

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 14, 2011
Start: 9:52am - End: 4:52pm

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

1 MR. MOY: Staff would recommend that if
2 there are any the Board address the matters as I
3 call the case Madam Chair.

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

6 **Appeal No. 18152**

7 MR. MOY: The first and only action
8 before the Board in its special public meeting is
9 a motion from one of the parties requesting a
10 June 21, 2011 decision of Appeal No. 18152 this
11 is of the Advisory Neighborhood Commission 1D.
12 If the Board will recall this application is
13 pursuant; to 11 DCMR 3100 and 3101 from an August
14 17, 2010 decision by the Department of Consumer
15 and Regulatory Affairs to grant a building permit
16 allowing the renovation and expansion of an
17 existing Mt. Pleasant Library in the R-5-D
18 District at premises 3160 16th Street, N.W.
19 property located in (Square 2595, Lot 803).
20 What's before the Board in your case folders
21 Madam Chair is a letter from D.C. Public Library
22 one of the interveners in the appeal and that

1 document is identified as "Exhibit 45".

2 CHAIRPERSON SORG: Thank you very much
3 Mr. Secretary. Yes so we received on June 9th, a
4 letter from the D.C. Public Library requesting an
5 earlier date for decision. The Board itself had
6 scheduled the decision on this matter for last
7 week and it was based on our lack of requirement
8 and it was rescheduled to our, I think, July 21st
9 decision date. The letter we can see, I think,
10 shows good cause and also has been served on both
11 DCRA and the Appellant in this case without any
12 issues or comment. That being said unless there
13 are comments from the Board Members I think that
14 we can go ahead and based on consensus schedule
15 this hearing for next Tuesday June 21st.

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

17 CHAIRPERSON SORG: I believe that
18 concludes our public meeting.

19 **A.M. Session**

20 CHAIRPERSON SORG: This hearing will
21 please come to order. Good morning ladies and
22 gentleman. This is the June 14th, Public Hearing

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

1 and on the tables in front of you. Upon coming
2 forward to speak to the Board please give both
3 cards to the court reporter sitting to my right.
4 The order of procedures for special exceptions
5 and variances is: 1. Statement of the Applicant
6 and Applicant's Witnesses. 2. Parties and persons
7 in support. 3. Parties and persons in opposition.
8 4. Government Reports including Office of
9 Planning and Department of Transportation, Office
10 of the State Superintendent for Education and the
11 Department of Public Works. 5. Report from the
12 ANC. 6. Rebuttal and closing statement by the
13 Applicant. Pursuant to Section 3117.4 and 3117.5
14 the following time constraints will be
15 maintained. The Applicant persons and parties
16 except an ANC in support including their
17 witnesses will be given 60 minutes collectively.
18 Apelles persons and parties except an ANC in
19 opposition including witnesses will be given 60
20 minutes collectively. Individuals will be given
21 3 minutes and associations or organizations will
22 be given 5. These time restrictions do not

1 include cross examinations or questions from the
2 Board. Cross examination of witnesses is
3 permitted by all parties and Applicants. The ANC
4 within which the property is located is
5 automatically a party to a special exception or
6 variance case. Nothing prohibits the Board from
7 placing reasonable restrictions on cross
8 examination including time limitations or
9 limitation on the scope of cross examination.
10 The record will be closed at the conclusion of
11 each case except for any materials specifically
12 requested by the Board. The Board and the Staff
13 will specify at the end of each hearing exactly
14 what is expected and the date when the material
15 must submitted to the Office of Zoning. After the
16 record is closed no other information will be
17 accepted by the Board. The Sunshine Act requires
18 that a public hearing on each case be held in the
19 open before the public. Pursuant to Section 405B
20 and 406 of the Open Meeting Amendment Act of
21 2010, the Board may consistent with its rules and
22 procedures and the Open Meeting Amendment Act

1 enter into closed meetings or closed emergency
2 meeting on a case for purposes of seeking legal
3 counsel in a case per Section 405B4 and or
4 deliberating on a case pursuant to Section 405B-
5 13 of the law but only after providing the
6 necessary public notice and taking a roll call
7 vote. The decision of the Board in these
8 contested cases must be based exclusively on
9 public record. To avoid any appearance to the
10 contrary the Board requests that persons present
11 not engage the members of the Board in
12 conversation. Please turn off all beepers and
13 cell phones at this time as to not disturb these
14 proceedings. All individuals wishing to testify
15 today please rise and take the oath. The Board
16 will now consider any preliminary matters.
17 Preliminary matters are those which relate to
18 whether a case should or will be heard today such
19 as a request for postponement, continuance or
20 withdrawal or whether proper or adequate notice
21 of a hearing was given. If you are not prepared
22 to go forward with a case today or if you believe

1 that the Board should not proceed, now is the
2 time to raise such a matter. Mr. Secretary, do we
3 have any preliminary matters?

4 MR. MOY: No Madam Chair.

5 CHAIRPERSON SORG: Thank you very much.
6 All individuals wishing to testify today please
7 rise and take the oath. Mr. Secretary, will you
8 please administer the oath.

9 MR. MOY: Do you solemnly swear or affirm
10 that the testimony you're about to present in
11 this proceeding is the truth, the whole and
12 nothing but the truth? Ladies and Gentleman you
13 may consider yourself under oath.

14 CHAIRPERSON SORG: Thank you very much,
15 let's begin with our agenda.

16 **Application No. 18221**

17 MR. MOY: Yes thank you Madam Chair, good
18 morning Madam Chair and Members of the Board.
19 The first application for Board action is
20 Application No. 18221. This is the Application
21 of David King and Betsy Damos, pursuant to 11
22 DCMR 3104.1 for a special exception, I'm going to

1 read the original caption that was advertised
2 Madam Chair. It was for a special exception to
3 allow a rear inside addition to an existing one
4 family row dwelling under Section 223 not meeting
5 the lot occupancy Section 403, court Section 406
6 a non-conforming structure, (subsection 2001.3)
7 requirements in the R-4 District at premises 123
8 to 10th Street, S.E., property located in (Square
9 943, Lot 808). Subsequent to the public notice
10 manager the Staff believes that the Applicant had
11 amended his application from special exception
12 relief to variance, area variance relief, from
13 closed court requirements under Section 406.1 and
14 2001.3. Staff would suggest that the Board
15 confirm that for clarification from the Applicant
16 now Chair. Finally for the record Madam Chair at
17 the moment in the official record there's not
18 affidavit for posting.

19 CHAIRPERSON SORG: Thank you very much
20 Mr. Secretary. If the Applicant for this first
21 case could please come forward and take a seat
22 and when you're seated if we could go ahead and

1 have everybody introduce yourselves with your
2 name and home address for the record. We will
3 and then take care of the two preliminary matters
4 that the Secretary mentioned.

5 MS. DAMOS: Betsy Damos, 123 10th Street,
6 S.E.

7 MR. KING: I'm David King 123 10th
8 Street, S.E.

9 MS. SANTIAGO: Kim Santiago representative
10 for the Kings, 3277 Danmark Drive, Glenwood, MD
11 21738.

12 MR. SANTIAGO: Jaime Santiago
13 representative of the Kings 3277 Danmark Drive,
14 Glenwood, MD.

15 CHAIRPERSON SORG: Great thank you very
16 much. Let's take care of the caption and the
17 relief that's requested here first. What we
18 understand from what we've received is that the
19 caption for the relief that was advertised
20 requires amendment. I know that you have
21 submitted an amendment to your application to
22 indicate the need you've discussed with the

1 Office of Planning and DCRA. I think the need
2 for variance relief under Section 406 and Section
3 2001.3. We understand from the filings also that
4 the plans have actually not changed since what
5 seems like the very beginning of this process for
6 you. I think there was an assumption of a matter
7 of right project through the indication of DCRA
8 of the special exception and then they changed
9 the variance. So that being said we have also
10 related to that, I think, you know we've got in
11 our record several letters of support from the
12 immediate neighbors who indicate that they've
13 seen the plans. We received today a new letter
14 from the ANC indicating that they remain in
15 support of the application from their letter of
16 May 11th and that they remain in support based on
17 the change of relief. Have you discussed with
18 the neighbors the change in relief at all?

19 MS. DAMOS: Yes we have the neighbors on
20 either side of us that have been informed of that
21 we've had discussions and they've submitted the
22 new letters as I believe you just said. No one

1 else has opposed, everyone else is aware of it.
2 Many neighbors know the change has been made and
3 it has been posted, of course we put up a new
4 sign with the variance change.

5 CHAIRPERSON SORG: So you did post the
6 new change on a new sign?

7 MS. DAMOS: Oh yes right away as soon as
8 we knew there was a change.

9 CHAIRPERSON SORG: And did you submit an
10 affidavit of posting?

11 MS. SANTIAGO: Yes we did, I have a copy
12 of that.

13 CHAIRPERSON SORG: That would be great if
14 you could hand that to the Secretary which it
15 looks like you may already have done.

16 MR. MOY: Madam Chair, I would just like
17 to say for the record this is all very strange to
18 me but certainly my copy in my case folder I've
19 discovered the affidavit of posting and it's
20 "Exhibit No. 30" so I'll pass that to the Board
21 for review.

22 CHAIRPERSON SORG: Then maybe we have one

1 fewer preliminary item to go through. Just give
2 us one second to review this and we'll get back
3 to you. I can't see from the photos that are
4 submitted in this exhibit which looks like the
5 sign was posted on May 20th but the caption that
6 was on the sign is for the variance or for the
7 special exception.

8 MS. SANTIAGO: The original sign that was
9 posted was for the special exception and then we
10 followed up with the correct sign for the
11 variance.

12 CHAIRPERSON SORG: Okay and that was on
13 5/20 which is what this relates to?

14 MS. SANTIAGO: That's correct.

15 CHAIRPERSON SORG: Okay great. So based
16 on what we've heard and getting to take a look at
17 the affidavit of posting as well as the second
18 letter from ANC 6-B I'm inclined to go ahead and
19 go forward with this case even though the relief
20 that's requested has changed from the original
21 application. To me it's pretty clear that the
22 Applicant has done a good deal of outreach

1 subsequent to that change, to the community, to
2 the ANC and also has posted that change. So
3 unless there are any comments from other Board
4 Members we can go ahead and accept the amended
5 application and we can go ahead and move forward
6 with your presentation today and however you
7 would like to proceed.

8 MS. DAMOS: I guess I should give a
9 little introduction about how this came about.
10 We've been in our house for 32 years and we
11 hadn't renovated since our first renovation. We
12 decided we needed to renovate our kitchen, update
13 it. At our age we also thought this was partly
14 part of a decision to try to remain in the house
15 as we aged. The one thing we had found very
16 dysfunctional about our house was we have a very
17 small dining area that actually is comprised of
18 what was once a porch, years ago, long before we
19 purchased a house and was enclosed to make that
20 dining area before we purchased the house as
21 well. We thought if we could only expand this we
22 could sit six people at our dining table and then

1 we would have a grown-up house, we wouldn't have
2 to do what we did when we were younger and move
3 to the table to the living room etc. So the only
4 way to go would be to the south side of our house
5 into the court which is the area that is already
6 calculated into our lot coverage. We could not
7 go to the west which is the rear of the house
8 because that would expand our lot coverage from
9 the present coverage percentage. I think it's a
10 little confusing, on today's agenda it says to
11 allow a rear and side addition, it's really just
12 to the side, we're not moving out to the rear.
13 We are redoing that wall for the sake of
14 construction stability and esthetics but not
15 enlarging it.

16 MR. KING: And I assume you would like us
17 here to address the Applicant's burden of proof
18 which I know that you have our written testimony
19 about and also the Office of Planning reported on
20 this. In terms of the specific uniqueness
21 clearly when this property was developed in 1895
22 the developer took three lots and divided them

1 into development for four row houses that were
2 developed back then. The lot is 13.8ft wide, it's
3 substandard in area, and it had a 3.5ft dog-leg
4 which today is a non-conforming open court.
5 Based on the situation due to the way the houses
6 were built and the esthetics at the time we have
7 a property that is non-conforming and so any
8 addition we would want to do would be burden by
9 having to come and seek relief based on the small
10 size of the property. If the property were a
11 standard size lot our mod is 700sqft. The 700sqft
12 footprint of our home would not require either a
13 special exception or a variance.

14 CHAIRPERSON SORG: Okay if we are already
15 after that unexpected interlude I believe Mr.
16 King you were in the middle of your remarks.

17 MR. KING: Thank you. So as I was saying
18 as a result of the way the property was built in
19 the end of the 19th Century we are a non-
20 conforming property, exceptionally narrow. If we
21 were a property of standard size we would not be
22 coming before you for a variance of a special

1 exception because even with a modest addition
2 would be under 60% of the property. As a result
3 of an addition to the property probably in the
4 50s or early 60s but before 1964 the dining room
5 was located in what was a porch converted into
6 the dining room at which point the house occupied
7 73% of the property and we had a dining room that
8 is essentially 5ft wide but 7.5ft long which is
9 substandard by today's dining standards where one
10 would look for at least 84 perhaps 100sqft for a
11 modest dining area for 4. The second issue I
12 wish to raise is that we are seeking relief from
13 the closed court 406.3 because due to the high
14 lot occupancy we can't move the addition out to
15 increase the size of our dining room so we could
16 only go to the side which doesn't increase our
17 lot coverage. This does occupy part of a non-
18 conforming open court. The reason we want to do
19 this if we fully enclosed filled in the dog-leg I
20 understand we would not need relief from 406.3.
21 We would prefer a less intrusive addition, one
22 which would preserve the light and air that comes

1 in too our living room window in the dog leg
2 rather than filling that up we also realized that
3 this would be less intrusive to our next door
4 neighbor on the south, Ms. Johnson. So we need
5 relief from the closed court provision because
6 we're trying to minimize the impact that we have.
7 The third issue I wish to raise is that we were
8 led to believe early on that this would at most
9 require a special exception two sections of the
10 Zoning Code and we understood from discussions
11 from the ANC and from looking at prior records of
12 how you have ruled on other requests for special
13 exceptions both on Capitol Hill and across D.C.
14 there are lots of cases similar to our seeking
15 small relief from courts and expansion of a non-
16 conforming structure. We assumed that it was
17 highly likely that that would be approved and in
18 fact we were issued building permits by DCRA for
19 the demolition and interior work to get that
20 started pending what we thought was going to be a
21 BZA hearing in April possibly early May. As a
22 result of that and that late finding by the

1 Office of Planning that there was an error made
2 somewhere along the line in our application that
3 we were required to come before this Board for a
4 variance. We have been living in a house that
5 has no dining facilities, that has no cooking
6 facilities that essentially looks like a
7 construction zone. Our kitchen and dining room
8 currently are strewn around the rest of our house
9 and it's a very difficult situation for us at
10 this time. In the interest of time perhaps we
11 could address questions from the Board. I
12 realize that we didn't anticipate a fire drill
13 today.

14 CHAIRPERSON SORG: Absolutely, I mean if
15 that concludes the remarks that you want to make.

16 MR. KING: Madam Chair if you will. I
17 will also point out that we have tried to be very
18 proactive in meeting with our neighbors and with
19 the ANC and the Office of Planning once we were
20 alerted that in fact we had to come forward as
21 requesting a relief as an area variance rather
22 than a special exception and that the ANC 6-C had

1 a special meeting last week, special called
2 meeting to review this case as a request for a
3 variance and they unanimously supported this
4 application. You have in your file what I think
5 is a strong letter of support from the Office of
6 Planning.

7 CHAIRPERSON SORG: Thank you very much. I
8 have a couple of questions at this point, the
9 first having to do with the last topic that you
10 raised regarding this sort of process and what
11 brought you here under the variance request. So
12 when you went to DCRA at the beginning of this
13 process were you told that you required special
14 exception relief or was that self certified?

15 MR. SANTIAGO: No when we originally
16 applied for the permit we were told that if we
17 put a Pergola next to the side addition we would
18 be able to get a permit which that's what we
19 preceded in doing. They told me that the only
20 thing we needed is to have the drawings showing
21 that we had a Pergola and to have the drawings
22 done and we'll get a permit which that's what we

1 did. We went back to Zoning and Zoning changed
2 and said that no the permit needs to go to the
3 file room and when it went to the file room it
4 came back saying that it needs to go to BZA and
5 that's what we stand at now.

6 CHAIRPERSON SORG: So had you had a
7 permit issued prior to the change in DCRA's
8 opinion?

9 MR. SANTIAGO: They told us that they
10 will give us a permit if we put a Pergola and
11 when we went back with the planning with the
12 Pergola they refused to give us a permit, they
13 said you need to go to BZA.

14 CHAIRPERSON SORG: Okay thank you, do
15 other Board Members have questions?

16 MR. JORDAN: The question is at the time
17 you started the work did you have a permit? And
18 what was the permit for?

19 MR. SANTIAGO: Yes before we started the
20 project we had a permit we tried to get the
21 permit for the project for the kitchen.

22 MR. JORDAN: Wait, I want to make sure

1 we're clear because you kind of said two things I
2 think I heard. Before you began the work you had
3 a permit correct? Before you began work on the
4 house?

5 MR. SANTIAGO: Before we began the job we
6 were trying to get the permit. So we didn't get
7 the permit so we could not begin the project.
8 Then we had the permit to do interior work in the
9 kitchen.

10 MR. JORDAN: Interior to do the kitchen
11 or to do the other area?

12 MR. SANTIAGO: No interior in the kitchen
13 only.

14 MR. JORDAN: I think I understand.

15 MR. KING: Madam Chair if I may add a
16 little to Mr. Santiago's answer to your former
17 question. He addressed the verbal assurance from
18 DCRA about not needing a permit. We have
19 subsequently seen paperwork from the Office of
20 Zoning, Engineering Report, I believe it was that
21 indicated that we needed a special exception and
22 we did get a letter from zoning officially the

1 Zoning Administrator specifically outlining the
2 need for special exceptions. So we did have both
3 verbal and written indications of needing special
4 exceptions.

5 CHAIRPERSON SORG: Thank you for
6 clarifying.

7 MR. MAY: Yeah according to the materials
8 that I have in the record you've gotten letters
9 from your immediately adjacent neighbors on both
10 sides right?

11 MS. DAMOS: We initially spoke with them
12 and all of our other neighbors by email. The
13 neighbors some others sent emails all of them
14 supporting it. Our adjacent neighbors sent
15 letters by email, then we were told by the Office
16 of Zoning that that wasn't acceptable that they
17 had to be a PDF file they had to be scanned,
18 signed letters so they did that. Then we were
19 told that it was changed to a variance because I
20 believe that someone in the Office of Zoning
21 calculated the square footage of the coverage on
22 the lot inaccurately and so we again requested,

1 we explained to our neighbors, we showed them the
2 plans hadn't changed and the styling as a
3 variance wasn't changed and they again sent
4 letters. On the north side that has the less
5 impact isn't in there so this went back and forth
6 three times and we do have the letters and the
7 person on the south side had no problem as well.

8 MR. MAY: Right, okay the one question
9 that I had based on the letter from the person on
10 the south side, that person indicated the
11 concern, oh yeah Ms. Johnson at 125 10th, that's
12 on the south side right? It notes that with
13 appropriate gutters emptying to the west I'm sure
14 that no rain would be diverted over our shared
15 fence onto our property. Looking at the photos
16 that were provided in the file I see a gutter
17 coming down and the water draining just directly
18 onto the patio. I'm wondering if that's been
19 addressed because that should really be going
20 into a boot or a drain of some sort. Is the
21 gutter going to be draining into a drain?

22 MR. KING: Our intent is to have the

1 gutter drain into a rain barrel and rain garden.
2 In trying to keep minimizing what might be
3 viewed as impervious area and it's a very small,
4 it's a 26 square foot roof that is actually
5 draining into the backyard so our plan was to
6 capture that in a rain barrel and use that to
7 water the...

8 MR. MAY: Only from that roof or from the
9 main roof because your main gutter comes down
10 right next to it?

11 MR. KING: The main gutter currently goes
12 into a... you would know the words for this,
13 concrete stand pipe that hooks into the sewer
14 system and drains into the sewer.

15 MR. MAY: I see okay. I saw a photo from
16 the back patio that made me think something else
17 was happening here. Oh I see I'm looking at this
18 photo here which looked to me like there's a
19 downspout that comes down and comes out but then
20 I see another image where there is a boot that it
21 feeds into. Okay I just wanted to make sure that
22 there wasn't going to be extra water. See that

1 one shows the boot, got it. Alright that's my
2 questions thanks.

3 MR. JORDAN: If I may just help me
4 clarify. Prior to the demolition any demolition
5 work being done. Your kitchen and the dining
6 room was the same room or was it a separate room?

7 MS. DAMOS: When we bought the house the
8 kitchen led right into the dining room. The
9 wall, the brick wall of the original house was
10 still in between, it was rather odd, there was a
11 doorway there that went between the kitchen and
12 dining room and a window over the sink so you
13 could look through the kitchen into the dining
14 room. During our renovation 30 years ago we
15 changed that, we took that wall out and put in
16 the appropriate steel beam support so one flows
17 into the other, I don't know if that answers your
18 question.

19 MR. JORDAN: So what you're saying they
20 were separate rooms separated by this wall.

21 MS. DAMOS: They were separate rooms at
22 that time, yes. There were two permits; I think

1 you're asking Mr. Santiago about the interior
2 demolition started because he was given the
3 permit for the interior work. We're talking
4 about a separate permit for the exterior wall
5 that we want to move out.

6 MR. JORDAN: So the exterior wall was
7 never removed? The interior wall was removed,
8 the kitchen work began and I guess you started
9 doing work in the dining room, what would have
10 been the dining room.

11 MS. DAMOS: The interior wall was removed
12 32 years ago, this was not part of this project
13 it was our original renovation when we purchased
14 the house. The demolition work that has been
15 done is to remove everything from the kitchen, do
16 the drywall, do the under layment for the flooring
17 in the kitchen right yeah. We have a systems
18 room, our heating and systems is in the kitchen
19 so it was taking up quite a bit of the kitchen so
20 we purchased new systems so that we could have a
21 smaller systems room and enlarge the kitchen by
22 inches, that work was also done, that's all

1 interior work.

2 MR. JORDAN: So the house is functional
3 until this point, until you started doing the
4 work?

5 MS. DAMOS: Until January, it hasn't been
6 since January, early February.

7 MR. JORDAN: So you were able to use the
8 property as it was but you're just more desirous
9 of having more space.

10 MS. DAMOS: More space in that dining
11 area so that it would actually sit six people.

12 MR. JORDAN: Okay thank you.

13 CHAIRPERSON SORG: I wanted to get,
14 obviously you've been very proactive in this
15 process as Applicant's and so I assume that
16 you've gone through and I know that you've met
17 with OP several times and so you will know by now
18 the three prongs of the variance test. I think
19 based on what we've seen in the filings and what
20 we've heard today I can understand a lot of the
21 difficulties; you've explained a lot of that.
22 One of the things that I wanted to ask you about

1 is the first prong of the variance test which
2 goes to uniqueness of the property. You've seen
3 the OP report correct? And exceptional
4 conditions related to the property. Can you
5 discuss a little bit outside of the regulatory
6 inconsistencies that you feel you've experienced
7 and outside of that can you discuss how you
8 believe this property itself is unique in the
9 area?

10 MR. KING: One of the things that at least
11 in terms of our square is unique is that fact
12 that as I said in 1895 three lots were turned
13 into four dwellings, it's a group as you see in
14 one of the photos of the application, four houses
15 that have largely the same façade, actually they
16 have other than the peaks on our house they have
17 the same façade and yet inside they're mirror
18 images of each other which I think is an
19 interesting twist on them. They are the only
20 quartet in our square that it built on a lot less
21 than 18 feet in width so that makes us a little
22 unique in that sense in terms of the narrowness

1 of the lot. Two of them have additions on the
2 back that are porches that were enclosed, two of
3 them have additions on the back that are not
4 enclosed porches with roofs, two-story porches
5 which is to say a patio on the first floor and a
6 porch on the second floor. They do have the dog
7 legs intact at this point so we are proposing to
8 fill in a small portion of the dog leg that was
9 one of the motivations on us to leave the dog leg
10 as open as possible and to only have a one story
11 addition on that. I don't know if that answers
12 your question Madam Chair.

13 CHAIRPERSON SORG: It does actually.

14 MS. DAMOS: Madam Chairman may I add
15 something to that?

16 CHAIRPERSON SORG: Of course.

17 MS. DAMOS: It's important to us and I'm
18 not sure it's absolutely clear to everyone
19 sitting there. That we have access to the
20 enclosed court from the dining area, there will
21 be a door there. It's important to us that we be
22 able to clean that area and keep it presentable

1 and actually attractive so it's not an
2 inaccessible space.

3 MR. KING: I guess I'll also add that as
4 I said this quartet is the only one in our square
5 that is on a lot narrower than 18-feet. I believe
6 there are 36 properties on our square. If we
7 were on a standard 18-foot wide property I don't
8 believe we would be here today because even with
9 a full size dog leg we would have a dining area
10 and a kitchen and it would have a dining area
11 that would be as broad as the dining area that
12 we're trying to obtain through the small
13 addition.

14 CHAIRPERSON SORG: Are there additional
15 questions from Board Members at this time? Okay
16 then let's move to the Office of Planning please.

17 MR. GOLDSTEIN: Good morning for the
18 record my name is Paul Goldstein. The Office of
19 Planning recommends approval of the Applicant's
20 request for an area variance relief to
21 accommodate a new one-story addition to an
22 existing single family row dwelling. The subject

1 property is located at 123 10th Street, S.E. it is
2 (Lot 808, Square 943) and is zoned R-4. The
3 application requests two areas of relief first
4 from Section 406.1 which is a provision that
5 provides minimum closed court standards and from
6 Section 2001.3 which conditions expansions of
7 non-conforming structures. The Applicants
8 requesting an approximately 26 square foot
9 addition, the addition would occupy a portion of
10 an existing non-conforming open court and instead
11 create a new non-conforming closed court. Also
12 the existing non-conforming lot occupancy is not
13 changing under the proposal. As detailed in the
14 Office of Planning report the property exhibits a
15 confluence of several exceptional conditions in
16 this case. First you've heard some about the
17 regulatory inconsistencies which have created
18 some difficulties for the Applicant. This case
19 was originally referred by DCRA as a special
20 exception and the Applicant proceeded with
21 interior demolition at that point relying on the
22 anticipated approval of a minor addition for

1 special exception relief. It was later
2 determined, of course, that the Applicant
3 actually needed area variances which is a higher
4 burden of relief. The second is the Applicant
5 only needs closed court relief because of the
6 desire to create a smaller sized addition. In
7 other words as you've heard some about today if
8 they had perhaps decided to build a larger
9 addition that relief may not have been needed.
10 Third the Applicant has described that there is
11 constraints on living space within the house
12 specifically dining space which is a byproduct of
13 a nearly century old home which is on a narrow
14 and small lot with the non-conforming court. So
15 some of their situation of course is caused by a
16 lot that is on the smaller and narrower side.
17 This cramped dining space led them to propose
18 expand at the back of the house toward the south
19 lot line about 3.5 feet. These exceptional
20 conditions create a practical difficulty which is
21 unnecessarily burdensome to the Applicant.
22 Finally granting a variance relief should not

1 cause substantial detriment to the public good
2 and there are letters in the record from both the
3 ANC and neighbors that are supportive. Relief
4 could be granted without substantial detriment to
5 the intent purpose and integrity of the Zoning
6 Regulations Map. That concludes my presentation
7 and I'm not available for any questions.

8 CHAIRPERSON SORG: Thank you very much.
9 Do Board Members have questions for the Office of
10 Planning? I have one question the Applicant
11 testified that out of 36 properties in the square
12 that these 4 are the smallest being the only that
13 are less than 18-feet in width. Do you think
14 that that constitutes an exceptional situation?

15 MR. GOLDSTEIN: Thank you for the
16 question. It's among the narrowest of the lots,
17 I don't know if you would say it's the smallest.
18 There are actually on the west side of the
19 square there are properties that are about 17-
20 feet wide so there are other properties that are
21 less than 18 feet, they're close. On the west
22 side of the square there are properties as well

1 that is less than 700 square feet in total so
2 there are other small properties in the square.
3 These lots certainly have a combination of being
4 narrow that are among the narrowest of the lots.

5 Among the four I mean they are all relatively
6 small in lot area. I don't think in and of
7 itself these lots are necessarily unique enough
8 to make the uniqueness test but I think there's
9 features and conditions of these lots which added
10 to the mix have created enough of an exceptional
11 circumstance.

12 CHAIRPERSON SORG: Okay, thank you. I
13 have a further question about the second point
14 that you make sort of in discussing the first
15 prong of the variance test here which has to do
16 with the court relief. From my reading I see a
17 more going towards the practical difficulty,
18 would you say that the uniqueness has to do with
19 the desire to create a smaller addition in this
20 case, or how do you define that?

21 MR. GOLDSTEIN: Yeah, I think that point
22 tends to kind of conflate the two provisions a

1 little bit more closely; it's a litter harder to
2 characterize. By their desire to retain as much
3 light and air under the circumstances as they can
4 it has created a practical difficulty because it
5 creates the need for relief. So they're creating
6 something smaller and in a sense going through a
7 more difficult burden because of it which is kind
8 of inconvenient and sort of counter intuitive.

9 CHAIRPERSON SORG: So really that's
10 arising based on the constrained width of the lot
11 as well as the footprint of the building on the
12 lot is that correct?

13 MR. GOLDSTEIN: Yeah I think they all
14 kind of work together. I think there's a synergy
15 because there's a 3.5 foot wide dog leg, a very
16 narrow property, I think they can combine.

17 CHAIRPERSON SORG: Okay, thank you. If
18 there are no other Board questions for the Office
19 of Planning then we'll see if the Applicant has
20 any questions for the Office of Planning?

21 MR. KING: We originally started into
22 this process as Mr. Santiago mentioned with an

1 understanding from DCRA that an addition of a
2 Pergola might obviate the need for any Zoning
3 Relief that's sense become not the case and we
4 did spend a significant amount of money for plans
5 related to installing a pergola to connect the
6 addition to the main house. It would be our
7 preference if it was the will of this Board to
8 continue with the addition without the Pergola
9 rather than with the Pergola to again, minimize
10 the impact of the addition. Of course if it is
11 the will of the Board that you will approve the
12 application only with the Pergola then that would
13 be an acceptable solution to us. My wife and I
14 have discussed if we were to move forward totally
15 enclosing the essentially closed court that is
16 being created if that was the only way that we'd
17 be given approval at that point we would withdraw
18 our application. But if we could move forward
19 without the Pergola we would appreciate your
20 approval for that.

21 MS. DAMOS: May I add something that I'm
22 not sure has been verbalized although I think it

1 is in written submissions. The window that we're
2 so concerned about that is at the end of that
3 closed court is the only window in our living
4 room. It is the only light and air source in the
5 living room. I'm assuming that there was what we
6 call a dog leg there initially for the purpose of
7 bringing light and air in and we still feel very
8 strongly about that. More light and air would
9 come in of course since we've decided on just a
10 one story addition which we did decide on for
11 that reason and more light would come in if there
12 weren't a Pergola there. It's not as though
13 there are other windows in that living room it is
14 the only window.

15 CHAIRPERSON SORG: Thank you that brings
16 up another question from me for the Office of
17 Planning. Is your opinion on the court relief
18 based on the presence of this Pergola or not?

19 MR. GOLDSTEIN: I'm sorry let me repeat
20 it so I make sure I understand. The Applicant's
21 saying that they could put in a Pergola and just
22 fully fill in the entire court space and

1 therefore get rid of any closed court relief to
2 be needed. I believe that is my understanding if
3 they had wanted to. I also understand their
4 preference is to not fill the entire court just
5 to say that if the Board has trouble granting
6 closed court relief under these circumstances
7 they would look at a different option, filling it
8 in to get rid of the relief. The idea of a
9 Pergola satisfying, filling it in accurately is
10 something I don't believe I've had any
11 discussions with the Zoning Administrator about.
12 They've mentioned it and I guess they've had
13 discussions with DCRA about it that that would
14 occupy the space if needed for lot occupancy or
15 closing in that court purposes. What the pergola
16 would necessarily have to look like, what kind of
17 beams, how close, I mean there's some issues that
18 might go into it. What separates it from a
19 trellis, there's some issues involved.

20 CHAIRPERSON SORG: Have you discussed
21 with DCRA whether this Pergola would indeed
22 obviate the need for the closed court relief?

1 MS. DAMOS: What was the beginning of the
2 question again please?

3 CHAIRPERSON SORG: Had you gotten an
4 assurance that the presence of this Pergola would
5 obviate the need for the close court relief.

6 MS. DAMOS: We were told that it most
7 likely satisfy the need because it would put a
8 roof of sorts of closed court. We then had the
9 architect do drawings for the Pergola and then I
10 believe that Mr. Santiago was told that there was
11 a restriction on how far apart the horizontal
12 boards could be on the Pergola and so we complied
13 with that restriction and put them closer
14 together in the drawing. We have investigated
15 that quite a bit as a possible way to satisfy any
16 objection to a closed court. I personally think
17 it would block light again and that it's not an
18 esthetic improvement. I feel very strongly about
19 historic preservation and I think the simple
20 small addition we have which is keeping the rear
21 of the house it would be stucco to match the rest
22 is more esthetically in keeping with the historic

1 nature of the house.

2 CHAIRPERSON SORG: Okay thank you.

3 Before we move on to if there's any person in the
4 audience do Board Members have any questions that
5 have arisen for the Applicant? Okay seeing none
6 we'll see if there is any person in the audience
7 in support of this application? Seeing no one
8 I'll note that we've received several letters
9 from neighbors in this case in our "Exhibit 9,
10 35, 28, 25, and 26" from adjacent and surrounding
11 neighbors in support of this application. Next
12 we'll move to see if there are any persons in
13 opposition in the audience who wish to testify.
14 Seeing none is there a representative of ANC 6-B
15 in the audience who would like to testify? So
16 you can go ahead and come forward or we can rely
17 upon the report that was given.

18 MS. GREENE: I'm Carol Greene, ANC 6-B
19 and we support the project, we've supported it
20 twice, we supported it first as a special
21 exception and second as a variance.

22 CHAIRPERSON SORG: Thank you very much

1 Ms. Greene. I'll note for the record our
2 "Exhibit No. 27" which is the first ANC letter as
3 well as submission from June 13th which I don't
4 have an exhibit number on in which the ANC
5 supports again the application under the
6 variance. Thank you very much. Do Board Members
7 have any questions for the ANC? Seeing none we
8 will go ahead and move forward to any closing
9 statements that the Applicant has.

10 MR. KING: Thank you for the opportunity,
11 unexpected opportunity to have the last word. We
12 hope that you will approve this application. We
13 hope that you will approve it without the
14 Pergola. What this means to us is we've lived in
15 this house for 32 years, 32 years tomorrow. We
16 hope to live in this house for another 32 years
17 and this will provide us the opportunity to live
18 a full rich comfortable life even into the days
19 where we may not be able to again walk up the
20 stairs and will be able to live on the first
21 floor in its slightly expanded configuration.

22 CHAIRPERSON SORG: Thank you very much.

1 Before we close the hearing I want to actually
2 ask a question of the representative from the ANC
3 if I might. Thank you very much Ms. Greene.
4 There's a little bit of I think mostly
5 administrative confusion here regarding the
6 Pergola and the request for court relief. Can
7 you state for the record whether the ANC would be
8 supportive of the Application without the
9 Pergola?

10 MS. GREENE: We would.

11 CHAIRPERSON SORG: Thank you very much.
12 So to my fellow Board Members I think in this
13 case what I would suggest is while I think that
14 we've heard a lot in terms of the support and
15 from the Office of Planning, the ANC and the
16 Applicants that I feel has clarified and filled
17 in the record for me I would like to see before
18 we deliberate and make a decision on this because
19 we need to vote on a set of plans that accurate
20 depict the project that the Applicant would like
21 to pursue I would like to have the Applicant
22 submit plans without the Pergola if that's the

1 relief that they are requesting. I think that
2 we've seen a good amount of support for that
3 relief as well as discussion there. I would like
4 to have an accurate set of plans before we
5 deliberate and make a decision. I will open up
6 for comment on that suggestion.

7 MR. MAY: Yeah I was just going to
8 suggest, you know I think that case has been made
9 for the relief that's been requested and that a
10 Pergola is not necessary in fact it would be
11 detrimental to the project. The fact that we
12 don't have drawings that accurately represent
13 that doesn't cause me a lot of anxiety I would
14 be, if we could do this and it would pass muster
15 I would be in favor of deliberating and moving
16 ahead and giving the Applicant the flexibility to
17 include the Pergola or to delete from the
18 drawings. We do that in the Zoning cases from
19 time to time we grant some flexibility to make
20 changes I don't know if you can do that in this
21 circumstance or not but I just don't see any
22 reason to drag this out any further it's already

1 taken a lot longer than it should have and I
2 think the facts of the case aren't really going
3 to change.

4 CHAIRPERSON SORG: Thank you Mr. May I
5 agree with you to OAG would that be something
6 that we could do today, or are allowed?

7 MS. GLAZER: With respect to Mr. May's
8 comments I don't have a problem with the Board
9 deliberating today but I would recommend that new
10 plans be submitted without the Pergola if that is
11 what the Applicant is not requesting. The
12 approval must be based upon a set of plans.

13 CHAIRPERSON SORG: But if we're giving
14 the Applicant flexibility.

15 MS. GLAZER: I understand that's done by
16 the Zoning Commission but in BZA cases I think
17 the regulations provide that the approval is
18 based on a set of plans.

19 CHAIRPERSON SORG: Could the same be
20 accomplished with a condition?

21 MR. MAY: What if they just mark up the
22 plans right now. We can get a plan that's

1 submitted by the Applicant and they just crossed
2 out the Pergola?

3 MS. GLAZER: That would be fine I don't
4 think there has to be formality about it but new
5 plans should be submitted that accurately reflect
6 the project.

7 CHAIRPERSON SORG: I think this is a
8 great idea.

9 MR. SANTIAGO: I think we can just cross
10 it if the Board is allowed us to do that. It's
11 not going to be part of the permit.

12 CHAIRPERSON SORG: We will so what we'll
13 do is we'll allow the Applicant to delete
14 manually the Pergola from the plans resubmit them
15 today to our record and with that we can go
16 ahead, as the plans are being amended to delete
17 the Pergola I think we can finally move into
18 deliberation and close the hearing in this case.
19 I can start us off really quick.

20 I think we've really gotten a very good
21 idea from the Applicant the very small square
22 footage of an addition that's being requested

1 here which if it were not for the constrained
2 proportions of the lot would require a rather
3 small degree of relief. I think that goes to the
4 Office of Planning's reasoning to the first prong
5 in which I think we can see a confluence of
6 factors that really do stem from the constraint
7 proportions in part the narrowness of the lot and
8 the footprint of the home built in the 1800's as
9 well as some regulatory inconsistencies as he
10 mentions in which the Applicant did rely on what
11 they were told would be a request for pretty
12 minor relief. Based on the lot occupancy that
13 already was so high, based on the small lot and
14 its narrowness was kicked up to a variance
15 relief. I think the court relief I can be
16 supportive of as well based on the Applicants
17 desire actually to minimize the intrusion of
18 their addition on their neighbors and on the
19 property that has the unintended effect of the
20 increasing the relief that's required.
21 Additionally as OP mentions the constrained
22 living space in the dining area that was

1 originally designed as a porch in fact and not a
2 dining area and is not now of a proportion that
3 is up to modern standards for a dining area and
4 wasn't meant to be a space that houses function
5 in the first place. I'll also mention that the
6 ANC has submitted letters as well as testified in
7 this case and there support is unanimous in a
8 letter that meets our requirements for great
9 weight as well as the Applicant having shared
10 more than once plans with the adjacent and
11 surrounding neighbors who also are supportive of
12 the application.

13 With that I will open up to deliberations
14 from other Board Members.

15 MR. JORDAN: I just want to say I think
16 that, I understand what the Applicant is looking
17 for and what they're trying to get. I'm having
18 some difficulty in regards to the extraordinary
19 situation because I don't think it's one of
20 practical difficulty, I think it's one of
21 convenience. However, I think it's a borderline
22 question and I just want to make sure that we're

1 consistent in how we handle cases so that people
2 can use going forward as the standard. So in
3 light of giving deference again to what claimant
4 is finding to be extraordinary even though the
5 claimant said it was not exceptional in itself.
6 The lot size is not the smallest and there are
7 other people who are functioning but I could
8 certainly go ahead and support because of the
9 inconvenience that it's causing you personally in
10 the household.

11 CHAIRPERSON SORG: Any further
12 deliberations?

13 MR. MAY: Yeah I agree that this is kind
14 of a borderline case in terms of the practical
15 difficulty that's created. Undoubtedly it's a
16 narrow site, something that's going to be in the
17 14 foot wide range is very narrow, I've lived in
18 a 14 foot wide house and I know how it can
19 constrain things. The lot overall is smaller and
20 you have this sort of additive effect of that
21 plus the way the house has been renovated over
22 the years or renovated in the past that created

1 an internal configuration with the living room in
2 what would ordinarily be a dining room space in
3 most houses that are three rooms deep, like this.
4 Also the fact that there's an existing garage
5 which creates the issue with lot occupancy or it
6 contributes to the issue of lot occupancy. All
7 these things I think are little things that if
8 the house were designed differently from the
9 start might never create an issue for zoning
10 other than the fact that the lot itself is non-
11 conforming. The building is what it is, the
12 house is what it is, and it's an historic house
13 in a historic neighborhood so I think that it
14 adds up to enough for me. Again it is kind of on
15 the border. I think some of the issues are self
16 imposed again because the internal configuration
17 of the house instead of being the typical living
18 room, dining room, kitchen, sitting room, kind of
19 configuration you wind up with this den at the
20 front and the living area in the middle of the
21 house and if it's the living room you really want
22 to preserve the light and air so it argues for

1 not filling in the dog leg completely which you
2 know you could do if you didn't have the garage,
3 so there are ways in which this is close to being
4 a matter of right but there are enough conditions
5 that make it do something. I also think that the
6 relief or the solution that's being presented
7 truly has minimal impact. I think that the fact
8 that the next door neighbor supports it is very
9 helpful in this circumstance and I think that if
10 a larger in field had been proposed it might be a
11 much more in contentious thing and a much more
12 difficult thing to approve but I'm inclined to
13 approve because of this, the combination of
14 circumstances and the modesty of the request.

15 CHAIRPERSON SORG: Thank you Mr. May I
16 appreciate it and I thank you for that
17 clarification. Are there any further
18 deliberations? Seeing none I will submit a
19 motion to approve Application No. 18221 of David
20 King and Betsy Damos for a one story addition to
21 an existing row dwelling requiring relief from
22 406.1 closed court requirements and 2001.3 area

1 variance for an addition to a non-conforming
2 structure in the R-4 District at 123 10th Street,
3 S.E. Motion has been made is there a second?

4 MR. MAY: Second.

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

7 CHORUS: Aye.

8 CHAIRPERSON SORG: Those opposed? Mr.
9 Moy could please read back the vote.

10 MR. MOY: Yes with pleasure Madam Chair.

11 The Staff would record the vote as 4 to 0 to 1
12 this on the motion of Chairperson Sorg to approve
13 the application for area variance relief from
14 Sections 406.1 and 2001.3 also Staff notes that
15 the submitted revised drawings are shown to
16 remove the Pergola structure as shown on sheets
17 number A-1.0, 1.1 and 3.0. Seconded the motion
18 Mr. Peter May and also in support of the motion
19 Mr. Jordan and Mr. Hinkle, no other Board Members
20 participating. So again the final vote is 4 to 0
21 to 1.

22 CHAIRPERSON SORG: Thank you very much

1 and I think we can request a summary order and
2 best of luck.

3 MR. MOY: Very good thank you.

4 CHAIRPERSON SORG: We can go ahead and
5 call the next case when you're ready.

6 MR. MOY: Madam Chair during the interim
7 period the Board has received a letter from the
8 Applicant to the third case in the morning. This
9 would be to case number 18222 as a preliminary
10 matter which is a request for the postponement.
11 The Board has the option of either taking this
12 case up first or preceding the scheduled second
13 case which would be Application No. 18218.

14 CHAIRPERSON SORG: Okay let's see by a
15 show of hands, who is here for case number 18222,
16 the third case in the morning? It looks like
17 pretty much everybody. Alright in the interest of
18 efficiency for all those folks that are here why
19 don't we go ahead and take up this matter first.
20 Okay so as I mentioned what we'll do is we're
21 going to take up the preliminary matters and the
22 request in the third case for the morning as

1 quickly as we can. So Mr. Moy why don't you call
2 that case and those people including the
3 Applicant and persons who submitted party status
4 request forms can join us at the table. Anybody
5 who submitted a party status request that's in my
6 file, I have five can go ahead and join us as
7 well as the Applicant while the Secretary calls
8 the case.

9 **Application No. 18222**

10 MR. MOY: Yes this is the reading for the
11 advertised, this is Application No. 18222
12 application of Danielle Dubois, pursuant to 11
13 DCMR 3103.2 for a variance from the alley width
14 requirements under (subsection 2507.2) a variance
15 from the alley lot building requirements under
16 (subsection 2507.3), this is to allow the
17 conversion of a vacant warehouse building to a
18 one-family dwelling in the R-4 District at
19 premises rear 1237-39 C Street, S.E. property
20 located in (Square 1017, Lot 79).

21 CHAIRPERSON SORG: Thank you very much
22 Mr. Secretary. Alright the first thing that

1 we'll do is we'll have everybody who has stepped
2 up to the table please introduce yourself
3 starting from my left and then first we'll sort
4 out the parties in the case.

5 MR. DOHERTY: Miles Doherty and I live at
6 727 Mass Ave but I own in partnership 1239 C
7 Street four condominiums that directly are
8 affected by the proposed wall of the compound.

9 CHAIRPERSON SORG: You submitted a letter
10 saying that you were not going to be present? Oh
11 you said may not.

12 MR. DOHERTY: As it turned out I am able
13 to be present.

14 CHAIRPERSON SORG: Okay great, thank you.

15 MS. GLICK: My name is Anita Glick I live
16 at 1237 C Street, S.E. Unit Number 1 I own that
17 unit it's on the lower floor in the east corner.

18 CHAIRPERSON SORG: Thank you Ms. Glick.

19 MS. GREEN: Carol Green ANC 6-B.

20 MR. GLICK: Hello, I'm Neil Glick Chair
21 of ANC 6-B and Commissioner 6-B-08. Commissioner
22 Green is also our Treasurer and Commissioner 6-B-

1 0-7.

2 CHAIRPERSON SORG: So this is your Single
3 Member District Mr. Glick?

4 MR. GLICK: No that commissioner
5 unfortunately is out of town right now.

6 MS. ZARESKI: Karen Zareski I also reside
7 at 1237 C Street, S.E. in Number 4 and as noted
8 this property is directly adjacent and abuts our
9 backyard.

10 MS. WNEK: Suzanne Wnek and I live at
11 1237 C Street, Apt 2, again directly to the north
12 of this property.

13 MS. BEAR: My name is Sheppard Bear I
14 live at 1237 C Street in number 3 upper floor
15 also in the same building.

16 CHAIRPERSON SORG: Thank you very much.
17 Where is the Applicant? Alright thank you all
18 very much for your patience. What we're going to
19 do is we'll consider the motion for continuance
20 which is what is on the table based on the letter
21 that's been submitted by the Applicant. We can
22 allow the potential parties as well as of course

1 the ANC which is a party automatically to comment
2 on the record while we make our decision on
3 whether or not to grant a postponement. So I
4 guess what we'll do instead, I'm sorry, is you
5 know there's a couple of thorny issues here that
6 I think we want to discuss on the record among
7 the Board Members. Based on what I understand on
8 this request for postponement, I think that there
9 are rules and procedures for this body and we
10 expect Applicants because we're taking our time,
11 the community is obviously taking their time, the
12 ANC is taking their time, we expect Applicant's
13 to come through on the appointed date or at the
14 very least to give notice to this office, to this
15 Board and to community members who have an
16 interest in projects good enough notice of any
17 request or amendments or changes to applications.
18 I think that this Applicant is walking a pretty
19 fine line on both of our rules and procedures as
20 well as common courtesy in terms of how they are
21 beginning to process this application. That
22 being said in our history it's a pretty high bar

1 to simply dismiss applications that we receive
2 from individuals without hearing any testimony.
3 Additionally from the letter that we received and
4 conversations we understand the Applicant has had
5 with the Office of Zoning, the standard for
6 postponement is good cause and no prejudice. In
7 terms of good cause I think it seems as though
8 the Applicant is working with Historic
9 Preservation as well as wanting to respond to ANC
10 6-B's comments in regards to the design and
11 massing of the project. It sounds like the plans
12 and design and application may change
13 significantly so I would be personally in this
14 case my suggestion on the way forward is to give
15 the Applicant a stern warning which I think is
16 appropriate but allow the case to be continued
17 and in deference to the engaged community members
18 who have shown up here today we will, I suggest
19 that we with them decide what is a day that works
20 for all of them and hold the Applicant to that
21 day as well as requiring that the Applicant share
22 the plans with the ANC as well as with all of the

1 potential party status requestors. So that being
2 said, that's sort of where I am on what I
3 understand is behind this motion as well as how
4 this is played out. I'll open it up for other
5 Board Members.

6 MR. MAY: I've got a really hot mic today
7 I don't know why so I apologize for the errant
8 noise. First of all I want to thank everybody
9 who came out here today you obviously showed more
10 interest in this project than the Applicant did
11 and it's very disappointing not having the
12 Applicant here to speak to any of these issues.
13 We could have settled a few things that would
14 have made the path from this point forward quite
15 a bit clearer certainly in terms of party status
16 and so on. There's no doubt based on the
17 information that's already in the record and the
18 substantial, not just opposition but the number
19 of people requesting party status on a case like
20 this, that this is a case that needs some further
21 work. So I actually believe that we won't be
22 considering it today because I didn't think it

1 was going to be a very smooth discussion, put it
2 that way. So I think the idea of postponing it
3 is certainly appropriate. I also think that this
4 would give an opportunity for the people who are
5 immediately affected by this to actually get
6 together and discuss some of these issues. I'm
7 not suggesting at this point how party status
8 would be granted; we'll consider whatever
9 applications come in. But it seems to be that
10 since the folks that have requested party status
11 are all in a very tight geographic area there may
12 be some benefit to consolidating an application
13 amongst those various members so they can
14 consider that for their own action or non-action
15 as they chose, but it is possible to amend a
16 party status application I believe. You
17 certainly can talk to staff about the process for
18 that and find out. It may simply be more
19 efficient and more effective if we were dealing
20 with one or two parties rather than five.

21 I just want to add my extreme concern to
22 the Chairman has already expressed about the

1 Applicant and their sort of getting off on the
2 wrong foot in this case, this is really not well
3 in the short life of this case and hopefully with
4 a little bit of regrouping when we set a new date
5 that the Applicant will come in better prepared
6 to make their case and give it a good and fair
7 hearing.

8 CHAIRPERSON SORG: I agree with your
9 comments and I also had we been able to, had we
10 started going forward with this case as normal
11 organizing the party status request individuals
12 was something that I also would have encouraged
13 especially given the letter seemed like a lot of
14 the concerns are shared among most if not all of
15 those people present. Are there other comments
16 from Board Members?

17 MR. JORDAN: Yes Madam Chair this gives
18 me great concern about delaying this hearing and
19 asking for a ninth hour request for a continuance
20 and then not be here because that really is kind
21 of disrespectful to the Board but more
22 importantly disrespectful to the people who are

1 here. Out of fairness I have some concerns about
2 that for the people who are here and took the
3 time to be here and they're not the Applicant.
4 The precedent that this may set going forward
5 that you may have a hearing scheduled, send a
6 letter and don't show up and then we roll it
7 automatically I think gives me great concern for
8 that. Dismissal I don't find to be that out of
9 the question because it's dismissal without
10 prejudice and what they would be burden with is
11 repaying and refilling and what have you and this
12 added consequence that they should get for this
13 type of last minute act. I have concerns about
14 that and I just want us to be kind of conscious
15 of the precedence that we set going forward and
16 then the fairness to the people that are here.
17 Those are my concerns.

18 CHAIRPERSON SORG: Thank you Mr. Jordan I
19 hear your concerns and I agree with them
20 certainly in spirit. I think with regard to
21 dismissal, actually I think with regard to
22 setting precedent I think that those of us who

1 have spoken already and certainly Mr. Hinkle will
2 be given a chance in a moment, I'm sure you'd
3 like to add something. I think we've clearly
4 show our displeasure with the Applicant and to
5 echo what Mr. May mentioned that this is really
6 getting off on the wrong foot for them and
7 certainly noted the behavior and lack of courtesy
8 of the Applicant here. With regard to dismissal
9 I think one of the things that we do try and do
10 as a Board is a difference from a regular sort of
11 judicial body is that we tend to try to encourage
12 Applicant's and communities to work together
13 outside of this room and as much as possible. So
14 the one benefit that I can see here is that
15 maybe, just maybe this Applicant will be able to
16 get somewhere with the concerned neighbors that
17 are here and not something that I think could be
18 a positive for the application.

19 I will open it up for Mr. Hinkle for any
20 comments.

21 MR. HINKLE: Thank you Madam Chair. I
22 tend to think as well that there's really a

1 burden on the Applicant to be here. Getting a
2 letter at the last moment right before we review
3 a case asking for a postponement I don't think
4 does the Applicant a favor, I don't think the
5 Applicant does a favor to the people that have
6 also come out here for this case. As Mr. Jordan
7 said, I'm afraid of the precedent that we would
8 set in terms of not dismissing this case right
9 now. I think it's pretty clear when working with
10 the Office of Zoning that the Applicant has a
11 burden to be here at the hearing. I have some
12 concerns that if we do postpone this now it does
13 set a precedent.

14 CHAIRPERSON SORG: So what I want to do
15 is, we've all gotten a chance to make our
16 comments and it looks like we may need to vote on
17 whether we to postpone this but I'd like to look
18 to OAG first regarding our regulations for
19 dismissal I think that might be a helpful thing
20 to clarify.

21 MS. GLAZER: Well I'm not sure what the
22 Chair's alluding to but I will just state that

1 there are regulations governing dismissal and one
2 pertinent regulation is 3113.11 which says that
3 an application dismissed by the Board for failure
4 to comply with procedural requirements shall not
5 be accepted for filing again for at least 90-days
6 after the date of the order dismissing the
7 application. There is another provision I
8 believe that I haven't located that talks about
9 giving an Applicant an opportunity to correct any
10 deficiencies before dismissing for procedural
11 reasons.

12 MR. JORDAN: If I may does it also say
13 that the Board can give leave to file prior to
14 90-days in that same regulation?

15 MS. GLAZER: It doesn't explicitly state
16 that. There is a provision the Board a general
17 waiver provision and there are certain exceptions
18 to that. The General waiver provision says that
19 the Board can waive almost any of the regulations
20 for good cause and lack of prejudice.

21 MR. JORDAN: I was just asking because I
22 thought you cited 3113.11?

1 MS. GLAZER: I did. Yes I did and the
2 last section of that, I'm not sure if I read it,
3 says that without leave of the Board so you're
4 saying that that implies that the Board could
5 give leave for a new application.

6 MR. MAY: I'm sorry what does that
7 actually mean, give leave of the Board?

8 MS. GLAZER: I think Mr. Jordan has
9 asked, if this petition, application were
10 dismissed the regulation says that a new
11 application can't be refiled until 90-days after
12 the, actually that's the withdrawal, that's if
13 the application is actually withdrawn. I was
14 reading from 3113.11 which doesn't have that
15 provision about leave.

16 MR. MAY: I'm trying to absorb all this.
17 So there's a basic question of whether based on
18 the Applicant essentially not showing up, whether
19 that's ground for dismissing the case and it
20 seems to me that it is. I don't see any
21 indication that it's not, or I haven't heard
22 anything that indicates that it's not. The

1 second question is how quickly can they refile?
2 Is it 90-days or is it less.

3 MR. JORDAN: It appears under my reading
4 of 3113.11 and I will read it, it states; without
5 leave of the Board and application dismissed by
6 the Board for failure to comply with procedural
7 requirements of this title shall not be accepted
8 for filing again for at least 90-days after the
9 date of the order dismissing the application.

10 MR. MAY: So without leave of the Board
11 means that unless the Board says otherwise, is
12 that right? So we could dismiss it and at the
13 same time including that motion a provision that
14 they could resubmit within 90-days. It will
15 probably take them more than 90-days to work
16 things out anyway but at least that would allow
17 them to get on the calendar again faster.
18 Alright well having heard the concern about
19 setting precedent in this circumstance if
20 somebody wants to bring up a motion to dismiss
21 maybe you should consider that. I'm not sure
22 exactly where I come out on it yet but if you

1 want to discuss that explicitly because we really
2 haven't dug in specifically on that.

3 MR. JORDAN: I would do that, I would
4 move if Madam Chair I don't know if it's
5 appropriate if you want to have further
6 deliberation.

7 CHAIRPERSON SORG: I think, I'm
8 personally not in favor of dismissal but if Mr.
9 Jordan or another Board Member would like to move
10 to dismiss I think we could see where everybody
11 comes out on that as Mr. May is suggesting.

12 MR. JORDAN: Good, then I move that the
13 Application Number 18222, be dismissed for
14 failure to follow procedural guidelines and be
15 here for this hearing that's been previously
16 scheduled and noticed.

17 CHAIRPERSON SORG: A motion has been made
18 is there a second?

19 MR. HINKLE: Second.

20 CHAIRPERSON SORG: A motion has been made
21 and seconded, all those in favor...

22 MR. MAY: I would like to have some

1 further discussion not that we have a motion on
2 the floor.

3 CHAIRPERSON SORG: Oh okay I apologize
4 Mr. May.

5 MR. MAY: So I assume that embedded in
6 your motion is the notion that the application
7 can be refiled immediately and without prejudice?

8 MR. JORDAN: I would add that to my
9 motion.

10 CHAIRPERSON SORG: My concern here with
11 this motion that's on the table is two things.
12 Number one that it seems as though what this
13 motion does, especially if we waive the 90-day
14 provision is punishing this application
15 monetarily and that's pretty much it. Also I
16 think one other thing that is unique about his
17 Board is that we get all sorts of people in front
18 of us. We get lawyers who've done land use for
19 100 years, we get individuals who've never looked
20 at a Zoning Regulation before and we get
21 everything in-between and in-between that a lot
22 of times I think are architects. So I understand

1 the concerns about setting precedence and I also
2 am extremely disappointed in how this Applicant
3 has shown discourtesy to this community and to
4 this Board. I would stop short at dismissing the
5 case because I don't believe that, I honestly
6 don't believe that the Applicant knew that they
7 were causing such a hubbub really. I see that
8 OAG wants to make a comment.

9 MS. GLAZER: Thank you Madam Chair. I
10 just want the Board to be aware of a provision I
11 mentioned there was a provision that in effect
12 gives the Applicant an opportunity to be warned
13 before dismissal and I didn't have that
14 regulation at my fingertips. I have finally
15 located it and it's at 3100.6 and it states; for
16 your consideration no appeal or application shall
17 be dismissed on the grounds that the Appellant or
18 Applicant failed to comply with the provisions of
19 this chapter unless after due noticed of the
20 deficiency and expiration of a reasonable time is
21 fixed by the Board the deficiency has not been
22 corrected. Now that may not make a difference to

1 Board Members but it's just something I think the
2 Board should think about. In the past I think
3 the Board has sent letters to Applicants who have
4 failed to abide by procedural regulations.

5 MR. MAY: So in this circumstance the
6 procedural violation is essentially not showing
7 up to deal with the case here and now?

8 MS. GLAZER: That's correct.

9 MR. MAY: It seems a little silly that we
10 would provide them notice that hey you didn't
11 show up we're going to dismiss your case.

12 MS. GLAZER: I suppose the notice would
13 say that you were required to be here and you
14 were not here today if you do this again we will
15 dismiss the case.

16 MR. MAY: Okay, so what we could do
17 conceivably then is postpone this specific
18 deliberation to another meeting date and take up
19 the preliminary matters and determine whether or
20 not we're going to dismiss the case based on
21 whether or not they show up at that point.

22 MR. JORDAN: Let me ask again what

1 provision was that that required the warning?

2 MS. GLAZER: I'm sorry 3100.6 and the
3 waiver provision is right above it 3100.5 that's
4 the provision that talks about waiving for good
5 cause and lack of prejudice.

6 CHAIRPERSON SORG: I see that the ANC who
7 is actually the one party in this case that is
8 official would like to make a comment. I think
9 because it looks like we're going back and forth
10 a little bit I'll allow the ANC to make a
11 comment.

12 MR. GLICK: Thank you Madam Chair and
13 Members of the Board. I'm Neil Glick Chair of
14 ANC 6-B. The fact that you have this letter, I
15 was in Richard Nero's office when at about 11:35
16 this morning, I was just going in there to see
17 well did they, because we saw no one was here
18 from the Applicant's side whether it's the
19 architect or the Applicant themselves and I was
20 just wondering if they had withdrawn and as of
21 last night at 6:30 they did not withdraw. I go
22 to Richard Nero and he explains well let's just

1 give them a call. The only reason that this was
2 even sent it was because of Richard Nero's
3 prompting and then on top of it the letter is
4 very specific talking about Historic Preservation
5 Issues and this is the BZA. It doesn't need to,
6 the HPRB has nothing to do with BZA and BZA has
7 nothing to do with HPRB. They could each be on
8 an approval track separate hopefully within the
9 same time frame. They can come here first before
10 HPRB or they can go to HPRB before BZA. So this
11 is much more pertinent to, they specifically say
12 Historic Preservation. Based on what the
13 Attorney General's office was reading out that
14 last provision refers to a good cause and offers
15 no lack of prejudice.

16 You know we do a lot of (inaudible) ANC
17 procedure at ANC 6-B. Mr. Jordan's motion could
18 withdraw the lack of prejudice part, I think, a
19 past parliamentarian for like five times. You
20 can move on without that.

21 Also the other thing I really want to say
22 that, and in this letter dismissal's the first

1 time the ANC has been told about this. We
2 literally get it and then five minutes later you
3 get right here as it's being called. There has
4 been, the Applicant has personally, and this is
5 from an architect, and the architect has been to
6 BZA before. The architect is no stranger to you;
7 the architect is no stranger to the ANC and our
8 processes. The Applicant themselves has never
9 once come to an ANC meeting to present their
10 case, they've never come once, they've never
11 reached out to any of the commissioners, any of
12 the ten, whether it's our planning and zoning
13 commission, me as chair or even their own
14 commissioner, Commissioner Critchfield, they've
15 never come forth to reach out to us. They've
16 been missing in action during this entire
17 process; they've left it up to the architect. I
18 think that not dismissing this case puts BZA in a
19 very bad position. I see this as running a
20 commission of my own that technically it weakens
21 you, it makes you look a lot weaker that oh well,
22 well if they're not here. I understanding

1 working to get the neighbors together, we're the
2 ANC we're very much community based and we
3 recently heard two cases, we had a very fast a 10
4 minute special call meeting with the case you
5 just heard with Mr. King. Just because we were
6 able to it was easy to fit in just to vote on
7 their variance versus the special exception and
8 we approved both. But in this case it kind of
9 weakens you and it makes you almost at the mercy
10 of every Applicant I think and the BZA, you know
11 you just don't bend in the wind to everyone's
12 request, I mean then well ANC 6-A is going to
13 come in here and oh well we're going to withdraw
14 so we're going to ask you to do this at the last
15 minute. It sets a very bad precedent, you're a
16 professional organization, you have professional
17 staff working for you, then there's all of us,
18 we've given up our entire morning, we've given up
19 vacation hours, we're losing money by coming here
20 and now we're going to have to come again and
21 just give them a little slap on the wrist for
22 someone who has never shown up and shown

1 absolutely no respect to the process, no respect
2 to the community, and no respect to the elected
3 officials in their neighborhood and no respect to
4 the BZA and all of the appointees. So it's just
5 a real waste of everybody's time. If they have
6 to refile and it costs them more money and
7 they're willing to dump money into this plan
8 anyway, which the Office of Planning Report is
9 against, which all the neighbors are against, I
10 haven't heard one person say anything in favor of
11 this, not even the Applicant themselves. I would
12 say go ahead and dismiss it, but that's just my
13 opinion, and I only represent 24,000 people.

14 CHAIRPERSON SORG: Thank you Mr. Glick
15 your comments are appreciated. I think what we
16 can do I don't believe that the provision 3100.6
17 disallows us from going forward on the motion to
18 dismiss. I think as Mr. Jordan maybe mentioned I
19 think it's open to interpretation whether showing
20 up is in of itself a procedural requirement. So
21 unless OAG has some other comment I would suggest
22 that we go forward and vote on the motion to

1 dismiss that's on the table.

2 MS. GLAZER: I just want to say I don't
3 know that failure to show-up is I agree with you
4 I don't know that it's necessarily a procedural
5 deficiency. However I don't know that there's a
6 failure to prosecute when a letter has been
7 submitted requesting a continuance. If the
8 Applicant had not shown up and not submitted a
9 letter that would clearly be a failure to
10 prosecute but they have submitted a letter,
11 albeit one that was done at prompting by OZ it
12 was still a request for continuance. It shows
13 that he intends to prosecute the application.

14 MR. MAY: I guess maybe this is a question
15 for OAG. On what basis could we actually dismiss
16 this case at this point? If it's not procedural,
17 is not showing up, is not showing up covered in
18 the...

19 MR. JORDAN: If I could whether or not
20 OAG determines that not showing up, sending a
21 letter was not failure to prosecute, that's
22 simply an interpretation that this Board can make

1 and I think it's within our power to do so.
2 Whether or not we say the letter means they
3 actually did do enough to prosecute it I think is
4 subjective to, I mean it's allowed for us to do
5 that as an interpretation and I think OAG has
6 given their interpretation of what the letter may
7 mean.

8 MS. GLAZER: That's correct, that's my
9 advice at this point and the Board can decide
10 otherwise. I don't know of any cases where there
11 has been a dismissal based up on failure to
12 appear.

13 MR. MAY: You know dismissing is a
14 fairly extreme matter and I have been involved in
15 cases before where the Applicant did not show up
16 and we did not dismiss and it had to do with the
17 lack of familiarity in that Applicant with our
18 process. Extending that courtesy in this
19 circumstance particularly when we know that the
20 Applicant is represented by an architect who has
21 experience with the system is in our process is a
22 bit different. Again I'm not feeling totally

1 comfortable that we can simply dismiss based on
2 the fact that they didn't show up. I almost
3 would feel more comfortable if we heard the case
4 without them and then denied the application
5 which would be a more extreme circumstance.
6 Again if this case ever comes back it's going to
7 come back as a very different case. Even if we
8 denied the application I would think they could
9 make a new case.

10 I'm really ambivalent on this I'm not
11 sure what to do in this circumstance. I always
12 want to try to give people the benefit of the
13 doubt and even in the most seemingly intractable
14 circumstances where there's great division hope
15 that it will come to a good resolution. In this
16 circumstance in terms of our review of this case
17 even though this is an egregious offense it's
18 still a first offense. I just don't feel I'm
19 sort of talking this out to try to come to a
20 conclusion myself. I don't feel strongly enough
21 that we need to dismiss, I think whatever warning
22 would be appropriate and I think frankly setting

1 a time for a week from now to consider party
2 status applications and insisting that the
3 Applicant show up at that time and if they don't
4 we will dismiss I think that's you know give them
5 a week and let's continue the conversation at
6 that moment, that would be my inclination. So in
7 other words if on the motion to dismiss I would
8 probably vote against this one.

9 CHAIRPERSON SORG: I couldn't agree more
10 Mr. May with you sentiments. I think it's sort
11 of a little bit of a loss at not knowing whether
12 or not we have grounds or ability to dismiss this
13 on our rules of procedure. That being said
14 though I too don't feel that dismissal on the
15 first offense is something that we don't in my
16 experience over the last year and a half which is
17 not as much as Mr. May certainly it's not
18 something that we are in the habit of doing. I
19 agree I would also agree that putting forward at
20 least going through the preliminary matters and
21 going ahead with this case next week and I too
22 would be inclined to vote against any motion for

1 dismissal. That of course could bring up another
2 question, Mr. Jordan or Mr. Hinkle do you have
3 anything?

4 MR. JORDAN: I've already stated where I
5 am with it. I just think they have the
6 opportunity to refile and if they're serious
7 about doing it, we've already taken up a lot of
8 time for this Board and others based upon their
9 decision. I just think it sets a bad precedence.

10 MR. HINKLE: I agree with Mr. Jordan
11 completely, again I think it's the burden of the
12 Applicant to be here.

13 CHAIRPERSON SORG: Alright well I think
14 that what we'll do is we'll call a vote even
15 though I'm not, we have a motion on the table and
16 that motion has been seconded so I'll call the
17 vote and all those in favor of the motion made by
18 Mr. Jordan.

19 MS. GLAZER: Excuse me I apologize for
20 interrupting again but Staff just handed me a
21 decision which I haven't read but I think it
22 might be pertinent to the issue and I would like

1 to have an opportunity to look at it and perhaps
2 give it to you to look at as well. BZA
3 Application 17585 is what I'm reading at this
4 moment. I'm just going to state that on quick
5 review it looks like this decision was a decision
6 by the Board to dismiss a case where there was a
7 last minute request for a continuance however I
8 will add that this was the second time that the
9 Applicant had requested a continuance not the
10 first. I will pass it down so that others can
11 take a look at it.

12 MR. JORDAN: It really doesn't help us.

13 MS. GLAZER: There are BZA decisions, I
14 mean there are cites in the decision which state
15 that the Board has the implicit authority to
16 dismiss but it's dependent on all the facts and
17 circumstances and they took into account here the
18 fact that everybody had come back now twice but
19 it is distinguishable on its facts because it
20 wasn't the first request.

21 MR. MAY: I'm just sort of skimming this
22 and I'll pass it on immediately but in your

1 reading of it was the Applicant present when the
2 decision was made to dismiss?

3 MS. GLAZER: I'm not sure I skimmed this
4 very quickly. I think he was contacted by letter
5 and telephone.

6 MR. MOY: My recollection Mr. May was
7 that the Applicant was not present after many
8 contacts to appear.

9 MR. MAY: I don't feel like this changes
10 my mind there have been, and this is the first
11 contact with this case. Like I said before this
12 is a bad episode and certainly a bad way to start
13 things off but it is the first offense and I
14 think the appropriate action is to take this
15 matter up again as quickly as possible and put
16 the Applicant on notice that they must be present
17 to stand up for their case.

18 CHAIRPERSON SORG: I agree. I'm going to
19 go ahead and call the vote again on the motion
20 that's on the table and all those in favor say
21 aye.

22 Mr. Hinkle and Mr. Jordan Aye.

1 CHAIRPERSON SORG: All those opposed?
2 Opposed?

3 MR. MOY: Staff would record the vote as
4 I believe 2 to 2 to 1 this on the motion of Mr.
5 Jordan to dismiss the application seconded by Mr.
6 Hinkle and opposed to the motion is Ms. Sorg and
7 Mr. May. No other Board Members participating, so
8 the motion fails for lack of majority concurring
9 vote.

10 CHAIRPERSON SORG: Okay so the motion on
11 the table as the Secretary noted fails. I would
12 in this case then like to take up these matters
13 at our next meeting which is in the morning on
14 June 21st.

15 MR. MAY: That's our next hearing date
16 right? That's not a public meeting date?

17 CHAIRPERSON SORG: I'm sorry public
18 hearing, the next public meeting is July 12th but
19 what I'd like to do, to OAG do we need to table
20 the motion and take it up again or can we?

21 MR. MAY: Madam Chair I would agree with
22 the notion that we would continue the hearing for

1 one week and allow the Applicant to come and
2 defend their case and we may not be able to take
3 up party status because all of the parties may
4 not be able to attend at that time. I mean if
5 they are and are able to fine, maybe we split it
6 up. All I know in order to put the Applicant on
7 notice that they need to stand up for their case
8 they ought to be here next week to talk to us,
9 that's my inclination.

10 CHAIRPERSON SORG: I agree I want to be
11 in terms of taking up, this is based on a failure
12 of a motion to dismiss so I think Mr. May is
13 right what we want to see is the Applicant here
14 to stand up for his case. That's not the time
15 when we will, not necessarily the time when we
16 would go ahead and take up party status because
17 we would want to be sensitive to those people who
18 came down today if we were going to go forward
19 with those matters.

20 MS. GLAZER: Excuse me Madam Chair the
21 Board I think first has to decide whether it's
22 going to take up the motion to dismiss again or

1 whether it's going to continue the hearing, they
2 are two different actions.

3 MR. JORDAN: Madam Chair if I may,
4 regarding the case that was just given to us and
5 I understand everybody was rushing looking at it
6 and I've taken the time subsequently to read it.
7 The Applicant was not granted a continuance in
8 the underlying case. Actually the ANC requested
9 the continuance because the ANC did not have a
10 quorum at their meeting to render a decision.
11 The Applicant at that time almost square with
12 what we have here today and the case did come for
13 a hearing at the BZA did not show. Staff at the
14 BZA called by telephone, sent fax letters over to
15 the Applicant, still there was no answer, no
16 reply and no showing and that's when the Board
17 took its action. More importantly the court of
18 appeals review of the decision by the BZA clearly
19 gave the power and authority to the BZA whenever
20 it finds (inaudible) has brought authority in
21 reasonable latitude perform it's functions and
22 when necessary authority to dismiss the

1 application for failure of the Applicant to
2 prosecute this case. So I just wanted to say
3 that for any decisions that we just make.

4 MR. MAY: Madam Chair I appreciate
5 knowing more about that case it's hard to observe
6 these things on the fly but again I would simply
7 suggest that the discussion that we're having
8 right now is I guess the start of the hearing, a
9 preliminary matter to the hearing be continued
10 for one week and that we take up this matter and
11 this matter only. The question is whether or not
12 to continue the case. Let's not deal with party
13 status because I think that's going to be more
14 complicated for people involved but anybody who
15 can show up and the party status applicants who
16 want to come to that hearing is fine obviously.
17 But I think we should just take up the matter of
18 the request for the continuing of the hearing
19 only at that time and then set a date at some
20 point in the future when everyone can
21 participate. Assuming that we agree that the
22 case for continuance is justified and if we think

1 that it's not we can dismiss next week, we will
2 have warned them. I don't think we need a motion
3 to postpone our consideration. I think next week
4 we're not going to hear the entire case no matter
5 what, it will be a relatively quick proceeding
6 next week.

7 CHAIRPERSON SORG: I agree with Mr. May I
8 think in the interest of some efficiency today
9 and based on the motion that's failed I think
10 that we will continue the discussion on this
11 matter only as Mr. May is suggesting to next
12 week, that's June 21st.

13 MR. JORDAN: I agree with you I think we
14 have to do it by motion, to make an action to
15 just move it get it done what you just said and
16 let's move on.

17 CHAIRPERSON SORG: I don't believe you
18 need a motion to schedule this further
19 discussion.

20 MR. JORDAN: The reason why I say that is
21 because presently before us we still have this
22 case and it's already been scheduled and we have

1 to move it off of the agenda one way or the other
2 and we can simply get it done if you just make
3 that a motion and we can approve that and just
4 get it done.

5 CHAIRPERSON SORG: Maybe there's
6 something I don't understand but...

7 MS. GLAZER: Is the question whether you
8 need another motion to reschedule it for next
9 week.

10 MR. MAY: We certainly can make a motion
11 the question is whether it's necessary.

12 MS. GLAZER: Well you can do it by
13 consensus as Mr. Moy just said or you can make a
14 motion.

15 MR. MAY: The question is, is there
16 consensus that we should delay one week.

17 MR. JORDAN: I agree with you it can be
18 done by consensus we just cannot administratively
19 do it we have to do something formal. I'm
20 hearing we can say it by consensus and it's done.

21 CHAIRPERSON SORG: Thank you Mr. Jordan
22 then I think by consensus we can go ahead and

1 move the reconsideration of this motion to June
2 21st and with that I think we'll be finished with
3 this matter for this morning.

4 MR. HINKLE: Madam Chair can we make that
5 the 1st item on the agenda that morning?

6 CHAIRPERSON SORG: Absolutely Mr. Hinkle
7 I think that's an excellent idea. So with that
8 being said I'll thank everyone for coming down
9 today and apologize for the mess that this is and
10 hope this discussion goes more smoothly next time
11 and I would like to take a five minute break and
12 then call the next case.

13 MS. ZARESKI: How will we be notified of
14 the next hearing?

15 CHAIRPERSON SORG: All those people who
16 submitted any party status request will be given
17 more than adequate notice of any further hearings
18 in discussion on those matters for sure.

19 MR. DOHERTY: Can I make one statement,
20 can't there be some procedure where you have a
21 time limit where you can cancel a case...

22 CHAIRPERSON SORG: I'm sorry sir thank

1 you for your concerns we already appreciate them.

2 **Application No. 18218**

3 MR. MOY: The next and last case for the
4 morning session Madam Chair is Application No.
5 18218 this is the application of James Lisowski,
6 pursuant to 11 DCMR 3103.2 for a variance from
7 the lot occupancy Section 403, court Section 406,
8 and alley centerline setback, (subsection
9 2300.2), requirements to allow construction of an
10 accessory garage addition serving an existing row
11 dwelling in the R-4 District at premises 1426 K
12 Street, S.E. (Square 1065, Lot 42).

13 CHAIRPERSON SORG: Thank you Mr.
14 Secretary and thank you again for your patience
15 to the Applicant. Can you please introduce
16 yourself for the record?

17 MR. TEASS: Good afternoon my name is
18 Will Teass I'm with Tektronix Design Group and
19 I'm here on behalf of the Applicant sitting next
20 to me Mr. James Lisowski.

21 MR. LISOWSKI: Good afternoon I'm James
22 Lisowski, Applicant at 1426 K Street, S.E.

1 CHAIRPERSON SORG: Okay thank you. You
2 can go ahead and begin your presentation.

3 MR. TEASS: Thank you Madam Chairperson.
4 I wanted to go over the three aspects that I
5 wanted to cover this morning, the first is more
6 of a preliminary or procedural issue which is in
7 regards to a change in the relief being sought
8 which caused us to basically, partially amend our
9 application as well as represent in front of the
10 ANC. Originally when we submitted the
11 application we were asking for three variances,
12 lot occupancy, what we thought was a closed
13 court, and a setback from the rear alley. In
14 reviewing the project with the Office of Planning
15 they determined that the open or closed court
16 relief was not necessary but they did note that
17 the proposed structure would be within the rear
18 yard setback and recommended that we amend the
19 application which we did. We sent a revised
20 notice to Rick Nero at the Office of Zoning. We
21 also posted the public notice at the property
22 included the corrected variance request for the

1 rear yard in lieu of the closed court. Then we
2 went to the ANC last week to review the changes
3 to the Application as well as the changes to the
4 variance. The Applicant has also informally
5 informed the adjacent neighbors about the slight
6 modifications to the project.

7 CHAIRPERSON SORG: Thank you very much
8 for discussing that preliminarily. I think that
9 the outreach you have done including the posting
10 and reaching out to neighbors as well as
11 soliciting an additional letter from ANC 6-B I
12 think based on a consensus we can go ahead and go
13 forward with the amended relief that would
14 include relief from 404 from the rear yard and
15 2300.2 from the alley setback.

16 MR. TEASS: Thank you very much. I
17 wanted to go through the proposed structure and
18 I'll try to keep it fairly brief in light of this
19 morning's events. The Applicant currently owns
20 and lives at 1426 K Street, S.E. He purchased the
21 structure about a year and a half ago and
22 underwent a renovation, a complete interior

1 renovation as well as adding two decks on the
2 rear of the structure. He has also decided
3 earlier this year that he'd like to build a
4 garage as access from the rear alley and so what
5 you have before you today is that application
6 which shows the existing structure as well as the
7 proposed garage. The garage itself is
8 approximately, it's the width of the lot which I
9 believe is 15 feet and it's about 19 feet deep.
10 There are a couple of unique conditions that I
11 want to address in the preliminary discussion.
12 One is which is at the right of way of the rear
13 alley way is only 10 feet which is exceptionally
14 narrow. Basically the right of way is 10 feet
15 but after investigating what is actually what I
16 would consider an effective right of way a
17 portion of the Applicant's property is
18 essentially being used as part of the alley way
19 in addition to space on the north side of the
20 alley. The effective right of way is more like
21 25 feet there's been sort of an informal practice
22 of aligning garages and fences along that alley

1 way to the existing fence line which sets about
2 4.5 feet to the south of the existing right of
3 way line. I would also like to call your
4 attention to the fact that the lot itself
5 predates the Zoning Code and is of insufficient
6 size it's only 15 feet wide and zoning minimum
7 for this District is 18 feet wide and we're also
8 below the lot area required.

9 The garage itself would be constructed
10 out of concrete block with the garage door facing
11 north allowing access from the alley way on the
12 south side facing both the Applicant's property
13 as well as the adjacent structures and he would
14 incorporate a green wall to soften the concrete
15 nature of the structure. Also the Applicant is
16 planning on putting a green or vegetative roof on
17 the structure and draining that water into a
18 storm barrel to mitigate some of the
19 environmental consequences of adding more
20 impervious coverage to the structure.

21 To summarize we're looking at three
22 variances, the first is lot occupancy, the

1 current structure as it stands now which you can
2 find on page 13 of the prehearing statement. The
3 existing house and deck is about 50 percent lot
4 occupancy, there's an existing light court and a
5 non-compliant open court that counts against the
6 lot occupancy representing an additional 5
7 percent so right about 54.8 or 55 percent. Then
8 the garage as its shown would bring the lot
9 occupancy up to 74.8 therefore necessitating the
10 need for a variance and not a special exception
11 because we're exceeding 70 percent. The second
12 relief you can find a diagram that shows that on
13 page 14 of the prehearing statement it talks
14 about within the zone there's a 12 foot setback
15 required from the alley way centerline to the
16 front of the structure. In this case we are
17 asking for a variance of about 2.4 feet, sorry
18 the setback would be 9.6 which are less than the
19 12 feet required. Then additionally because as
20 we discovered through the process that the rear
21 property line is not at the fence line as was
22 shown in the survey but it's actually setback the

1 4.6 feet from the alley way right of way that
2 we're now on encroaching on the rear yard if the
3 rear yard is measured from the existing
4 structure. At this point I wanted to see if any
5 of the Board Members had any questions about the
6 particular specifics of the design and what we're
7 proposing before I got into meeting the burden of
8 proof?

9 MR. MAY: I just have one quick question,
10 the decks that are on the property right now,
11 were there structures in that place before you
12 built the decks what was there?

13 MR. TEASS: When the Applicant took
14 possession of the property there was a ground
15 floor deck, the second floor deck was added as
16 part of that renovation.

17 MR. MAY: Okay thanks.

18 CHAIRPERSON SORG: Was that existing deck
19 at the same height that it was replaced by?

20 MR. TEASS: The deck that was there that
21 comes off of what is the kitchen was at
22 approximately the same height, the extents of

1 that deck were increased as part of the
2 renovation work and the second floor deck was
3 added.

4 CHAIRPERSON SORG: Okay thank you. You
5 can go ahead if there are no other questions, I
6 don't have any.

7 MR. TEASS: Thank you Madam Chairperson.
8 What we wanted to do is outline the argument for
9 why we consider ourselves a special condition or
10 have a practical difficulty which would allow you
11 to grant the variance. We're going to list a
12 number of conditions any of which may not have
13 enough weight on their own but we've taken the
14 totality of all these conditions that do reflect
15 the special condition that would allow you to
16 grant this variance today. The first is that the
17 existing lot is less than the zoning required lot
18 size both in width and in area. If the lot were
19 of an already legal minimum width we would
20 probably not need to request a variance. The
21 second issue that we wanted to raise is that we
22 worked with the Office of Planning a number of

1 issues and we looked at a configuration that
2 would allow this project to be heard as a special
3 exception however in doing so because the lot
4 width is only 15 feet and with a complying side
5 yard we would basically be left with a nine foot
6 wide garage with in and of itself presents some
7 practical difficulties to being used as a garage,
8 it basically would be a door and you wouldn't be
9 able to pull your automobile in there and open
10 the doors. If that garage were to be still
11 underneath the 70 percent occupancy but slightly
12 wider we then get into the issue of creating an
13 additional non-conforming side yard which then
14 counts against our lot occupancy so it's sort of
15 a little bit of a Catch-22. We're arguing that
16 the degree of relief that we're asking for today
17 is relatively minor. If this project were a
18 special exception as a lesser burden of proof
19 that may or may not have been granted by the
20 Board and so we were to look at this application
21 in the context of that we're only about 4.8
22 percent above what would be consider a special

1 exception.

2 We would argue that the effective lot
3 occupancy not counting the non-conforming side
4 yards and created both by the existing structure
5 and the proposed structure we're less than the 70
6 percent. There's a portion of the neighbors
7 structure that encroaches on the Applicant's
8 property, while it's not substantial it is an
9 additional factor that we would like for you to
10 consider. We'd also like for you to consider
11 that a portion of the alley way has effectively
12 been transferred into public space by virtue of
13 the building practice of setting back both the
14 fence lines and the adjacent garages by about 4.5
15 feet. The existing alley way to the north is
16 only 10 feet wide, basically as we've discussed
17 previously the effective right of way has been
18 increased by encroaching on private property on
19 both sides of the alley. The historic pattern of
20 development is evidenced by base maps and shows a
21 prevalence of garages in this particular square.
22 There is also an existing traffic pattern on K

1 Street which is where the front door to the
2 structure that is located that is utilized by
3 commuters traveling to Maryland and basically
4 there's quite a bit of traffic and on a curb to
5 curb dimension of only 30 feet with parallel
6 parking on both sides has led to the Applicant's
7 car and a number of the neighbors cars being
8 struck and so the Applicant wishes to house his
9 automobile off the street and onto his private
10 property.

11 The Applicant is also concerned about
12 security in particular there is history in the
13 neighborhood of car break-ins as well as there
14 being a retail establishment around the corner
15 and the alley way is actually used as an outdoor
16 gathering space for lack of a better word for
17 some of the people that utilize those retail
18 establishments. Then finally the Applicant would
19 like to screen the off street parking while he
20 would be allowed to park the automobile
21 underneath the trellis for example he would like
22 to screen it both for his own benefit as well as

1 his neighbors to the north and to the south.

2 I'd also like to add that we've reviewed
3 this project with both neighbors on either side
4 as well as the neighbor to the north and a letter
5 of their support is included with the application
6 materials. We've gone before the ANC twice and
7 both times have received unanimous support from
8 the ANC.

9 So again to summarize while any one of
10 these conditions in and of itself would not be
11 unique we're arguing that the confluence of all
12 these issues does create the special condition
13 that would allow the Board to grant a variance in
14 this case.

15 CHAIRPERSON SORG: Does that conclude
16 your presentation?

17 MR. TEASS: It does and one other thing
18 is that we did receive our letter of support from
19 the ANC which I am hoping you received a copy of
20 it came in early this morning. That concludes
21 the remarks that we wanted to make at this point.

22 CHAIRPERSON SORG: Thank you very much.

1 You received a letter which I'm looking at in
2 your prehearing statement from the neighbor on
3 one side of the property or on both sides? Oh I
4 see alright, thank you.

5 MR. TEASS: The letter that you can find
6 on page four of the prehearing statement is
7 countersigned by both sides and then across the
8 alley way.

9 CHAIRPERSON SORG: Right, thank you. Do
10 Board Members have questions for the Applicant?
11 Okay seeing none we'll move to the Office of
12 Planning please.

13 MR. GOLDSTEIN: Good afternoon again for
14 the record my name is Paul Goldstein. The Office
15 of Planning cannot recommend approval of the
16 Applicant's request for area variance relief to
17 accommodate a new detached rear garage on a
18 property with an existing single family row
19 dwelling. The subject property is located at
20 1426 K Street, S.E. the property is (Lot 42,
21 Square 1065) and is zoned R-4.

22 The application requests three areas of

1 relief as you've heard from Section 403 which
2 limits the lot occupancy, Section 2300.2 which
3 provides a minimum setback from the alley
4 centerline, and Section 404 which requires a
5 minimum required rear yard. Beginning with the
6 lot occupancy the application proposes about 75
7 percent lot coverage in a zone that permits 60
8 percent or 70 percent by special exception. The
9 property currently conforms to lot occupancy at
10 about 55 percent. Looking at more specifically
11 the variance test OP certainly considered what
12 the Applicant put forward for a lot of conditions
13 that they say generate the confluence of factors.
14 On balance we just couldn't quite get over the
15 hurdle to find that there was an exceptional
16 condition here.

17 We examined the properties size and shape
18 and found that the lot dimensions are typical of
19 what are found in the square, the property is
20 already developed as a single family row
21 dwelling, has expanded with some decks and has
22 additional room for expansion as well by right.

1 The fact that there was historically garage
2 there, the fact that there are security issues,
3 its being used as a cut through I just couldn't
4 quite get to our level of comfort on that. I'm
5 certainly willing to hear more from the Board and
6 more from the Applicant to weigh additional
7 information.

8 Since the property's not unique there's
9 no resulting practical difficulty which is
10 unnecessarily burdensome to the Applicant. OP
11 does note however that the proposal would not
12 appear to cause substantial detriment to the
13 public good but it would be contrary to the
14 Zoning Regulations. Nevertheless and as you can
15 sort of see in the report should the Board
16 determine that the proposed lot occupancy is
17 appropriate in this case OP has no concerns with
18 the Applicant's limited relief request from rear
19 yard and alley setback. That relief would be
20 needed to accommodate a garage.

21 That concludes my presentation actually I
22 do want to say one more thing. I would like to

1 compliment the Applicant on presenting a very
2 good set of drawings and also being really
3 willing to work on the application, they set it
4 back further than it was originally. They've
5 scaled back the size of the garage. The Office
6 of Planning appreciates such a responsive
7 Applicant we just couldn't quite get there. I
8 can certainly discuss any questions the Board may
9 have about sort of various sizes for the garage
10 as well and why a slim down garage also has its
11 own occupancy issues. Now I'm available for any
12 questions.

13 MR. MAY: Yeah actually I am interested
14 in the slim down garage alternative, can you
15 explain to me how that would have worked?

16 MR. GOLDSTEIN: Sure, and this is
17 something we'd asked the Applicant to explore and
18 I also talked to the Zoning Administrator about
19 this. A garage of say nine feet width I think
20 the Applicant has testified or provide more
21 information with just isn't useful enough when
22 you talk about the effected space of the garage.

1 That would be a conforming if the garage was
2 constructed to 9 feet width at 19 feet depth it
3 would be a special exception case. It would be
4 under 70 percent lot occupancy. So if you tried
5 to kind of widen the garage a little bit more,
6 see if there's kind of a sweet spot. An 11 foot
7 wide garage for instance I think is about, maybe
8 the Applicant can correct me is about the width
9 they need at 11 feet narrowness, is that correct?

10 MR. TEASS: I apologize for interjecting
11 but I do have a couple of diagrams that I think
12 might be helpful to illustrate these issues if
13 the Board would be willing to consider them at
14 this point?

15 CHAIRPERSON SORG: Yes I think because
16 we're pursuing this line of questioning if you
17 can give those to Mr. Moy he can distribute
18 those.

19 MR. MAY: Did you consider did you talk
20 about other alternatives that would push them
21 back into special exception territory?

22 MR. GOLDSTEIN: Yeah I did, the

1 alternative for instance an 11 foot width what
2 you're getting right now. An 11 foot width, 19
3 foot depth would seem to get them to a lot
4 occupancy of about under 70 percent. The problem
5 that arose and this is what I ended up speaking
6 with the Zoning Administrator about is that, here
7 is my understanding of sort of the technical
8 nature of the regulations. Accessory buildings
9 or private garages aren't required to have a side
10 yard, however if there is a side yard provided
11 there are certain lot occupancy implications for
12 that. Looking for the regulations and I'll sort
13 of tell you how I get to this. You begin by
14 looking at percentage of lot occupancy which is
15 something that then references building area;
16 this is in the definitions of the Zoning
17 Regulations. If you get to the definition of
18 building area which is sort of the key metric,
19 the maximum horizontal projected area of a
20 building and it's accessory buildings, this I
21 would assume qualifies as an accessory building,
22 the term building area should include all side

1 yards and open courts less than 5 feet in width
2 and that's really the key provision. So it's a
3 15 foot wide lot, an 11 foot garage which would
4 leave a 4 foot side yard would actually still
5 have that side yard counted toward the lot
6 occupancy thus pushing into the variance test. I
7 confirmed this understanding, I asked the Zoning
8 Administrator specifically about this and he
9 confirmed that understanding of how he interprets
10 the regulations. So you get even trying to be
11 less impactful you have a bit of a problem.

12 MR. MAY: Okay so five yard seems to be
13 the minimum for the side yard if you will next to
14 a garage. So if they had a five foot side yard
15 and a 10 foot garage would that keep them in
16 special exception territory?

17 MR. GOLDSTEIN: I believe it would my
18 understanding and the Applicant can let me know
19 if that width of garage actually satisfies their
20 needs for the use of the property?

21 MR. TEASS: If the garage were 10 feet we
22 still when you take into account that we'll need

1 a firewall on the one wall that is on the
2 adjacent property it still doesn't give us quite
3 enough area inside the structure to fully open
4 the door to get into the automobile.

5 MR. MAY: I'm sorry how much clear space
6 do you have inside?

7 MR. TEASS: We basically have about,
8 basically like 16 inches and then of those 16
9 inches you'd have to take out the thickness of
10 the wall so it could go down to..

11 MR. MAY: How much is the clear width,
12 keep it simple for me, how much is the clear
13 width on the inside?

14 MR. TEASS: If it were a 10 foot garage?

15 MR. MAY: Yes.

16 MR. TEASS: The clear width inside would
17 basically be 8 foot 10 I believe.

18 MR. MAY: Mr. Goldstein what's the
19 definition of a Zoning Standard parking space?

20 MR. GOLDSTEIN: It's 9 by 19.

21 MR. MAY: And the compact space?

22 MR. GOLDSTEIN: Pardon me I have to check

1 I believe it's, let me...

2 MR. MAY: Okay we'll check that, that's
3 no big deal.

4 MR. GOLDSTEIN: Yeah that was another
5 issue, I'm sorry if you don't mind, we had
6 discussed the idea of a compact space as well
7 which also would then perhaps lead you to have to
8 get relief from the typical size for a parking
9 space. Even trying to do a smaller space my
10 understanding...

11 MR. MAY: We're not trying to create a
12 required parking space are we or trying to
13 preserve one, this is only a single family, an R-
14 4 so there's not a required parking space unless
15 you had two units.

16 MR. GOLDSTEIN: There is one required
17 parking space; they have a space currently on the
18 property so if you're removing a conforming space
19 to make a smaller space I would think that would
20 need some kind of relief. If the Board feels
21 differently that's...

22 MR. MAY: Okay, so then my next question

1 along these lines is what was the size of the
2 garage that was removed? I don't know when it
3 was removed but we see the footprint of it.

4 MR. TEASS: The slab that represents what
5 we think was the garage was, you can see it on
6 page 5, and it was 15.8 feet by 9.8 feet.

7 MR. GOLDSTEIN: I'm sorry the answer to
8 the compact space is 8 feet by 16.

9 MR. MAY: Okay great. Then one last
10 question did you look at other alternatives that
11 would put them into special exception territory
12 not involving manipulating the garage?

13 MR. GOLDSTEIN: I did not that would be
14 implying removing maybe part of the deck?

15 MR. MAY: Yes.

16 MR. GOLDSTEIN: I did not suggest that.

17 MR. MAY: Okay because it seems to me
18 that is one way to get rid of the variance
19 standard for lot occupancy is to have that second
20 floor deck not be there. So this is sort of a
21 conscious choice. Anyway we'll get into that a
22 little bit further when we get into deliberation.

1 That's it thanks.

2 CHAIRPERSON SORG: Thank you Mr. May.
3 Along those lines are there other options for
4 parking in the rear yard in a covered manner that
5 would put them under a special exception that is
6 not a garage?

7 MR. GOLDSTEIN: I mean you certainly
8 could have some kind of trellis structure which
9 wouldn't count toward lot occupancy at all, roll
10 up gates, things like that. Beyond that some
11 type of hybrid that would get you more lot
12 occupancy but not enough. I'm not quite sure
13 what a structure like that would look like but
14 there probably are some options of partly covered
15 garages or things like that.

16 CHAIRPERSON SORG: Okay thank you, are
17 there any further questions from the Board for
18 the Office of Planning? Seeing none, does the
19 Applicant have any questions for the Office of
20 Planning?

21 MR. TEASS: No not at this time I just
22 would like to comment that Paul has been

1 particularly helpful in developing this
2 application and commenting on some of our what
3 seem to be hypothetical's so I appreciate his
4 help.

5 CHAIRPERSON SORG: Thank you, now we turn
6 to see if there are any persons in support or
7 opposition for this case wishing to testify in
8 the audience. I see someone if you would like to
9 come take a seat and introduce yourself.

10 MR. PETERSON: Good afternoon I'm Gary
11 Peterson I'm Chair of the Capitol Hill
12 Restoration Society's Zoning Committee and the
13 Zoning Committee did have a hearing and the
14 Applicant did appear and we heard the testimony
15 and basically heard their case before and our
16 Committee voted unanimously to oppose this
17 application. I'd also like to thank the
18 Applicant for having shown up at our meeting
19 unlike the previous Applicant who did not show up
20 at two of our noticed meetings without
21 explanation.

22 I'd like to note just a couple of

1 things. First of all this property is in a row
2 of 10 homes, row houses that were built at the
3 same time and abutting this row of row houses is
4 another row of five homes that were built at the
5 same time. All of these 15 properties have the
6 same dimensions except the ones on either end.
7 For some reason 1412 and 1440 which are at either
8 end of the entire row of properties have a square
9 footage that's either 12 or 13 square feet,
10 smaller than the other properties. All of the
11 other properties have 1,425 square feet in size
12 and the lots are identical to each other. If you
13 go across to Ivy Street which is to the north the
14 lots are all standard size as well. For those
15 reasons we don't believe that this property is
16 unique in any regards. There indeed are garages
17 present there and by my calculations I think
18 there are five garages in the row that I'm
19 talking about there. And there are miscellaneous
20 garages elsewhere in the square. Many of the
21 properties actually have gates where they open up
22 and they park their cars on pads. Whether or not

1 there was a garage there before I don't really
2 believe is relevant to the case at hand. One of
3 the things is the Applicant bought the property
4 about a year and a half ago and has nicely
5 renovated the property. One of the things the
6 Applicant chose to do was to put a second floor
7 deck on the house. The first floor deck is under
8 four feet and so it does not count towards the
9 lot occupancy but unfortunately the second floor
10 deck does and that's what necessitates getting
11 the variance in this case. If the Applicant and
12 I think the Applicant put the second floor deck
13 on without realizing that that would have
14 impacted their opportunity to get a garage. I
15 don't think this was done intentionally to
16 structure the case I think it was truly just an
17 oversight.

18 The obvious way to fix this is to remove
19 that second floor deck and then the Applicant
20 would have to come in for a special exception
21 which I think the Capitol Restoration Society
22 supports special exceptions going from 60 to 70

1 percent lot occupancy in almost 100 percent of
2 the cases. So I think that's the easy solution in
3 this case. I gave you one case that I thought
4 was appropriate to this one, very similar
5 circumstance where all the lots are the same
6 size. I don't think the Applicant has met the
7 uniqueness test in this particular case.

8 CHAIRPERSON SORG: Thank you very much
9 Mr. Peterson. Do Board Members have any
10 questions for Mr. Peterson? Seeing none, thank
11 you very much for your testimony.

12 MR. LISOWSKI: May I comment, I was
13 unaware of the jurisdiction of the Capitol Hill
14 Restoration Society.

15 CHAIRPERSON SORG: I hear where you're
16 going with this and in terms of our order of
17 procedures as a Board we understand the
18 jurisdictions of the various bodies and so we'll
19 be understanding everybody's testimony in the
20 judgment that is appropriate for it based on our
21 own interpretation. You will have a chance at
22 the closing to give a closing statement, okay

1 thank you.

2 MR. LISOWSKI: But I'm happy to answer
3 the question Madam Chair.

4 CHAIRPERSON SORG: I'll go ahead and let
5 you briefly.

6 MR. PETERSON: Our bylaws for the
7 jurisdiction of the Capitol Hill Restoration
8 Society we have in our bylaws an interest area
9 that covers basically the same planning area, the
10 area that the Office of Planning designates as
11 Capitol Hill which includes this area.

12 CHAIRPERSON SORG: Thank you and thank
13 you very much for coming down and for submitting
14 a letter, we appreciate your interest. Now we
15 will move to see if anybody from ANC 6-B is still
16 in the audience? Seeing no one I will reference
17 our "Exhibit 22" and subsequent letter from the
18 ANC which I don't have an exhibit number for but
19 it's dated June 13th in which the ANC voted to
20 support the Application including under the
21 amended relief that's being sought. That being
22 said I'll turn back to the Applicant for any

1 closing statements.

2 MR. TEASS: Thank you very much we'd like
3 to reiterate our initial argument that whereas
4 any one of these conditions that we discussed and
5 presented today don't necessarily represent a
6 special condition but that if you take them in
7 totality that they do. I think that we were
8 disappointed certainly that the Capitol Hill
9 Restoration Society has chosen to render an
10 opinion on a structure that's outside of the
11 Historic District and actually is closer to the
12 Hill East Neighborhood than it is to the Capitol
13 Hill Neighborhood but they've addressed some of
14 the points but they haven't addressed the
15 argument that if you take these conditions in
16 totality that they do represent a special
17 condition that is required by the Board to render
18 a decision in this matter.

19 That being said we would also be very
20 willing to discuss alternatives in terms of a
21 special exception complying lot configuration
22 with a garage that is somewhere less than the

1 full width. We would also I think be amenable to
2 reaching an agreement to remove the second story
3 deck that I believe will put us, just on my
4 preliminary calculations, back into the special
5 exception process. However, we submitted the
6 application in March and I would ask for some
7 relatively speedy resolution to this issue that
8 we could discuss here hopefully within this
9 meeting or the next and shortly thereafter if the
10 project does go down the special exception path I
11 wouldn't want to have to refile and wait another
12 several months before the case is heard.

13 CHAIRPERSON SORG: Thank you very much
14 and I think at this point we can go ahead and
15 move on into deliberations on this case and I'll
16 start with Mr. May.

17 MR. MAY: Thanks, I appreciate the fact
18 that this is a case that has been put together
19 well by the Applicant and has been pursued
20 earnestly in cooperation with the Office of
21 Planning and the ANC and so on. All that bodes
22 well it's certainly what we like to see. However

1 when it comes to the actual case I tend to side
2 with the Office of Planning that this really is
3 not a unique property, it's very similar to the
4 other properties in the row, it's not
5 exceptionally small, there's not an exceptional
6 grade change issue or any of those other things
7 that we look to, to provide a compelling reason
8 why this is a unique property or a really heavily
9 constrained property. I just don't see it and
10 particularly we're talking about the ability to
11 have a garage which is an accessory structure
12 that many, many houses do not have and so we're
13 not talking about something that really everyone
14 is entitled to, some sites can have them, some
15 can't it all depends on what the constraints of
16 any given site are. The mere fact that there are
17 other garages in the neighborhood probably
18 indicates that there were other garages that were
19 built before the Zoning Regulations took effect.
20 I don't find that particularly compelling. The
21 idea that the alley is very narrow and all of the
22 yards have a few feet sort of lopped off the back

1 I also don't think is a particularly compelling
2 circumstance. The alternative to having a 10
3 foot wide alley with 4 feet on each side that's
4 part of everybody's yard that becomes part of the
5 alley.

6 The alternative to that is to have an 18
7 foot wide alley and your lot would be that much
8 smaller, that's what happened at my house in the
9 past, I used to have a 100 foot lot and now I
10 have a whole alley going through the back because
11 it used to abut the property at the back opposite
12 my house. So what we have run into is the
13 requirement of the front of the garage having to
14 be a certain distance from the centerline of the
15 alley. I think if that were the only thing that
16 we were considering a variance on I think that's
17 a case that's easily made because you have that
18 line that has developed over the years with the
19 other fences. But the lot occupancy thing I'm
20 just not persuaded because the width of the alley
21 doesn't go to that unique circumstance. I do
22 think that this really is a matter of choice and

1 if the Applicant is willing to consider taking
2 down the second floor deck in order to get the
3 garage, too me that's a very natural solution.

4 If there were other solutions involving
5 a narrower garage that could work out and put it
6 back into special exception territory I'd be open
7 to that as well. I think either of those things
8 are an alternative and I would be willing to
9 defer decision making on the case to allow the
10 Applicant to submit revised plans that put this
11 back into special exception territory and then we
12 could deliberate further and make a decision
13 based on that. I would certainly be supportive
14 of that kind of solution that involves a special
15 exception on the lot occupancy question and then
16 I guess it's still a variance on the requirement
17 for the distance from the centerline of the alley
18 but again I think that means the case is more
19 easily made.

20 CHAIRPERSON SORG: Thank you Mr. May I
21 agree with your assessment. I think this case
22 while I'll echo your sentiments that I think the

1 Applicant has really done a very good job of
2 explaining the project clearly too all the
3 agencies and so forth and these are probably the
4 best accessory garage plans I've seen since I've
5 been here. Clearly has gotten the support of the
6 ANC and the neighbors so I think that the
7 confluence of factors that the Applicant points
8 to for me also doesn't quite get over the hump.
9 I'm sensitive to a lot of the issues that are
10 raised but I think that for me like I said it
11 doesn't quite get there but like Mr. May has
12 indicated I think that there is certainly a case
13 under the lot occupancy for a special exception
14 that can be made for me and I agree also that the
15 case could be made for the alley set back and the
16 rear yard deficiency is there. With that I'll
17 open it up for deliberation from other Board
18 Members.

19 MR. HINKLE: Madam Chair I'm certainly in
20 agreement with yourself and Mr. May as well. I
21 think there's a good argument he made in terms of
22 the alley setback and the rear yard setback but I

1 think it's just getting over that hump for the
2 area variance and the lot occupancy. If you
3 could defer a decision and have the Applicant
4 submit something that requests a special
5 exception I would be open to entertain that.

6 CHAIRPERSON SORG: Are there any other
7 deliberations from Board Members? Okay seeing
8 none I think what we'd like to do is we will come
9 out of deliberation and ask the Applicant I think
10 if they would like to amend their application,
11 work with Office of Planning and Office of Zoning
12 or give the opportunity, I guess ultimately to
13 withdraw the application and resubmit I think
14 that we could go either way with you depending on
15 who you want to go forward.

16 MR. TEASS: Do you think I could have a
17 moment to confer with my client?

18 CHAIRPERSON SORG: Of course.

19 MR. TEASS: Thank you, after discussing
20 this with my client I think we would like to
21 amend the application to come up with a site plan
22 that puts us in special exception for lot

1 occupancy. We would probably still need in order
2 to basically build, I think where the fence line
3 is now, we would still need some variance relief
4 from the alley setback and potentially the rear
5 yard but we would look at a configuration that
6 would look at removing the second floor deck or
7 partially removing that to get us into the realm
8 of special exception which it sounds like it
9 would be a more palatable solution to the
10 problem.

11 CHAIRPERSON SORG: I think that's a great
12 idea. So what we'll do is we will keep the
13 hearing open for this case and we will, I think
14 we can say by consensus that we will move for
15 continuance and allow you, of course, to work
16 with the Office of Planning and the Office of
17 Zoning on amending the plan as well I think, I
18 recommend that you continue to speak with the
19 neighbors and make sure they've seen and support
20 whatever amendments. That being said I think we
21 can go ahead and schedule this. Mr. Moy I would
22 look to you to see when you think, or actually I

1 will look to the Applicant first, how long do you
2 think you would need to go ahead and make these
3 changes?

4 MR. TEASS: I think and speaking for the
5 Applicant we would like to move forward as
6 quickly as possible. I think that Mr. Goldstein
7 has been responsive to what we've sent him and
8 it's not going to take a lot of work on our part.

9 I would like to speak with the Chair of
10 the ANC and make sure that if any of the parties
11 I think that I want to make sure that we're
12 handling this appropriately for them. I know that
13 there is an ANC meeting this evening and I'm
14 certainly not opposed to working something up and
15 presenting it this evening before the full ANC as
16 a preliminary matter.

17 MR. MAY: So how long does that mean
18 before you can submit revised plans?

19 MR. TEASS: We can have revised plans by
20 tomorrow.

21 MR. MAY: Wow, nobody ever says that so
22 that's good.

1 MR. LISOWSKI: I apologize in advance
2 this is my first procedure through this and I
3 don't know all the different procedures but from
4 what it sounds as a layman in this court if we
5 remove the second level deck with our original
6 plans of the basic garage will that be okay with
7 the Board, I mean is that something we all see
8 plain as day in front of us here with all of his
9 posters will that be okay to put it to the Office
10 of Planning?

11 CHAIRPERSON SORG: Personally I'm not
12 comfortable with crossing out an existing deck
13 and going forward today. I think there's some
14 lot occupancy calculations and so forth that need
15 to be done. So I think we would want to get OP's
16 further input on new plans as well as be able to
17 review them ourselves. As well with the ANC and
18 the surrounding neighbors for that. But that
19 being said we can...

20 MR. MOY: Madam Chair since you're
21 looking at dates July 12th is a monstrous docket
22 for the Board so I'm looking at either the

1 afternoon of July 19th or the afternoon of July
2 26th.

3 CHAIRPERSON SORG: Unfortunately you're
4 running into a few Tuesdays where we don't have
5 hearings so the best I think we can do is July
6 19th in the morning. I think what we can do is we
7 can schedule that for July 19th in the morning. I
8 wish we could do it earlier based on how
9 responsive you have been but it doesn't look like
10 we can accommodate it. We would look to have all
11 of your submissions which it doesn't sound like
12 it will be a problem submitted to us by July 12th.

13 Any other matters to clear up on this one
14 Mr. Secretary.

15 MR. MOY: No that will give you four
16 cases in the morning for the 19th.

17 CHAIRPERSON SORG: I think we should be
18 okay with that.

19 MR. TEASS: There is one thing I would
20 like to request if we can be put at the front of
21 that docket in lieu of today's events?

22 CHAIRPERSON SORG: Yeah I don't see a

1 problem with that. We'll put you in the morning,
2 you showed an abundance of patience today so, I
3 think that's just fine. Alright thank you very
4 much and we'll see you on July 19th.

5 MR. TEASS: Thank you very much for your
6 time.

7 CHAIRPERSON SORG: Alright so this will
8 conclude our morning meeting and we will come
9 back around 2:30.

10 **P.M. Session**

11 Chairperson Sorg: This hearing will
12 please come to order. Good afternoon ladies and
13 gentleman. This is the June 14th, Public Hearing
14 of the Board of Zoning Adjustments for the
15 District of Columbia. My name is Nicole Sorg,
16 Vice Chairperson, joining me today to my right is
17 Mr. Jeffrey Hinkle, representing the National
18 Capitol Planning Commission, to my left Mr. Lloyd
19 Jordan, Mayoral Appointee, and far left Mr. Peter
20 May representing the Zoning Commission.

21 Copies of today's hearing agenda are
22 available to you and are located to my left in

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

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

1 limitation on the scope of cross examination.
2 The record will be closed at the conclusion of
3 each case except for any materials specifically
4 requested by the Board. The Board and the Staff
5 will specify at the end of each hearing exactly
6 what is expected and the date when the material
7 must submitted to the Office of Zoning. After the
8 record is closed no other information will be
9 accepted by the Board. The Sunshine Act requires
10 that a public hearing on each case be held in the
11 open before the public. Pursuant to Section 405B
12 and 406 of the Open Meeting Amendment Act of
13 2010, the Board may consistent with its rules and
14 procedures and the Open Meeting Amendment Act
15 enter into closed meetings or closed emergency
16 meeting on a case for purposes of seeking legal
17 counsel in a case per Section 405B4 and or
18 deliberating on a case pursuant to Section 405B-
19 13 of the law but only after providing the
20 necessary public notice and taking a roll call
21 vote. The decision of the Board in these
22 contested cases must be based exclusively on

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. All individuals wishing to testify
7 today please rise and take the oath. The Board
8 will now consider any preliminary matters.
9 Preliminary matters are those which relate to
10 whether a case should or will be heard today such
11 as a request for postponement, continuance or
12 withdrawal or whether proper or adequate notice
13 of a hearing was given. If you are not prepared
14 to go forward with a case today or if you believe
15 that the Board should not proceed, now is the
16 time to raise such a matter. Mr. Secretary, do we
17 have any preliminary matters?

18 MR. MOY: Madam Chair there are no
19 visible preliminary matters for this afternoon.

20 CHAIRPERSON SORG: Oh good. Now all
21 individuals wishing to testify today please rise
22 and take the oath. Mr. Secretary, will you

1 please administer the oath.

2 MR. MOY: Do you solemnly swear or affirm
3 that the testimony you are about to present in
4 this preceding is the truth the whole truth and
5 nothing but the truth. Ladies and gentleman you
6 may consider yourself under oath.

7 CHAIRPERSON SORG: Thank you very much
8 and let's go ahead with the agenda.

9 **Application No. 18223**

10 MR. MOY: Yes, thank you Madam Chair good
11 afternoon and good afternoon to the other members
12 of the Board. The first of three cases for Board
13 action is Application No. 18223. This is the
14 application of Otis Marechaux and Toni Grobstein,
15 pursuant to 11 DCMR 3103.2 for a variance from
16 the lot occupancy requirements under (Section
17 403), variance from the rear yard requirements
18 under Section 404, and a variance from an
19 accessory building area requirements under
20 (subsection 2500.3). This is to construct a
21 freestanding carport serving a one family
22 dwelling in the R-5-B District at premises 1757

1 Seaton Street, N.W., property located in (Square
2 150, Lot 807).

3 CHAIRPERSON SORG: Thank you very much if
4 the Applicant could please come on down, take a
5 seat and introduce yourself for the record.

6 MR. MARECHAUX: My name is Otis Marechaux
7 I live at 1757 Seaton Street, N.W.

8 MS. GROBSTEIN: Hi I'm Toni Grobstein-
9 Marechaux I also live at 1757 Seaton.

10 CHAIRPERSON SORG: Good afternoon. If
11 you want to go ahead with any presentation that
12 you may have prepared for today you can.

13 MR. MARECHAUX: I assume you have the
14 drawings in front of you?

15 CHAIRPERSON SORG: Yes we do.

16 MR. MARECHAUX: I'll be brief. The
17 application is for a carport as per the drawings.
18 The neighbors have no objections, the ANC has no
19 objections and the structure will have minimal
20 visual impact.

21 CHAIRPERSON SORG: Well I thank you for
22 being brief. I have a few questions based on

1 what we have. The first thing is I don't believe
2 that we've received an ANC report. Can you just
3 testify as to what happened when you presented in
4 front of them.

5 MR. MARECHAUX: Our local ANC has a
6 planning, zoning, transportation subcommittee and
7 I wasn't present but my wife went to the meeting
8 and they agreed that there was no objection to
9 the application. The Chairman of the committee
10 came to our house, looked at it, took a look
11 around, took a look around the neighborhood and
12 said I don't see a problem with this.

13 CHAIRPERSON SORG: And while you were
14 there they took a vote?

15 MR. MARECHAUX: During the meeting yes.
16 Just the Chairman came to the site.

17 MS. GROBSTEIN: They also told us that
18 they sent in and faxed in a report to planning,
19 twice because they didn't receive it.

20 MR. JORDAN: I thought he said the ANC
21 subcommittee, not the full ANC.

22 MR. MARECHAUX: It was just the planning,

1 zoning and transportation committee that saw our
2 application.

3 CHAIRPERSON SORG: So did ANC at their
4 regular evening meeting, just so we clear this
5 up. The whole ANC?

6 MR. MARECHAUX: No it was just the
7 planning, zoning and transportation committee.

8 CHAIRPERSON SORG: Let me over this, you
9 said that the ANC mentioned that they sent a
10 letter to the Office of Planning.

11 MR. MARECHAUX: Okay let's just skip
12 forward and ask the Office of Planning. Are you
13 aware or did you receive anything from the ANC?

14 MR. JACKSON: My name is Arthur Jackson,
15 Development Specialist at the District of
16 Columbia Office of Planning. Good afternoon,
17 what I received was an email from Wilson Reynolds
18 who I think is the Single Member Representative
19 saying that in response to an inquiry about what
20 the status of what the review was and they said
21 yes this was supported by a vote on May 4th and
22 mailed by UPS on May 6th. Now I asked about the

1 ANC's response and this email doesn't indicate
2 whether it was the ANC or the committee. But
3 they did say, was there a meeting on May 4th?

4 MR. MARECHAUX: Correct.

5 MR. JACKSON: Then that must have been
6 the committee that voted because the email that
7 they sent me did not indicate whether it was the
8 committee or the entire ANC. They promised to
9 fax or email a copy of the actual resolution but
10 I didn't receive that.

11 CHAIRPERSON SORG: Okay well, regardless
12 without a letter from the ANC that meets our
13 standards for great weight and an official vote
14 in our record we can't give it great weight but
15 we can take into account your testimony that you
16 went and presented and that they were supportive,
17 those members of the ANC that you did present to.

18 Should we request additional
19 documentation, should that be something that we
20 need to do maybe this is something that we can
21 try and get from the ANC at a later time but we
22 can get to that a little bit later.

1 To move on to another subject I
2 understand that the project seems pretty simple
3 in nature in an absolute sense. But based on the
4 conditions of the property you come in under a
5 variance standard which is pretty high standard
6 for relief. So can you talk a little bit about,
7 the first prong of that standard that needs to be
8 satisfied is a uniqueness that's related to the
9 property and that leads to a practical
10 difficulty. Can you talk about what uniqueness
11 if any there may be in the property or any
12 attributes of the property that you think are
13 notable?

14 MR. MARECHAUX: The unique nature of the
15 property is that it's at the west end of the
16 block and receives a lot of direct sunlight
17 that's directly down to the backyard and the car
18 just cooks. That's the unique nature; none of my
19 neighbors have that issue.

20 CHAIRPERSON SORG: Do other Board Members
21 have questions for the Applicant? Seeing none
22 we'll move to the Office of Planning please.

1 MR. JACKSON: Good afternoon again,
2 before you is a copy of the Office of Planning
3 report; I emailed a copy to the Applicant.
4 Basically we reviewed the application and before
5 we go much further I need to clarify that in our
6 report we referred to the lot occupancy as going
7 up to 95 percent based on the submitted
8 application and the plans it's either 90 or 92
9 percent so that the amount of lot occupancy was
10 not correctly quoted. In any case there's one
11 other issue that I wanted to raise. Because the
12 application is for a freestanding carport however
13 under Section 2300.8 a carport has to be attached
14 to the main dwelling. So if it's freestanding
15 it's not a carport anymore, it's a garage based
16 on the definitions in the regulations. If it's a
17 garage then they would need to have relief from
18 Section 2300.2B because the garage would have to
19 sit back 12 feet from the centerline of the
20 alley. This structure would set back 7 feet and
21 they would be 1 foot short of the required 12
22 feet since the alley is 5 feet wide and this

1 building would be only 6 feet from the end of the
2 property line. So since its only 6 feet from the
3 property line to the building they need another
4 foot to have the 12 feet from the centerline of
5 the alley, so they would need relief from that
6 Section too.

7 In any case we reviewed the application
8 and based on our analysis the lot is small but we
9 think that's typical for the square and we did
10 not identify, we could not identify any unique
11 characteristics associated with this property.
12 Since there are no unique characteristics then
13 there can't be any practical difficulty so that's
14 the first two prongs of the test for a variance.

15 In terms of detriment to public good we don't
16 think that erecting a carport or garage structure
17 on top of the existing posts that are already
18 there would be detrimental to the neighborhood.
19 However we think it would impair the integrity of
20 the Zoning Regulations. We note the lot
21 occupancy is intended to contribute toward the
22 maintenance of the neighborhood character and

1 that the property is developed to the extent
2 that's allowed under the Zoning Regulations. We
3 also note that there is no residential zone that
4 allows 90 percent lot occupancy, the maximum in
5 our R-5-C, D and E is 75 percent and this is far
6 above anything that would be allowed as a matter
7 of right in any residential district.

8 So with that in mind we are unable to
9 support this application. We'd also note that
10 the Historic Preservation Office has advised us
11 that this project would have to be reviewed by
12 the Historic Preservation Review Commission if it
13 is approved because it's visible from Florida
14 Avenue.

15 Of course we noted in the report the
16 email that we received indicating that there was
17 approval by the ANC. Again, the question was
18 asked what the ANC's position was and the
19 response was assumed to be that for the entire
20 ANC not from the Committee of the ANC. We stand
21 corrected on the information provided in the
22 report and we state that there was approval by

1 the zoning and planning committee of the ANC
2 rather than the entire ANC. That concludes the
3 Office of Planning's Report and I'm available to
4 answer questions.

5 CHAIRPERSON SORG: Thank you very much.
6 So just to clarify your analysis was based, I
7 might have this wrong, was your analysis based on
8 an attached carport?

9 MR. JACKSON: Yes, but the lot occupancy
10 wouldn't change it's just that there would be
11 additional relief required if this is a
12 freestanding structure and that relief would be
13 relief from the requirement that the freestanding
14 structure be 12 feet from the centerline of the
15 alley.

16 CHAIRPERSON SORG: And a follow up
17 question I see in our advertisement requirement
18 for relief under 2500.3 and I didn't see that in
19 your report.

20 MR. JACKSON: We did not do that
21 analysis. We're familiar with that requirement
22 and that has to do with the amount that an

1 accessory structure would occupy the rear of the
2 property. Based on our review with regard to the
3 other variance we still don't think that this
4 proposal meets the standard for relief from that
5 standard either.

6 CHAIRPERSON SORG: So what you're saying
7 basically is that you didn't get there from the
8 first variance so you didn't go to analyzing that
9 bit of the relief?

10 MR. JACKSON: Right, again it's tied to
11 the standards of uniqueness and practical
12 difficulty. If those two aren't established
13 relief is not merited.

14 CHAIRPERSON SORG: Okay, did you discuss
15 with the Applicant any possible either matter of
16 right or other possibilities that might be able
17 to come under special exception?

18 MR. JACKSON: We had a brief conversation
19 but I don't know of any that would work in this
20 instance.

21 CHAIRPERSON SORG: So you don't believe
22 that there are actually any other options that

1 would come in under anything but a variance?

2 MR. JACKSON: No, at this point they've
3 got a rear yard that they can park in but they
4 want a structure over that space and they are at
5 56 percent of lot occupancy. The only other
6 option would be if they build a trellis that
7 would be additional protection but it sounds as
8 if they want a solid roof over the parking pad
9 and a trellis can't have a solid roof. I would
10 note that there is a trellis further down the
11 alley on the opposite side that person is using.
12 Of course what they did was put up some doors
13 behind it so it shields the back of, so their car
14 would be protected from the alley. So I guess
15 it's still a trellis because it's open on the
16 top.

17 CHAIRPERSON SORG: Okay thank you, do
18 other Board Members have questions for the Office
19 of Planning? Does the Applicant have any
20 questions for the Office of Planning?

21 MR. MARECHAUX: No.

22 CHAIRPERSON SORG: Okay thank you. No

1 we'll go and see if there are any persons in
2 support of in opposition to this case who are
3 with us this afternoon? Seeing no one, I will
4 note the letters of support received, three I
5 think from surrounding neighbors and our
6 "Exhibits 9-11" as well as testified. Now we
7 will see if anybody from ANC 1-C is in the
8 audience, seeing no one I will mention again that
9 the Applicant has testified that they presented
10 to at least part of the ANC and received their
11 support although we do not have an official
12 letter in our record.

13 At this time we will turn back to the
14 Applicant unless there are other questions from
15 the Board for any closing statements.

16 MR. MARECHAUX: I don't have any closing
17 statements.

18 MS. GROBSTEIN: The structure even though
19 it's freestanding is only six inches from the
20 house it could be attached if that were better.

21 CHAIRPERSON SORG: Thank you very much.
22 At this point I think we can go ahead and close

1 the hearing and go into deliberations unless
2 there's anything that other Board Members think
3 they need for this application.

4 I can start us off. Certainly I
5 appreciate what the Applicant, the way that
6 they're going about this application, you know;
7 they've received support from their neighbors as
8 well as having spoken to the ANC so a good amount
9 of outreach is done. Obviously from OP's
10 testimony that they've tried working with them as
11 well and understandable the difficulty that comes
12 from a small lot in a city and a neighborhood
13 that's congested as Adam's Morgan, I certainly
14 understand that one. Unfortunately for me I
15 don't feel that I've got enough here to be able
16 to judge that this property really gets over the
17 hump of the first prong of the variance test. It
18 seems to me that it's a fairly standard lot for
19 this area, while even though it is small, I think
20 the next five or so lots are about the same
21 dimensions. Based on that I think I can sort of
22 incorporate the analysis in the OP report and our

1 "Exhibit No. 26" without any uniqueness, while I
2 understand as I mentioned some of the constraints
3 that a property such as this may give to its
4 owners I don't feel that I can get over the hump
5 to approve a variance in this case and with that
6 I will open it up to further deliberation.

7 MR. MAY: Yeah I agree with the Chair, I
8 just can't see the variance here, there's not an
9 exceptional circumstance here that necessitates
10 the relief. The bare fact of it is that some
11 homes are, or some properties are big enough to
12 handle a garage or a carport and some of them
13 aren't. There's not an inherent or a right to
14 have a garage per se'. The fact that there's a
15 parking space I think is a positive but the
16 reasons why the Zoning Regulations are what they
17 are and that we're required to have rear yards
18 and not allowed to occupy 90 percent of the lot.

19 I just don't see the circumstance here that
20 justifies building on 90 percent of the lot.

21 CHAIRPERSON SORG: Thank you very much
22 Mr. May are there any further deliberations?

1 Seeing none I will submit a motion to deny
2 Application Number 18223, pursuant to 11 DCMR
3 3103.2 for a variance from the lot occupancy
4 requirements, for Section 403 rear yard, 404
5 2500.3 at premises 1757 Seaton Street, N.W.
6 Motion has been made is there a second.

7 MR. MAY: Second.

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

10 CHORUS: Aye.

11 CHAIRPERSON SORG: Mr. Moy can you please
12 read back the vote.

13 MR. MOY: Staff would record the vote as
14 4 to 0 to 1, this is on the motion of Chairperson
15 Sorg to deny the application for the variances
16 requested, seconded the motion is Mr. Peter May.

17 Also in support of the motion Mr. Jordan and Mr.
18 Hinkle, no other Board Members participating so
19 again the vote to deny is 4 to 0 to 1.

20 CHAIRPERSON SORG: Thank you Mr. Moy. I
21 think we can request a summary order in this
22 case, no order sorry. Thank you very much and

1 when you're ready you can call the next case.

2 **Application No. 18217**

3 MR. MOY: The second application for
4 Board action is Application No. 18217 this is the
5 application of Brookland Homes, LLC, pursuant to
6 11 DCMR 3103.2, for a variance from the lot width
7 requirements under Section 401, and a variance
8 from the side yard requirements under Section
9 405, to allow the construction of two semi-
10 detached dwellings in the R-2 District at
11 premises 1222 Randolph Street, N.E. property
12 located in (Square 3923, Lot's 821 and 822).

13 CHAIRPERSON SORG: Good afternoon if you
14 can please introduce yourselves for the record.

15 MS. FULLER: Good afternoon Madam Chair,
16 Members of the Board I'm Carlynn Fuller
17 representing Brookland Homes.

18 MR. TOPJIAN: Good afternoon Madam Chair,
19 Members of the Board, my name is Savan Topjian
20 I'm the sole member and owner of Brookland Homes.

21 MR. DIETZ: Good afternoon Madam Chair
22 and Board my name is Christopher Dietz I'm the

1 owner of the two lots.

2 CHAIRPERSON SORG: Alright thank you very
3 much. I think there's a couple of things that we
4 need to clear up first on the relief that's
5 requested. Was there an amendment on this
6 application to the relief from the original
7 request?

8 MS. FULLER: Originally we requested just
9 one variance, but yeah we amended the next day to
10 add the...

11 CHAIRPERSON SORG: Oh you deleted the use
12 variance and added 401.3 which is the lot width?

13 MS. FULLER: Yes that's correct.

14 CHAIRPERSON SORG: And I may have
15 misplaced something but I don't think I have an
16 affidavit of posting in my file.

17 MS. FULLER: I have a stamped copy.

18 CHAIRPERSON SORG: Oh I just go that I'm
19 sorry it was my mistake. We have it; it just
20 didn't appear in my particular file. So on the
21 posting signage was the amended relief posted
22 there?

1 MS. FULLER: Yes both provisions were
2 listed on the posting.

3 CHAIRPERSON SORG: Okay and that
4 similarly was shared with your other neighborhood
5 outreach the amended relief requested at the ANC.

6 MS. FULLER: Yes because we amended the
7 next day so all of our presentations have been
8 with both provisions.

9 CHAIRPERSON SORG: Gotcha okay, just
10 making sure. So I think with that clearing up of
11 the notice on the amendment we can go ahead.

12 MS. FULLER: Good afternoon again my name
13 is Carlynn Fuller I'm the attorney representing
14 Brookland Homes, LLC. As we just had Mr. Dietz
15 here to clear up, we initially listed Brookland
16 Homes as the owner and actually they have a
17 contract to purchase the property but the closing
18 has not taken place yet so..

19 CHAIRPERSON SORG: I'm glad you mentioned
20 that because that was my other point.

21 MS. FULLER: So we asked Mr. Dietz to
22 come and appear as a witness to testify to any

1 questions that may be around that issue. Also we
2 just recently received letters of support which I
3 believe Mr. Moy passed out to you and so one we
4 just literally got last night.

5 The property consists of two lots that
6 have been vacant for a number of years prior to
7 the purchase by Mr. Dietz and also Mr. Topjian.
8 Up until the late 1980's and early 1990's
9 somewhere around then there was one narrow single
10 family home on that lot on 821 and it was raised
11 by the previous owner. The owners are requesting
12 a variance from the lot width requirements under
13 401.3 and a variance from the side yard
14 requirement under (subsection 405.9) to allow the
15 construction to semi-detached one family dwelling
16 it's an R-2 District.

17 The three tests, turning to those
18 criteria the physical characteristics, the lot
19 are non-conforming with respect to the width and
20 this is an existing non-conformity. The lots are
21 narrow, they're the narrowest lots in the square
22 and even though there are smaller lots that front

1 12th Street, our goal was to keep in line with the
2 character of the immediate block of Randolph
3 Street and so that we believe is practical
4 difficulty. While in the neighborhood there are
5 smaller lots but right within the immediate area
6 these are the smallest lots in that square.

7 The lot dimensions are only 25 feet wide
8 and the current Zoning Regulations require a
9 minimum lot width of at least 30 feet. We are
10 also requesting side yard variance of the current
11 regulation which requires at least eight feet on
12 each freestanding side. To meet this requirement
13 we would be required to construct 17 foot wide
14 houses. Again that would not be keeping in with
15 the existing neighborhood character, the existing
16 immediate neighborhood character of Randolph
17 Street, specifically the 1200 block of Randolph
18 Street.

19 The community consists primarily of
20 single family detached homes however there are a
21 few semi-detached properties and there is one
22 semi-detached property adjacent to the proposed

1 development and the width of that dwelling is
2 more in line with what we are proposing in this
3 development. The proposed project would create
4 attractive semi-detached dwelling with two
5 mirrored units of 2080 square feet each. The
6 homes will feature brick front again keeping in
7 line with the character of the adjacent property
8 and there will be parking in the rear. Each home
9 would be three bedrooms and two and a half
10 bathrooms.

11 The second prong granting the application
12 will not be of substantial detriment to the
13 public good. The proposed semi-detached
14 development will not negatively impact the
15 traffic patterns in the neighborhood nor will it
16 obstruct or negatively impact the light of any of
17 the surrounding neighbors. On one side of the
18 property is a parking lot that's used by a
19 private school. Mr. Topjian can discuss more in
20 detail his efforts to work with the community,
21 the neighbors and the ANC. We attended four ANC
22 related meetings to present this project and a

1 lot of what is being proposed in this developed
2 have taken in consideration what the neighbors
3 and the ANC has requested that we do as it
4 relates to the development.

5 Granting the application will not be
6 inconsistent with the general intent and purpose
7 of the Zoning Regulations and map. The R-2 Zone
8 permits matter of right development of single
9 family residential uses including detached and
10 semi-detached dwellings. We believe that this
11 project is consistent with that use. We're not
12 seeking to build an apartment building on the
13 lots that would greatly increase the density.
14 Basically we want to replace the house that was
15 there previously. The proposed plan is similar
16 to the size and shape of that previous house and
17 adds an additional house in the space that was
18 treated as a very large size yard in the past.

19 As it relates to the issue of 401.2 that
20 was raised by the Office of Planning in their
21 report, we met with the Zoning Administrator on
22 April 1st and with that meeting it was our

1 understanding that since one lot had a house at
2 one point that it was considered an improved lot
3 and therefore proceeded and the house was built
4 prior to 1957 which was preceded the Zoning
5 Regulations and so that particular lot 801 would
6 be grandfathered so 401.2 wouldn't apply and
7 either would side yard relief be required for
8 that lot. So that's why we did not include that
9 provision in our application. Mr. Jackson has
10 reached out again to the Zoning Administrator as
11 well as I and neither one of us have gotten more
12 clarification, we've gotten no response to get
13 more clarification on this issue, but that is why
14 it was not included, that particular Section was
15 not included in our application because we were
16 under the understanding that relief was not
17 needed.

18 That concludes my statement and Mr.
19 Topjian can speak more directly to the
20 development itself and his meetings with the
21 community.

22 CHAIRPERSON SORG: Great thank you. Can

1 I interject with a quick question? So you're
2 still not clear in terms of whether or not the
3 prior existence of a house on the lot constitutes
4 an improved lot?

5 MS. FULLER: Our position is that it does
6 and therefore that provision doesn't apply
7 because that lot was improved, it was not always
8 a vacant lot. Prior to 57' there was a house on
9 that lot. Up until the early 90's there was a
10 house on that lot. When we met with the Zoning
11 Administrator we discussed that particular issue
12 of how would that prior house be treated and he
13 gave us the impression that lot would be
14 grandfathered because there was a structure
15 making it an improved lot and not an unimproved
16 lot.

17 CHAIRPERSON SORG: But you haven't been
18 able to get confirmation on that?

19 MS. FULLER: Not a written clarification
20 to that, no.

21 CHAIRPERSON SORG: And the new house
22 that's going on that lot is it on the same

1 footprint as the previous house?

2 MS. FULLER: Yes, the footings are still
3 there on lot 821 so that's how we were able to
4 determine that what's being proposed is similar
5 in size and shape of the previous home.

6 CHAIRPERSON SORG: And also located on
7 the same place in the site?

8 MS. FULLER: Yes.

9 CHAIRPERSON SORG: Okay. Other Board
10 Members have any questions?

11 MR. JORDAN: Yeah I want to be clear
12 again. Your conversation with the Zoning
13 Administrator, it was with the Zoning
14 Administrator himself?

15 MS. FULLER: Yes that's correct we met
16 with him..

17 MR. JORDAN: Repeat that conversation.

18 MS. FULLER: We met with the Zoning
19 Administrator on April the 1st to make sure that,
20 we had already filed the application it was hard
21 to get a meeting with him, so we filed the
22 application and then our meeting was subsequent

1 to our filing but we wanted to make sure that we
2 had included all of the provisions that we needed
3 to for relief so that if we needed to amend our
4 application we could do that. We talked about
5 the side yard issue as well as the lot width
6 issue and the 401.2 issue. He led us to believe
7 that because there was a house, and I can
8 personally testify to that, my best friend grew
9 up in that house, so I spent many a days and
10 nights in that house. So because there was a
11 house on lot 821 that it was not considered
12 unimproved because the house predated the Zoning
13 Regs it was prior to 1957 so that the unimproved
14 portion was not applicable because it was a
15 structure on that particular lot. So the only
16 lot in question as it related to unimproved and
17 the lot width relief was lot 822.

18 MR. MAY: Can I follow up on that same
19 line? In the simplest terms, one of the two
20 properties had a house on it?

21 MS. FULLER: Correct the one closest to
22 the house.

1 MR. MAY: Okay and the Zoning
2 Administrator led you to believe that because at
3 one point that property had a house on it, it was
4 not subject to which regulation?

5 MS. FULLER: To the lot width.

6 MR. MAY: Lot width so you could still
7 build a 25 foot wide house on that lot?

8 MS. FULLER: Yes.

9 MR. MAY: But you would still need relief
10 in order to build on the other property and you
11 would still need relief from side yard.

12 MS. FULLER: Correct.

13 MR. MAY: Okay so I don't think that
14 really has any bearing whether or not the Zoning
15 Administrator had anything to say on that.
16 Unless you try to move forward with building
17 (inaudible) property.

18 MS. FULLER: Well I was just clarifying
19 that we had asked also for him to come back, the
20 reason I brought it up was because Office of
21 Planning put it in their report so I was
22 addressing what was in their report.

1 CHAIRPERSON SORG: If you want to go
2 ahead.

3 MR. TOPJIAN: Good afternoon Madam Chair,
4 Members of the Board. My name is Savan Topjian;
5 I am the sole owner of Brookland Homes, LLC, and
6 thank you very much for your time today. I
7 appreciate the opportunity to present this
8 proposal requesting relief from the lot width and
9 side yard requirements to the two vacant lots
10 located at 1222 Randolph Street, N.E. in the
11 heart of Brookland, N.E. D.C. My family and I
12 reside on the 1300 block of Newton Street, just
13 four blocks from the site. I've been building
14 and renovating homes for most of my life I've
15 been living and working in the Brookland area for
16 more than eight years now. My family and are
17 strongly linked to the community and I'm proud to
18 deliver attractive, high quality, residential
19 construction to the neighborhood. Local
20 residents and previous home buyers will attest
21 that I stand by my product and I'm always
22 available to address their concerns. As you can

1 imagine I run into many of my home buyers
2 regularly at the market, CVS, Brookland Hardware
3 and many other close community events. Prior to
4 submitting this variance application I met
5 casually with ANC Commissioner John Feely in
6 March of this year to discuss this proposal. We
7 took a tour of the site as well as some of my
8 completed homes and he invited me to present at
9 the ANC meeting on April 11th. Prior to the
10 meeting I personally passed out flyers to all the
11 residents introducing myself and my intentions to
12 purchase and develop the property. I provided a
13 phone contact and invited them personally to call
14 or email me to discuss our plans for 1222
15 Randolph Street.

16 There are many reasons for this property
17 to be granted the variance to build two
18 residential semi-detached units. One of the most
19 significant is that there was an existing single
20 family semi-detached product directly to the west
21 owned by Mrs. Thomas. She has provided a letter
22 of support for both variances and is looking

1 forward to the new construction. As you can see
2 our product mirrors the property in size and
3 location. My property also sits between her home
4 and the Metropolitan Day School and acts as a
5 natural buffer transition to the commercial
6 property and parking lot both as a visual
7 transition, as a land use continuation and as a
8 similar in size and site location.

9 As Ms. Fuller represented I've made four
10 formal presentations to the ANC with an
11 additional fourth formal meetings with neighbors
12 in their homes. I've also had many informal over
13 the fence discussions with local residence of the
14 1200 block of Randolph Street. The proposed
15 product presented before you has been unanimously
16 approved by the block. Commissioner Feely
17 provided many opportunities to neighbors to
18 discuss the proposal and a strong letter of full
19 ANC support for my proposal, commends the product
20 and our outreach process. I believe you have
21 copies of those letters of support, correct?

22 CHAIRPERSON SORG: Yes we do, thank you.

1 MR. TOPJIAN: I also have a detailed list
2 here of the many meetings attended and resulted
3 outcomes if you wish to review them further. In
4 addition I'm not sure if you noticed earlier but
5 one of our elderly neighbors Ms. Hopkins was here
6 to express her support, she lives at 1207
7 Randolph but had to run off for an appointment.
8 I provided a letter of agreement to the community
9 in response to their concerns raised, this
10 included committing to working schedules of 8am
11 to 5pm Monday through Saturday, portable sanitary
12 facilities, onsite parking for contractors,
13 commitment to preserve all existing trees on the
14 property, window trim details facing the side of
15 Mrs. Thomas' home, and fence repairs and
16 replacements for the neighbors. I'm also
17 providing them a schedule of construction so
18 neighbors can know what to expect when, it's a
19 very transparent process.

20 Throughout our many conversations the
21 plans and product were modified to incorporate
22 the many changes requested by the neighbors. For

1 example in the meeting with Mr. Bill Jones a
2 neighbor directly behind the property with the
3 view onto our backyard suggested he would prefer
4 not to look out onto a parking pad or stand alone
5 detached garage. He was also concerned about the
6 location of trash receptacles for the new
7 neighbors. A pad will be provided upon
8 construction and completion and the decision was
9 made to incorporate the garage parking into the
10 home for which he was grateful. This began the
11 process of our side yard relief requests. Among
12 the other comments we addressed was that the size
13 of the front and rear yards of the homes would
14 match the neighbors for a uniformed look.
15 Residents want to sit on their back porch and
16 look at the backyard to the left and the right
17 and see their neighbor's backyards, not housing
18 which would block a clean line view. This was
19 another reason to widen the product to avoid the
20 deeper construction necessary for adequate square
21 footage. In fact residents discussed the current
22 (inaudible) at Chancellor's Row and that the 16

1 and 17 foot wide row house product would be too
2 narrow and give a shotgun style look to these
3 homes. These lots are among the narrowest in the
4 square and the neighbors want the additional
5 width of the homes to fit in with the existing
6 character of Randolph Street. All of these
7 comments were successfully incorporated into the
8 design including the height of the proposed homes
9 which is a natural sloping from the school to the
10 current semi-detached properties.

11 I've also committed to using green
12 building principles both during construction and
13 products for the home such as pervious paver
14 system for driveways, foundation insulation,
15 tankless water heaters, low e-argon windows,
16 energy star appliances and many, many more which
17 we use regularly throughout the community.
18 Community cooperation in this case was not
19 guaranteed but it was earned. As I previously
20 mentioned it is a vital part of my business
21 strategy to have neighborhood support for my
22 projects. Every homeowner on the block has my

1 business card and contact information. Perhaps
2 the most sensitive issue facing our Brookland
3 Community is the price sensitivity of the housing
4 stock. Many longtime residents feel forced from
5 the neighborhood particularly in Brookland and
6 the greater Ward Five area. Brookland Homes is
7 known in the neighborhood for building products
8 that provide value and are priced (inaudible) in
9 fact Council Member Harry Thomas, Jr. has also
10 provided a letter of support for these variances
11 in which he highlights the company's commitment
12 to the community and positive developments in
13 Brookland and Ward Five.

14 When discussing the building of a single
15 home on this property and it's affect on
16 increasing prices to the neighborhood Randolph
17 residents took arms. There have been two
18 recently constructed properties in Brookland that
19 came to market that are known locally as the
20 Hokie Monsters due to there out of character
21 appearance and inability to blend in with the
22 local neighborhood character. Our proposal of

1 building on the two existing lots would remedy
2 this and provide affordable housing to local
3 residents. It is in line with the surrounding
4 product and fully supported by residents on the
5 block.

6 In summary the proposal before you today
7 is an outcome of the balance between local
8 building and neighbor to achieve a product that
9 was acceptable to all parties. ANC Commissioner
10 John Feely's letter states that semi-detached
11 homes which are well integrated into the existing
12 fabric of the neighborhood such as the project
13 that Mr. Topjian is proposing are welcome in 5-A-
14 06. I respectfully ask you consider the approval
15 of the application and I look forward to any
16 questions that you may have, thank you.

17 CHAIRPERSON SORG: Thank you very much.
18 Do Board Members have questions for Mr. Topjian?

19 MR. MAY: What was the site, the house
20 that was originally there what was the footprint
21 of that house do you know?

22 MR. TOPJIAN: I don't know exactly but we

1 believe that it was similar to the footprint of
2 Mrs. Thomas's house. Her house right now has a
3 six foot side yard setback from our lot line and
4 we believe it was the same on the other side from
5 what we can tell. So we believe it was either 19
6 or 20 feet wide as hers is.

7 MR. MAY: And how deep?

8 MR. TOPJIAN: The current depth on her
9 house not including her addition is 40 feet.

10 MR. MAY: And what about including her
11 addition?

12 MR. TOPJIAN: Including her addition I
13 don't know the exact measurement I would assume
14 that's it's between 10 and 12 feet is her
15 addition.

16 MR. MAY: And you're proposing to build
17 something that's 20 by 34?

18 MR. TOPJIAN: That is correct, 20 by 36.
19 If you look at the site plan it should be the
20 third page.

21 MR. MAY: Oh yeah I see 36. I'm going by
22 the building plans, it shows 34 and some inches,

1 I'm not sure what, 10 maybe. Well in any case,
2 20 by 34 is about the same as 17 by 40 right?

3 MR. TOPJIAN: Correct.

4 MR. MAY: So if you were equal in depth
5 to the next door neighbor that you site as a
6 model you would be able to maintain a proper side
7 yard?

8 MR. TOPJIAN: That is correct. One of
9 the reasons for the side yard variance was out of
10 request, like I said for Mr. Bill Jones in the
11 back, the neighbor in the back and also for Ms.
12 Thomas the neighbor on the side. There are two
13 issues they're concerned about; the first was the
14 detached parking pad so that was one thing..

15 MR. MAY: We'll get to that. I guess
16 what I'm trying to understand is why; I mean you
17 say that you want it to be like, similar to the
18 context of the immediately adjacent property. I
19 understand the six foot side yard. I understand
20 where that comes from. But the 40 foot depth, I
21 don't understand why you're trying to be less
22 than 40 feet if that next door property is

1 already 40 feet, why is that?

2 MR. TOPJIAN: That's something we didn't
3 really consider. Again Ms. Thomas, all the
4 neighbors that came to the first meeting they
5 were mostly on this side of Randolph Street.
6 Their biggest concern was the backyard, what are
7 you going to do with the backyard because they
8 had experience with other neighbors, like I
9 mentioned before when you look out the home is
10 extended much further back. So they said they
11 didn't want me to build past where here brick
12 structure was.

13 MR. MAY: And is that where you stop it
14 now?

15 MR. TOPJIAN: That's where I stop it now.

16 MR. MAY: Okay so then you much be
17 starting beyond where her property is. In other
18 words your front yard is bigger than hers. Is
19 that right?

20 MR. TOPJIAN: It's the same. She's 20 by
21 40 roughly, 19.5 or 20 by 40.

22 MR. MAY: Forty feet deep? And you're

1 proposing 35 or 36.

2 MR. TOPJIAN: Exactly.

3 MR. MAY: But those numbers are not the
4 same so where the difference is is it on the
5 front or the back?

6 MR. TOPJIAN: It's on the back, the front
7 of the homes all line up on the street. Sorry I
8 didn't understand. The front lines up.

9 MR. MAY: Other properties in the
10 neighborhood do they have garages in the rear?

11 MR. TOPJIAN: Yes.

12 MR. MAY: All, most, some?

13 MR. TOPJIAN: Mrs. Thomas has a
14 standalone detached garage in the back, the
15 neighbor next to her has a parking pad and two of
16 the others on the block have detached garages.

17 MR. MAY: And do any other homes in the
18 immediate vicinity have garages under the house?

19 MR. TOPJIAN: No.

20 MR. MAY: The reason I'm asking these
21 questions is that you've chosen to tie your
22 argument to making similar to the context in

1 terms of how far back the building goes and in
2 terms of how wide the houses would be. Yes
3 you're incorporating these other features which
4 are (inaudible), more properties; certainly more
5 properties have detached garages than have them
6 under the homes. None of them have them under the
7 homes. Then the fact that its 35 foot deep or 36
8 foot deep and not 40 feet or 40 plus 10 if she
9 has an addition so 50 foot deep. I'm not sure;
10 you're being kind of selective on what you want
11 to be similar to and what you don't. I
12 understand it maybe the neighbors' concerns but
13 neighbors concerns are not a specific criteria
14 that we evaluate in this circumstance. It is if
15 you're in a special exception and there are
16 certain criteria, having to do with light and air
17 and whatnot but we have a specific requirement to
18 look at those but in this circumstance it should
19 be driven by uniqueness of the property. So I'm
20 trying to understand your argument a little bit
21 better.

22 MR. TOPJIAN: If I could make one more

1 comment to that. The driveway that you see in
2 the back it's listed there as a grass paved
3 driveway. What we've done there is we're
4 planning to connect them to the middle and
5 basically have them to be a pervious substructure
6 with grass planted over it. So when you look
7 into the backyard of the property from the
8 neighbors and from your home its looks as if it's
9 all grass. Although there is a sub-driveway
10 going right down the middle that will apron off
11 to the integrated garages.

12 MR. MAY: So is that the plastic
13 (inaudible) product?

14 MR. TOPJIAN: You got it.

15 MR. MAY: Ms. Thomas is the one next
16 door?

17 MR. TOPJIAN: Yes sir.

18 MR. MAY: What's the width of those two
19 houses? They're semi-detached right, so what's
20 the width?

21 MR. TOPJIAN: It's between 19 and 20
22 feet.

1 MR. MAY: They're both 19 to 20 okay so
2 her lot is roughly; those two lots are roughly
3 the same?

4 MR. TOPJIAN: Yes sir.

5 MR. MAY: Okay, Ms. Thomas' house looks
6 like its two-stories is that correct?

7 MR. TOPJIAN: its three-stories with the
8 basement level.

9 MR. MAY: Is it a basement or is it a
10 cellar?

11 MR. TOPJIAN: It's like an English
12 basement so basically it has about, you can see
13 the small side windows from the first page so
14 it's half buried.

15 MR. MAY: It looks likes it more than
16 half buried maybe because we're going downhill
17 toward her property?

18 MR. TOPJIAN: Exactly.

19 MR. MAY: So you're talking about going
20 half a story taller than hers.

21 MR. TOPJIAN: That's correct.

22 MR. MAY: Then it looks like you have a

1 gable in roof, so your roof structure is going to
2 be taller even above that, right?

3 MR. TOPJIAN: Part of what we did was we
4 took the analysis between Mrs. Thomas' house and
5 there's a roof for a single family detached home,
6 you can barely see, we took the distance of that
7 roof line, the difference compared with the grade
8 and the slope of the natural slope of the street.
9 What we found that the difference between Mrs.
10 Thomas' neighbors home and going down to that
11 single family detached home was more than 15 feet
12 and the difference of ours was right around 10
13 including our gable roof. That was a discussion
14 we had with her, she was concerned about the
15 height and we went out and did the actual
16 measurements together.

17 MR. MAY: Okay well I appreciate your
18 being very attentive to her interests. Okay
19 that's it for my questions, thank you.

20 MR. TOPJIAN: Thank you.

21 CHAIRPERSON SORG: Do other Board Members
22 have questions for the Applicant?

1 MR. JORDAN: Just a quick question. Are
2 other houses in the street sitting on a double
3 lot?

4 MR. TOPJIAN: I don't know the answer to
5 that.

6 MS. FULLER: I don't have answer for
7 that, I know the adjacent house is the two lots;
8 I'm not sure about further down the street.

9 MR. JORDAN: And what about the size of
10 the alternative proposed by the Office of
11 Planning that size house, is that characteristic
12 of the neighborhood?

13 MS. FULLER: The 17 foot wide house again
14 when looking at the neighbors' concerns about the
15 detached parking or the parking pad, the reason
16 for the width of the house is to incorporate the
17 garage, integrate it into the structure of the
18 house. To make the house narrower would only
19 allow for one car garage and not two.

20 MR. JORDAN: I think I was reversing
21 that, Office of Planning was talking about a
22 larger house.

1 MS. FULLER: Oh combining lots to make
2 it, as Mr. Topjian spoke about being sensitive to
3 housing prices in the community. To combine the
4 lots and build one house would then as the
5 neighbors at one meeting that I was there were up
6 in arms about being priced out of the market and
7 so when looking at other single family
8 developments that have taken place in the
9 Brookland neighborhood they were indeed priced
10 out of the market so that was a major concern for
11 the residents that were present at that
12 particular meeting. They did not want to see
13 another mega structure going up in their
14 neighborhood that nobody could afford to buy.

15 MR. JORDAN: On that block are those
16 types of structures there?

17 MS. FULLER: Yes the block is diverse,
18 there is single family, and they're not very
19 large single family as this one probably would be
20 if the lots were combined. But there are single
21 family detached homes on the block. Then you
22 have Ms. Thomas' semi-detached which is right

1 adjacent to what's being built. Again looking at
2 the history of the property the previous owner
3 for whatever reason only built one structure on
4 that lot and it was on one of the lots and not
5 combining the two lots. So that was taken into
6 consideration as well.

7 MR. TOPJIAN: Throughout the couple
8 streets here, like Perry, Quincy, Randolph etc.
9 there are the semi-attached homes kind of
10 sprinkled in. We think that the transition again
11 because there is one directly to the west and
12 there is a parking lot and a commercial structure
13 directly to the right we believe that continuing
14 that product will prove a more smooth transition
15 on this site specifically.

16 CHAIRPERSON SORG: One follow up
17 question. Are there lots 50 feet in width on the
18 block?

19 MS. FULLER: We don't know the answer to
20 that. As to whether other lots have been combined
21 to create that width.

22 CHAIRPERSON SORG: Okay thank you. Do

1 Board Member have any additional questions?

2 MR. MAY: Yeah one quick question. I'm a
3 little confused. Your saying that the face of
4 your proposed homes would line up with the front
5 face of Ms. Thomas' home is that right?

6 MR. TOPJIAN: That's correct.

7 MR. MAY: I have this drawing that was in
8 the Office of Planning report. Is that
9 incorrect?

10 MR. TOPJIAN: What happened we spoke
11 about this previously with Mr. Jackson at our
12 meeting was that, I think there's either an error
13 with the way that he's calculating the lot size
14 or the way we're calculating it and I think it
15 has to do with the building restriction line.
16 Our Platt that we pulled from the city shows that
17 there is not one and that the lot goes all the
18 way to the street here so we did our calculation
19 back from the sidewalk so that the fronts line
20 up. Mr. Jackson can speak about this obviously
21 but his calculation showed that there was a
22 building restriction line and so he came 40 feet

1 back from there. So our intent is absolutely to
2 line up the front facades of the homes. I think
3 it was a miscalculation from one party or the
4 other.

5 MR. MAY: But the depth of the lot is 142
6 feet no matter what, right?

7 MR. TOPJIAN: That's correct 142 feet.

8 MR. MAY: Yeah, I mean going back from
9 the, okay so if Mr. Jackson is correct what that
10 means is that this drawing here is incorrect.

11 MR. TOPJIAN: We had a little bit of a
12 back and forth, because this is the Plat that we
13 got from the city obviously and you'll see that
14 if you do the quick math coming back 40 it looks
15 like it's going to line up here. But if you do
16 it with Mr. Jackson's plan it looks like there's
17 about 30 feet, 20 feet not there.

18 MR. MAY: You could actually be on the,
19 if it's a building restriction line that we're
20 seeing in Mr. Jackson's diagram that your
21 neighbor, not Ms. Thomas' but the next property
22 down, its right on that building restriction

1 line, right?

2 MR. TOPJIAN: It looks like they're a
3 little bit behind it, is that correct?

4 MR. MAY: I don't have it in color; I
5 have it in black and white. It looks like it's
6 virtually on it. But in any case the correct
7 version of Mr. Jackson's drawing here would be to
8 push the front of your building down on the page
9 if you will be like 30 feet or so.

10 MR. TOPJIAN: The front facades of our
11 homes will match Mrs. Thomas' home.

12 MR. MAY: That will leave you with a 96
13 foot deep rear yard.

14 MR. TOPJIAN: Welcome to Brookland.

15 MR. MAY: Thanks.

16 CHAIRPERSON SORG: Okay I'd like to get
17 to the Office of Planning. Does anyone else have
18 any questions for the Applicant? Seeing none
19 let's go ahead here from you.

20 MR. JACKSON: Hello again, my name is
21 Arthur Jackson with the D.C. Office of Planning.
22 Before you, you have the Office of Planning's

1 report of the application. We have reviewed the
2 application, we met with the Applicant and our
3 conclusion was that we could not support the
4 variances requested from 401.3 to reduce the
5 minimum required width of the abutting lots and
6 from 405.9 to reduce the required side yard from
7 8 to 5 feet because the Applicant did not
8 adequately explain why the requirements present a
9 practical difficulty. The referenced provision
10 of regulations 401.2 is of course follows 401.1
11 which states that the minimum lot size which
12 should be met for a new construction 401.2
13 provides that if the lot predates what the single
14 ownership prior to 1957 that new construction
15 would be allowed on it unless there was a lot
16 with it under a common ownership. I think the
17 intent of the regulations was that if there are
18 two lots that are non-conforming and a common
19 ownership that they be combined to become a
20 conforming lot.

21 When I met with the Applicant, the
22 Applicant explained that there was a previous

1 structure on the property but I was unable to
2 find anything in the D.C. records that reflect
3 that acknowledged that a building ever existed,
4 so before we forwarded the question to the Zoning
5 Administrator and they did not respond. So at
6 this point we'll leave that issue for the Board
7 to decide. But we did note that the width of the
8 current lots would be within the requirements of
9 the regulations in terms of the non-conformity,
10 it's within 83 percent of the width requirement.

11 We also note that the lot is larger than the
12 minimum requirement for the zone such that
13 there's plenty to do the development in. So with
14 that in mind we looked at some other situations
15 of the case in terms of the location of the
16 dwellings I think the Applicant keeps referring
17 to the building restriction line. According to
18 our GIS maps the property lines start some
19 distance from the roadway so that's why we were
20 saying that we thought the building needed to be
21 shifted forward. We also note to that Applicant
22 that there should be stakes in the ground around

1 the property so that they went back and check the
2 stakes to see where the property corner is, that
3 would help them determine where the house would
4 actually be.

5 We understand the Applicant's intent we
6 just don't think that the current plans in the
7 file reflect the actual development that they're
8 proposing so we would recommend that going
9 forward if this project is approved that the
10 Applicant provide the correct plans that show
11 exactly the placement that they are planning.

12 In any case in terms of unique conditions
13 and circumstances, the property is one of the
14 four lots on the square that currently are around
15 25 feet. So that is somewhat unique but we don't
16 think that width difference itself presents any
17 practical difficulty because they have more than
18 enough depth in the lot. If you look in the plan
19 on page three of our submittal we basically drew
20 a box where the Applicant would be allowed to
21 develop in the site. That box you can see the
22 difference between what they're proposing and

1 what would happen if they had the 8 foot setback
2 from the side yards and they met the rear
3 requirement. There's plenty of space in there to
4 build what could be a significant architectural
5 feature coming down, either going west on
6 Randolph, it would be narrow but there would be
7 things that you could do to make it still a nice
8 entrance to the whole streetscape. We encourage
9 the Applicant to look at that option in terms of
10 their overall design.

11 We also note that the, so the concern
12 about being able to put the parking for two cars
13 on the ground floor of each building we
14 highlighted their other options. You could have
15 freestanding garages that would hold two that
16 could go from property line to property line and
17 they too could be architectural structures that
18 would be very attractive.

19 So understanding the concerns that are
20 expressed by the Applicant we presented several
21 options for them to address those concerns. Given
22 the status of the property that although narrow

1 is much larger than the minimum requirement and
2 the option that we made on the overall site, the
3 majority of the houses are single family and the
4 majority of the lots are 55 feet or wider. We
5 felt that in this case they did not establish
6 that there was a unique condition or
7 characteristic of the property that prevented
8 them from developing the property in line with
9 the current Zoning Regulations which is one of
10 the standards that required under 401.2.

11 We think the regulations really intend
12 that when you have an opportunity to bring a lot
13 into conformance that you do so. If you own both
14 properties that you make that work. Again this
15 is based on the fact that after trying to do some
16 research we weren't able to find out any
17 documentation that actually supported the
18 position presented by the Applicant that one of
19 the lots was developed. Again the District
20 records are perfect and the attorney said she
21 played in the house so we don't doubt that it
22 actually existed. So based on that we also asked

1 them about interaction with the Advisory
2 Neighborhood Commission, we were not able to get
3 any response from them and there isn't any
4 historic preservation issues related to this
5 property. So in light of all this information our
6 analysis was that the standards simply weren't
7 met for approval of a variance in this case.
8 There was no definitive reason why the
9 development could not be undertaken in line with
10 the current Zoning Regulations. With that, that
11 completes the Office of Planning's report and
12 we're available to answer questions.

13 CHAIRPERSON SORG: Thank you very much.
14 Just to clarify, so your position is that because
15 these properties both come above the 80 percent
16 requirement under 401.2 that if you take in
17 combination with providing the adequate side yard
18 which leads to two 17 foot wide houses that would
19 be a matter or right development?

20 MR. JACKSON: Yes if they would still
21 need relief from the 25 foot width.

22 CHAIRPERSON SORG: So that's I guess a

1 better way to say my question. So the 83 percent
2 doesn't kick in unless it's separate owner or
3 unless one of the two lots is improved?

4 MR. JACKSON: Right, it doesn't preclude
5 the development of the lot assuming they could
6 meet the other requirements. That's why they
7 need the additional relief to narrow it to five
8 feet. They can develop a lot that does not meet
9 the requirements as long as the width of the area
10 was at least 80 percent. The width is actually
11 83 percent of the requirement, the area
12 (inaudible). So that precludes from developing
13 the property if there's no definitive indication
14 whether or not there was any development on
15 either lot. So if you assume there was
16 development on one of the lots then you wouldn't
17 be required, there's nothing that you could do
18 with the other lot that was not developed. In
19 essence there's nothing there to combine it with.

20 MR. MAY: Just so I understand most
21 completely. If what was proposed here was two 17
22 foot wide houses we wouldn't have the side yard

1 issue to deal with right?

2 MR. JACKSON: Correct.

3 MR. MAY: So if the properties were in
4 separate ownership there would also not be need
5 for a variance right?

6 MR. JACKSON: Correct.

7 MR. MAY: So if, since the properties are
8 under contract if they actually staggered the
9 development and sale of them they wouldn't need
10 to be here at all?

11 MR. JACKSON: I can't answer that
12 question.

13 MR. MAY: I'm not suggesting that because
14 I don't think it's practical. I'm sure they want
15 to build both houses at the same time so they
16 still want to come here and get relief from the
17 lot width requirement. I just wanted to
18 understand what how one could work the system if
19 you will in this circumstance. Sometimes it's
20 hard to ferret out what the intention was. The
21 Zoning Regulations were written but under the new
22 Zoning Regulations I'll know what was behind

1 everything so I'll be able to answer questions
2 like that.

3 MR. JACKSON: I guess the only
4 observation that we can make is we've had other
5 case where people come in and they purchase
6 property at an auction, and they were two
7 separate lots. I think the Zoning actually
8 anticipate that, all properties will be bought in
9 conformance and all buildings on all properties
10 are brought into conformance somehow. The market
11 would drive it. This is the case where we have
12 one lot that may have been developed and so it
13 technically is no longer in the status of being
14 never undeveloped even though it's a common
15 ownership. That's really the quandary that
16 they're in. But if it were 17 foot buildings
17 they would not have to get the side yard
18 requirement and it would be just be a variance
19 for the width requirement which is something that
20 you handle everyday under special exception.
21 Well actually if all they were doing is getting,
22 no nothing existed. They still need a variance

1 because there's no existing building on the
2 property. You would handle if there was a
3 building there you would handle by special
4 exception under 223.

5 MR. MAY: For relief to which provision?

6 MR. JACKSON: Just for the lot width.

7 MR. MAY: For the lot width.

8 MR. JACKSON: If the house that they say
9 was torn down in 1995 still existed then it would
10 be a special exception on that lot.

11 MR. MAY: But we're not in that situation
12 so it's enough to ponder the variables in this
13 circumstance. I don't have any more questions
14 for the Office of Planning.

15 CHAIRPERSON SORG: So what's your opinion
16 on following up? I mean we've seen to have come
17 to a little bit of a dead-end or a road block
18 with the Zoning Administrator on this question
19 which I do think is maybe relevant of whether
20 there existed a home and whether that makes it an
21 improved lot. It changes a lot of things, what's
22 your opinion on that?

1 MR. JACKSON: Madam Chair I think the
2 Board has heard a good bit of testimony today
3 about the status or history of it, of course it's
4 verbal and nothing is documented. But I don't
5 think there would be anything wrong with the
6 Board taking what's been presented and accepting
7 these lots as being valid and then the question
8 to deal with is the side yard setback. Because
9 401.2 really is targeted at specific situations
10 that are more or less obvious. In this case it's
11 a grey area if you wanted to move forward and
12 just deal with the second component of the side
13 yard setback that would seem to be a reasonable
14 course of action in this case.

15 As for the Zoning Administrator to give
16 you an opinion about the status of the property
17 which would be an additional step but those seem
18 to be two valid options to proceed. Making
19 accepting what's presented, dealing with the side
20 yard setback issue or referring the question of
21 the status of the two lots to the Zoning
22 Administrator and then dealing with the side yard

1 issue at a later date.

2 CHAIRPERSON SORG: So if there was a home
3 built on lot 821 and it has been raised the
4 definition of lot 821 on June 14, 2011 is
5 improved.

6 MR. JACKSON: Yes and so there would only
7 be one unimproved lot and the status since there
8 is no lot to combine with it, that's as far as I
9 can go, I'm not sure what the Zoning
10 Administrator would say about what would have to
11 happen with that lot. My guess is that it could
12 be developed separately because there's nothing
13 combined with it. There's no opportunity to
14 expand that lot to another undeveloped lot.

15 CHAIRPERSON SORG: Any further questions
16 for the Office of Planning? I feel like maybe
17 we'll come back to that. Does the Applicant have
18 questions for the Office of Planning?

19 MR. TOPJIAN: Thank you, thank you Mr.
20 Jackson. Can I respond or is it just questions?

21 CHAIRPERSON SORG: You are going to have
22 a chance to give a rebuttal closing statement.

1 MR. TOPJIAN: Okay I'll save it until
2 then, thank you.

3 CHAIRPERSON SORG: So at this time.

4 MR. MAY: I'm sorry I want to go back to
5 the Office of Planning for just a second. I'm
6 pondering this issue of the unimproved lot
7 definition. If it's determined that one lot was
8 unimproved and one is improved. What that means
9 is that the unimproved lot could qualify for the
10 80 percent rule if you will, but the other one
11 could not because it's not a case of an
12 unimproved lot being next to another unimproved
13 lot? I mean the fact that you've got one
14 improved and one unimproved, the fact that you
15 have one unimproved means that this provision
16 simply does not apply? I guess I'm not sure that
17 there's any circumstance under which this
18 applies.

19 MR. JACKSON: Well now this says if
20 there's a case of an unimproved lot that has an
21 area less than specified, I think it would still
22 qualify for the 80 percent because there's not

1 another unimproved lot with it. If there was
2 another unimproved lot with it then the thought
3 would be that they would have to be combined.
4 But a single unimproved lot can qualify for the
5 standard.

6 MR. MAY: But that works for the lot
7 that's unimproved. But for the one that we have
8 now determined has been improved...

9 MR. JACKSON: That would be legally non-
10 conforming.

11 MR. MAY: Right.

12 MR. JACKSON: So legally non-conforming
13 would not need to have relief. But you still need
14 relief to the lot width. It probably still would
15 need relief because even at 223 we have legally
16 non-conforming lot that you have to get relief to
17 build on it. So they both would still need
18 relief.

19 MR. MAY: Yeah I think no matter what
20 there needs to be relief. I think that the most
21 straight forward thing to do is to address this
22 as two unimproved lots in the same ownership and

1 to answer yes or no on the question of whether
2 the variance for lot width is appropriate. I
3 think that's the clearest path.

4 CHAIRPERSON SORG: Maybe I just wanted a
5 little bit more.

6 MR. MAY: I got sort of twisted around in
7 it.

8 CHAIRPERSON SORG: Okay let's move on to
9 see if there are any individuals in the audience
10 in support or in opposition for this application?

11 Seeing no one I will reference for the record I
12 think, three letters of support received from the
13 Applicant from the surrounding neighbors none of
14 which I have exhibit numbers for. Next we'll
15 turn to the ANC, is there anyone present from ANC
16 5-A? Okay seeing no one we can go ahead and move
17 to any closing statements from the Applicant.

18 MS. FULLER: Madam Chair would it be
19 appropriate to ask for a continuance to allow us
20 to bring in photo proof that one lot was
21 improved. I can get pictures that there was a
22 house on lot 821 to show that it was an improved

1 lot at one time.

2 CHAIRPERSON SORG: Well as Mr. May stated
3 I think that it's not clear whether the
4 improvement or lack of improvement of lot 821
5 does much difference in terms of the zoning
6 relief but I personally would be inclined to
7 allow that as something to be investigated. If
8 you were I think what would be, in my opinion,
9 especially helpful there would be not just
10 photographs but trying again with the ZA and
11 trying to understand how that would change the
12 relief, maybe any relief that was required. I
13 would be inclined to be in support of that.

14 MR. JORDAN: I would join that
15 additionally having discussion I believe further
16 discussion with Office of Planning sounds like
17 something's mixing between Planning and the
18 Applicant are missing from each other especially
19 what the buildings lines are.

20 MS. FULLER: So we would respectfully ask
21 if we could have a continuance to clear up the
22 issue of whether there is a miscalculation

1 somewhere with where the property will line up
2 and also to get with Matt LeGrant on this issue
3 and also provide him with the documentation that
4 there was a house on that lot and if we can get
5 further clarification.

6 CHAIRPERSON SORG: What that would mean.

7 MS. FULLER: What that outcome would mean
8 in terms of the type of relief that would be
9 needed.

10 CHAIRPERSON SORG: Additionally I would
11 sort of note that if you're going to be adding to
12 your submissions for me if you have more
13 reasoning or anything else to say about the side
14 yards, I'm not convinced. So unless other Board
15 Members have any additional comments?

16 MR. MAY: No I think that it would be
17 helpful to understand exactly what relief might
18 be necessary with regard to lot width. I don't
19 think it's a reasonable position to me taking the
20 way this should be developed as a single family
21 home on a subdivided single lot; I don't think
22 that's a reasonable position. I think the idea

1 of putting two houses on here is a reasonable
2 proposition regardless of the ownership. How we
3 get there in terms of regulations I think is a
4 question that still needs to be decided. With
5 regard to, I know we're not deliberating yet but
6 I will go out on a limb and say that when it
7 comes to the side yard I just do not see the case
8 for a variance here and I think that the
9 Applicant would be wise to go back and think
10 about the possibility of making this project
11 compliant with regard to side yard and then we
12 get the lot width question sorted out and then I
13 think we could go forward.

14 I'm very impressed with everything else
15 about the presentation and about the attitude of
16 the Applicant and the development of the property
17 and wanting to work with the community and how to
18 achieve a desirable end and the aspirations for
19 the property and all that. But all of those
20 things don't add up to Zoning Relief. That would
21 be my message.

22 CHAIRPERSON SORG: There you have it, I

1 have nothing to add. So I think we can say based
2 on consensus we can go ahead and approve your
3 motion for continuance. How long do you think
4 you would need to be able to provide this
5 additional evidence?

6 MS. FULLER: Can you just give me one
7 quick second please? Okay could we get dates in
8 July 30 days? I know you go in summer recess in
9 August so if we could get back before then that
10 would be great.

11 CHAIRPERSON SORG: Let's see what we can
12 do. Mr. Secretary, do you have an opinion on the
13 afternoon of July 26th?

14 MR. MOY: That was the date I was looking
15 at also Madam Chair.

16 CHAIRPERSON SORG: Alright sounds good to
17 everybody.

18 MS. FULLER: Yes thank you very much.

19 CHAIRPERSON SORG: We will schedule the
20 continued hearing for this case in the afternoon
21 on July 26th.

22 MR. TOPJIAN: Thank you very much.

1 CHAIRPERSON SORG: Thank you very much.
2 Alright if you can call our final case.

3 **Application No. 18219**

4 MR. MOY: The last application for Board
5 action is Application No. 18219. This is the
6 application of Jemal's Bartley, LLC, pursuant to
7 11 DCMR 3103.2 for a variance from the rear yard
8 requirements under Section 774, a variance from
9 the off street parking requirements under
10 (subsection 2101.1), and a variance from the
11 residential floor area requirements under
12 (subsection 1706.4. This is to allow the
13 construction of a commercial building in the
14 DD/C-2-C District at premises 705 6th Street,
15 N.W., property located in (Square 486, Lot 4).

16 CHAIRPERSON SORG: Good afternoon.

17 MS. MILLSTEIN: Good afternoon Members of
18 the Board for the record my name is Carolyn Brown
19 with the Law Firm of Holland and Knight. I am
20 here on behalf of the Applicant Jemal's Bartley,
21 LLC. We have three witnesses today, Mr. Paul
22 Millstein of Douglas Development and Jemal's

1 Bartley LLC, the Applicant, Mr. Brian Miller of
2 Edit D.C. Architects, and Mr. Steven Sher,
3 Directly of Zoning and Land Use Services at
4 Holland and Knight. Also with us today are Mr.
5 Yama Jewayni, Mr. Daisuke Utagawa, and Mr. Khaled
6 Alegalan and they are the business partners in
7 the restaurant that has the lease for the
8 building. Mr. Jewayni is the owner of 18th Street
9 lounge and Mr. Utagawa is the owner and creative
10 director of Sushiko Restaurant that's in Glover
11 Park and Chevy Chase and they're available for
12 questions if the Board should have any.

13 I'd like to take care of a few
14 housekeeping matters before I begin. We have
15 handed up a packet of materials that are in front
16 of Mr. Moy that has some updated materials for
17 you once they're handed out. First the packet
18 includes resumes of Mr. Sher and Mr. Millstein
19 and we would ask that they be qualified as expert
20 witnesses, Mr. Millstein in urban construction
21 and development and Mr. Sher in land use and
22 zoning. In the District both have been qualified

1 many times before the Zoning Commission as well
2 as the Board of Zoning Adjustment. I'll continue
3 and then we can come back to the expert witness
4 request.

5 Second in the packet of materials are
6 updated drawings and a revised "Exhibit C" that
7 we had provided in our prehearing statement and
8 these reflect calculations based on the recorded
9 dimensions found in the surveyor's office. In
10 our prehearing statement we relied on the
11 measured drawings we have not yet obtained a
12 surveyor's certification as to the measured
13 dimensions so we went back to using the record
14 dimensions. It's a slight difference but I just
15 wanted to clarify that for the record and show
16 you how to fix the calculations. In those
17 calculations shown on the revised "Exhibit C"
18 which I believe is being handed out to you still.
19 You will note that the area of the third floor
20 is actually smaller than stated in our prehearing
21 statement. The ones that you see in "Exhibit C"
22 that say revised are our correct.

1 Third in our supplemental package you
2 will find two support letters, one from the
3 Myrine Condominium which abuts the property
4 immediately to the south and another one from the
5 Downtown Neighborhood Association. Both
6 organizations were very excited about the arrival
7 of this restaurant to the site and they recognize
8 the need for variance relief in order to proceed
9 with this development.

10 Finally there is a memorandum from
11 Douglas Development which summarizes the
12 financial practical difficulties meeting the
13 residential housing requirement either on site or
14 off site through the use of a combined lot
15 development. This memo supplements the
16 information provided in our prehearing statement.

17 So with that I'd return to the request
18 for expert witness status for Mr. Millstein and
19 MR. Sher.

20 CHAIRPERSON SORG: Thank you very much
21 let's start with Mr. Sher. We last certified as
22 an expert I think in 2010, or so, I'm looking at

1 this resume. Do any Board Members have any
2 comments on his certification as an expert?

3 MR. MAY: I think we should test Mr. Sher
4 on how quickly he can read the entirety of this
5 resume, just kidding.

6 CHAIRPERSON SORG: Alright so based on
7 consensus I think we can accept Mr. Sher as an
8 expert. Moving to Mr. Millstein, I don't have a
9 record of his being certified but you testified
10 he has been in the past.

11 MS. BROWN: Right before the Zoning
12 Commission I can name at least three cases in the
13 PUD project at 10th and F Streets he was
14 recognized as an expert, in BZA cases I believe
15 there was, he has been qualified as an expert in
16 certain BZA cases I believe one for the Takoma
17 Park Project that Douglas Development did and I
18 believe another one I believe it's 6th and L
19 Street, N.W. if I'm correct on the address.

20 CHAIRPERSON SORG: Okay any comments on
21 the, okay so by consensus we'll also agree to
22 that certification for Mr. Millstein.

1 MS. BROWN: Thank you very much I will
2 precede then with a brief opening statement.

3 We are very pleased to be here this
4 afternoon in our case for area variances from the
5 parking, rear yard and residential requirements
6 for the property in order to allow construction
7 of a new three story building that will be
8 occupied by a restaurant.

9 As set forth in our prehearing statement
10 and as you will hear from our witnesses the
11 property is unusually small and narrow which
12 leads to practical difficulties and meeting the
13 requirements of the Zoning Regulations. The
14 relief is similar to what the Board granted in
15 BZA Application 17983 in 2009, for this same
16 property and the lot adjacent to it to the north
17 which is occupied by a two story built in the
18 1930s. There the Board found that the small size
19 of the property and its narrow width as well as
20 the existing building on the north lot created
21 practical difficulties in meeting the rear yard
22 and parking requirements. In the instant case

1 the development parcel is smaller by half which
2 continues to make it difficult to meet the
3 parking and rear yard requirements and we have
4 included a copy of that BZA decision in "Exhibit
5 D" of our prehearing statement. The difference
6 between that case and this one is that previously
7 we did not request relief from the residential
8 requirement and additionally it's also a smaller
9 site.

10 As you will hear from our witnesses it's
11 simply not practical to build the residential
12 units on this site given its constraints. Nor is
13 it financially practical which is what the
14 Douglas Development memorandum in the packet that
15 was just handed out to you demonstrates. I'm
16 just going to review that memo with you briefly
17 and then Mr. Millstein will address it as well.
18 The first page of that memo describes the
19 financial implications of constructing housing on
20 this site. It concludes that even under ideal
21 circumstances that is assumptions that will never
22 align namely zero vacancy, no developer fee, no

1 affordable units, no lender origination fee, and
2 no repair or maintenance fee that a residential
3 project on this site would yield a negative
4 return of roughly 12 percent. The second page of
5 the memo describes the financial implications if
6 the Applicant were required to satisfy the
7 housing requirement through a combined lot
8 development. The cost of purchasing CLD would
9 add another 320 to 335 thousand dollars to the
10 development cost of the property which the retail
11 use, the restaurant use just can't support. It
12 adds approximately 63 dollars per square foot to
13 the project and results in a return of anywhere
14 from under 2 percent to about 2.4 percent with no
15 margin for error for cost overruns. Because of
16 that it's just financially infeasible or
17 profitable to pursue combined lot development for
18 the residential requirement.

19 We have reviewed the Office of Planning
20 report and are pleased to have its support for
21 our application and its conclusions that we have
22 met the burden of proof for variances from the

1 rear yard, parking and residential requirements.

2 With that I would like to turn to our
3 first witness Mr. Paul Millstein.

4 MR. MILLSTEIN: Good afternoon Madam
5 Chair and Board Members again nice to be here, I
6 come quite frequent which is a good sign. This
7 is a challenging little piece thought sometimes
8 the smaller pieces are harder than the larger
9 ones. This lot is a very narrow lot, it's 25
10 feet wide, it's a vacant lot, and it's the only
11 vacant lot on the block. We attempted to do
12 something several years ago and combine the lots
13 with the existing two story building and in the
14 interim of trying to put that together we
15 actually had a tenant step up for the existing
16 building which is the Graffito Restaurant which
17 will be opening in a matter of days. So we kept
18 the lots separate and now we have to pursue
19 something that makes sense for this lot.

20 Unfortunately it's a new day and in these
21 current days things have to stand on their own
22 financially. This particular lot, like I said

1 it's a small lot, it doesn't make sense to do the
2 residential, the numbers are in front of you and
3 we can get into detail in the numbers. Then we
4 had the option to do CLD's but they have gotten
5 expensive as well. When you add the CLD's on top
6 of the construction cost which we took a
7 construction cost of 150 dollars on a gross foot
8 for a commercial building, 200 dollars a foot for
9 a full apartment building. So our numbers I
10 think are very in line with the current numbers
11 we're seeing on other developments. It just
12 becomes impractical to develop; the reality is
13 we're better just to stay a vacant lot which
14 nobody wants to do.

15 Particularly beginning we have these
16 gentleman behind us that have a great concept,
17 that have actually signed a lease predicating the
18 ability to build a building that we'd really like
19 to bring to the neighborhood. They are paying a
20 42 dollar rent which we believe is a market rent
21 and we gave some examples of current market rents
22 for similar type stuff in the neighborhood. When

1 you just put it all together it makes sense, this
2 is really what we found made sense to go forward
3 which we would really like to go forward.

4 So with that being said we can show you
5 the residential layouts, we can show you the
6 impracticality, we've put the numbers in front of
7 you, and I don't know what else to say at this
8 point other than hopefully you'll see what we
9 see. We're available for questions, thanks.

10 MS. BROWN: Thank you we're ready to
11 proceed with the architect's presentation except
12 we didn't get the PowerPoint up but we do have
13 the drawings before you that we can go through
14 and I think that might be a little bit better in
15 the interest of time than trying to wait for the
16 PowerPoint.

17 CHAIRPERSON SORG: Whatever you prefer, I
18 have some questions on this CLD but we can wait
19 until you're finished with your presentation.

20 MS. BROWN: Actually at this point if you
21 want to stick with the variance test because I
22 think that's probably the most critical thing for

1 you all we can skip to Mr. Sher's testimony then
2 if you have questions about the drawings that we
3 can do it that way if that works for you?

4 CHAIRPERSON SORG: I think that's a good
5 idea, I think the drawings are pretty clear and
6 pretty well set forward.

7 MS. BROWN: That's what I was hoping,
8 great so why don't we precede that way, thank
9 you.

10 MR. SHER: Good afternoon Madam Vice
11 Chair, presiding officer and Members of the Board
12 for the record my name is Steven E. Sher, the
13 Director of Zoning and Land Use Services with the
14 Law Firm of Holland and Knight. I think Mr.
15 Millstein has set out what makes this property
16 exceptional or extraordinary in its context.
17 It's a 25 foot wide lot, its 85 feet deep, and
18 its 2,125 square feet in area. If this were
19 zoned R-3 and were going to be developed with a
20 row house it would be absolutely nothing about it
21 that would be extraordinary. But it's not zoned
22 residential, it's not going to be developed with

1 a row house, it is zoned DD/C-2-C, it is the only
2 lot that's this small, that's unimproved in that
3 immediate vicinity. There are lots that are of
4 equal size in the block but they all have
5 something on them so there is some reasonable use
6 one can make of those buildings either as an all
7 commercial building or in the case of the Myrine
8 next door and all residential building. There is
9 no vacant lot that has to be developed under the
10 criteria of the C-2-C District and the Downtown
11 Development District Overlay other than this one
12 and so that makes this exceptional and the
13 application of the regulations to this site
14 creates the practical difficulty for the
15 Applicant.

16 In order to develop this site under the
17 housing priority area requirements of the DD, the
18 site must either have onsite 4.5 FAR of
19 residential or somehow account for that in one of
20 the various ways that the DD allows for someone
21 to do something other than actually building
22 onsite. You can partner with somebody else in a

1 combined lot development; you can reduce some of
2 that housing requirement by doing affordable
3 housing elsewhere. Basically you've got to
4 account for 4.5 FAR of residential. Because the
5 site is so small if you tried to put, I don't
6 know anybody that's ever built a half a story, so
7 you've got to put 5 stories of residential above
8 your commercial base. If you tried to put that
9 and then brought down to the ground floor all of
10 the accoutrements of an apartment house, the
11 core, the elevators, the exit stairs, the hallway
12 you'd rip out the heart of the commercial
13 development on the ground floor. There's just
14 not enough space there to accommodate a
15 restaurant on the ground floor and all the space
16 that has to serve the residential above. It's
17 just not large enough to do that.

18 The alternative as Mr. Millstein has
19 suggested is okay we can't put it on the site
20 because then you get to other things like parking
21 and other things that go along with an apartment
22 house. You can't put it on site, how can we go

1 to the other ways to satisfy residential under
2 the DD, the idea of combined lot development
3 which essentially says we're going to do all
4 commercial over here and somebody else is going
5 to do our residential on another site in the DD.
6 Basically that's a cash transfer going from this
7 site to somebody else because the person doing
8 the residential is going to extract a payment in
9 order to take our residential and build it for
10 us. What generally happens is, it doesn't happen
11 prospectively it happens after the fact.
12 Someone's build more residential than they needed
13 build, they have this excess density that they
14 can use to satisfy somebody else's requirement so
15 you've got to find somebody who's got it, you've
16 got to figure out what you've got to pay for it
17 and given what we know that's a market
18 transaction, it's not controlled by the Zoning
19 Regulations but given what we know about that
20 market and what it's going to cost the dollars
21 that have to go into this project to get rid of
22 the residential requirement just make it

1 impossible to do anything here.

2 The variance process is essentially a
3 constitutional safety guard. It is here so that
4 someone who is otherwise deprived of the ability
5 to use property under the regulations can get
6 relief and that's pretty much what we have here.

7 Since you can't do anything unless you go the
8 4.5 FAR residential we can't do the 4.5 FAR
9 residential onsite or buy the CLD's to do it
10 somewhere else, we need a variance and so that's
11 what the issue is on the housing thing.

12 On the parking this is again it's an 85
13 foot deep site, given the size of gross floor
14 area to be devoted to the commercial use we're
15 required to have two parking spaces. The
16 building as currently designed goes all the way
17 back to the rear lot line. If you had to set it
18 back to get a parking space on the property 9 by
19 19, you lose about 25 percent of the floor area
20 on the ground floor, that's essentially what the
21 Board found in 2009, when we went through this
22 before raising the same issues. Yeah you could

1 put a parking space in there, there's an alley at
2 the back, 16 feet 9 inches wide at the back, you
3 can get into it but you've got to pull the
4 building so far back that you really are creating
5 an exceedingly difficult condition on the first
6 floor to get your restaurant in there. The same
7 is true of the rear yard; the rear yard has to be
8 setback 15 feet. You just wind up taking the
9 prime commercial space out of the building if you
10 have to meet that rear yard requirement. As we
11 noted before there is a 16 foot wide alley at the
12 back. The building on the other side of the
13 alley is setback about 15 feet from the property
14 line so there is a significant separation at the
15 back for the space between the two buildings even
16 if this building is built to the rear lot line.
17 We know also that we do not have the option to
18 not build commercial on this site, there are a
19 lot of negatives there. Let me just turn it
20 around and say it the other way.

21 The Chinatown provisions of the Downtown
22 Development District require us to put commercial

1 on the ground floor at least half an FAR so we
2 can't just walk away from that or we'd need
3 another variance. So one way or another we've
4 got a problem here that we've got to deal with.
5 What Douglas Development's view of this site is,
6 it is best served as a commercial building, like
7 the commercial building next door, like the
8 commercial building down at the corner of 6th and
9 G, like the commercial building at the corner of
10 6th and the alley to the north. In order to do
11 that we have the three areas of relief that we've
12 requested, the variance on the rear yard to have
13 no rear yard above the 20 foot plane and count
14 the alley as half the rear yard on the below 20
15 feet to have no parking where two spaces are
16 required and to be relieved of the requirement to
17 provide residential either onsite or through
18 combined lot development.

19 We believe that the factors that we've
20 gone through in our prehearing submission and
21 that I've just attempted to summarize create the
22 basis for the Board to grant those variances. I

1 believe we meet the test for a variance of
2 exceptional situation, practical difficulty, no
3 adverse impact and I think respectfully the Board
4 should grant the application.

5 MS. BROWN: Madam Vice Chair that
6 concludes our direct testimony and presentation
7 in this matter.

8 CHAIRPERSON SORG: Thank you very much.
9 Do Board Members have questions for the
10 Applicant?

11 MR. MAY: I have just a couple. What was
12 the original intention before you leased the
13 other; I mean this originally came in as two
14 properties, what was the original intention at
15 that point? Can you elaborate on that?

16 MR. MILLESTIEIN: Sure the intention was
17 to build the very same building we're proposing
18 now. The reason we weren't seeking residential
19 relief at the time was we had a building under
20 contract called the Canterbury building at 3rd and
21 G Streets, N.W. and by virtue of buying that
22 building and developing that building we were

1 creating an excess of CLD's in that perspective
2 neighborhood that we were just going to simply
3 shift over. I can tell you that we never
4 anticipated not closing on that building and it
5 just was a factor of the times and we took a
6 substantial financial hit but not closing. So
7 what happened was, quite honestly we leased the
8 Graffito Building, we didn't focus on the
9 Canterbury and the CLD issue we did a lease with
10 Sushiko these gentleman for this next restaurant
11 and then Chip said wait a minute we have a CLD
12 issue we never finished that and we said holy
13 cow! Then we had to go back and clean this whole
14 thing up and that's the reality of it.

15 MR. MAY: It helps to understand what
16 happened. The next question I had is there HPRB
17 review for the design of this building?

18 MS. BROWN: No it falls outside the
19 Historic District.

20 MR. MAY: Alright thanks.

21 CHAIRPERSON SORG: Going back to the CLD
22 issue. You own other properties in the housing

1 priority B area?

2 MR. MILLSTEIN: No but, let me be clear
3 the CLD's are obtainable we can get them, they're
4 out there we just secured a very large number of
5 CLD's for a commercial building we're building in
6 Square 451 for the American Association of
7 Medical College. We're familiar with the process
8 it was a large transaction, we did Catholic
9 Charities, we did Fordable, and we did the whole
10 program. They're out there but they have to make
11 sense on each particular development and so it's
12 not a question of we can't get them, it's a
13 question of they will cost us and right now we
14 are paying 35 dollars a CLD, that is market rate,
15 we just went through a transaction. If you're
16 posting a deposit with the District of Columbia
17 and invest them in a building they're going to
18 make you post a deposit of a 35 degree value
19 somewhere along that line. So the reality is
20 it's purely a financial issue, it's not that
21 they're not achievable. We're not sitting on any
22 that we currently own, we have to buy them. The

1 original assumption was we'd be generating them
2 and never need it because the building wasn't
3 getting any difference and historic building so
4 it was a no brainer to shift them over, that's
5 the issue.

6 CHAIRPERSON SORG: Are there any further
7 questions from the Board for the Applicant at
8 this time? Alright let's go ahead and go to the
9 Office of Planning then.

10 MR. COCHRAN: Thank you Madam Chair or as
11 Mr. Sher said any number of potential titles that
12 you have currently. First off I'd like to clarify
13 that OP had originally analyzed the case based on
14 the record lot and then we revised it based on
15 the measured lot and now we're very happy to go
16 back to what would have been our original report
17 based on the record lot. It just changes the
18 calculated FAR from something like 2.44 back to
19 2.28 so it really makes no difference in the
20 analysis.

21 OP stands on the record with respect to
22 the rear yard and off street parking relief and

1 recommends that the Board approve it. Related to
2 that rear yard relief we note that DDOT has
3 recommended that all loading occur from the alley
4 and both OP and the Applicant have agreed with
5 that recommendation. That was the same
6 recommendation that they had in the previous case
7 involving this lot.

8 The request for relief from 1706.4 we
9 don't feel that we should just stand on the
10 record it requires a little bit of explanation.
11 The Applicant has provided additional information
12 at OP's request a fair amount of detailed
13 development information and with this in hand OP
14 concludes that the Applicant has demonstrated
15 that the small size of the lot constitutes an
16 exceptional condition that would pose exceptional
17 practical difficulties if the residential housing
18 requirement were strictly applied especially in
19 light of the first floor's retail requirement for
20 the Chinatown area. Based on the cost the
21 revenues and the Performa that the Applicant
22 submitted, the Applicant as they said lose a

1 substantial amount of money if it were forced to
2 meet the DD housing requirement. By building
3 this structure that would be about twice as large
4 as what they are now planning to build. They
5 would have to build something of a 5 FAR just to
6 begin to meet the DD housing and Chinatown sub
7 area requirements.

8 So it's clear that they wouldn't be able
9 to do it on site practically. That left at that
10 point when OP was analyzing it left the CLD's.

11 But because the construction of downtown housing
12 is such an important part of public policy and a
13 comprehensive plan OP really pushed the Applicant
14 on the combined lot development because it seems
15 like it could have worked one time before, but as
16 the Applicant demonstrated today even with CLD's
17 there'd be an extreme practical difficulty in
18 meeting the DD housing requirement on this site.

19 At the time of the last decision that involved
20 this current site CLD's were going for about 20
21 dollars a square foot, they are now 35 dollars a
22 square foot.

1 The other thing is in response to a
2 question you had Madam Chair, even if the
3 Applicant had surplus CLD's in a different site,
4 because the Applicant is doing some other
5 construction in the area but that's in housing
6 priority area A. The CLD's have to come within
7 housing priority B and they'd also be generated
8 by separate LLC so combining the two you just
9 can't link housing priority area A and housing
10 priority area B and you have to consider as Mr.
11 Millstein said each limited corporation, LLC as a
12 different entity.

13 The Applicant has demonstrated with a
14 detailed scenario that standard stick built
15 construction and a market rate lease, that at
16 that the 34 per square foot cost of the CLD's
17 would actually tip the return that the Applicant
18 would have on the project from 16.5 percent
19 without CLD's down to about 1.8 percent return on
20 investment and 1.8 percent return is typically
21 regarded as too low to justify proceeding with
22 the project. It's actually even below what; in

1 some instances the Supreme Court has constituted
2 it as a taking if you get down to that low. OP's
3 reached its conclusion to support the requested
4 housing relief though only after a protracted
5 consideration. We're committed to increasing
6 downtown housing; we know that it's vital to the
7 health of the city's central area and to the
8 success of the new retail that's going to come in
9 with development such as City Center. Were it
10 practical to build it OP would prefer a larger
11 building on the site that would meet the
12 Chinatown subarea retail objectives and the DD
13 housing priority area B, housing requirements.

14 However for this particular location the
15 Applicant has demonstrated that it simply isn't
16 practical to build such a building. In this
17 particular location across from the Verizon
18 Center and one block from Gallery Place Metro the
19 presence of at least the two story, three story
20 restaurant that the Applicant is proposing would
21 pose no substantial harm to the public good and
22 would be preferable to the continuation to the

1 surface parking lot now on the site, and a
2 service parking lot would likely remain if the
3 requested relief were denied. Testament to this
4 no substantial harm to the public good is found
5 in the letters of support the Applicant mentioned
6 today and the ANC's letter of support.

7 Granting the requested relief from 1706.4
8 would not have a substantial negative impact on
9 the intent of the Zoning Regulations but only
10 because of the sites exceptionally small size.
11 If the Applicant were proposing construction on a
12 larger site or proposing a project of a size more
13 closely aligned with a level of FAR envisioned by
14 the housing requirements and that larger building
15 were practical, OP would be very unlikely to
16 support relief. However the site is
17 exceptionally small and does pose practical
18 difficulties for the construction a half an FAR
19 of ground floor retail plus 4.5 FAR of housing.
20 Granting the requested relief would enable the
21 site to put into a productive use. When you
22 measured this against the likelihood of the sites

1 continued under utilization as a parking lot if
2 the relief were not granted, granting the
3 requested relief would not pose a substantial
4 harm to the DD Zoning Regulations and would
5 actually further a basic objective of the
6 Chinatown sub-district which is to expand retail
7 opportunities. Based on all of this OP
8 recommends all of the requested relief. That
9 concludes our testimony but of course I'm
10 available for questions.

11 CHAIRPERSON SORG: Thank you for your
12 comments. Do Board Members have questions for
13 the Office of Planning? Seeing none does the
14 Applicant have questions for the Office of
15 Planning?

16 MS. BROWN: No we do not thank you.

17 CHAIRPERSON SORG: Okay then we'll move
18 onto see if there's any individuals in support or
19 opposition starting with support for the
20 application who wish to come forward and testify?
21 Seeing none I will note for the record two
22 submissions relevant one from the Downtown

1 Neighborhood Association which we received today
2 in support of this application as well as from
3 the adjacent neighbor Myrine Condominium the
4 adjacent neighbor. Any individuals in opposition
5 to this application who wish to testify? Seeing
6 none, we'll move on to ANC 6-C, is there a
7 representative from ANC 6-C in the audience?
8 Seeing no one, our records are "Exhibit No. 23"
9 letter from ANC 6-C in which the commissioners
10 voted unanimously to support the project and a
11 letter that meets our requirements for great
12 weight. We can go ahead and hear any closing
13 statements that you might have.

14 MS. BROWN: Thank you, based on the
15 evidence of record and the materials and the
16 testimony that you've heard today we believe that
17 we've fully demonstrated that we have met the
18 burden for variance relief from rear yard, the
19 parking and the residential requirement of the
20 Zoning Regulations and we therefore ask for your
21 approval and if appropriate we would request a
22 bench decision and summary order today. Thank

1 you.

2 CHAIRPERSON SORG: Thank you very much
3 before we go into any deliberations do any Board
4 Members have any questions for the Applicant? No
5 okay. Then I will close the hearing and I think
6 we can go into deliberations and I can start us
7 off.

8 As I just mentioned first of all that
9 we've seen neighborhood individual support as
10 well as from the ANC for the variances requested
11 here. I think with regard to the requests for
12 rear yard and off street parking under 774.1 and
13 2101.1 I think that OP really did a good job in
14 their report in laying out the reasoning behind
15 being supportive of those requests so I'll just
16 incorporate that for the record from our "Exhibit
17 No. 27". As OP also noted and I think as
18 evidenced by the questions that we asked today
19 the thing that really for me was to consider was
20 the residential requirement as the sort of
21 heftiest kind of relief that was being requested.
22 To me it was a question was why in 2009, this

1 variance was not requested in the previous order
2 that was related to this property but to me I
3 think that was answered satisfactorily. With the
4 development of the existing building and with the
5 Top Chef Restaurant which I'm excited to go to
6 and you know the primarily with the plan for the
7 use of the CLD's off site on another property
8 which the Applicant was in contract on or
9 planning to buy having fallen through. I think
10 based on the testimony from the developer and I
11 think what the Performa examples about the
12 difficulty of doing CLD's off site and their cost
13 at I guess 35 dollars per CLD makes sense to me
14 as a difficulty.

15 In addition to the financial questions
16 which I think have become fairly clear to me as
17 contributing to an exceptional situation and
18 related practical difficulty I think also that
19 the requirement for both the commercial on the
20 ground floor and the residential above and
21 accommodating entry and exit and a core and so
22 forth in a five story building there would

1 compromise to an extent the restaurant and it's
2 feasibility on the site.

3 I think I'll also just note in terms of
4 the first prong of the variance test I think its
5 notable as OP and as the Applicant mentioned the
6 Zoning that this is a very small lot to have this
7 hefty commercial zoning in the DD/C-2-C not
8 making an exception as well as to me as we heard
9 in testimony is the only lot that is this small
10 that is unimproved in the area. So that being
11 said I could be supportive of the variance relief
12 requested in this application. I will open up
13 for deliberations from other Board Members.

14 MR. MAY: Believe it or not I have nothing
15 to say.

16 CHAIRPERSON SORG: Nothing, alright,
17 seining none I will submit a motion to approve
18 Application No. 18219 of Jemal's Bartley, LLC,
19 pursuant to 11 DCMR 3103.2, variance from the
20 rear yard requirements under Section 774,
21 variance from the off street parking requirements
22 under (subsection 2101.1), variance from

1 residential floor area requirements under
2 (subsection 1706.4), to allow construction of
3 commercial building at premises 705 6th Street,
4 N.W. A motion has been made is there a seconded?

5 MR. JORDAN: Second.

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

8 CHORUS: Aye.

9 CHAIRPERSON SORG: All those opposed?
10 Mr. Moy can you please read back the vote?

11 MR. MOY: Yes Staff would record the vote
12 as 4 to 0 to 1 this on the motion of Chairperson
13 Sorg to approve the application per the variance
14 relief as cited. Seconded the motion is Mr.
15 Jordan and in support of the motion Mr. Hinkle
16 and Mr. May. No other Board Members
17 participating so again the final vote is 4 to 0
18 to 1 to approve.

19 MS. GLAZER: Excuse me Madam Chair did
20 the Board want to consider the condition
21 suggested by DDOT regarding the loading?

22 CHAIRPERSON SORG: I think the loading is

1 shown in the plans to be from the rear and if I'm
2 not mistaken and if we're voting on this set of
3 plan a deviation from the placement of the
4 loading in the rear of the building I think would
5 constitute more than a minor modification but I'm
6 happy to amend.

7 MS. GLAZER: I thought I heard the
8 testimony by OP that DDOT was suggesting it be a
9 condition.

10 CHAIRPERSON SORG: I don't think DDOT was
11 suggesting that it be a condition and you can
12 correct me if I'm wrong. I think that they were
13 saying that it should be located in the rear.

14 MR. MAY: I think it was a condition but
15 I think it was agreed to. The Applicant agreed
16 that it was agreed to and is reflected in the
17 plans.

18 CHAIRPERSON SORG: Right and therefore
19 was part of the order. So we're good I think.
20 Thank you very much.

21 MR. MILLSTEIN: Thank you all very much.

22 CHAIRPERSON SORG: I think I called for a

1 summary order but if I forgot to I'll do that
2 now.

3 MR. MOY: Okay great, thank you.

4 CHAIRPERSON SORG: Alright that concludes
5 this afternoon's public hearing. Thank you.

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