: Thank you very
15 much, if the Applicant can step forward, okay you
16 still have to take a seat and introduce yourself
17 by turning on your microphone.

18 MS. HASSETT: Kristie Hassett, 2811 34th
19 Place, N.W. Washington, D.C. 20007.

20 CHAIRPERSON MOLDENHAUER: And is Daniel
21 Witt in the audience? Seeing that he is it's a
22 preliminary matter that we received a party

1 status request if he's not present we then would
2 not be able to consider that but it's proponent's
3 application so that's really not that crucial.
4 Okay Ms. Hassett we would then turn to you and
5 you can either present information if you would
6 like to stand on the record.

7 MS. HASSETT: I would like to stand on
8 the record.

9 CHAIRPERSON MOLDENHAUER: So that being
10 said then I'll turn to the Board to see what
11 questions any Board Members have regarding the
12 application of the Applicant.

13 MR. SCHLATER: Good morning Ms. Hassett,
14 I think the record is pretty full in this case
15 and you've submitted a good package here and
16 you've got the support of your neighbors and I
17 don't think there are a lot of objections here.
18 I do have one question about the tree and slope
19 overlay requirements there's additional burden
20 that needs to be demonstrated specifically that
21 the Applicant shall demonstrate that there are
22 specific physical characteristics of the lot that

1 justified the exception. Can you explain what
2 are the physical characteristics of the lot that
3 necessitate relief here?

4 MS. HASSETT: It's my understanding that
5 our architect wants to put the addition out about
6 three feet on footers because we do have an
7 existing concrete patio slab that no one knows
8 the structural integrity of, there are no trees
9 coming down and the grade will not change and he
10 wants to do that to make sure that in fact there
11 is solid support for it.

12 MR. SCHLATER: And I don't know if
13 there's more to say on it, I just question
14 whether that relates to the specific physical
15 characteristics of the lot itself I mean that
16 speaks to the foundation of the building and the
17 patio and whether or not there's structural
18 support there, I think that's for us to discuss
19 up here and determine if that's sufficient.

20 CHAIRPERSON MOLDENHAUER: I share that
21 same concern as you do and so I'm just looking at
22 the lot and seeing is there anything else in your

1 view that would identify the property as having
2 any special physical characteristics?

3 MS. HASSETT: The only thing that I can
4 say is that the addition I'm not sure what your
5 talking about in terms of what you mean by the
6 characteristics of the lot, there are no trees
7 coming down, there is no sloping change, the
8 addition would not go back beyond the existing
9 back wall of our kitchen, I don't know what to
10 add on top of that, there would be no impact on
11 the neighbors or anything impacting the trees or
12 the slope of our ground.

13 MR. SCHLATER: Ms. Hassett I think I
14 agree that this would not have an impact on your
15 adjacent neighbors and if this were a straight up
16 and down special exception review I don't think
17 we'd have a problem, there are these additional
18 requirements that we are required to consider
19 when looking at an application and when we talk
20 about the lot, we're not talking about the
21 building, we're talking about the characteristics
22 of the piece of land that you own and whether

1 there's anything abnormal about it that would
2 justify the exception.

3 MS. HASSETT: I don't think that we would
4 be able to do the addition without the extra
5 supports, I don't know, my architect is not here
6 he's working in Haiti right now and it was my
7 understanding that he thought this would satisfy
8 the requirements.

9 MS. SORG: I think maybe one of the ways
10 that we can learn a little bit more about this
11 and the discussions that you've had with your
12 architect regarding the structural issues that
13 your bringing up and how that may or may not be
14 connected with the specific characteristics of
15 the existing property. Maybe if you just go
16 through a little bit of what's there now and how
17 you're using the existing condition in your
18 addition.

19 MS. HASSETT: Do you mean the existing
20 space right now there are simply, it's an empty
21 patio at the moment it's not being used. The
22 ground there, there are no plantings around it,

1 I've had them all moved, there are no trees
2 coming down, there is no grading change, our
3 neighbors do not object in fact have letters of
4 not a position, the ANC does not object this will
5 bring us back to the level with the back of our
6 kitchen, there is no, there is nothing on the lot
7 that would be destroyed or harmed, I understand
8 that we're in a special zone with respect to
9 trees and parkland and that's why I understand
10 that we have to get the special exemption and
11 nothing is happening, there's no trees coming
12 down.

13 CHAIRPERSON MOLDENHAUER: Do either Board
14 Member have any additional questions for the
15 Applicant?

16 MR. SCHLATER: One question, just on the
17 grade of the lot, it looks like as you exit the
18 rear of your home it slopes away, down.

19 MS. HASSETT: There is a slight grade, it
20 is not steep, but yes I think that's true if you
21 put a marble there I think it might roll in that
22 direction if you gave it a little push. It's my

1 understanding that our contractor intends to use
2 the existing drainage and will not make any
3 changes to the downspouts.

4 MR. HINKLE: So in terms or construction
5 there's a limit on the effect of the topography,
6 as you mentioned you're not tearing down trees..

7 MS. HASSETT: No in fact we limited it,
8 there's a very large Crepe Myrtle which is
9 intentionally not being touched and we had some
10 lilac bushes which I've moved, so there's really
11 no plants that are coming down.

12 MR. HINKLE: Thank you.

13 MR. SCHLATER: Was there any
14 consideration given to moving the brick slab, the
15 patio?

16 MS. HASSETT: We were hoping to avoid
17 that because of the cost and also just disturbing
18 the general foundation of the house that we could
19 just build this over it without disturbing.

20 MR. SCHLATER: So that, can you describe
21 what's going on underneath that.

22 MS. HASSETT: No body is sure what's

1 going on underneath that, there is no room under
2 there it is simply ground, but the structural
3 condition of it was something that we were just
4 hoping to avoid getting close to our foundation.

5 MR. SCHLATER: Understand, there's a
6 possibility that it's integral to your
7 foundation?

8 MS. HASSETT: I would assume so it's also
9 brick and it's, I don't know if this is the right
10 word, seamless.

11 MR. SCHLATER: That sounds right. Okay
12 no further questions thank you.

13 CHAIRPERSON MOLDENHAUER: Any other
14 questions from Board Members. That being said
15 then at this point in time I'll look to see if
16 there's any individuals in the audience in
17 support, seeing none I will reference that we do
18 have a couple of letters in our record indicating
19 support of the Applicant from neighboring
20 properties. In addition to that are there any
21 individuals in the audience in opposition to this
22 case? Seeing none we'll then turn to the Office

1 of Planning for their report.

2 MR. MORDFIN: Good morning Madam Chair,
3 Members of the Board, I'm Stephen Mordfin with
4 the Office of Planning, and the subject
5 application is in conformance with the criteria
6 for the granting of the special exception to
7 increase the lot occupancy because no tree
8 removal, grading or topographical changes are
9 proposed and the specific characteristics of the
10 lot is that the Applicant is unable to determine
11 the condition of the concrete slab that is
12 attached to the rear of the dwelling and instead
13 proposes to construct a new foundation bridging
14 over the existing slab to support the new room.
15 The proposed addition would be generally
16 consistent with the TSP overlay because it would
17 not effect any trees, alter topography, or
18 adversely effect parkland or trees and
19 neighboring property owners have submitted
20 letters to the file in support of the application
21 and the application included a site plan for
22 development, therefore the Office of Planning

1 recommends that the subject application be
2 approved, thank you.

3 CHAIRPERSON MOLDENHAUER: Thank you does
4 the Applicant have any questions of the Office of
5 Planning?

6 MS. HASSETT: No.

7 CHAIRPERSON MOLDENHAUER: Do any Board
8 Members have any specific questions for the
9 Office of Planning?

10 MR. SCHLATER: Sure, Mr. Mordfin do you
11 think that rear deck and foundation system
12 qualifies as a specific characteristic of the
13 lot?

14 MR. MORDFIN: I thought it does qualify
15 because it is an improvement to the lot that must
16 be dealt with and anything that happens to this
17 piece of property, so it was constructed there at
18 one time, it is still there, so it has become
19 part of the lot, it's not part of the shape or
20 the size of the lot but it's an improvement to
21 the lot that permanently effects to it, so
22 therefore I do think it is a specific

1 characteristic.

2 MR. SCHLATER: You wouldn't think that
3 you should just remove that; I mean if it were
4 removed then you wouldn't have the problem,
5 correct?

6 MR. MORDFIN: That is correct but it is
7 also attached to the dwelling and they were going
8 to build above it so..

9 MR. SCHLATER: Okay thank you.

10 CHAIRPERSON MOLDENHAUER: Are there any
11 other physical aspects of the lot that
12 potentially we could look at to satisfy this
13 prong?

14 MR. MORDFIN: In reference to you mean
15 like the site, the shape or the size, or the
16 topography?

17 CHAIRPERSON MOLDENHAUER: The shape, or
18 the size or the topography or any other physical
19 aspects?

20 MR. MORDFIN: I don't think there are any
21 other physical aspects of this property are
22 unusual, I think it's rectangular relatively

1 level lot, not completely level as was discussed
2 but I think it's other than that I think the
3 shape and size of the property is typical.

4 CHAIRPERSON MOLDENHAUER: No trees will
5 be removed at all in this design.

6 MR. MORDFIN: That is my understanding.

7 CHAIRPERSON MOLDENHAUER: Okay, I have no
8 other questions of the Office of Planning do any
9 other Board Members have any questions for the
10 Office of Planning? Seeing none then we'll turn
11 to the ANC, is anybody present from ANC 3-C?
12 Seeing no one I will indicate we have "Exhibit
13 No. 26" in our record which indicates that at a
14 duly called public meeting with a quorum present
15 of 9, 5 of 9 Commissioners the ANC 3-C submitted
16 a resolution that they have no objection to the
17 application, that resolution satisfies our
18 standard and will receive great weight. That
19 being said we'll turn back to the Applicant for
20 any closing remarks.

21 MS. HASSETT: I certainly agree with what
22 the Office of Planning proposes with respect to

1 considering what the lot actually is.

2 CHAIRPERSON MOLDENHAEUR: Any follow up
3 questions for the Applicant? Seeing none then
4 are there any additional submissions that any of
5 the Board Members would like to see? No, then
6 thank you and this would conclude the hearing and
7 we'll enter into deliberation. We have, I'll
8 start us off, a fairly straight forward 223 case
9 the only unique aspect of this case is that it's
10 also in the Tree and Slope Protection Overlay
11 District as I think has been kind of parsed out
12 by some of our Board Members including Mr.
13 Schlater, so in general under the 223 standard I
14 really see no issue with this case in regards to
15 the addition, the question is the special
16 exception under the Section 1515.1 and so the
17 question then is does the Applicant satisfy the
18 special exception standard under 1515, and so we
19 look at the issue of are there any trees that are
20 being removed, any changes in the grading or the
21 topography and both the Applicant submission and
22 the Office of Planning indicate that there is no

1 changes or removal of any trees, this is being
2 built on top of a concrete slab that preexists
3 and then the second question is the more
4 challenging decision is has the Applicant
5 demonstrated that there's any specific character,
6 physical characteristics of the lot that justify
7 the exception. I think here there's a very
8 dominimus exception that's being made because
9 there are no changes to any of the trees or
10 slopes or topography thus the minimal condition
11 of the fact that there's a concrete slab here I
12 think satisfies then this limited justification
13 for an exception because there's really no
14 exceptions as to the fact that there's no trees
15 that are going to be removed or a grade that's
16 going to be changed. Also the excepted building
17 and overall site plan of the lot shall be
18 generally consistent with the purpose of the TSP
19 Overlay District and the Office of Planning and
20 the Applicant submits that they are, and the
21 Board may impose reasonable requirements and I
22 don't think any potential reasonable requirements

1 that we could implement not that would be
2 required to further the TSP Overlay. That being
3 said I'll look to any further Board Members for
4 any additional deliberation.

5 MS. SORG: Thank you Madam Chair, I agree
6 with your analysis and I think you've gone
7 through the merits of the case fully. Just to
8 mention, you know, reiterate your point that the
9 relief that's being requested here is dominimus
10 and also I think through the testimony that we
11 heard from the Applicant and OP today I think
12 that questions I had regarding the second section
13 of 1515 I think have been discussed to my
14 satisfaction to support the application.

15 CHAIRPERSON MOLDENHAUER: That being said
16 is there any further deliberation from any Board
17 Members, seeing none I will submit a motion, a
18 motion to approve Application No. 18177 pursuant
19 to 11 DCMR 1515.1 and 3104.1 for a special
20 exception to allow a one story rear addition to
21 an existing one family detached dwelling not
22 meeting the lot occupancy required under

1 (Subsection 1513.1) in the TSP R-1-B District at
2 premises 2811 34th Place, N.W. a motion has been
3 made is there a second?

4 MS. SORG: Second.

5 CHAIRPERSON MOLDENHAUER: A motion has
6 been made and seconded, all those in favor say
7 aye.

8 CHORUS: Aye.

9 MR. MOY: Staff would record the vote as
10 4 to 0 to 1, this on the motion of the
11 Chairperson Ms. Moldenhauer to approve
12 Application No. 18177 for the special exception
13 relief as cited by the Chair, seconded by Ms.
14 Sorg, also in support of the motion Mr. Hinkle
15 and Mr. Schlater, no other Board Members are
16 participating. Again the final vote is 4 to 0 to
17 1.

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much Mr. Moy and seeing that we have no
20 opposition in that case I'd like to waive our
21 requirements and that a summary order be issued.

22 MR. MOY: Very good thank you Madam

1 Chair.

2 **Application No. 18178**

3 MR. MOY: The next application for Board
4 Action is Application No. 18178 of Elenora
5 Giddings Ivory, pursuant to 11 DCMR 3104.1 for a
6 special exception to allow a rear addition to an
7 existing one family detached dwelling under
8 Section 223, not meeting the rear yard, Section
9 404 requirements in the R-1-B District. This is
10 at premises 3630 13th Street, N.E. property is
11 located in (Square 3927, Lot 25).

12 CHAIRPERSON MOLDENHAUER: Good morning,
13 if when you take a seat you can turn on your
14 microphone and you can both introduce yourselves
15 for the record.

16 MS. GIDDINGS-IVORY: I'm Elenora Giddings
17 Ivory and I reside at 3630 13th Street, N.E.

18 MR. GIDDINGS: Edward Giddings and I
19 reside at 7503 in Ft. Washington, MD.

20 CHAIRPERSON MOLDENHAUER: Thank you both
21 and at this point in time we can turn to you to
22 either present your case or if you'd like you can

1 rest on the record as we have it before us.

2 MS. GIDDINGS IVORY: I'd like to rest on
3 the record but I'd also like to say we're kind of
4 anxious to get going, it's an old house and we'd
5 like to get going. I'd be happy to answer
6 questions, I did give some additional information
7 that shows the way that the addition is to be
8 drawn and an email that was sent from one of my
9 abutting neighbors, he sent it originally I think
10 to the wrong email address so I made a copy.

11 CHAIRPERSON MOLDENHAUER: Thank you, yes
12 we have received those in our submissions Do any
13 Board Members have any questions for the
14 Applicant?

15 MR. HINKLE: Thank you Ms. Ivory, I was
16 hoping you could just tell the story in terms of
17 what has occurred and how you got the permit and
18 how you learned that you were short in terms of
19 the rear yard, and how you discovered that.

20 MS. GIDDINGS IVORY: Okay well be began
21 the building with the demolition of the old part
22 of it which had these nails in it, I brought this

1 so you could see how old the house was. The
2 kitchen was really small in a large house and I
3 needed a kitchen that's larger, I have family
4 events there, so we went to an architect and had
5 the plans drawn up and the architect put on the
6 plans that required 20 feet or proved it was plus
7 or minus 22 feet. We took the plans through the
8 whole process with the permit office stamps along
9 the way and these are the plans here, and so if
10 you have the pictures you will see that it has
11 been constructed outside, so from the outside it
12 looks complete. When we went to get the wall
13 check it was discovered that because of rear
14 property wall not being even and because of the
15 amount of line that was given on the plans we
16 were short, it was at that point going to the
17 permit office that we discovered that it should
18 have been 25 feet and not 20 feet as was put on
19 the plans. So the wall check indicated that we
20 weren't at the 22.10 as you can see on the plans.
21 So it was just to build an extension from the
22 original house out 12 feet 4 inches and at that

1 point we discovered that it was too short, the
2 original house was too short which we discovered
3 also in the process. But the house has been
4 there longer than most of the houses around it.
5 The person who built the house was Ebenezer
6 Southall in 1900 and he just chopped off pieces
7 of it and other people took pieces of it. The
8 wall check company discovered that almost no
9 properties on that block have actual markers.
10 Also earlier in the summer Otis Street was
11 widened which also changed things so it's a
12 series of mishaps I'll say. The addition does
13 not in any way impinge on my existing driveway or
14 the neighbors. The neighbors are happy with
15 what's there and they want to enjoy it as much as
16 I will enjoy it, does that help you?

17 MR. HINKLE: That does, thank you, so you
18 originally you thought that you had the correct
19 space in terms of the required rear yard and on
20 further investigation you discovered the line
21 actually was not where you thought it was.

22 MS. GIDDINGS IVORY: It's a shock to me

1 and some of my of neighbors who want to put up
2 new fences, are a little concerned about where
3 their property ends and starts as well.

4 MR. HINKLE: Sure, thank you.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much Mr. Hinkle it was a very help question. Do
7 any other Board Members have any other questions
8 for the Applicant? Seeing none, thank you. Then
9 at this time I will look to see if there are any
10 individuals in the audience in support or in
11 opposition of this case? Seeing none, I'll just
12 reference that we do have letters of support in
13 the record. Are there any individuals in
14 opposition of this case? Seeing none, I'll turn
15 to the Office of Planning for their report.

16 MS. JACKSON: Good morning Chair, Members
17 of the Board, for the record my name is Arlova
18 Jackson with the Office of Planning, I'm happy to
19 stand on the record and just state that the
20 Office of Planning recommends approval of the
21 request and find that it meets all the standards
22 found within Section 223, and I'm happy to take

1 any questions you have.

2 CHAIRPERSON MOLDENHAUER: Thank you very
3 much; does the Applicant have any questions for
4 Ms. Jackson?

5 MS. GIDDINGS IVORY: Just wondering when
6 we can get started again.

7 CHAIRPERSON MOLDENHAUER: Do Board Members
8 have any questions for the Office of Planning?
9 Seeing none then at this time I turn to see if
10 there's anybody in the audience from the ANC?
11 Seeing no one in the audience from the ANC-5-A, I
12 don't believe we have anything in our report from
13 the ANC.

14 MS. GIDDINGS IVORY: I did talk to
15 Carolyn Steptoe who is the Commissioner for the
16 ANC and she had no difficulty, I have emails that
17 went back and forth between she and myself and
18 she felt comfortable with what was going on
19 especially since my abutting neighbors have no
20 problems.

21 MR. HINKLE: And she's seen this, you're
22 like 80% constructed or so is that correct?

1 MS. GIDDINGS IVORY: She knew exactly
2 which house is mine because I usually have a flag
3 outside, and she said or you're the house with
4 the flag.

5 MR. HINKLE: But she's seen the addition
6 as constructed so far?

7 MS. GIDDINGS IVORY: Yes.

8 MR. HINKLE: Okay, thank you.

9 CHAIRPERSON MOLDENHAUER: Thank you,
10 we'll take your oral statement but obviously we
11 cannot provide the ANC great weight in that
12 regard so but I appreciate you providing us the
13 additional information that you have been in
14 contact with the ANC and that they are aware of
15 this and have no objections, because they didn't
16 submit anything on the record. That being said
17 then at this point in time we turn back to the
18 Applicant for any closing remarks.

19 MS. GIDDINGS IVORY: No closing remarks,
20 thank you for this time.

21 CHAIRPERSON MOLDENHAUER: You're very
22 welcome. At this point then we'll enter into

1 deliberation on this case, this is a 223 for a
2 relief of a rear yard 25 feet is the requirement,
3 there's only 22.1 here as we heard testimony from
4 the Applicant and we have in our record the fact
5 that that was a surprise and that obviously they
6 initially thought that the property was
7 sufficient providing the required rear yard.
8 That being said there's nothing in our record, we
9 have letters of support from Danielle June at
10 3628 13th Street, we have letters of
11 recommendation from the Society of the Sacred
12 Heart indicating that this would in no way effect
13 any of the adjacent properties at 1235 Otis
14 Street, a letter of support form 1250 Newton
15 Street and so there seems to be nothing in the
16 record that would indicate that there would be
17 any impact on light and air of any neighboring
18 properties by approving this relief. In addition
19 to that there's nothing in the record that would
20 indicate there would be any lack of privacy or
21 use or enjoyment of any neighboring properties,
22 based on this addition as indicated this addition

1 is 90 probably percent complete and there's
2 obviously nobody here indicating that they do
3 have any opposition with this case, that stands
4 to be fairly strong proposition typically if
5 something is already built and there's a problem
6 you'll see more individuals coming forward
7 echoing that they may have a concern. I'll refer
8 to the OP report in regards to prong C and D in
9 regards to any potential impact on neighboring
10 street frontages and in regards to views of the
11 addition and I don't think there's any issue
12 there. That being said I see no problem in
13 approving this application and I'll look to any
14 Board Members for additional deliberation.

15 MS. SORG: Thank you Madam Chair I don't
16 have much to add here except also just I agree
17 with your analysis and also would just note that
18 the relief that we're looking at here is about 3
19 feet of rear yard and that's it.

20 CHAIRPERSON MOLDENHAUER: Yeah, so I
21 think it's a very small relief that's being
22 sought. That being said I'll submit a motion, a

1 motion to approve Application No. 18178 from 11
2 DCMR 3104.1 for a special exception to allow a
3 rear addition to an existing one family detached
4 dwelling under Section 223 not meeting the rear
5 yard under 404 requirements in an R-1-B District.

6 Motion has been made is there a second?

7 MR. HINKLE: Second.

8 CHAIRPERSON MOLDENHAUER: Motions' been
9 made and seconded all those in favor say aye.

10 CHORUS: Aye.

11 MR. MOY: Staff would record the vote as
12 4 to 0 to 1 this on the motion of the Chairperson
13 Ms. Moldenhauer to approve the special exception
14 relief under Section 223 not meeting the rear
15 yard requirements under Section 404, seconded
16 motion Mr. Hinkle also in support of the motion
17 Ms. Sorg and Mr. Schlater, no other Board
18 Members, again the final vote is 4 to 0 to 1.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much Mr. Moy since we have no opposition in this
21 case I'd like to waive our requirements and ask
22 that a summary order be issued.

1 MR. MOY: Very good thank you Madam
2 Chair.

3 CHAIRPERSON MOLDENHAUER: Thank you very
4 much and good luck with your addition.

5 **Application No. 18179**

6 MR. MOY: The next and last Application
7 for Board Action for the Morning Session is
8 Application No. 18179, this is the Application of
9 Mary Elizabeth McDaniel and Philippe A. Braindet
10 pursuant to 11 DCMR 3104.1 for a special
11 exception to allow an accessory garage addition,
12 this is to a one family semi-detached dwelling
13 under Section 223 not meeting the lot occupancy
14 requirements under Section 403, in the R-4
15 District at premises 1727 1st Street, N.W.
16 property located in (Square 3105, Lot 105).

17 CHAIRPERSON MOLDENHAUER: Good morning
18 how are you doing? If you could introduce
19 yourself for the record.

20 MR. MCDANIEL: My name is Mary Elizabeth
21 McDaniel; I reside at 12624 Capon Oak Drive in
22 Ellicott City, MD. My husband and I are owners

1 and soon to be occupants of 1727 1st Street, N.W.

2 CHAIRPERSON MOLDENHAUER: And at this
3 time we'll turn to you to present your case, if
4 you'd like you can rest on the record. I'd like
5 to hear a little bit kind of as to how you got to
6 where we are today as well.

7 MS. MCDANIEL: I'm not sure I understand
8 the question, we would like to build a garage,
9 and there was a garage at the house. The house
10 was purchased at some point by someone who I
11 believe was going to turn it into condominiums
12 and they tore down the garage, the concrete pad
13 from the garage still exists and we would like to
14 build a garage in the same location that would
15 slightly exceed the lot occupancy because my
16 architect calculated if we build a garage that
17 meets the lot occupancy that there would only be
18 like one inch on all four sides of the car so it
19 really wouldn't be a useable garage. I think the
20 overage that I'm asking for a special exception
21 would not really have any great impact on the
22 neighbors or the neighborhood but would allow us

1 to have a useable garage.

2 CHAIRPERSON MOLDENHAUER: Thank you I'll
3 just take a quick look at the plans. Do any
4 Board Members have any other questions for the
5 Applicant?

6 MR. HINKLE: Ms. McDaniel we have on
7 letter of support from a neighbor. Have you spoke
8 to the other neighbors and some of the neighbors
9 that have been there when there was a garage
10 existing beforehand and are they supportive of
11 this?

12 MS. MCDANIEL: Yes I have, everyone in the
13 neighborhood who I've talked to has verbally
14 supported it. The adjoining neighbor I just got,
15 I never received an email from him but I did turn
16 in an email where he said he would send an email
17 in support but he verbally has no objection, none
18 of the people on the street have any objection.
19 The neighbor across Randolph to the side he
20 offered to write a letter and offered to come
21 today but he's been hospitalized, he's been in
22 the neighborhood almost 50 years and he has

1 described the man who lived there for years and
2 years and years backing his car into the garage
3 but I don't have any pictures he said he would
4 look but not many of the adjacent houses are long
5 time residents so no one, I just have the
6 demolition permit to tear down the garage and the
7 remaining concrete pad but everyone who has been
8 in the neighborhood a long time recalls that
9 there was a garage and most of the corner lots in
10 the neighborhood do have garages, most of the end
11 units have garages.

12 MR. HINKLE: Great, thank you.

13 MR. SCHLATER: Ms. McDaniel the garage
14 that's proposed basically takes up the entire
15 width of your property is that correct?

16 MS. MCDANIEL: Yes.

17 MR. SCHLATER: So it's 17 feet wide, does
18 that sound right? I'm just reading the plans
19 here; does that mean you'll be able to
20 accommodate two cars in there?

21 MS. MCDANIEL: No.

22 MR. SCHLATER: The garage that was there

1 before, I saw the pad it didn't look like it
2 occupied the entire width. So why do you need
3 the entire 17 feet?

4 MS. MCDANIEL: Because I want to build it
5 of brick and so the structure itself will take up
6 some of the space and I also want, I mean there
7 will be a little more space than necessary for a
8 tight fit for one car but I have, because I'm an
9 end unit I have 32 feet in the front and over 100
10 feet on the side of yard and sidewalk to maintain
11 so I was hoping to be able to have room to store
12 equipment to maintain the yard and the sidewalk.

13 MR. SCHLATER: Okay thank you it does
14 look like a very nice garage made out of brick
15 and it has some detailing in it, it seems like
16 you've taken some care to make sure it fits into
17 the neighborhood.

18 MS. MCDANIEL: My architect wanted it in
19 the style of the traditional style of the
20 neighborhood, although not many remain that look
21 like that.

22 MR. SCHLATER: Looks great, thank you.

1 CHAIRPERSON MOLDENHAUER: Any further
2 questions from the Board? Seeing none then I'll
3 see if there are any individuals in the audience
4 in support or in opposition to this case? Seeing
5 none then I'll just indicate that as stated
6 earlier we do have some letters of
7 recommendation, "Exhibit 25, 28, and 29" all
8 letters of support for this case. I'll turn now
9 to the Office of Planning for their report.

10 MR. COCHRAN: OP's prepared to stand on
11 the record except for one thing, just wanted to
12 clarify the lot is actually 32 feet wide what the
13 Applicant is building to is the maximum extent of
14 the building restriction lot.

15 CHAIRPERSON MOLDENHAUER: Thank you for
16 that point of clarification I appreciate that.
17 Any questions for the Office of Planning from
18 Board Members? Seeing none, thank you, does the
19 Applicant have any questions for the Office of
20 Planning?

21 MS. MCDANIEL: No thank you.

22 CHAIRPERSON MOLDENHAUER: Thank you then

1 at this point in time, we would turn to see if
2 anybody is present from the ANC? Seeing no one
3 present from the ANC, did you have a chance to
4 talk to your ANC?

5 MS. MCDANIEL: I communicated with one
6 member by phone and three members by email and
7 one in person but none of them seem to have a
8 problem with it but at the same time they didn't
9 I was told by one member that they didn't have
10 time in their agenda to consider it but I
11 invited, the former member lives across the
12 street and so he's very familiar with the house
13 and the man who replaced him in January lives
14 down the street and they don't seem to have any
15 concern about it.

16 CHARIPERSON MOLDENHAUER: I appreciate
17 you providing us with that oral update obviously
18 we have nothing in our record to give weight to
19 but we will consider obviously your statement
20 about their support and the lack of formal
21 opposition from ANC 5-C. That being said, are
22 there any closing remarks by the Applicant?

1 MS. MCDANIEL: No thank you I appreciate
2 your consideration.

3 CHAIRPERSON MOLDENHAUER: Thank you then
4 at this point in time if there's any new final
5 questions from any Board Members, I don't see
6 any, we will conclude this hearing and we'll
7 enter into deliberation on this case. We have an
8 application before us for 223 relief of increase
9 in lot occupancy from 33% to 47% to permit lot
10 occupancy up to 70% rather than the permitted 40%
11 in the zone. That being said as we heard this is
12 a rebuilding of a prior garage that had been
13 demoed obviously it's not being reconstructed
14 exactly as it was, we can see as Mr. Schlater
15 identified that the parking pad which is being
16 expanded but I think that based on the plans, and
17 as based on the statements of the Applicant you
18 know it's being recreated in a brick façade which
19 his going to be more attracted to the area, the
20 garage that they are putting in is not a
21 mechanical garage up and down but rather it's a
22 carriage style automatic garage which I think is

1 quite nice to see that someone is taking the time
2 and effort and the money to put in that type of
3 physical attractive type of garage and structure.
4 That being said we have letters of support as I
5 said from some of the neighboring properties are
6 "Exhibit 25, 28, and 29". We don't have anything
7 from the ANC indicating any concerns. Office of
8 Planning is in support of this application and I
9 see no issue of how this would potentially
10 adversely effect light and air, privacy of any of
11 the adjoining properties. Again this was a
12 preexisting condition that was removed but that
13 is now going to be put back up and I think that
14 the addition while definitely visible from the
15 street since this is corner property is being
16 done in a way where it's going to enhance the
17 character of the neighborhood and not provide any
18 adverse effect on the street frontage. I will
19 open up the floor for any additional deliberation
20 from the Board Members. Seeing none then I will
21 submit a motion, a motion to approve Application
22 No. 18179 pursuant to 11 DCMR 3104.1 for a

1 special exception to allow an accessory garage
2 addition to a one family semi-detached dwelling
3 under Section 223, not meeting the lot occupancy
4 under 403 requirements in an R-4-District at
5 premises 1727 1st Street, N.W. Motion has been
6 made is there a second?

7 MS. SORG: Second.

8 CHAIRPERSON MOLDENHAUER: Motion has been
9 made and seconded all those in favor say aye.

10 CHORUS: Aye.

11 MR. MOY: Staff would record the vote as
12 4 to 0 to 1 this is on the motion of the
13 Chairperson Ms. Moldenhauer to approve the
14 special exception relief under Section 223, not
15 meeting lot occupancy requirements under Section
16 403. Seconded motion Ms. Sorg, Vice Chair, also
17 in support of the motion Mr. Hinkle and Mr.
18 Schlater, and no other Board Members are
19 participating. So again the final vote 4 to 0 to
20 1.

21 CHAIRPERSON MOLDENHAUER: Thank you very
22 much Mr. Moy and seeing that we have no

1 opposition in this case we'd like to waive our
2 requirements and ask that a summary order be
3 issued.

4 MS. MOY: Thank you very much Madam
5 Chair.

6 CHAIRPERSON MOLDENHAUER: Thank you and
7 thank you and that concludes our hearings for
8 this morning, thank you.

9 **Afternoon Session**

10 CHAIRPERSON MOLDENHAUER: This hearing
11 will please come to order, good afternoon ladies
12 and gentleman, this is the March 8, 2011, Public
13 Hearing of the Board of Zoning Adjustments for
14 the District of Columbia, my name is Meredith
15 Moldenhauer, Chairperson, joining me today to my
16 left is the Vice Chair Nicole Sorg, to her left
17 Representative of the Zoning Commission is Conrad
18 Schlater and to my right is Jeffrey Hinkle,
19 Representative of the National Capital Planning
20 Commission. Copies of today's meeting agenda are
21 available to you and are located to my left in
22 the wall bin near the door. Please be advised

1 this proceeding is being recorded by a court
2 reporter and is also being webcast live.
3 Accordingly we must ask you to refrain from any
4 disturbing noises or actions in the hearing room.
5 When presenting information to the Board please
6 turn-on and speak into your microphone first
7 stating your name and home address. When you are
8 finished speaking please turn-off your microphone
9 so that your microphone is no longer picking up
10 sounds or background noise. All persons planning
11 to testify either in support or in opposition are
12 to fill out two witness cards these cards are
13 located to my left on the table near the door and
14 are also on witness tables. Upon coming forward
15 to speak to the Board please give both cards to
16 the court reporter sitting to my right. The order
17 for an appeal is as follows: 1. Statement of the
18 Appellant and Appellants Witnesses. 2. The Zoning
19 Administrator and the Government, Officials Case.
20 3. Case of the owner, leasee or operator involved
21 as an intervener if not the Appellant. 4. Other
22 interveners in the case if permitted by the

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

1 specifically requested by the Board. The Board
2 and the Staff will specify at the end of each
3 hearing exactly what is expected and the date
4 when that material should be submitted to the
5 Board. After the record is closed no other
6 information will be accepted by the Board. The
7 Sunshine Act requires that a public hearing on
8 each case be held in the open before the public.

9 The Board may consistent with its rules and
10 procedures and the Sunshine Act enter into
11 Executive Session during or after a case for
12 purposes of reviewing the record or deliberating
13 on a case. The decision of the Board as in these
14 contested cases must be based exclusively on the
15 record, to avoid any appearance to the contrary
16 the Board requests that persons present not
17 engage the members of the Board in conversation.

18 Please turn off all beepers and cell phones at
19 this time as to not disturb these proceedings.
20 The Board will make every effort to conclude this
21 hearing as close as possible to 6pm if the
22 afternoon cases are not completed at 6pm the

1 Board will assess whether it can complete pending
2 or pending cases on the agenda. At this time the
3 Board will consider any preliminary matters,
4 preliminary matters relate to whether a case
5 should or will be heard today such as a request
6 for postponement, continuance or withdrawal or
7 whether proper or adequate notice of a hearing
8 was given. If you are not prepared to go forward
9 today or you believe that the Board should not
10 proceed, now is the time to raise such a matter.
11 Mr. Secretary, do we have any preliminary
12 matters?

13 MR. MOY: Staff is not aware of any
14 preliminary matters Madam Chair.

15 CHAIRPERSON MOLDENHAUER: The I will
16 proceed with the agenda and all individuals
17 wishing to testify please stand and take the
18 oath.

19 MR. MOY: Do you solemnly swear or affirm
20 that the testimony you're about to present at
21 this proceeding is the truth, the whole truth and
22 nothing but the truth. You may consider yourself

1 under oath.

2 CHAIRPERSON MOLDENHAUER: Mr. Moy you can
3 all the first and only case on the agenda today.

4 **Appeal No. 18181**

5 MR. MOY: Good afternoon Madam Chairperson
6 and Members of the Board that would be Appeal No.
7 18181 of AMM Holdings Inc., pursuant to 11 DCMR
8 3100 and 3101 from a November 18, 2010, decision
9 by the Zoning Administrator, Department of
10 Consumer Regulatory Affairs to issue a stop work
11 order halting the construction of a new 3 unit
12 apartment building in the R-4 District at
13 premises 527 Irving Street, N.W., property
14 located in (Square 3048, Lot 63).

15 CHAIRPERSON MOLDENHAUER: Thank you very
16 much Mr. Moy and I think the parties area already
17 at the table and if you can introduce yourself
18 starting to my left.

19 MR. KAHN: Mudashir Kahn, 10419 Headly
20 Coate, Fairfax, VA.

21 MR. KAHN: Mubashir Kahn, 10422 Headly
22 Coate, Fairfax, VA.

1 MR. NAPPO: Vincent Nappo I'm the
2 attorney for the Appellants.

3 MR. LEGRANT: Good afternoon Madam Chair,
4 Members of the Board, I'm Matthew LeGrant Zoning
5 Administrator with the Department of Consumer and
6 Regulatory Affairs.

7 MR. SURABIAN: Good afternoon, Assistant
8 Attorney General Jay Surabian on behalf of DCRA.

9 CHAIRPERSON MOLDENHAUER: Okay we'll get
10 started by looking at the Appellant and you can
11 start by presenting your case and any witnesses.
12 Do you think your going to need the full 60
13 minutes today?

14 MR. NAPPO: I don't believe so ma'am.

15 CHAIRPERSON MOLDENHAUER: Okay what do
16 you think you'll need and we'll put that on the
17 clock.

18 MR. NAPPO: Forty minutes should do it. I
19 take it that cross examination is not included.

20 CHAIRPERSON MOLDENHAUER: No it's not
21 included. That way we can put it on the clock
22 and we'll turn to you to present your case.

1 MR. NAPPO: I'm going to make a brief
2 opening statement, the AMM Holding is my client
3 and on January 8, 2010, they purchased the
4 property at 527 Irving Street, N.W. which has
5 been described as Lot 63, Square 3048. They
6 purchased it as a vacant piece of property and
7 they applied for a building permit with DCRA.
8 The Building permit was actually, the application
9 was done on February 18, 2010, and the building
10 permit clearly stated that they were requesting a
11 new construction of a 3 unit apartment building.
12 They were assisted by a gentleman named Agipong
13 and he evidently employed a construction engineer
14 whose name is Quentin Worrell who actually signed
15 the drawings in the case. Be that as it may on
16 February 18th, they presented a complete
17 application asking for permission to build a new
18 3 until apartment building. The application was
19 taken under advisement by DCRA and about 3 months
20 later on May 7th, they issued a building permit
21 again for a new 3 unit apartment building on the
22 site. I should mention the site has 2708 square

1 feet which apparently is within the scope of a 3
2 unit building. The application we have in our
3 attachment to the appeal in this case we've shown
4 that 10 different departments within the Board
5 approved it within DCRA, I'm sorry. But, and
6 then just as a footnote it was just brought to
7 our attention today that on October 27th, my
8 clients applied for another permit to do some
9 work on the roof of the building and that was
10 granted by the Zoning Division on October 27th,
11 and suffice to say that in those 6 months my
12 clients put up a very nice looking apartment
13 building, we've submitted a photograph of it with
14 our appeal, I don't know if every member has seen
15 it but the building was in essence completed. On
16 November 18th, someone came out from DCRA with a
17 stop work order and ordered my clients to stop
18 work on the building. They voiced some objection
19 to that and in the next few days they had an
20 interview with Mr. Matthew LeGrant the head of
21 this particular group and Mr. LeGrant was very
22 forthright and admitted to them that the permit

1 had been granted in error, there' some
2 correspondence back and forth by email where the
3 words in error are quite prominent and I don't
4 believe anyone is really disputing that the
5 permit was granted in error. My clients are then
6 in kind of a tough spot because acting in good
7 faith never trying to conceal anything about the
8 enterprise, they asked for permission to put up a
9 3 unit building, they are not novices they've
10 been in the field and they have been through this
11 before but unlike their council because this is
12 my first time before the Board. They appealed to
13 LeGrant to give them some relief and the answer
14 was got to BZA because that's where you might get
15 relief. My clients went to the BZA I wasn't with
16 them at the opening meeting but they filed an
17 appeal in this case and that's why we're here
18 today, once again unless I'm greatly mistaken
19 because I've had some conversations with Mr.
20 LeGrant and with his council Mr. Surabian who
21 have been very forthcoming and very decent, and
22 very helpful but what they're saying in effect is

1 our hands are tied we can't do anything about
2 this, you've got to go to the Board concerning
3 appeal. Now as I reviewed this great big thick
4 book on Zoning Regulations I've used it a couple
5 of times because in my practice I've had occasion
6 to sue on behalf of tenants of buildings injured
7 maybe the staircase was faulty, or I have one
8 case where a window came down and fracture the
9 fingers of a child, terrible case, but I don't
10 know the real ins and outs of it. However, our
11 argument with the DCRA is as follows, they erred
12 grievously in approving the application, relying
13 on their permission my clients expended a ton of
14 money upwards of 350,000 in putting up a 3 unit
15 building which looks for all the world like a two
16 unit building, it's within the height limit and
17 all that stuff, but this building has a basement
18 and a ground floor apartment with a bath and the
19 usual, then there's a second unit bath and
20 kitchen what have you, then there's a third unit
21 bath and kitchen what have you. All the work is
22 done, they still have to do a little work on the

1 interior but the brick work is done, the roof is
2 done, all the plumbing and that stuff is roughed
3 in, in another month they would have completed
4 the job. But that was not to be because Mr.
5 LeGrant felt that he had to stop the work. Our
6 argument isn't really with Mr. LeGrant's decision
7 to stop the work, I take it at face value he's a
8 decent person who's doing his job and they found
9 this mistake. It's too late to help my clients
10 however and so we are appealing the issuance of
11 the work order, that's what we're appealing
12 because that's the action that stopped the
13 construction but truly what we're appealing is
14 the mistake that they made and freely admitted to
15 it in allowing the construction to go on in the
16 first place. I'm well aware, I've talked to my
17 clients about possibly getting a variance or an
18 exemption but that is so time consuming and the
19 facts are just on the table, the building is
20 built. My clients say to me but why must we ask
21 for a variance we're real happy with the building
22 permit that was issued and we've put in a third

1 of a million dollars to get the building in
2 spanking shape, it doesn't really intrude on the
3 neighbors, it's pure hearsay but they tell me
4 they have talked to the neighbors on either side
5 who are pretty happy with the building it
6 actually improves the look of the block, they
7 have off street parking for 3 units and what have
8 you. Now in as much as my people went through
9 the drill and got the permits and acted in good
10 faith throughout they now have a building on
11 their hands which in order to comply with the 2
12 unit rule they'd have to tear out kitchens, tear
13 out bathrooms, and then they've got a building
14 that is not really suitable from their real
15 estate point of view, I'm not in the business.
16 But it's just a much less attractive proposition,
17 lurking behind all of this is the fact that they
18 really, I believe, and I've told them, have a
19 case against the District of Columbia because a
20 District of Columbia agency kind of put them in
21 this position. However I'm appealing to the
22 Board to see if there's some way that they could

1 be permitted to complete the building as it's
2 built. If any further input is required that
3 that be done on a very expedited basis because
4 I'm going to ask them to testify because I cannot
5 testify and I don't know it as they do, but they
6 missed they're very careful operators my clients,
7 they buy the properties and try to get the
8 properties finished in time to get the full
9 business, now I always think the spring well you
10 have to be ready. I through determination of
11 circumstances usually leaving little buildings
12 that my wife loved and we wouldn't sell the
13 properties, very stupidly I hung onto a property
14 which I paid 13,500 for back in 1955 because I'm
15 as old as the hills, but that property which I
16 paid 13,500 for and a fellow came around and said
17 look, I had put it up for rent because my wife,
18 wonderful smart woman said you know there will
19 come a day when we won't want to climb steps and
20 this is one level beautiful little house and
21 some hard rules real estate guy came around and
22 says look I know what you paid for it, you paid

1 13,750, I'll give you 22,500, I said no my wife
2 wants to hang on to it, and he said that's crazy
3 and he came back about a month later and said
4 look I'll give you 25 but I will not go above
5 that, I said you want to talk to my wife, because
6 I'm powerless, that house is now worth 500,000
7 dollars and well if we have just a minute because
8 I won't go above the 40 I then I had the GI Bill
9 because I was in WWII but I hadn't used it to buy
10 this 13,750, I think 5% was like 800 dollars
11 something like that, which you get it FHA so then
12 I found a house that I could get VA no money down
13 108 dollars rent, a big house, two floors, two
14 fireplaces, a beautiful house worth today about
15 work 550 or 600 today, I paid 25,000 no money
16 down, 108 dollars the first month rent,
17 unbelievable. But now these fellows are real
18 estate investors and they feel that they have
19 missed the spring market, their money is tied up
20 and I'll be pulling out my handkerchief and
21 weeping in about two minutes because they're
22 really in a bad spot and we appeal to the Board

1 to somehow make them whole. Further information
2 is required let it be done on an expedited basis
3 because we here everything takes 6 months or 3
4 months or 9 months and their capital is tied up.

5 I think that's all I have to say...

6 CHAIRPERSON MOLDENHAUER: Mr. Nappo can I
7 just interrupt you and ask you as their council
8 I've heard some of the key terms that you've
9 identified but I haven't seen in your initial
10 prehearing statement or even right now any legal
11 doctrines that you're relying on to support your
12 argument, have you identified a specific legal
13 doctrine that you would want us to look to?

14 MR. NAPPO: I have not Madam Chairwoman,
15 I'm appealing strictly on equitable grounds that
16 they've been put in this terrible situation
17 through no fault of their own and that, you know
18 I've been practicing law for well over 50 years,
19 if I was in front of an appeals judge I'd couch
20 it on basis for instance of a stopple that they
21 come very late with this after the money is spent
22 and the building is built. After they had a

1 chance in October to review it because when these
2 fellows ask for permission to make a roof deck or
3 something like that on October 27th, it was
4 approved by the Zoning Division.

5 CHAIRPERSON MOLDENHAUER: So obviously if
6 you're going to argue Estoppels then I've heard
7 you say good faith, I've heard you talk about the
8 District's actions, and I've heard you talk a
9 little bit about the reliance the reasonable
10 reliance of your parties in that regard and then
11 the fact that the equities are in favor.
12 Obviously we'll hear from your witnesses as you
13 present them, we'd like to hear from those
14 issues.

15 MR. NAPPO: What you talk about is the
16 effect of missing market date and also that you
17 rely on their approval to build the building.

18 MR. MUBASHIR KAHN: Okay basically as we
19 all know in this application it's very clear, we
20 are put into this spot clearly because of DCRA
21 negligence, mistake or remedy whatever you can
22 say. We applied in good faith, we got these

1 permits, we commenced with our construction and
2 we were not in any violation, we were in
3 compliance all that time till this person come
4 out to our property on November 18th, who got
5 instructions to stop work and it's quite funny
6 thing that my project manager was there and the
7 DCRA inspector comes there and he has no idea why
8 he's there, he looked at the plans, the permits,
9 everything's in order and he tells him I'm here
10 to stop your work but I don't know why. So he
11 goes back to his car makes some phone calls and
12 then comes back with a stop work order that
13 you're not allowed to have 3 units on this R-4
14 District.

15 MR. NAPPO: Can you make reference to
16 your application for building permit and what you
17 put down on the application?

18 MR. MUBASHIR KHAN: Sure I mean we
19 applied the building permit, our agent applied on
20 February 18th and it clearly states it's a 3 unit
21 new construction, if you have the original
22 drawings from DCRA stamped and approved from all

1 10 different divisions including zoning, after a
2 careful review it was not a walk through job, you
3 can not miss this thing this was a three month
4 review job, my agent was going there almost
5 everyday, reviewing with the engineers and zoning
6 folks and getting this through. So it's a clear
7 mistake, you can think whatever but this was a
8 very, very clear thing on the drawings that's a 3
9 unit property, 2708 square feet lot and it got
10 approved and it's very clear on the building
11 permit if you see that to construct 3 stories
12 plus basement apartment building and we all know
13 apartment building is minimum 3 buildings
14 otherwise it's a flat and if you read the zoning
15 the comments, and "Exhibit I" you can see that
16 the dates, the different divisions, the different
17 groups have approved this application from
18 February 18th all the way to May 7th and you can
19 see all the DDOT, mechanical, all of those
20 including zoning and then if you flip over the
21 next page of "Exhibit I" also you can read the
22 zoning review details from May 3, 2010, and this

1 is what zoning put themselves from their systems,
2 from their website, it's very, very, very clear,
3 zoning approved in R-4, it says Zoning approved
4 wall check R-4 new, cellar plus 3 stories, 3
5 units apartment building, the required 2 parking
6 spaces at rear, I think this is clear as crystal,
7 there is no point when someone comes after 6
8 months and telling us there's a mistake, it's a
9 very clear thing, flip over on the other page
10 "Exhibit I" again and you see the approval on
11 October 27, 2010, 20 days before we got a stop
12 work order and we applied for that roof top deck
13 we got permission again from zoning and I think
14 this is the second mistake they made, if they
15 made a mistake first hand and now on October 27th,
16 they found out oh you know what, if they do, they
17 found out they made a mistake now and after 6
18 months their giving us another approval, so I
19 think they have no reasons to come back and tell
20 us they made a mistake, if they made a mistake
21 this should be the internal stuff, why are they
22 penalizing us. We are doing some development in

1 city, and we should not be penalized for their
2 mistakes. The lot is spacious enough, It's 2708
3 square feet it can fit 3 units that's what I
4 thought when I bought it, that's what all those
5 people probably in DCRA thought, the 2700 square
6 feet lot can fit three units but now on November
7 18th we found out that since this new construction
8 we cannot. But it's a clear mistake from their
9 end, and on the stop work order as mentioned on
10 November 18th, when it was issued the inspector
11 was not aware of why he was there that's one
12 thing. The other thing is, there are two things
13 on stop work order, they are saying we cannot
14 have 3 units in this zone and the second point is
15 we raised the building without raise permit,
16 that's what the stop work order says it's
17 "Exhibit A" if you flip to there stop work order
18 there are two points, the first one is 3 unit
19 apartment building is not matter of right in R-4
20 Zone which we already got the permits and the
21 second one is previous principle building was
22 removed without a raise permit, so that's another

1 negligence you can think of DCRA because we
2 bought this as a vacant lot with exception of a
3 small shed on it and we got a permit, a raise
4 permit on April 26th, from DCRA to raise that shed
5 and on this stop work order they're mentioning
6 that we demolished the building which is not
7 true, we have the pictures, we brought the
8 property as a vacant piece of land and then we
9 got a raised permit to demolish that small shed
10 on it and that raised permit is "Exhibit D" in
11 the application. So clearly the stop work order
12 is not even accurate because the points they are
13 trying to make here is not even correct. So I
14 believe DCRA is making mistakes one after another
15 an I think they need to fix their department
16 internally, they need to have their own meetings,
17 they need to contact this person who approved
18 from Zoning it's Chad Anderson, the person who
19 signed off on these drawings. If you flip it
20 over to "Exhibit E" if you can go to there you
21 can see that drawing, if you have original
22 drawings here as well from DCRA stamped and this

1 is one page of that clearly showing 3 units, unit
2 number 1, unit number 2, unit number 3, on the
3 right bottom corner it says new apartment
4 building and it is approved from DCRA, so it's
5 new, there was no building before. They new all
6 this time it's a new building and then you go to
7 next exhibit which is (inaudible) "Exhibit F"
8 again you see a stamp from DCRA and Janet
9 Anderson she wrote, R-4 and you see the D85310
10 and it also says new 3 units. So I cannot
11 understand if it's a mistake or it's a blunder
12 what is this but this is a clear negligence from
13 their part and it's not only one time, it's not
14 only two times, it's three, four times just in
15 this case. They have done same kind of
16 negligence in the past and it happened with me
17 one time before also but that's not in this case
18 so I don't need to bring that up what I suffered
19 but at that time we decided not to pursue this,
20 but that's apart from this. So as for the stop
21 work order on November 18th which we got, we were
22 required to talk to Mr. LeGrant, me and a couple

1 of other folks, my other partner, I'm sorry my
2 real estate agent we went to see Mr. LeGrant on
3 November 22nd right after the stop work order, and
4 he told us he can't do anything we have to go to
5 BZA, I tried to escalate that, I sent an email to
6 Ms. Linda Argo about our meeting and tried to
7 seek some help from her and there's an email
8 attachment response from Linda Argo also is
9 attached as "Exhibit B" and she also mentioned I
10 need to appeal which is not going to get us
11 resolve this issue but we need to go to BZA so to
12 follow instructions I did appeal with DCRA on
13 December 2nd and that is also attached as "Exhibit
14 H" so on December 2, I filed electronically
15 appeal with DCRA for the stop work order.
16 Nothing happened the only thing was I got a call
17 from a lady from Barbara from DCRA and she told
18 me we cannot do anything on these because you're
19 asking something which we cannot do so you have
20 to talk to Mr. LeGrant and of course Mr. LeGrant
21 told me to go to BZA, that's what Ms. Linda Argo
22 told me so based on that recommendation I came

1 here with my attorney with the DCRA we consulted
2 with them what should we do and they told us this
3 is this is the course you need to do, you need to
4 file an appeal which we have done. So I guess
5 you know this is where we are and I strongly
6 believe that this is DCRA fault, I don't
7 understand if the fault was to issue the permit
8 or the stop work order but that's not what we're
9 trying to get at, our target is we need to get
10 back to our jobs, we need to get this permit
11 restored, our investors are behind us, we are
12 losing time, since November 18th this work was
13 shut down right away we lost a lot of materials
14 on site, our contractors were lined up, so
15 they're all gone so we are losing money, from we
16 are paying mortgage on this, and then our plan
17 was to finish this project by the end of December
18 and put on the market for sell in spring and as
19 we all know in D.C. the best time to sell
20 properties is spring market in which we will miss
21 it. Now even assuming we get our permits
22 restored today by the time we get back to job,

1 finish the job we are talking selling our units
2 in late summer or early fall and we all know
3 that's not good for real estate, I mean it's a
4 slow market its at least 10 to 15% below what you
5 can sell in the spring, so this is costing us
6 carrying costs and potential future profits and
7 loses as well. So I guess this is what I have to
8 say, is there anything you want to add? I guess
9 that's what I have, so we have followed all the
10 procedures, we have done whatever we could and we
11 were never in any violation, so I guess we need
12 to have some justice from here, thank you.

13 CHAIRPERSON MOLDENHAUER: Thank you, Mr.
14 Surabian, do you have any cross examination for
15 Mr. Kahn?

16 MR. SURABIAN: Yes I do, Mr. Kahn how
17 many development projects have you done in
18 Washington D.C.

19 MR. KAHN: More than 10.

20 MR. SURABIAN: And did those involve
21 building on vacant land.

22 MR. KAHN: No.

1 MR. SURABIAN: Is this the first one?

2 MR. KAHN: The first one in D.C.

3 MR. SURABIAN: You bought this property
4 at an auction?

5 MR. KAHN: Right from a public auction
6 right.

7 MR. SURABIAN: Why did you buy this
8 particular property?

9 MR. KAHN: Because I wanted to put up a 3
10 unit building that's one thing of course I didn't
11 know at that time how many units but I wanted to
12 put some kind of house or property, so that was
13 the whole purpose to buy this property put a
14 house or apartment building and sell it.

15 MR. SURABIAN: How did you know when you
16 bought it what you could do with the property?

17 MR. KAHN: Because there's a very famous
18 common understanding in DCRA that if you have
19 more than 900 square feet lot, you can have a
20 unit 3600 square feet can have 4 units and 2700
21 can have 3, so that was the thing, that's what I
22 was thinking, it's not only me it seems like 100

1 other people in DC think the same thing that's
2 why we have the permits.

3 MR. SURABIAN: So it was the size of the
4 lot, you thought you could build on.

5 MR. KAHN: Exactly it was over 2700
6 square feet we felt, we thought we could do 3
7 units.

8 MR. SURABIAN: Before you purchased the
9 property you thought you could do 3 units?

10 MR. KAHN: No not before but of course the
11 day, I don't know if you've been to these public
12 auctions, you go there you don't know what you're
13 buying all they tell you is the lot and square
14 number, I didn't not even know at that time it
15 was a vacant lot or it's a house there. It's
16 like gambling you go there and you buy something
17 but the price I paid I realize that okay this is
18 the price even if it's an old house there I can
19 fix it and sell it, so later on I found out it's
20 a vacant piece of lot, later on meaning the same
21 day.

22 MR. SURABIAN: So you didn't visit the

1 site before you bought it?

2 MR. KAHN: My partner he did visit the
3 same day before, the same morning.

4 MR. SURABIAN: And do you remember what
5 you paid for it?

6 MR. KAHN: I paid 72,000 at the auction
7 but of course after that there are more costs.

8 MR. SURABIAN: I made a filing with the
9 Board yesterday I attached the deed did you get a
10 copy of that Mr. Nappo? Is this the deed?

11 MR. KAHN: It looks like that. That was
12 the day I purchased from Jerome Kuta he was the
13 trustee that's true and the lot and square is
14 72,000 dollars yep it seems like this is the
15 right one.

16 MR. SURABIAN: Turn to "Exhibit B" have
17 you ever seen a datasheet like this before?

18 MR. KAHN: Yeah it's a public record from
19 DCRA website.

20 MR. SURABIAN: This is a part where
21 there's tax information there?

22 MR. KAHN: You mean the 2012 tax

1 assessment rule.

2 MR. SURABIAN: Right.

3 MR. KAHN: Right.

4 MR. SURABIAN: Do you see the land is
5 valued at 193,000 dollars approximately.

6 MR. KAHN: Right.

7 MR. SURABIAN: So did you know if you
8 paid 72 and it's assessed for 193 did you know
9 you were getting a pretty good deal?

10 MR. KAHN: First of all I didn't know
11 when I paid 72,000 dollars what it is assessed
12 for, I didn't know that, and the second thing is
13 yeah of course it's a good deal that's why people
14 go to auctions.

15 MR. SURABIAN: Did you take any other
16 steps before you bought the land to check out the
17 property?

18 MR. KAHN: No not at all.

19 MR. SURABIAN: You didn't do a survey?

20 MR. KAHN: No not at all.

21 MR. SURABIAN: You didn't talk to a
22 lawyer?

1 MR. KAHN: No not at all.

2 MR. SURABIAN: You didn't do a title
3 search?

4 MR. KAHN: No not, as I told you that day
5 before I went to auction I was told about this
6 property, that morning.

7 MR. SURABIAN: And so the sale happened
8 in January of 2010 is that right?

9 MR. KAHN: Right.

10 MR. SURABIAN: And then you applied for
11 your building permit in February.

12 MR. KAHN: Right.

13 MR. SURABIAN: So I guess between January
14 and February is when you had your plans?

15 MR. KAHN: Actually you're right, that
16 was the time for the plans but we started
17 researching right after we bid at the auction on
18 December 2, or 3rd, we have 30 days, it was
19 probably December 8th, because we put the deposit
20 if you don't buy, those rules are very strict at
21 the auction so pretty much you take
22 responsibility after that. So we started

1 researching after that and we hired, and we
2 started thinking about the project. MR.

3 SURABIAN: Okay so between December and February
4 you created your plans?

5 MR. KAHN: Right.

6 MR. SURABIAN: And the plans you created
7 were for a 3 unit building.

8 MR. KAHN: Let me go back, you said
9 between December, we did not create plans until
10 we bought it but we started thinking about it,
11 because we don't want to create the plans we
12 don't want to hire someone until we are 100%
13 owner of the property.

14 MR. SURABIAN: Okay and who did you hire
15 to do that for you?

16 MR. KAHN: We hired this agent Mr.
17 Agipong and my partner hired him, I'm mostly in
18 the offices my partner he's the project manager
19 also and we hired this guy for this particular
20 job but we have hired a lot of other guys in the
21 past but he's one of the guys we use him as a
22 consultant but we have used tons of other people

1 as well.

2 MR. SURABIAN: Did Mr. Agipong tell you
3 he had zoning expertise?

4 MR. KAHN: He just told us he can run
5 permits for us, he can get drawings for us that
6 are all he told us.

7 MR. SURABIAN: And did he get drawings
8 for you?

9 MR. KAHN: Yes.

10 MR. SURABIAN: And what did you tell him
11 you wanted?

12 MR. KAHN: We told him that this is the
13 property and check if we can get 3 units here we
14 want to put an apartment house.

15 MR. SURABIAN: And did he say 3 units
16 were okay?

17 MR. KAHN: No he said he have to look
18 into that, he have to do some research, he will
19 do that, he will talk to DCRA, of course he
20 cannot assure us and he didn't know even up
21 front, he said okay I'll look into that what we
22 can do about that.

1 MR. SURABIAN: And did you yourself or
2 your partner consult the zoning regulations?

3 MR. KAHN: No we don't because that's why
4 we hired these people.

5 MR. SURABIAN: I'll refer you to the..

6 MR. KAHN: The other thing I know about
7 Mr. Agipong is he used to work in DC for 10 years
8 and he was within DCR I don't know which division
9 but within permitting or something like that.

10 MR. SURABIAN: So can you look at
11 "Exhibit E" on your appeal?

12 MR. KAHN: Okay I see that.

13 MR. SURBIAN: Okay and then the stamp is
14 from Quentin Worrell, do you know him?

15 MR. KAHN: No he works with Mr. Agipong,
16 I don't know him.

17 MR. SURABIAN: You never met him?

18 MR. KAHN: No I never met him.

19 MR. SURABIAN: And he never told you that
20 3 units...

21 MR. KAHN: I don't even know him..

22 MR. SURABIAN: Do you know if Mr. Worrell

1 knew what zone the property was in?

2 MR. KAHN: As I said I never even met him
3 I have no idea, because the way it works for us
4 is we, Mr. Agipong was like lead for this job, as
5 I said he's a consultant he's not an employee, no
6 relationship and we have used other consultants
7 in the past as well so his job for us was to
8 deliver us permits, go get the drawings done, run
9 the permits, all that stuff you know. In DCRA
10 it's very common all these builders have
11 expeditors running for them, running for permits,
12 so it's I guess that's very normal.

13 MR. SURABIAN: And did that concern you
14 when you had a plan set that was stamped by
15 someone you didn't know?

16 MR. KAHN: I didn't know that you just
17 brought me up a couple of weeks ago when we met
18 in your office.

19 MR. SURABIAN: Did you see the plans
20 before the permit application was filed?

21 MR. KAHN: No I did not because it's my
22 partners job, he's a partner and he's an engineer

1 himself but he's not, he has a degree in
2 engineering but it's his job, he's my project
3 manager, I'm in the office so he goes and meet
4 with Mr. Agipong or the engineers on a regular
5 basis so they get his approval.

6 MR. SURABIAN: Do you know if your
7 project manager met Mr. Worrell?

8 MR. KAHN: I did not.

9 MR. SURABIAN: Did Mr. Agipong know what
10 zone the property was on?

11 MR. KAHN: Of course, I believe so it
12 says here.

13 MR. SURABIAN: And did your project
14 manager did he look at the plans before they were
15 filed?

16 MR. MRDASHIR KAHN: I did yeah, he gave
17 me a rough copy to see and I saw everything
18 what's coming out.

19 MR. KAHN: Before it was approved right
20 he just gave you a rough.

21 MR. MUDASHIR KAHN: They show you copy
22 once they do the drawings before the submit so I

1 saw that copy.

2 MR. SURABIAN: And have you looked into,
3 have you gotten a bid from a contractor as to
4 what it would cost you to convert this to a two
5 unit building?

6 MR. KAHN: We already know that we are in
7 this business.

8 MR. SURABIAN: So you have spoken to a
9 contractor or you haven't.

10 MR. KAHN: We already no how much it will
11 cost that's what I'm saying.

12 MR. SURABIAN: How much will it cost you?

13 MR. KAHN: For what?

14 MR. SURABIAN: To convert it to a two
15 unit building?

16 MR. MUDASHIR KAHN: But in order to
17 convert it we have to demo a lot of stuff and
18 then at the end the building is designed for 3
19 units, so the two units if we do two units its
20 going to be very undesirable units because those
21 units will be gigantic big units and it's going
22 to be very hard for us to sell it. If we knew

1 from day one if DCRA would not have issued this
2 permit and they could have cashed this right
3 there back in March, February last year we would
4 have gone through another design for two units,
5 smaller building more desirable for people. So
6 this building is designed for 3 but it's going to
7 be expensive for us, we have to do a lot of
8 demolition, a lot of design change and still we
9 will end up with difficult units to sell. And of
10 course with less sales so more cost.

11 MR. SURABIAN: So this property was an
12 investment for you?

13 MR. KAHN: Of course it was an
14 investment.

15 MR. SURABIAN: Let's say you had applied
16 for the permit and DCRA denied it, wouldn't you
17 have already spent a lot of money in acquiring
18 the land and designing the building?

19 MR. KAHN: Repeat.

20 MR. SURABIAN: Had DCRA not approved the
21 permit but denied it, you would have already
22 spent a lot of money in the design cost...

1 MR. KAHN: But design cost is not as much
2 as construction, we all know here, design cost us
3 only like 15 or 20 grand I would never sit here
4 to recall 15 or 20 grand alright so, the problem
5 is if they would have denied me I would go back,
6 my project manager would go back to the engineers
7 and tell them okay now lets redesign for two
8 units and we know what we can sell, how bit units
9 we should sell or we should not put a gigantic
10 units, we would not have put a third floor here
11 if we knew it was going to be two units, we would
12 not build that big of building. We may have got
13 away with sprinklers so there are a lot of things
14 which we could have saved.

15 MR. SURABIAN: Why would you buy a piece
16 of land and then spend 20,000 dollars designing a
17 3 unit apartment building there if you never
18 spoke to anybody who had expertise in zoning who
19 could tell you that was allowed?

20 MR. KAHN: As I said we hired this guy
21 and these expediters they go out to DCRA every
22 day, you are very much familiar with DCRA

1 culture, you know, you don't see any developers
2 and real estate investors sitting there all day
3 having a ticket in their hand and try to talk to
4 someone for this, because they have these people
5 that's what they go with, this is their living,
6 right, and they tell people that they know about
7 this. Especially in our case we had this guy who
8 works for 10 or 12 years for DCRA, so you know
9 it's just like I have Mr. Nappo here because he's
10 expert in this job, I cant come here without
11 having attorney, why would you take a case if you
12 don't make money out of it, it's the same thing,
13 it's not my job to do, I'm trying to administer
14 my business I cannot go and talk to DCRA
15 everyday. There are people out there for that.

16 MR. SURABIAN: But you didn't talk to
17 DCRA before you bought the land?

18 MR. KAHN: Of course not.

19 MR. SURABIAN: And you didn't talk to
20 DCRA before you had the plans drawn?

21 MR. KAHN: Do you think I should talk to
22 DCRA before, I, no I did not.

1 MR. SURABIAN: Mr. Agipong didn't tell
2 you, he told you that he didn't know what the
3 zoning was right?

4 MR. KAHN: Let me tell first Mr. Agipong
5 did not know I bought this land, we hired him
6 after we bought the building, after we bought the
7 land so of course he did not tell us what zone it
8 is but after that bidding they redid our research
9 when we already bought it and found out what zone
10 it is but being a developer in DC, we know these
11 areas we know where R-4 is, where, so we had an
12 idea just by the address that it should be R-4
13 zoned.

14 MR. SURABIAN: So when you say you did y
15 our research what did that entail?

16 MR. KAHN: After we bought it, we found
17 out it's an R-4 Zone property.

18 MR. SURABIAN: Yes, and when you found
19 out it was R4 did you check the regulations to
20 see what that meant?

21 MR. KAHN: That's why we hired this agent
22 to find out what we can do for this.

1 MR. SURABIAN: So Mr. Agipong told you
2 that 3 units were allowed in R-4?

3 MR. KAHN: No I had it in my mind
4 already, I knew it before as 2700 square feet, as
5 I said I've done other developments as well so we
6 know if it's over 2700 square feet we assume we
7 can do 3 units.

8 MR. SURABIAN: But you were wrong about
9 that.

10 MR. KAHN: Yeah that's what I found out
11 on November 18th, that's true.

12 MR. SURABIAN: I don't have any further
13 questions.

14 CHAIRPERSON MOLDENHAUER: Before you have
15 any, do you have any redirect? The Board will
16 have some questions as well.

17 MR. NAPPO: May I reserve my redirect
18 till after you?

19 CHAIRPERSON MOLDENHAUER: That will be
20 fine. So you've done 10 developments you said in
21 the District?

22 MR. KAHN: About that yeah, I don't

1 remember exactly but probably should be at least
2 that many.

3 CHAIRPERSON MOLDENHAUER: None of those
4 were vacant properties all of those were
5 conversions or rehabs?

6 MR. KAHN: Right.

7 CHAIRPERSON MOLDENHAUER: Can you
8 explain, you said that you understand R-4 and you
9 understand the fact that you know, different
10 properties, can you tell me I guess the extent of
11 your or your contractors, your project managers
12 understanding of what zones permit, different
13 uses. What did you understand the permitted use
14 on that property?

15 MR. KAHN: As far as I understand, R4 is
16 residential it's by default even if you have a
17 smaller lot it's default for two flats, two
18 apartments, and if you have more than 900 square
19 feet per unit you can go with those, that's what
20 I believe, like if you have 3600 square feet you
21 can put four units there, if you have whatever
22 27, 3, so that's what I think and that's what I

1 believed until November 18th, until we got the
2 stop work order so that's what I think R-4 is
3 zoned for, it's 40 feet high, 60% lot occupancy
4 if it's a single family house, 40% lot occupancy
5 if it's multi-family, I mean all those basic
6 stuff.

7 CHAIRPERSON MOLDENHAUER: Do any Board
8 Members have any other questions?

9 MR. SCHLATER: I think the facts here are
10 actually not in much dispute, I think everybody
11 knows what happened and then the question for us
12 is to apportion responsibility and then figure
13 out a way out of this mess, I think it is an
14 unfortunate situation, there's no doubt about
15 that. I think Mr. Kahn you as a developer bear
16 some of the responsibility here and you should be
17 willing to own up to that, you submitted the
18 building permit application whether it was your
19 consultant who ultimately made the mistake and
20 counseled you incorrectly you still submitted a
21 building permit application to the District that
22 was in error, so Mr. Agipong clearly didn't do

1 you any service, the engineer who stamped the
2 plans, Mr. Worrell didn't do you any service and
3 then unfortunately it slipped through DCRA as
4 well and then that just multiplied the mistake.
5 I wouldn't as you characterized it put all of the
6 burden on DCRA employees, I think you have to
7 understand you made a mistake as well and you
8 have to own up to that. I think my main
9 questions have been covered mostly by Mr.
10 Surabian I think, questions are did you do your
11 due diligence leading up to the purchase, you
12 didn't have a lot of time, so I think that's been
13 answered, you were at an auction you were just
14 purchasing it and you were going to figure out
15 what to do afterwards but I work in development,
16 I know that the first thing you do when you get a
17 piece of property is you figure out what you can
18 build on it, and that's a very important step in
19 the process. So one question I would have is
20 where is the engineer, should he be here today,
21 MR. Agipong, I mean it would be helpful to
22 understand what he was thinking, so I think we're

1 at a little bit of a loss not having him here
2 today as your agent.

3 MR. KAHN: If we knew he was needed here
4 we would have tell him to come here.

5 MR. SCHLATER: Okay, I don't know, we can
6 work it out and figure out whether we need any
7 information from him. The question I would like
8 to know the answer to is how much would it cost
9 to turn this into a two unit building? You can
10 give me a rough estimate and I don't think that
11 was answered, I understand what you said earlier
12 which was there's other costs, not just the
13 actual construction and conversion cost but it's
14 not as marketable structure but it would have
15 been good to know how much would it physically
16 cost to make this building into a two unit
17 building.

18 MR. KAHN: The point I was trying to make
19 earlier was one thing is how much it's going to
20 cost us to convert back into two units, but the
21 other thing was we should not have built it as
22 big..

1 MR. SCHLATER: I understand your point
2 very well but I'm just asking you a question
3 which is how much would it cost to convert it?

4 MR. KAHN: It's going to be another
5 200,000 dollars from this point on. Can I ask
6 you a question or no, not at this point in time?

7 CHAIRPERSON MOLDENHAUER: I actually have
8 a follow up question to that, what do you think
9 the currently the three units would market at?

10 MR. KAHN: You mean the sales price?

11 CHAIRPERSON MOLDENHAUER: Sales price yes.

12 MR. KAHN: Okay we believe if we finished
13 this project as three units, we should be able to
14 sell the bottom unit which is a duplex with
15 basement around it all depends on the market
16 again around 400,000 dollars and the one above
17 around 300 and the top one as well around 300.

18 CHAIRPERSON MOLDENHAUER: You're going to
19 be selling these as condos?

20 MR. KAHN: Right.

21 CHAIRPERSON MOLDENHAUER: What would you
22 consider if you had to covert to two units?

1 MR. KAHN: If we had to, the bottom would
2 be again 400,000 and the top at the max 425
3 because the layout has been...

4 CHAIRPERSON MOLDENHAUER: Did you hire a
5 lawyer to do your condo conversion?

6 MR. KAHN: No we basically we do it in
7 house.

8 CHAIRPERSON MOLDENHAUER: I'm just trying
9 to find out if you had somebody that could have
10 looked at this and advised you that there was a
11 problem as well, but you do your condo
12 conversions in house.

13 MR. KAHN: Right.

14 CHAIRPERSON MOLDENHAUER: Any other
15 questions from Board Members at this time? We
16 can come back to any additional questions in the
17 future. Is there any redirect Mr. Nappo?

18 MR. NAPPO: There is but may I ask one
19 question? My clients have an opportunity like a
20 day or two to present the Board with a more
21 reasoned figure for what it would cost, they seem
22 to be talking a bit, just a bit off the cuff and

1 I'm wondering if we might have a day for them to
2 ponder the costs and think all the ramifications
3 and present that figure to the Board because as I
4 heard it the suggestion was what cost about
5 200,000 thousand, I think the Board could use a
6 more definite figure than that.

7 CHAIRPERSON MOLDENHAUER: Mr. Nappo what
8 we'll do at the end of the hearing we'll
9 determine whether the Board thinks we can make a
10 decision on the facts that we have in front of us
11 or we'll determine whether we'd like to hold the
12 record open for additional information, that
13 would be one of the things if we decide to hold
14 the record open we would give time to supplement
15 the record but I think right now lets go forward
16 with the hearing to determine if we feel that
17 we're prepared to make a decision today, if not
18 we need more information we will leave the record
19 open for that.

20 MR. NAPPO: May I then redirect very
21 briefly then my client? Mr. Kahn have you ever
22 submitted a project or a plan to the DCRA which

1 was rejected?

2 MR. KAHN: Yes, many, many times.

3 MR. NAPPO: And what happened, lets take
4 the last time, what happened, can you just
5 briefly tell us why the plan was rejected and
6 what you did in response to the rejection of the
7 plan?

8 MR. KAHN: Only he can tell you that
9 better.

10 MR. MUDASHIR KAHN: There have been times
11 that basically we tried to get something and the
12 rules are like different so we can't really do
13 that so freehand we just make a modification to
14 drawings make sure we get the permits according
15 to our plans. If we know prehand we can plan
16 better, in this case nothing was told to us, and
17 we could have (Inaudible).

18 MR. NAPPO: But previously if I
19 understand your answer you have submitted plans
20 to DCRA which were not approved, and you would
21 modify the plan to meet the objection is that
22 correct?

1 MR. KAHN: That's correct.

2 MR. NAPPO: Then may I ask you a somewhat
3 hypothetical question if this plan had been
4 rejected as a 3 unit plan what would have been
5 your response?

6 MR. MUDASHIR KAHN: I guess obviously we
7 would have gone another route like make a two
8 unit building, change the drawings, get new
9 permits and then make sure they would go to
10 planning.

11 MR. NAPPO: Do you want to add to that?

12 MR. KAHN: Right I want to add that we
13 need to understand this; these permits were not
14 approved right away so there were a lot of
15 objections during that time which our consultant
16 went back to DCRA trying to solve added drawings
17 so it's not like it was an instant approval.

18 MR. NAPPO: Are you saying that in the 3
19 months that they had to consider this they did
20 voice some objections and you modified your plans
21 accordingly?

22 MR. KAHN: Right it's always like that,

1 they always pick up a lot of things, either
2 plumbing, or this issue or that issue and you go
3 back and fix it.

4 MR. NAPPO: And that happened in this
5 project?

6 MR. KAHN: Absolutely.

7 MR. NAPPO: I think that's all I have.

8 CHAIRPERSON MOLDENHAUER: Thank you do
9 you have any further witnesses?

10 MR. NAPPO: Could you indulge me a
11 moment?

12 CHAIRPERSON MOLDENHAUER: Sure.

13 MR. NAPPO: Madam Chairperson, I would
14 also say that if it becomes vital or critical or
15 even necessary for the Board to hear from the
16 architect, it's my fault I didn't think to bring
17 him, once again we'd be happy to come back with
18 him in a reasonable short period of time if that
19 would be helpful for the Board.

20 CHAIRPERSON MOLDENHAUER: You're talking
21 about Mr. Agipong? Because I mean you don't
22 have...

1 MR. NAPPO: No I'm talking about Worrell,
2 the fellow who stamped it.

3 CHAIRPERSON MOLDENHAUER: He's also not
4 an architect he's a professional engineer.

5 MR. NAPPO: Oh professional engineer, I
6 use that term or both of those individuals if you
7 feel that hearing from them would clarify your
8 opinion we'll get them in here.

9 CHAIRPERSON MOLDENHAUER: Okay I think
10 that actually maybe was a raised question from
11 one of the other Board Members.

12 MS. SORG: Yeah actually thank you Madam
13 Chair one of the things that you just said just
14 reminded me, to the other Mr. Kahn, the project
15 manager, are you a professional engineer?

16 MR. KAHN: I'm an engineer I have a
17 degree civil engineer but I haven't cleared the
18 BE exam for D.C.

19 MS. SORG: Okay but your degree is...

20 MR. KAHN: Civil Engineer from UDC.

21 MS. SORG: Okay thank you.

22 MR. NAPPO: That would conclude our

1 presentation.

2 CHAIRPERSON MOLDENHAUER: Let me ask one
3 other question, I'm looking at this Exhibit were
4 you emailed Ms. Argo, and you sign off as Metro
5 Construction Capital Hill Washington D.C.

6 MR. KAHN: Right.

7 CHAIRPERSON MOLDENHAUER: Is all of your
8 work in construction in D.C.?

9 MR. KAHN: Right.

10 CHAIRPERSON MOLDENHAUER: Do you think
11 that you should have known what the requirements
12 are for an R-4 zone?

13 MR. MUDASHIR KAHN: I believe we knew but
14 the thing is again as I said that's not a
15 requirement and also they stamp this if someone
16 submits the application DCRA they are the people
17 who knows all these rules so if they can make a
18 big mistake what about the people of the street,
19 we're not required to know all these rules, so
20 it's their baby basically so they're the one who
21 is enforcing all this and it's not gone through
22 one person, we all know that its gone through

1 tons of people at DCRA so if I was assuming I can
2 put 3 units I believe there are tons of other
3 people in DCRA as well, because the law is very
4 confusing about that, if I read the law book it
5 still says 900 square feet is for conversion, new
6 construction, now we find out about all these
7 details but if you walk into D.C. even I can tell
8 you if you go to Zoning Office, I've consulted
9 with Zoning in the past and they've given me
10 wrong advice so where do you go from there. Back
11 in 2005 I wish I could have brought that, there
12 was a building on D Street N.E. back in 2005 I
13 got permission for 6 units for conversion and
14 after two weeks I got a letter from Zoning that
15 no you can only have 4 units for within two weeks
16 I did not lose a lot of money so I did not pursue
17 and we end up having 4 units so basically these
18 are the mistakes they do all the time, you go to
19 Zoning and you still don't get satisfactory
20 answers because I think the law is very confusing
21 or the people there they are now educated as
22 well.

1 CHAIRPERSON MOLDENHAUER: Any follow up
2 questions for Mr. Kahn? Seeing none then thank
3 you we'll turn over to the Districts case.

4 MR. SURABIAN: Thank you, I think as Mr.
5 Schlater pointed out that it's sort of an
6 unfortunate situation but really the Appellant is
7 working from a wrong assumption that it's not
8 their responsibility to know the rules that it's
9 DCRA's and that if a mistake is made that they
10 don't have any accountability and I think that's
11 the wrong assumption. It's the property owner,
12 the investor who applies who needs to know and if
13 they don't have the knowledge to take the steps
14 to hire somebody who does have the knowledge to
15 put together plans that comply with the law.
16 Quite frankly DCRA doesn't review permits for the
17 benefit of the Appellant we review permits for
18 the benefit of the public and if a mistake is
19 made we have an obligation to the public to
20 correct that, we don't work for him in that if we
21 made a mistake we necessarily owe him anything,
22 we're enforcing the laws for the benefit of the

1 public. The issue of Estoppels has come up
2 before the court of appeals and a quote from an
3 often sided case it's the Wike v District of
4 Columbia Board of Zoning Adjustment Case 383 and
5 the court of appeals said due to the important
6 general public interest then the integrity
7 enforcement of the zoning regulations the
8 affirmative defenses of Estoppels and latches are
9 not judicially favored and that same case goes on
10 to say that in order to evoke an Estoppels
11 doctrine the equities need to be strongly in
12 favor of the party invoking the doctrine and I
13 don't think that the equities are really strongly
14 in favor. I think if we look through the facts
15 here, one the Appellant is there is a remedy for
16 them to, they could seek a variance or they could
17 convert it to a two unit flat. In that sense yes
18 there are maybe some excess costs but they are
19 not losing the use of their land nor do they have
20 to tear down the entire building. There's a
21 building in large part can remain standing, you
22 know all of the costs associated with the

1 structure of the building, the foundation, that's
2 money they would have spend anyway. Look into
3 the equities I think there's a clear lack of
4 diligence on the part of the Appellant here that
5 just can't be ignored they didn't go to the right
6 professionals to ask the questions about zoning,
7 they didn't consult the Zoning Regulations
8 themselves. They sort of were working on their
9 own misapprehension of the law and didn't think
10 that when building on a vacant lot in the
11 District of Columbia that there could be rules
12 out there that would stop them, I mean this is
13 Washington, D.C. there could be historic
14 regulations, there could be overlays there could
15 be any number of agencies, regulations that would
16 be applicable here and they didn't look into any
17 of it. Any financial loss I think can be
18 mitigated I mean first of they purchased the land
19 for 72,000 dollars and the assessment records
20 shows it's worth quite a great deal more than
21 that. This is a commercial investment I think
22 there are certain risks associated with that and

1 costs can recouped over time in that they would
2 still have two condos they could rent those out,
3 they could sell them, there's still a great deal
4 of value here in the building. And in terms of
5 reliance yes DCRA issued a permit but they didn't
6 rely on DCRA before they purchased the land, they
7 didn't rely on DCRA before investing money and
8 hiring consultants and engineers who designed the
9 plans. Certainly after before beginning
10 construction they never did any independent
11 research or hired an attorney to look into what
12 they could use with the land. That's essentially
13 my legal argument and I have one witness who's
14 the Zoning Administrator. Please state your name
15 for the record.

16 MR. LEGRANT: Matthew LeGrant.

17 MR. SURABIAN: What is your employment?

18 MR. LEGRANT: I'm the Zoning Administrator
19 for the District of Columbia and the Department
20 of Consumer Regulatory Affairs.

21 MR. SURABIAN: Are you familiar with 527
22 Irving Street?

1 MR. LEGRANT: I am.

2 MR. SURABIAN: Are you aware of a
3 building permit that was issued on May 5th for
4 that property?

5 MR. LEGRANT: Yes I am.

6 MR. SURABIAN: That's "Exhibit C" in the
7 Appellant's appeal.

8 MR. LEGRANT: Yes we're talking about
9 Exhibit C Building permit number B1003393 for 527
10 Irving Street, N.W. issued on May 7, 2010.

11 MR. SURABIAN: And you're familiar with
12 that permit?

13 MR. LEGRANT: I am.

14 MR. SURABIAN: And did you review the
15 application associated with that permit?

16 MR. LEGRANT: My staff did.

17 MR. SURABIAN: And do you believe that
18 permit is issued in error?

19 MR. LEGRANT: I do.

20 MR. SURABIAN: And how so?

21 MR. LEGRANT: In the subject zone which
22 was the R-4 District it is not possible to

1 construct a new apartment building as a matter or
2 right use under Section 330.5 it is allowable to
3 convert an existing building into an apartment
4 building as long as you have 900 square feet of
5 lot area for each unit, but that is the, other
6 than a grandfathered apartment building use on
7 this conversion apartments are not a matter of
8 right use.

9 MR. SURABIAN: And are there, is the 900
10 square foot per unit rule the only zoning
11 regulation applicable to this property?

12 MR. LEGRANT: No, in addition to that
13 basic density limitation then all the other
14 zoning development standards of which we've heard
15 a little bit about today do apply, the maximum is
16 60% lot occupancy, 40 foot height limit, 3
17 stories, at least one parking space for every two
18 units and so forth.

19 MR. SURABIAN: So just based on the size
20 of the lot wouldn't necessarily tell you if a lot
21 was buildable?

22 MR. LEGRANT: No one would have to do a

1 review and analysis before one could conclude
2 depending upon what the particular proposal that
3 is before us.

4 MR. SURABIAN: How did you ultimately
5 learn that there was an error with this building
6 permit?

7 MR. LEGRANT: In early or late October,
8 early November 2010, one of my staff came to me
9 who had been reviewing the permit that was
10 mentioned earlier today about the roof deck and
11 she noted to me she said well there's a roof deck
12 for a new apartment building and that apartment
13 building was not a matter of right use but
14 nonetheless it was, it looks like it was
15 approved, it had been approved by another
16 technician so when I looked into the matter and
17 did the research my initial thought was well was
18 it a conversion from an existing building or was
19 it new construction but then that technicians
20 information was correct that it was a new
21 construction, that's the point that I became
22 aware that this building permit that we just

1 described was in fact issued in error.

2 MR. SURABIAN: And the Appellant
3 referenced a permit to do work on the roof, are
4 you aware of that permit?

5 MR. LEGRANT: Yes.

6 MR. SURABIAN: Could you describe that?

7 MR. LEGRANT: Yes this was a permit to
8 construct or establish a roofed deck on the roof
9 on top of this building.

10 MR. SURABIAN: And did you approve that
11 permit?

12 MR. LEGRANT: Yes I did.

13 MR. SURABIAN: If it was a two unit
14 building would a roof deck be allowed?

15 MR. LEGRANT: Yes.

16 MR. SURABIAN: How many staff do you have
17 approximately?

18 MR. LEGRANT: 10.

19 MR. SURABIAN: How many building permit
20 applications do they review in like a month lets
21 say?

22 MR. LEGRANT: In a month I would say

1 between 4 to 500.

2 MR. SURABIAN: And is there anything
3 else your office reviews?

4 MR. LEGRANT: Yes in addition to the
5 building permits review we review applications
6 for certificates of occupancy, we review
7 applications for subdivisions, we work with the
8 permitting division on reviewing home occupation
9 permits, those are the basic permit streams that
10 we review, we also have responsibility for
11 enforcement function I have a dedicated
12 enforcement staff.

13 MR. SURABIAN: And how many C of O
14 applications would you review in a month?

15 MR. LEGRANT: I would say about 200 to
16 250.

17 MR. SURABIAN: Then subdivision and home
18 occupation permits about?

19 MR. LEGRANT: I would say about 30 to 40
20 subdivisions and maybe 100 home occupation permit
21 applications.

22 MR. SURABIAN: So between 500 building

1 permit applications, about 200 to 250 C of O
2 applications, 30 subdivision applications and 100
3 home occupation applications in a month, how many
4 times in a month do you discover an error, in a
5 good month?

6 MR. LEGRANT: Well let's see, I would say
7 maybe one or two errors may come to my attention.
8 Let me clarify that those are issues that may be
9 brought to my attention pre-issuance, maybe a
10 reviewer has already approved something but the
11 permit has not yet been issued then we'll go back
12 and make the appropriate adjustments. I have to
13 say post issuance I'm happy to say that's a very
14 rare occurrence.

15 MR. SURABIAN: So maybe less than one a
16 month. And after you learned of the error in
17 this case what did you do next?

18 MR. LEGRANT: Well I wanted to find out
19 how far the construction had proceeded, we looked
20 at I had a staff member go out to see how far the
21 construction had proceeded, we looked at the
22 inspection record, the inspection record tells us

1 how far the building had proceeding in terms of
2 having inspections improved so those are the two
3 things we looked at.

4 MR. SURABIAN: And then you issued a stop
5 work order I guess at that time?

6 MR. LEGRANT: Yes.

7 MR. SURABIAN: I show the stop work order
8 "Exhibit A" and you familiar with that?

9 MR. LEGRANT: I am.

10 MR. SURABIAN: Did you ask for this stop
11 work order to be issued?

12 MR. LEGRANT: I did.

13 MR. SURABIAN: Can you describe the
14 violation just for the record.

15 MR. LEGRANT: Right, the violation I'll
16 read it, it's a 3 unit apartment building it's
17 not a matter of right use in an R-4 Zone it also
18 notes previous principle building was removed
19 without a raise permit of the code section, I
20 mentioned earlier 11 DCMR 330.5

21 MR. SURABIAN: And after the stop work
22 order was issued did the Appellant call you?

1 MR. LEGRANT: Yes he called and wished to
2 meet and we met four days later on November 22ND.

3 MR. SURABIAN: And what did you discuss
4 at that meeting?

5 MR. LEGRANT: Well we, Mr. Kahn brought
6 in Mr. Achipong and two members of my staff and
7 myself and we described the violation, the reason
8 for the stop work order, I explained to him that
9 because that the construction that he was
10 proceeding with was not a matter of right use I
11 did not have authority as a Zoning Administrator
12 to approve that use. I told him he had options
13 to try to remedy the situation.

14 MR. SURABIAN: What options did you
15 describe to him?

16 MR. LEGRANT: I told him that in order to
17 establish this use you can seek relief in form of
18 a variance from this Board the Board of Zoning
19 Adjustments, he could also redo the building and
20 apply for a permit that reflected a matter of
21 right use which could be a flat or a single
22 family home.

1 MR. SURABIAN: And did, at the meeting
2 did Mr. Agipong or Mr. Kahn dispute the
3 regulation with you and suggest that a 3 unit
4 building could be there?

5 MR. LEGRANT: As I recall they were
6 obviously upset having to stop their construction
7 and they noted looking at the financial loss they
8 would endure, I stated several times the limit of
9 my authority that I was acting in capacity of
10 enforcing the Zoning Regulations, that if they
11 have the right to appeal my decision to this
12 Board that the suggested remedy was to seek a
13 variance and is the perhaps the most time
14 efficient situation would to be to apply for a
15 variance to see about getting relief.

16 MR. SURABIAN: Do you ever when a
17 developer is in sort of the design phase of a
18 project do you ever meet with developers and
19 advise them of the regulations?

20 MR. LEGRANT: Yes all the time.

21 MR. SURABIAN: Did the Appellant in this
22 case do that?

1 MR. LEGRANT: No.

2 MR. SURABIAN: Did they do that with any
3 one of your staff?

4 MR. LEGRANT: Not that I'm aware of.

5 MR. SURABIAN: No further questions.

6 CHAIRPERSON MOLDENHAUER: Mr. Nappo
7 redirect, or cross sorry.

8 MR. NAPPO: Mr. LeGrant, you just
9 testified that you meet with people on occasion
10 before issuing the permit, you meet with people
11 who are asking building permits and their counsel
12 and their architect before issuing the permit, is
13 that right?

14 MR. LEGRANT: That's correct.

15 MR. NAPPO: Can you give us a good
16 working estimate of how many times you meet with
17 people before issuing a building permit as
18 opposed to getting a request for a building
19 permit and making your decision on it without a
20 previous conference with the persons involved?

21 MR. LEGRANT: Well, I'll try to answer
22 your question this way, the organization of my

1 office is such that most the permit reviews are
2 done by my staff, my subordinates in terms of my
3 zoning technicians and my deputy zoning
4 administrator, I, myself and my deputy on
5 occasion meet probably two or three times a week
6 with developers, their counsel, architects who
7 seek clarification or who have questions about
8 the Zoning Regulations so I would say we've
9 already heard some of the numbers about the
10 volume of the number of permits that my office
11 reviews on occasion maybe one or two permits a
12 week come directly to me, they're very complex
13 cases or cases with particular specialized issues
14 that I review but I do meet again 3 or 4 times a
15 week with applicants seeking input on Zoning
16 Regulations.

17 MR. NAPPO: And again I'm going to ask
18 the question what percentage of applications do
19 you actually meet with people as opposed to
20 exercising your independent judgment on a
21 building permit application?

22 MR. LEGRANT: Personally or my whole

1 office?

2 MR. NAPPO: The whole staff.

3 MR. LEGRANT: So it's less than 1%.

4 MR. NAPPO: So 99 people out of 100 submit
5 building permit applications to you and those
6 applications are acted on?

7 MR. LEGRANT: I would say that that's
8 correct.

9 MR. NAPPO: Would you look at "Exhibit C"
10 which is the building permit in this case.

11 MR. LEGRANT: I have it here before me.

12 MR. NAPPO: Description of work would you
13 agree that this building permit application said
14 to construct new 3-stories plus basement
15 apartment building?

16 MR. LEGRANT: Yes that's what it states.

17 MR. NAPPO: Is there any word in that
18 phrase that you failed to understand?

19 MR. LEGRANT: No.

20 MR. NAPPO: And then you acted
21 accordingly, you issued a building permit, is
22 that correct?

1 MR. LEGRANT: That's correct.

2 MR. NAPPO: About how long, well we know
3 isn't it a fact that you had the application for
4 almost 3 months before granting it?

5 MR. LEGRANT: I think that's accurate.

6 MR. NAPPO: And is it also accurate that
7 10 different units within your office signed off
8 on it?

9 MR. LEGRANT: To clarify that the
10 different disciplines include the permitting
11 division, the other departments, department of
12 environment, for example the DDOE, and my office
13 but you're right there's 10 disciplines,
14 approximately 10 disciplines apparently involved
15 with this review, this particular application.

16 MR. NAPPO: Was there any attempt or
17 could you tell us of any attempt by the
18 plaintiffs here to obfuscate or hide or conceal
19 their obvious purpose in how they intended to
20 develop this property?

21 MR. LEGRANT: I would not attribute any
22 obfuscation to their application.

1 MR. NAPPO: Would you also agree that on
2 October I believe 27th, a couple of weeks before
3 this came about they applied for a roof permit?

4 MR. LEGRANT: Yes as I testified through
5 that process is how I became aware of the issue
6 with the first permit.

7 MR. NAPPO: You also in one of your
8 responses said that you looked over complex
9 applications; I take it those are multi-unit
10 apartment buildings?

11 MR. LEGRANT: Well, I guess I'll say it
12 this way, sometimes there's multiple uses,
13 multiple lots, that are approved by the Zoning
14 Commission, Board of Zoning, cases approved by
15 this Board, properties with past enforcement
16 issues things as that type, that's how I would
17 constitute a complex situation.

18 MR. NAPPO: And to be more direct would
19 you consider this building permit application to
20 be a complex case?

21 MR. LEGRANT: In the fact that it was, did
22 not involve those matters no.

1 MR. NAPPO: Do you know from your own
2 experience with this case or your review of the
3 records whether in the roughly 3 month period
4 that they were considering his application for a
5 building permit whether any questions arose about
6 any phase of the project at all?

7 MR. LEGRANT: No and in the post analysis
8 when this came to my attention and I spoke to the
9 reviewer Ms. Anderson, who's name was mentioned
10 before, I went back and spoke with her about what
11 occurred, there was a mistake made which was
12 acknowledged that instead of a conversion
13 situation it was new construction so there was no
14 additional analysis that the technician that was
15 involved did other than the compliance with all
16 the development standards that the height, the
17 setbacks, lot occupancy and so forth.

18 MR. NAPPO: And in those obvious factors
19 apparently the building was of a height that was
20 allowable 40 feet and there was a 60% occupancy
21 use, I take it that in the gross analysis this
22 building passed?

1 MR. LEGRANT: Correct.

2 MR. NAPPO: That's all I have of this
3 witness.

4 CHAIRPERSON MOLDENHAUER: Before we allow
5 any redirect Board Members may have some
6 questions, I have one quick question. You
7 indicated you met with the Appellant and Mr.
8 Agipong is that correct?

9 MR. LEGRANT: That's correct.

10 CHAIRPERSON MOLDENHAUER: What was your
11 impression of Mr. Agipong's knowledge of zoning
12 regulations and zoning requirements?

13 MR. LEGRANT: Well Mr. Agipong who was
14 a former DCRA employee I think his tenure
15 preceded my tenure at DCRA it may have overlapped
16 a little bit but my impression his expertise was
17 in the realm of the building code in our meeting
18 I don't recall specifically asking him about his
19 knowledge of the Zoning Regulations but he did
20 not represent to me that he had done a Zoning
21 Analysis as I recall on this application?

22 CHAIRPERSON MOLDENHAUER: Did he seem

1 surprised to understand I guess the correct
2 aspect of the Zoning requirements?

3 MR. LEGRANT: I don't know I would use
4 the word surprised, he shared with the Appellant
5 the angst of having their job stopped and then I
6 explained to all assembled but with the
7 regulation was the rationale of the stop work
8 order and then the options to go forward.

9 CHAIRPERSON MOLDENHAUER: No other
10 questions, do any Board Members have any follow
11 up?

12 MR. SCHLATER: Sure, Mr. LeGrant can we
13 just talk about the stop work order for a moment?

14 MR. LEGRANT: Sure.

15 MR. SCHLATER: Do you have discretion on
16 whether to issue a stop work order if you know
17 something's being built in violation of the
18 Zoning Code. Specifically you know that you
19 already issued the building permit and signed off
20 on it, do you think you had any discretion as to
21 whether to issue that stop work order?

22 MR. LEGRANT: The only discretion I have

1 is to whether after consulting with my counsel
2 where we are in terms of the construction and how
3 far it proceeded but if there's a violation of
4 the Zoning Regulations it's my duty, part of my
5 job to enforce the Zoning Regulations and so I do
6 not have an option of saying well this one I'm
7 not going to pursue enforcement or not issue a
8 stop work order, if the authority to pursue the
9 stop work order then that's my job as I must have
10 to issue a stop work order.

11 MR. SCHLATER: Then when you sat and met
12 with the Applicant and you gave them the options
13 with respect to the variance or appealing the
14 stop work order, had you also explored areas
15 where you might have been able to grant some
16 relief to the Applicant?

17 MR. LEGRANT: Well because we had gotten
18 to the point of saying well there was the
19 violation it did not comply it was not a matter
20 of right construction the options that were laid
21 out were either other matter of right
22 construction is a possibility or and I strongly

1 recommended to pursue relief in the forms of a
2 variance and I preface my discussion as I always
3 do with individuals I cannot speak for the Board
4 but you have the opportunity to go before the
5 Board and make your case and anything that I
6 could do to help get the matter before the Board
7 in a timely matter I would do so.

8 MR. SCHLATER: Is there a burden on the
9 Applicant of a building permit when they submit a
10 building permit is there any burden that they
11 demonstrate, do they make any representations
12 with respect to that application and it's
13 conformance to building code and the zoning
14 regulations?

15 MR. LEGRANT: Yes it is incumbent upon an
16 Applicant to make their place that they're
17 compliant, I can speak for the Zoning Regulations
18 but then the other aspects of DCRA look at
19 compliance with the other Districts construction
20 related codes.

21 MR. SCHLATER: Okay no further questions,
22 thank you.

1 CHAIRPERSON MOLDENHAUER: Any redirect?

2 MR. SURABIAN: Yes I just have one
3 redirect question. In the span between the
4 filing of the permit in the middle of February
5 and then the review by the Zoning Tech in early
6 May do you know what was happening during that
7 time?

8 MR. LEGRANT: Well other than what was
9 represented on the chart which was part of the
10 Appellant's exhibit that the other disciplines
11 were reviewing, no I don't know the particular
12 details of the..

13 MR. SURABIAN: Did your zoning reviewer
14 sort of say to you oh I was thinking about this
15 one for 3 months or is it likely that it came to
16 her at a much later time?

17 MR. LEGRANT: Well just to explain the
18 process as the plans, it's not concurrent review
19 it's typically a serial review so it's one
20 discipline has the plans, they make their review
21 or comments either to approve or hold for
22 correction and then it moves down the line but

1 its not a situation where it's sitting in the
2 Zoning Office for 3 months.

3 MR. SURABIAN: Okay, so it's likely that
4 those plans were not, they were not in your
5 office when the Application was filed?

6 MR. LEGRANT: No they were not, not to my
7 knowledge, no.

8 CHAIRPERSON MOLDENHAUER: Before we turn
9 to Mr. Nappo for any closing comments I just had
10 a couple of follow up questions for Mr. Kahn.
11 Just looking at the issue of, you know kind of
12 what you have in the deal and what it would take,
13 what type of interest rate do you currently have
14 on the property?

15 MR. KAHN: 6.25.

16 CHAIRPERSON MOLDENHAUER: Do any of the
17 Board Members have any questions? Mr. Nappo if
18 you like you can have closing remarks.

19 MR. NAPPO: I will have some very brief
20 closing remarks but I don't want to forget this
21 point. Mr. Surabian has quoted a case regarding
22 what I mentioned about Estoppels, I would

1 appreciate having five working days to review
2 that case and presenting a very brief document to
3 the Board about my analysis to that case as to
4 what the facts were in that case compared to this
5 case and whether Estoppels which evidently denied
6 or at least as Mr. Surabian, sure he's quoting
7 correctly that the court, the equities need to be
8 strongly in favor of the complaining party, so
9 I'd like if I may have five working days or a
10 week but I will try to get it in two or three
11 days, it's just one case, I'd like to read it and
12 make a comment.

13 CHAIRPERSON MOLDENHAUER: I think that's
14 fine I think that if that's something that you'd
15 like to do, I think that's probably a good idea
16 because I think that was an interesting point
17 that obviously was brought out by Mr. Surabian
18 and it did make me look at the numbers more which
19 is where I asked the question about the interest
20 rate and looking to see would there be strong
21 equities against just doing a two unit flat
22 versus a 3 unit flat and I think also you know my

1 rough calculations of what carrying costs would
2 be and what potentially you know some other
3 additional hard costs it would be preferable to
4 also include maybe a better more artfully
5 submitted document on your side in regards to
6 what the comparison is to show us the fact that
7 potentially the equities are very strong in your
8 favor in regards to flat versus a 3 unit,
9 because I think those figures are going to be
10 important in our evaluation. So is there
11 anything else that the Board would want to see
12 from the Applicant in that regard during this
13 time frame?

14 MR. SCHLATER: Madam Chair I might like to
15 see a statement form Mr. Agipong as to what he
16 was thinking in terms of his zoning analysis when
17 he prepared the plans and then subsequently went
18 to the engineer to get them stamped and submitted
19 to the DCRA.

20 CHAIRPERSON MOLDENHAUER: I think it's a
21 question of good faith and right now we have
22 these statements by Mr. Agipong that he didn't

1 know what was going on, I had questioning about
2 that with Mr. LeGrant but I think that would be
3 helpful obviously whatever you can or cannot get
4 based on the facts, but something like that would
5 probably be helpful as well.

6 MR. NAPPO: Happy to provide that.

7 CHAIRPERSON MOLDENHAUER: Based on that
8 and trying to also get, see we don't have any
9 hearings on the 22nd, so the next day we could put
10 this on the calendar for would be the 29th of
11 March, so what we'll do is we will give you until
12 the 17th to submit a filing, March 17th and then
13 Mr. Surabian if you feel the need to reply to
14 that you will have until the 24th to reply and
15 then we will have this for decision on March 29th.

16 MR. SURABIAN: I just ask that Mr. Nappo
17 could serve that to me via fax or email?

18 MR. NAPPO: I'll do that soon, that I can
19 do.

20 MR. SURABIAN: Okay thank you.

21 CHAIRPERSON MOLDENHAUER: And obviously a
22 copy will come to the Office of Zoning.

1 MR. NAPPO: Right, and Ma'am I've lost a
2 little bit of track, one I'm going to have a
3 comment on the case cited by Mr. Surabian. Two
4 I'm going to have a statement from Mr. Agipong
5 and three I'm going to have a clarifying
6 statement from my client more accurately as to
7 the cost of converting from 3 units to 2 units.

8 CHAIRPERSON MOLDENHAUER: Showing
9 potential obviously the substantiated figures
10 showing a back up for those figures so we know
11 obviously if there's a difference in the
12 marketing prices showing back up for those, I'm
13 sure you guys have a real estate agent of a
14 construction cost estimator someone like that,
15 that can provide us documentation of those
16 figures with support for that.

17 MR. NAPPO: I think this is really their
18 business so that they may realize to a great
19 extent on their own experience as to what it would
20 cost, because they actually could get it at a
21 lower price than what a general contractor can,
22 but I'll try, we will try to satisfy you in each

1 of those particulars. We appreciate the
2 opportunity.

3 CHAIRPERSON MOLDENHAUER: What I'm going
4 to do, I'm actually just going to for the
5 purposes of the record, the ability for you to
6 provide any written brief is not going to be
7 limited just to that one case, if you feel the
8 need to provide additional closing remarks
9 because this is going to be your closing instead
10 of providing an oral closing right now, if you
11 have any need to provide any additional oral
12 closing as to Estoppels or potential latches, the
13 record will remain open in that regard not just
14 to respond to that one case.

15 MR. NAPPO: Thank you very much.

16 MS. NAGELHOUT: Madam Chair does that go
17 to both parties?

18 CHAIRPERSON MOLDENHAUER: Yes it does
19 because obviously Mr. Surabian's response will be
20 limited based on Mr. Nappo's statement so I think
21 it depends on obviously how Mr. Nappo what type
22 of submission he has. But again the deadline

1 will be March 17th, for Mr. Nappo for the
2 Appellant and then the 24th for Mr. Surabian for
3 the District and then we'll hear this case on the
4 29th for decision.

5 MR. SURABIAN: Thank you.

6 CHAIRPERSON MOLDENHAUER: That concludes
7 this hearing and that also concludes our day's
8 cases.

9 MR. KAHN: Thank you.

10 END

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