

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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

PUBLIC MEETING AND PUBLIC HEARING
June 7, 2011
Start: 9:46am - End: 10:41am

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

Board Members

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

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

2 CHAIRPERSON SORG: This meeting will
3 please come to order. Good morning ladies and
4 gentleman. This is the Tuesday May 24, 2011,
5 Public Meeting of the Board of Zoning Adjustments
6 for the District of Columbia. My name is Nicole
7 Sorg, Vice Chairperson, joining me today to my
8 right is Jeffrey Hinkle, representing the
9 National Capital Planning Commission and to my
10 left Greg Selfridge representing the Zoning
11 Commission. Copies of today's hearing agenda are
12 available to you and are located to my left in
13 the wall bin near the door. We do not take any
14 public testimony at our meetings unless the Board
15 asks someone to come forward. Please be advised
16 this proceeding is being recorded by a court
17 reporter and is also being webcast live.
18 Accordingly we must ask you to refrain from any
19 disturbing noises or actions in the hearing room.
20 Please turn off all beepers and cell phones. Mr.
21 Secretary, do we have any preliminary matters?

22 MR. MOY: The Board is not aware of any

1 but if there are we should take that on a case by
2 case basis Madam Chair.

3 CHAIRPERSON SORG: Okay thank you so let's
4 proceed with the agenda.

5 **Appeal No. 18152**

6 MR. MOY: Good morning Madam Chair,
7 Members of the Board. The first case for Board
8 action is Appeal No. 18152. This is of the
9 Advisory Neighborhood Commission 1-D, pursuant to
10 11 DCMR 3100 and 3101 from an August 17, 2010,
11 decision by the Department of Consumer and
12 Regulatory Affairs to grant a building permit
13 allowing a renovation and expansion of the
14 existing Mt. Pleasant Library in the R-5-D
15 District. This is at premises 3160 16th Street,
16 N.W. (Square 2595, Lot 830). With that the Staff
17 has no other information for the Board.

18 CHAIRPERSON SORG: Okay thank you Mr.
19 Moy. Unfortunately I think for this case we were
20 waiting for an additional Board Member to be able
21 to vote on it. We will have to postpone
22 deliberations and decision on this case No. 18152

1 until our next decision date which is July 12th.

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

4 **Application No. 18209**

5 MR. MOY: The next is Application No.
6 18209 of the Washington Tennis and Education
7 Foundation and the Government of the District of
8 Columbia. This application is pursuant to 11
9 DCMR 3104.1 for a special exception to allow the
10 construction of a public recreation and community
11 center under (subsection 408.1) exceeding the
12 maximum gross floor area in the R-5-A District at
13 premises 100 Stoddert Place, S.E. (Square 5407,
14 Lot 807). In addition if the Board will
15 recollect at its public hearing on May 17, 2011,
16 the Board affirmed the Applicant's request to
17 amend the application to add special exception
18 relief to allow required off-street parking to be
19 located in the front yard pursuant to Section
20 2116.5. At its public hearing on May 17, 2011
21 the Board completed public testimony, closed the
22 record, and scheduled this for decision on June

1 7, 2011. The Board requested additional
2 information to supplement the record from the
3 Applicant which had a set deadline of Friday May
4 27, 2011. The filing is in the record Madam Chair
5 in your case folders identified as "Exhibit 35",
6 in addition to the Board's allowed responses with
7 a deadline of June 6, 2011. Madam Chair in your
8 case folders there are two filings, one is from
9 ANC 7-A-06 SMD and 7-A-01 SMD identified as
10 "Exhibits 36 and 37" respectively. The Board is
11 to act on the merits of a requested special
12 exception relief as I've just stated. That
13 completes the Staff's briefing Madam Chair.

14 CHAIRPERSON SORG: Thank you very much
15 Mr. Moy. As you mentioned we received what we
16 requested from the Applicant and while it looks
17 like they've reached an agreement with the
18 homeowners association, as the secretary
19 mentioned, we have received two requests from two
20 out of the, I think, seven Single Member
21 Districts that comprise ANC 7-A which notified us
22 that the ANC would like to take up this issue

1 again after a meeting which is scheduled for this
2 evening. So to address some of the concerns that
3 were discussed in testimony and the hearing that
4 we had on May 17th. Given that I think that
5 between May 17th and now there's been some
6 movement and discussion between Washington Tennis
7 Education Foundation and specifically the
8 adjacent homeowners association whose opinions
9 and concerns figured pretty prominently in the
10 ANC earlier submissions to us I'm inclined to
11 allow this postponement and schedule this again
12 for a decision on our next decision date. Are
13 there any comments from other Board Members?

14 MR. KALICHECK: On behalf of the
15 Applicant can make a comment, I know you really
16 don't take comments.

17 CHAIRPERSON SORG: Yeah go ahead and
18 introduce yourself for the record.

19 MR. KALICHECK: Kerry Kalicheck from
20 Laughlin, Goldsten and Storrs on behalf of the
21 Applicant. I would just like to make a motion
22 that the two submissions be stricken from the

1 record. If you'll remember from the ANC's
2 initial filing they designated Valerie Johnson
3 the Chair of the ANC to be the representative in
4 this case for ANC 7-A. I believe those two
5 submissions were made on behalf of those
6 individuals not speaking on behalf of the ANC but
7 speaking on behalf of themselves. On the May 17th
8 hearing the record was left open for comments
9 from ANC 7-A in response to our filings and ANC
10 7-A through Chairman Johnson did not make
11 comments. Secondly, and it's my understanding
12 based on what I saw that those submissions were
13 made after the 3 o'clock filing deadline for
14 submissions.

15 CHAIRPERSON SORG: Thank you I appreciate
16 what you're saying and we're aware that these
17 have come from the Single Member Districts. I'll
18 let other Board Members weigh-in on this but from
19 my opinion I think in the original, for me one of
20 the questions here in this case was what was
21 contained in the original ANC submission. I
22 think while it's true that we haven't received

1 any comments from the ANC as a whole I think the
2 fact that it's meant on the agenda today I'm
3 inclined to let this play out a little bit
4 further so that we can really make sure that the
5 conditions that are, before we deliberate and
6 take a decision on this that we can really
7 understand what exactly are the relevant
8 condition requests here. I will open it up for
9 further comments.

10 MR. HINKLE: Madam Chair I agree with you,
11 your thoughts. I think there's an expectation
12 here that there will be conditions on this order
13 and I think it would be appropriate for the Board
14 to wait for some further discussion by the ANC
15 before we consider conditions on this.

16 CHAIRPERSON SORG: Thank you Mr. Hinkle
17 and are there any further comments? Seeing none,
18 I think what we're going to do is we will
19 postpone the decision date for this case to our
20 July 12th date and will allow the ANC until June
21 14th to submit any updates or new resolution that
22 they may come to. Also I want to request the

1 meeting minutes from the ANC if they can submit
2 that as well and then any responses from the
3 Applicant I will request by July 5th and that's
4 all we're going to allow.

5 MR. KALICHECK: Just one point of
6 clarification; the original ANC 7-A filing
7 supported the application with the conditions
8 from the homeowners association they didn't have
9 any of their own concerns. So my concern is that
10 by allowing them to make additional comments in
11 considering this case that it will open up new
12 issues. Seeing is all that they did originally
13 in the filing is attach the letter from the
14 homeowner's association and then support it with
15 only those conditions I'm concerned that there
16 will be issues that were never raised in the
17 original case.

18 CHAIRPERSON SORG: I hear you but I think
19 based on the, what we've heard from you as the
20 Applicant as well as the rest of the neighborhood
21 concerns I think we are in a position to judge
22 which of the conditions from the original vote

1 that you have spoken further about with the
2 homeowners association and anything else that may
3 come up between now and then we will be able to
4 understand what is relevant and what is under the
5 purview of use as a Zoning Board as opposed to
6 other issues that are there. I'm pretty
7 confident there, okay.

8 MR. KALICHECK: The dates that the ANC
9 has to submit by and then our response?

10 CHAIRPERSON SORG: We'll give them until
11 June 14th, that's about a week in case they have
12 anything else. Then I mentioned I would ask that
13 the ANC submit the minutes from their meeting of
14 this evening and then for any responses that the
15 Applicant may have July 5th, then we'll set this
16 for July 12th.

17 MR. KALICHECK: Thank you.

18 CHAIRPERSON SORG: Thank you very much.

19 MR. MOY: Madam Chair the Applicant
20 raises an interesting aspect because of the
21 homeowners the DuPont Commons Homeowners
22 Association. Would the Board consider with

1 respect to responses since you provided an
2 opportunity for the Applicant to respond with
3 their agreement with the homeowners I am assuming
4 that homeowners then the DuPont Commons also
5 could be part of the responses with the
6 Applicant? I'm just throwing that on the table
7 for consideration.

8 CHAIRPERSON SORG: I mean the way they
9 were going about this is a little bit different,
10 I think, than normal. What we've gotten so far
11 is an agreement between the Applicant and the
12 homeowners so I think that anything from them
13 would be incorporated from the Applicant is fine
14 so I won't request anything or give for comment
15 from the homeowners association.

16 MS. GLAZER: I don't know if Mr. Moy is
17 trying to clarify whether the homeowners would be
18 permitted to submit something separate if they
19 desired, is that your concern?

20 MY MOY: I just raised that for the
21 Board's consideration since apparently it's
22 already a proposed said condition that's been

1 submitted, that's been worked out in agreement
2 with the Applicant. I'm not sure as a separate
3 stakeholder how that would work with the ANC
4 comment. They may be similar I just thought I
5 would raise that.

6 CHAIRPERSON SORG: Thank you I appreciate
7 you raising that. I don't believe that the
8 homeowners association is a party in the
9 application so therefore I don't think that we
10 need to allow for them to have response in
11 addition to the fact that we already have an
12 agreement between them and the Applicant.

13 MR. MOY: Okay that's fine I just wanted
14 to raise it so we cover all the bases.

15 CHAIRPERSON SORG: Thank you very much.
16 If there are no other clarifications then we can
17 go ahead and move forward.

18 MS. GLAZER: Madam Chair I'm sorry I
19 should have raised this before but I believe
20 there was a motion made by the Applicant's
21 counsel to strike and I don't know if that was
22 addressed. I don't know if the Board wants to

1 address it now or consider it later? I would
2 just add that my recommendation would not be to
3 consider it without input from the other parties
4 which at this point it's the ANC.

5 CHAIRPERSON SORG: I agree I think that
6 we can move forward in the postponement without
7 considering a motion based on the way that we
8 understand how we want to make our decision.

9 MR. KALICHECK: If the ANC, sorry if the
10 Board is going to postpone I'll withdraw my
11 motion.

12 CHAIRPERSON SORG: Thank you very much.

13 **Application No. 18193**

14 MR. MOY: Okay very good. The next
15 application before the Board is Application No.
16 18193 this is of Solomon Gramajo, pursuant to 11
17 DCMR 3103.2 for a variance this is from the use
18 provisions to allow the conversion (cellar, first
19 floor and attic for storage) of an existing one-
20 family row dwelling for commercial use under
21 (subsection 330.5) in the R-4 District at
22 premises 1324 Park Road, N.W. (Square 2843, Lot

1 36). On May 10, 2011, the Board completed public
2 testimony, closed the record and scheduled its
3 decision on June 7, 2011. The Board did not
4 request any additional information for the record
5 and the Board is to act on the merits of the
6 variance relief for the use provisions that would
7 allow for the conversion under (subsection
8 330.5). That completes that Staff's briefing
9 Madam Chair.

10 CHAIRPERSON SORG: Thank you very much
11 Mr. Secretary. For deliberations for this
12 application I'll turn first to Mr. Hinkle to
13 start us off.

14 MR. HINKLE: Thank you Madam Chair. As
15 Mr. Moy stated this is an application for use
16 variance. This is an existing row house within a
17 full row of similar structures. The request is
18 to convert the first floor and the cellar from
19 residential use to a commercial use. Part of the
20 issue here is that adjacent to the subject
21 property on both sides the structures also have
22 commercial uses on the cellar as well as the

1 first floors. Part of the issue here is that
2 those uses would result in some noise and some
3 vibrations and some odors to the subject
4 property. Thus the Applicant has been unable to
5 rent these spaces as residential uses both the
6 cellar as well as the first floor. A number of
7 the windows to his units overlook where the
8 garbage is stored next door at the restaurant.
9 Again, there's a Laundromat in the cellar of the
10 adjacent building that causes vibrations. The
11 Office of Planning submitted a report that
12 initially stated that the Applicant had not
13 supplied enough information related to the time
14 periods for which the existing units, existing
15 residential units that are being proposed for
16 commercial as well as the applicant's endeavors
17 to rent those units and what lost income they've
18 been dealing with. Also, whether they've
19 explored noise attenuation measures to help make
20 those units more marketable as residential units.
21 We did receive a submission from the Applicant
22 just prior to the hearing that addressed those

1 issues. At that hearing the Office of Planning
2 actually stated that with that supplemental
3 information they could support this application.

4 For me I think the condition here is that there
5 are some noise issues, and vibration issues, and
6 order issues related to this property based on it
7 being sandwiched between two commercial uses.
8 This has created a difficulty for the Applicant
9 to rent these units as commercial spaces. I feel
10 that the Applicant has made his case in this
11 regard; I'll leave it there for now at this
12 point.

13 CHAIRPERSON SORG: Thank you Mr. Hinkle
14 and I will open up for further deliberations I
15 just wanted to add a couple of things. I think
16 generally speaking I agree with your analysis.
17 For me this was a pretty tough one and I think
18 here the Applicant kind of just squeaks over the
19 hurdle of the use variance that's being
20 requested. I think a couple of things also that
21 go into my analysis here are that I think the
22 exceptional nature of the subject property is

1 very specific to its location between these other
2 two uses. Also I wanted to note that regarding
3 detriment to the public good and that prong of
4 the variance test I think it's worth mentioning
5 that this area has a history of this kind of
6 small neighborhood retail uses and it's actually
7 something that while it's not in the
8 comprehensive plan itself is supported by the
9 mid-city area elements planning and development
10 priority as well as the Central 14th Street
11 studies that have been done. Also I think one
12 other thing to mention is that even though we
13 didn't receive any submissions from the ANC in
14 this case it was noted in the OP report as well
15 as the testimony that ANC 1-A met on April 13th
16 and voted to recommend approval. From testimony
17 we learned that the vote was 10 to 0 in support
18 and while we can't give that great weight having
19 not received a letter from that ANC that is, I
20 think, definitely something to note as well as we
21 hadn't received any opposition from any
22 neighboring uses here. With that addition I will

1 open it up for further comment.

2 MR. SELFRIDGE: Thank you Madam Chair,
3 unfortunately I have a different reading in this
4 case in regards to meeting the variance test. I
5 think clearly I'm not sure that the exceptional
6 circumstances have been addressed; I don't think
7 that an illegal use is sufficient. I think that
8 if the illegal use is causing exceptional
9 circumstance that the Applicant or DCRA or OP can
10 assist the Applicant in getting the illegal use
11 shut down, that seems to be the first step in
12 addressing the exceptional circumstance. That's
13 one, I'm not convinced that there is a hardship;
14 the evidence that was provided to me was
15 insufficient to prove that they even tried to
16 rent this out. From what I heard in the
17 testimony was that this building sat empty for
18 years and when they were approached with
19 commercial opportunity they decided that would be
20 a good use of it, to rent it. I don't see
21 anything in terms of documentation that it was
22 attempted to be rented out. I don't see anything

1 in terms of documentation in regards to, by a
2 third party with regards to the vibration. I
3 don't see any documentation in regards to a third
4 party with the impact to the restaurant or the
5 illegal business operating next door. I also
6 think that by granting this we would be setting a
7 dangerous precedent. If you were to take this
8 logic and you were to kind of continue to
9 perpetuate it down the block then the house next
10 door can now be turned commercial because it was
11 next to a business, then the house next door, and
12 the house next door and before you know it you've
13 got a whole commercial block. I don't think
14 that's the intent here for a variance, I think
15 that this is clearly outside of what's intended
16 by granting the use variance. I think it's
17 inconsistent with the R-4 District. As a matter
18 of fact the Zoning Commission is addressing some
19 of these issues in the Zoning re-write and
20 specifically we're addressing commercial
21 properties in residential districts, R-3, R-4 and
22 R-5 Districts and there are circumstances when

1 businesses such as coffee shops, small corner
2 stores, deli's maybe these could be allowed under
3 very strict circumstances and criteria within
4 these Districts. But even by this relaxed
5 standard this application does not meet that. I
6 just don't see how I can support a use variance
7 for this. I think that it clearly does not meet
8 the standards and I think even going forward of a
9 relaxed standard that we still would not consider
10 something like this for a special exception.
11 And, I'm very concerned with the precedent that
12 this would set going down the block and in other
13 R-4 Districts. I don't think the case has been
14 made.

15 CHAIRPERSON SORG: Thank you Mr.
16 Selfridge. I understand and I share your
17 concerns with regard to not wanting to set a
18 precedent of this nature on these types of
19 residential blocks and that was what really kept
20 me on the fence here. I think that what makes me
21 feel like this is a particularly unique
22 circumstance in this neighborhood is the fact

1 that there are commercial uses that are in
2 extremely close proximity on either side of the
3 property. I think for me the fact that the use
4 is next door are illegal or not, I mean they are
5 operating and have been operating there for a
6 good amount of time. That doesn't to me change
7 the situation that is brought by a restaurant
8 that is open until midnight with noise from their
9 kitchen and trash and patrons as well as a
10 Laundromat who's noise and exhaust are vented
11 directly next to this building.

12 MR. SELFRIDGE: Is the first step in
13 recourse a variance from the BZA or should they
14 not be going to DCRA and asking DCRA to shut this
15 down? He hasn't even focused on the restaurant
16 his main concern was the Laundromat and the
17 vibrations caused by the Laundromat and the
18 congregating on the front steps both at the
19 Laundromat and from the hair salon. I think a
20 very easy way to address that is simply go to
21 DCRA and ask them to shut down this illegal
22 business which DCRA should be willing to do. I

1 think it was notable that OP had not actually
2 taken those steps and had seemed to look the
3 other way on this illegal business. He hadn't
4 engaged his neighbors; he hadn't looked at any
5 other mitigation efforts. It seems like the
6 first step was to come to BZA and get a variance
7 for the use because it was convenient. It seems
8 to be that he essentially found what he wanted to
9 do with the property and then he built the case
10 to support that. I just think it's not the right
11 way to go about it, I don't think we should be
12 granting variances in situations like this. I
13 don't think we should be blessing illegal
14 operations. I think that the standard should
15 remain high; I think this Board is very
16 permissive in a lot of cases and I think we try
17 to balance the needs of the property owners with
18 the impacts on the community but this is turning
19 this block more and more into a commercial block.
20 There are R-4 zones all over the city that are
21 adjacent to commercial zones. If that becomes
22 the standard that if you're adjacent to a

1 commercial zone or you're near a commercial zone
2 that it impacts your ability to have a
3 residential property that we're going to see this
4 occurring everywhere. I think this is very, very
5 dangerous, the standards need to mean something,
6 there needs to be an exceptional circumstance,
7 and an illegal operating business is not an
8 exceptional circumstance. And, they have not
9 demonstrated a hardship, where's the proof that
10 they've tried to rent this. I could come in and
11 say that I tried to rent out my row house on
12 Capitol Hill and I couldn't do it so I want to
13 put a restaurant in there and what's to stop
14 that?

15 CHAIRPERSON SORG: I mean I understand
16 where you're coming from is there something you
17 think that you might, some evidence from the
18 Applicant that might help you, or might improve
19 that? Also I would just, from OP it looks like
20 they did consider, I think, the nature of the
21 uses on either side and found yes that no permit
22 was found for the Laundromat but that the

1 restaurant had received a use variance.

2 MR. SELFRIDGE: That's fine the first
3 step should be to shut down the illegal business
4 that's causing all the problems. They haven't
5 done it and they made BZA the first stop and the
6 reason they made BZA the first stop is because
7 they're simply trying to find a solution to get a
8 commercial use in this building. The building
9 has sat empty, they've probably been a bad
10 neighbor for years and now they want to get a
11 variance from this Board to put a commercial use
12 in a residential building. They haven't made
13 their case, what is the purpose of having these
14 standards that applicant's need to meet to obtain
15 a variance if we're not going to apply them. I
16 just don't see how they're being applied here.
17 There are no exceptional circumstances; there are
18 commercial properties adjacent to residential
19 properties throughout the city. The reason
20 they're squeezed in because there's an illegal
21 business and the first step should be to force
22 the licensing on this business and have it shut

1 down and his problems would be gone and they
2 haven't done that. I see the ANC letter which
3 has just been introduced which is fine. OP made
4 the point that the ANC supported it originally.
5 I question the standard which we are applying to
6 grant these variances and I don't think it's been
7 met, I think it clearly has not been met. I
8 think in these residential neighborhoods there's
9 a tipping point and you have to be careful and
10 you get three or four businesses, you start
11 getting over concentration then the character and
12 the fabric of the neighborhood changes. If it
13 was intended to be a mixed use zone it would be
14 C-2-A, it is not C-2-A. I can't speak to the
15 order that was issued in 2002, I see it. There
16 was a current Zoning Commissioner who sat on this
17 and its unfortunate he's not on this case because
18 he could speak to what occurred back then. I can
19 simply tell you that I don't think the standard
20 has been met, I don't know how else to say it
21 more clearly. Very important to me is that the
22 Zoning Commission has looked at this. This is an

1 issue that has been studied; this is not a one
2 off. We've looked at the importance of having
3 commercial uses in these residential zones.
4 There's recognition that there is some benefits
5 that are provided to them but they're limited,
6 they're focused and they're regulated. Even
7 under the new regulations if they are adopted we
8 would not allow this use, we would not allow this
9 use because of the concentration, we would not
10 allow this use because of what's proposed, we
11 would not allow this use because of its location
12 to another commercial district. Under no
13 circumstances would we even allow this to go
14 forward. I think that it has clearly been
15 studied; I think the impacts have been evaluated
16 and this is not something that's just coming
17 across out of the blue. These are the type of
18 circumstances that we looked at and decided that
19 the impacts it would have on the residential
20 neighborhoods would outweigh the benefits.

21 CHAIRPERSON SORG: Thank you are there
22 any further comments?

1 MR. HINKLE: I would echo the concern
2 about this sitting a precedent but I also
3 understand that there is a use, there's a
4 Laundromat in the adjacent building that has been
5 operating there. There's a restaurant in the
6 other adjacent building that has been operating
7 there. I can understand it difficult as far as
8 renting as testified by the Applicant. Renting
9 units adjacent to those uses one on each side, so
10 I think there is a particular circumstance with
11 the structure. I might have a different opinion
12 if there was a residential structure adjacent on
13 one side but I don't I think this would be a
14 difficult structure to rent out as a residential
15 structure simply because there are vibrations,
16 there are noises, there are odors associated with
17 those adjacent uses. In terms of whether the
18 Laundromat is an illegal use or not we heard from
19 OP that they could not find a permit. I don't
20 see any other evidence of that. Mr. Selfridge is
21 right there should be some follow up on that but
22 what I see at his point is a Laundromat on one

1 side of a property and a restaurant on the other.

2 MR. SELFRIDGE: I'd like to ask OAG's
3 opinion about what appears to be an illegal
4 business, should we be considering that when
5 we're evaluating this case?

6 MS. NAGELHOUT: An illegal use is not
7 grounds for granting a use variance but if you
8 have some questions about whether in fact it's
9 legal or illegal you could refer the matter to OP
10 or DCRA to get some evidence whether the
11 Laundromat and the hair salon have a C of O or
12 there has been no use variance on that side as
13 far as I know but you could ask OP to look into
14 what exactly is the status. Yes an illegal use
15 is not a ground for a variance in part because it
16 could be gone tomorrow if it is in fact illegal
17 and enforcement action is taken.

18 MR. SELFRIDGE: Thank you. I would offer
19 to the Board that if they can produce a C of O
20 and a business license for this then I would
21 reconsider my position and I would consider that
22 this is an exceptional circumstance and that we

1 have two legally permitted businesses and the
2 property in-between is an exceptional
3 circumstance and there are obviously hardships.
4 I would certainly offer the Applicant to go back
5 or have OP provide that documentation and I would
6 be happy to review my position at that point.
7 But based on what OAG said we have to ignore the
8 fact that there's an illegal next door if that's
9 what it truly is.

10 CHAIRPERSON SORG: Thank you, both of
11 you. Yeah, I actually agree with that I think I
12 was looking at some of the notes from OP's
13 testimony and our discussion and hearing about
14 illegal commercial uses not being considered as
15 grounds for a variance. I think as you Mr.
16 Selfridge and OAG suggests that we should take a
17 look at what documentation we can find because it
18 is, OP, and Mr. Hinkle and I think our looking
19 pretty closely at the exceptional condition that
20 is created by this property being sandwiched
21 between the two uses. So to get some
22 clarification on whether that is actually what we

1 can be considering I think is important.

2 MR. HINKLE: I'm in agreement as well I
3 think that makes sense to get a full
4 understanding of what's occurring prior to making
5 a decision.

6 CHAIRPERSON SORG: Okay great. I guess a
7 question to either Mr. Moy or OAG is there in our
8 regulations tell us who ought to be responsible
9 for producing such a document and can we request
10 that directly from DCRA or is that something we
11 should request from OP to try to produce?

12 MS. NAGELHOUT: I would suggest OP since
13 they wrote the initial report and they mentioned
14 this issue, they could do a supplemental report
15 addressing that particular question.

16 CHAIRPERSON SORG: Okay, great, thank
17 you. So if the rest of my Board Members are in
18 agreement what we'll do is we will request OP to
19 take a closer look at whether or not legal
20 documentation can be provided for the commercial
21 uses located in 1322 Park Road and subsequently
22 submit a supplemental support and that's all

1 we'll request here. Then we can go ahead and set
2 this for decision also on July 12th which is very
3 busy.

4 MR. SELFRIDGE: Madam Chair so just to
5 repeat what exactly and how are we requesting
6 that this information is presented and who's
7 going to bring it? OP is going to provide a
8 supplemental report and what's the specific
9 request to them?

10 CHAIRPERSON SORG: Yes, I think the
11 request is that OP provides a supplemental report
12 that indicates whether or not there are legal
13 licenses or permits for the commercial uses that
14 are operating in the adjacent property at 1322
15 Park Road.

16 MR. SELFRIDGE: Then if we could include a
17 copy of the C of O, because we should be able to
18 get a C of O as well whether there are licenses
19 or not there should certainly be a C of O that
20 would address it. Some reasons there's ambiguity
21 on this that nobody has been able to provide or
22 prove. I think a C of O would clearly have to be

1 issued for the Laundromat and the hair salon in
2 this case.

3 CHAIRPERSON SORG: Yes correct I think a
4 C of O would be what we want to see.

5 MR. SELFRIDGE: I think the absence of a
6 C of O would simply indicate that it's a single
7 family home in my mind. I just want to be clear
8 in terms of, I want to get to ground decision,
9 and I want to be clear on what I think we need to
10 see here. I think anything other than a single
11 family home would require a C of O is that
12 correct?

13 MS. NAGELHOUT: I believe so.

14 MR. SELFRIDGE: So absent a C of O I'm
15 going to consider it a single family home. Just
16 want to be clear that OP understands what we are
17 looking for so that there's no more ambiguity so
18 I think that part of the problem here has been
19 the lack of documentation has not allowed us to
20 draw definitely conclusions I want to be clear
21 that without a C of O that I will draw a
22 conclusion that it's a single family home.

1 MR. MOY: Madam Chair Staff would suggest
2 that we place a deadline for the submissions. I
3 would suggest the OP supplemental report is
4 submitted no later than Wednesday, June 29th and
5 any responses from the Applicant by July 6th?
6 Decision will be July 12th.

7 CHAIRPERSON SORG: Yes that sounds good
8 to me, thank you for making that suggestion. I
9 think that being said we can go ahead and move
10 on.

11 **Application No. 18216**

12 MR. MOY: The last case for Board action
13 is Application No. 18216 of Jemal's K Street Lot,
14 LLC, pursuant to 11 DCMR 3104.1 and 3103.2 for a
15 special exception from a roof structure
16 requirements under (subsection 770.6), and a
17 variance from rear yard requirements under
18 Section 774, a variance from the court
19 requirements under (subsection 776.3) and a
20 variance from the loading requirements under
21 (subsection 2201.1) to allow the construction of
22 an apartment building with a ground floor retail

1 in the DD/C-2-C District at premises 450 K
2 Street, N.W. property located in (Square 516, Lot
3 61). If the Board will recall on May 24, 2011,
4 the Board completed public testimony, closed the
5 record, and scheduled its decision on June 7th.
6 The Board requested the Applicant submit
7 additional information to supplement the record
8 one copy of the architect's resume and secondly a
9 copy of the support letter from the Mt. Vernon
10 Neighborhood Association. That file Madam Chair
11 is in your case folders dated June 1, 2011,
12 identified as "Exhibit 30" with that the Board is
13 to act on the merits of the relief that I've just
14 stated. Also Staff notes for the Board that at
15 its public hearing on May 24th the Applicant
16 requested the Board allow the Zoning flexibility
17 to revise buildings plans after they receive
18 final design reviewed by the HPRB staff. That
19 completes the Staff's briefing Madam Chair.

20 CHAIRPERSON SORG: Thank you very much
21 Mr. Moy. We did in the Applicant's supplemental
22 submission after the hearing receive the resume

1 of the architect on this building which we
2 requested to be able to certify him as an expert.
3 Then there is the letter of support from the Mt.
4 Vernon Square Neighborhood Association, which we
5 had requested. I see that the Applicant is here
6 and wanted to ask if their representative might
7 come forward. It was our understanding that the
8 Applicant was scheduled to meet with HPRB between
9 the last hearing and today. If we're considering
10 design flexibility I wanted to hear that it
11 happened and what else about that.

12 MS. BROWN: Good morning Madam Vice
13 Chair. I am Carolyn Brown from Holland and
14 Knight here on behalf of the Applicant. The
15 staff recommendation was adopted at the HPRB's
16 meeting. The final delegation construction
17 drawing approval has been delegated to the staff
18 to the extent that we need any of that minor
19 flexibility as we tweak the design for final
20 construction drawings. We would request the
21 condition for the order.

22 CHAIRPERSON SORG: Thank you very much.

1 So with that I can start off our deliberations.
2 I think that we've seen a lot of good information
3 in this application. The application requests
4 three variances and a couple of special
5 exceptions for construction of an apartment
6 building with ground floor retail at 450 K
7 Street, N.W. We've see a good amount of support.
8 I think as we've just heard the Applicants
9 received approval from HPRB and the recent
10 submission we've seen the official letter of
11 support from the Mt. Vernon Neighborhood
12 Association. They've also if you remember in our
13 "Exhibit 22" have unanimous support from the ANC.
14 We saw no opposition from neighbors as well the
15 Office of Planning in their report recommends
16 approval. I think we can see the Applicant seems
17 to me to have met both variance and special
18 exception standards as is I think pretty well set
19 forth in the OP report and is based primarily on
20 the constraining shape of the property as well as
21 the fairly stringent requirements that have been
22 imposed by HPRB. I think we can see how these

1 pretty clearly lead directly to the practical
2 difficulties that are discussed in the
3 Applicant's brief and the testimony as well as in
4 the OP report. I think some of the positive
5 things that we can see in this application are
6 the mixed use nature of the project, and how that
7 can be seen to activate the streetscape. The
8 Applicant's provided adequate parking and I think
9 we really see no adverse effects in granting the
10 relief. Only two other things I would note is it
11 seems also from testimony and exchanges with the
12 neighbor owning two of the adjacent properties at
13 the hearing last time the Applicant committed on
14 the record to work closely with this adjacent
15 neighbor as well as the rest of the community and
16 I think we've seen good evidence of that. We've
17 also heard in testimony that their planning was
18 done in tandem with owners of surrounding
19 development properties which I think is also
20 pretty good. That being said I think I can be in
21 support of the requested relief in this case and
22 I would open up to further deliberation.

1 MR. HINKLE: Yes Madam Chair I just want
2 to point out that the Applicant has suggested
3 some exceptional conditions for the property that
4 I don't agree with. The Office of Planning has
5 noted and doesn't consider relevant as well.
6 These are conditions required under the Mt.
7 Vernon Triangle Overlay District as well as the
8 Downtown Development District. They are outlined
9 in the Office of Planning's report but with that
10 said I certainly feel that the size and T-shaped
11 configuration of the lot is sufficient
12 exceptional condition to grant the relief that's
13 being requested.

14 CHAIRPERSON SORG: Great, thank you for
15 noting that, I agree and think it's a good thing
16 to have that on the record as well as in the OP
17 report. Are there any further deliberations?
18 Before I go ahead and make a motion I wanted to
19 ask one question of OAG. The Applicant is
20 requesting the ability to make minor
21 modifications but my understanding is that's
22 already in our regulations and within a certain

1 percentage within the understanding of the orders
2 that we issue?

3 MS. NAGELHOUT: I have seen conditions in
4 BZA orders that grant flexibility to respond in
5 this case to HPRB so long as it doesn't entail
6 any additional areas of zoning relief. Give
7 minor flexibility so the expectation is that
8 changes will in fact be minor in response to the
9 requirements of HPRB.

10 CHAIRPERSON SORG: Okay thank you very
11 much. Okay that being said I would submit a
12 motion to approve Application No. 18216 for
13 Jemal's K Street Lot, LLC, pursuant to 11 DCMR
14 3104.1 and 3103.2, special exception from the
15 roof structure requirements under (subsection
16 770.6), variance from the rear yard requirements
17 under Section 774, variance from the court
18 requirements under (subsection 776.3), and a
19 variance from the loading requirements under
20 (subsection 2201.1) to allow construction of an
21 apartment building at premises 450 K Street, N.W.
22 Also with a condition to allow the plans minor

1 flexibility to respond to requirements of HPRB as
2 long as there are additional areas of relief. A
3 motion has been made is there a second?

4 MR. HINKLE: Second.

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

7 CHORUS: Aye.

8 CHAIRPERSON SORG: Mr. Moy can you please
9 read back the vote?

10 MR. MOY: Yes Madam Chair before I read
11 back the vote I just would like to include also
12 that we have an absentee ballot from another
13 participating member on this application from Mr.
14 Jordan and his absentee vote is to approve the
15 application with any conditions the Board may
16 impose. So that would give a final vote of 4 to
17 0 to 1 this on the vote of the Chairperson Sorg
18 to approve the application with the relief that
19 was just stated and to allow design flexibility
20 so long as it doesn't affect the ruling that's
21 being granted. Seconded the motion Mr. Hinkle
22 and also in support of the motion Mr. Jordan and

1 Mr. Selfridge. No other Board Member
2 participating so again the vote is to approve
3 with a vote of 4 to 0 to 1.

4 CHAIRPERSON SORG: Thank you very much and
5 I think that we can ask for a summary order in
6 this case.

7 MR. MOY: Very good, thank you.

8 CHAIRPERSON SORG: And that concludes
9 this morning's meeting, thank you very much.

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