

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC MEETING
OF THE BOARD OF ZONING ADJUSTMENT

9:54 a.m. through 4:55 p.m.
Tuesday, September 13, 2011

441 4th Street, N.W.
Jerrily R. Kress Memorial Hearing Chamber
Second Floor, Suite 220-S
Washington, D.C. 2000

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LLOYD JORDAN, Mayoral Appointee
MICHAEL G. TURNBULL, Zoning Commission
PETER G. MAY, National Park Service Designee
JEFFREY L. HINKLE, National Capital Planning
Commission Designee

Office of Planning:

MAXINE BROWN-ROBERTS
KAREN THOMAS
STEPHEN MORDFIN

Also Present:

CLIFFORD W. MOY, Secretary to the Board
MARY NAGLEHOUT, ESQ.,
Office of Attorney General
SHERRY GLAZER, ESQ.,
Office of Attorney General
JOHN NYARKU, Zoning Commission
ANTHONY HOOD, Chairman, Zoning Commission

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

2 CHAIRPERSON MOLDENHAUER: This meeting
3 will please come to order. Good morning, ladies
4 and gentlemen. We are located in the Jerrily
5 Kress Memorial Hearing Room at 441 4th Street,
6 N.W. This is September 13th, 2011, the Public
7 Meeting of the Board of Zoning Adjustment for the
8 District of Columbia.

9 My name is Meridith Moldenhauer,
10 Chairperson. Joining me today to my left is the
11 Vice-Chair, Nicole Sorg. To her left is Peter
12 May, representing the Zoning Commission and the
13 National Park and Planning -- Park Service. Back
14 at the beginning of September after an August
15 recess.

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

19 We do not take any public testimony at
20 our meetings unless the Board asks someone to
21 come forward.

22 Please be advised this proceeding is

1 being recorded by a court reporter and is also
2 being webcast live. Accordingly, I must ask you
3 to refrain from any disturbing noise or actions
4 in the hearing room. Please turn off all cell
5 phones or beepers at this time.

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

8 MR. MOY: The staff is not aware of any
9 preliminary matters for the decision cases for
10 the morning, Madam Chair.

11 CHAIRPERSON MOLDENHAUER: Thank you, Mr.
12 Moy. Then we can get started with our first
13 decision of the morning.

14 **Application No. 18242**

15 MR. MOY: Yes. Good morning, Madam
16 Chairperson and members of the Board. Welcome
17 back --

18 CHAIRPERSON MOLDENHAUER: Thank you.

19 MR. MOY: -- from the August recess.

20 The first case for a decision is
21 Application No. 18242. This is the Embassy of
22 the Republic of Serbia, pursuant to 11 DCMR 1001

1 and 22 USC Section 4306 of the Foreign Missions
2 Act to allow the location of a chancery use in
3 the D/R-3 District at premises 2221 R Street,
4 N.W., property located in Square 2516, Lots 4 and
5 29.

6 As the Board will recall at its Public
7 Hearing on July 26, 2011, the Board completed
8 public testimony, closed the record, and
9 scheduled its decision on September 13th.

10 The Board did request supplemental
11 information to complete the record, supplement
12 the record from all the parties by September 2nd,
13 2011, from the Applicant, the U.S. Department of
14 State, and the Board also allowed further
15 testimony in writing from the opposition, which
16 is the Sheraton Kalorama Neighborhood Council.

17 In your case folders, Madam Chair, are
18 the post-hearing documents. The Applicant's
19 filing is identified as Exhibit 49. There is
20 also a filing from the U.S. Department of State
21 identified as Exhibit 50, and there are two
22 post-hearing filings from the Sheraton Kalorama

1 Neighborhood Council represented by Arent --
2 actually Arent Fox representing SKNC, two
3 documents identified as Exhibit 50 and 51.

4 And finally, we do have, I guess I would
5 refer to it as, a "soft preliminary," which there
6 is a filing from ANC-2D dated August 22nd, 2011,
7 identified as Exhibit 48. The Board didn't
8 request any filing from ANC, but my understanding
9 is from reading their letter, the document, the
10 substance of the document clarifies the testimony
11 they had presented at the Public Hearing.

12 Other than that, the Board is to act on
13 the merits of the application that would permit
14 the location of the chancery use, pursuant to the
15 six criteria on the Foreign Missions Act and
16 Section 1001 of the Zoning Regulations.

17 That completes the status briefing, Madam
18 Chair.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much, Mr. Moy.

21 And just to kind of address, I guess,
22 maybe two small preliminary issues, one would be

1 the ANC letter, which is our Exhibit 48, and
2 obviously, we will accept that into the record to
3 provide some clarity upon their testimony and
4 position.

5 In addition to that, just to note for the
6 record, our Exhibit No. 50, which was the
7 supplemental submission by the Department of
8 State, on the second page this letter also
9 requests that we waive our rules in order for
10 this additional filing, which we did not
11 specifically ask for, to be admitted. I just
12 want to make sure that both of those are admitted
13 to the record as a preliminary matter.

14 That being said, now we get into the
15 merits of the case, and we are looking at this
16 case under the Foreign Missions Act standard.
17 Just to jump in, what we have is we have a case
18 which is not specifically in the (D) overlay.
19 It's actually in a residential zone, and so the
20 question is I think we have to look at this under
21 a two-prong analysis; first, whether or not the
22 appropriateness of the area is adequate for a

1 chancery; and then, two, whether this application
2 meets the six criteria of the Foreign Missions
3 Act for this specific case.

4 In my opinion, just have to go through
5 this, I think that if we get past the first
6 prong, I do feel that this case does meet all six
7 criteria under the Foreign Missions Act. So,
8 based on that, I am going to focus my discussion
9 on that first prong in regards to whether the
10 area, there is an appropriateness of the area,
11 and then go from there.

12 I think the major question here is
13 looking at a city, trying to make sure that there
14 is a healthy balance between the uses in an
15 active and diverse city and trying to make sure
16 that there is that balance, especially when
17 you're looking at combing or adding a chancery
18 use to a residential zone.

19 And the standard that we've had from
20 other cases that the BZA has decided in regards
21 to whether or not the area is considered
22 appropriate is to look at the --

1 Actually, the one thing I want to make
2 sure I indicated is that the Applicant here
3 typically under the six prongs of the FMA case
4 does not have the burden. It's a presumption
5 that the application should be approved. Under
6 this first prong, the Applicant actually does
7 have the burden, in my view, to prove that the
8 area is appropriate, and I think that in this
9 case, both the Applicant and the Department of
10 State have identified the fact that this is --
11 while it is residential area, they've actually
12 gone through the lot and the neighboring
13 properties and identified the different uses on
14 that block, showing, I guess, the high percentage
15 of non-residential specific uses as a primary
16 residence in this location.

17 That being said, I do have some
18 reservations in upholding the standard where the
19 more you create a non-residential use, the more
20 acceptable it is then to put a chancery. I think
21 that to some degree, there is potentially a level
22 where someone would say the street that broke the

1 camel's back, an area where maybe it has become
2 too non-residential and we should not allow any
3 more chanceries in; however, I think that this is
4 not the case here. But I do think that that is a
5 discussion that may need to be had by the Zoning
6 Commission at another date or during the Zoning
7 rewrite in regards to trying to identify or
8 provide more of a standard for how to determine
9 whether an area is appropriate for a chancer.

10 That being said, I think here, one, we do
11 have the authority to make a determination seeing
12 that the Foreign Missions Act under 4036(b)(2)(B)
13 does state that we can determine a chancery on
14 any other area on the basis of the existing use
15 and as indicated earlier based on other BZA cases
16 that have made the same determination in regards
17 to the BZA's authority and jurisdiction to
18 evaluate these properties in a two-prong manner.

19 That being said, I also give the
20 Applicant the credit for working and trying to
21 provide some response, I think, to a lot of our
22 questions, especially concerning the rear portion

1 of the property and reducing the number of
2 parking from seven to four in the rear, actually
3 utilizing the two garage spaces that initially
4 they were not planning on utilizing. They were
5 simply planning on having it as an ingress and
6 egress in and out for the initial garage, but now
7 in their revised application, they actually show
8 using that garage space for two spaces.

9 I would be supportive of placing a car in
10 the front location. Obviously, right now a car
11 -- a parking place cannot be located between the
12 building line and a lot line abutting a street to
13 satisfy a parking requirement, but I would be
14 willing to review that and approve the
15 requirement for locating that parking space in a
16 public space and then also locating an additional
17 parking space in the front causeway to try to
18 alleviate the use and the severity of potential
19 non-residential use in the rear portion of the
20 property.

21 And I do think that the way that they
22 changed the trees and the way that they also

1 provided for some screening on the site lots next
2 to the rear building, which is not being used
3 obviously as a carport, I think that that also,
4 in my view, addressed some of the concerns that I
5 would have had in potentially approving this
6 application.

7 That being said, I will open up the floor
8 to additional deliberation.

9 MR. MAY: Madam Chair, I just had a
10 question for you about what you had said about
11 supporting having a parking space in the yard, in
12 the front yard. Which space are you talking
13 about? The one that is marked No. 5 on their
14 most recent submission? That's on the R Street
15 front there?

16 CHAIRPERSON MOLDENHAUER: Yes, the one
17 that's marked No. 5.

18 MR. MAY: Okay. Okay, thanks. That
19 threw me for a loop for a second, so I want to
20 just take a look at the drawings again from the
21 original.

22 CHAIRPERSON MOLDENHAUER: All right.

1 MR. MAY: Thanks.

2 [Pause.]

3 MR. MAY: Madam Chair, I guess I would
4 like to say that the Applicant's additional
5 submission, which modified the whole parking
6 strategy and reduced the number of parking spaces
7 in the rear -- or along Decatur Place, the part
8 of the property that fronts Decatur Place,
9 reducing that from seven spaces in total to, I
10 guess, four within the yard, I think is a very,
11 very significant improvement.

12 The previous proposal really was kind of
13 disturbing and jarring and a real change to the
14 context, but I think that what's being done there
15 now is actually a relatively minor change from
16 the existing circumstance, and most of what would
17 be visible to the neighbors would really be I
18 think a minimal change.

19 I'm not nearly as troubled now as I was
20 when we saw the original proposal, and I think
21 there's a lot of discuss whether this use is
22 appropriate in just the R-3 without the

1 Diplomatic overlay.

2 The majority of the use that will
3 actually occur in and out of Decatur Place, I
4 think is going to be focused on the residential
5 use, and then there will be vehicles coming and
6 going. It's not a huge number of vehicles. It's
7 not a major parking garage or something like
8 that.

9 The chancery functions, I would imagine
10 will occur primarily under the R Street side.

11 So I don't really buy that the use is
12 that dramatically different, just looking at it
13 from a purely practical point of view. Like I
14 said, the original proposal was troubling,
15 because it was a real change from an out-building
16 kind of use and yard to a big parking lot.

17 Now, the total area of the parking lot
18 isn't hugely different, but the way it's been
19 landscaped and the way it's been laid out and the
20 reduction of cars, I think adds up to something
21 that's fairly sympathetic to the context, and I
22 think it's kind of a minimal variation from

1 what's there right now.

2 So I'm really not that troubled by it at
3 this point, and the rest of the project, I think
4 it's pretty straightforward that it meets the
5 tests.

6 MS. SORG: Thank you, Madam Chair.

7 I would just chime in and say that I
8 agree with both your comments and Mr. May's, your
9 comments regarding -- analysis regarding the
10 FM-BZA's jurisdiction as well as your focus on
11 the appropriateness of the area.

12 For me, the use that's being proposed,
13 for me, I think looking at the uses that are
14 already present in the square, which, of course,
15 you know, includes both parts of the (D) overlay
16 as well as the R-3, I think was instructive for
17 me in thinking about the use and its
18 appropriateness.

19 And I agree with Mr. May in thinking
20 about that the chancery use itself will, in fact,
21 by on the R Street side in the overlay, and that
22 the residential use as well as the accessory

1 parking would be in the Decatur place side.

2 I agree also that there have been
3 significant improvements in the plan. Almost 50
4 percent of the parking in the yard has been
5 reduced.

6 In addition to that, what was important
7 to me is the improvements in the landscaping
8 itself, because as Mr. May mentioned, the area of
9 the parking area itself is not actually
10 significantly used, but I think that its planning
11 is certainly significantly improved.

12 Therefore, I think I can also be
13 supportive and in agreement with your leanings on
14 the case. Thank you.

15 CHAIRPERSON MOLDENHAUER: Yes, thank you
16 both. I think that you both did point out some
17 very important aspects. The landscaping is very
18 important.

19 We did hear from some of the neighbors
20 talking about their view from the deck and I
21 think it just identifies some additional things.
22 On this G-1 exhibit, you are seeing now new

1 property as well.

2 Motion has been made. Is there a second?

3 MR. MAY: Second.

4 CHAIRPERSON MOLDENHAUER: The motion has
5 been made and seconded. All those in favor, say
6 "aye."

7 [Chorus of ayes.]

8 MR. MOY: The staff would record the vote
9 as 3 to 0 to 2, this on the motion of Chairperson
10 Moldenhauer to not disapprove the application per
11 the relief as cited.

12 Seconded motion, Mr. Peter May. Also in
13 support of the motion, Ms. Sorg. And we have two
14 Board members not participating on this
15 application.

16 So, again, the vote is 3 to 0 to 2 to not
17 disapprove.

18 CHAIRPERSON MOLDENHAUER: We will wait a
19 few minutes for our other colleagues to joint us,
20 and the we'll start the next case.

21 [Pause.]

22 MR. MOY: Madam Chair, before I start

1 with the next application, I just want to add on
2 the previous case, just for the record, that the
3 approval was also to reflect the revised drawings
4 that are on Sheets G-1 and G-1.2.

5 CHAIRPERSON MOLDENHAUER: Absolutely.
6 Thank you. I appreciate that.

7 MR. MOY: So, with that, welcome to the
8 rest of the Board members.

9 **Application No. 18264**

10 MR. MOY: I believe the next item up is
11 the Expedited Review Calendar, and on the
12 calendar this morning, there is one application,
13 and that is Application No. 18264 of Elias
14 Wolfberg, pursuant to 11 DCMR 3104.1 for a
15 special exception to allow an addition to an
16 existing dwelling for use as a flat, two-family
17 dwelling, under Section 223, not meeting the lot
18 occupancy requirements under Section 403 and
19 nonconforming structure provisions under
20 Subsection 2001.3 requirements in the R-4
21 District at premises 3601 13th Street, N.W.,
22 property located in Square 2829, Lot 58, which is

1 the corrected lot number as opposed to the lot
2 number that was submitted with the application.

3 For the record, the Expedited Review
4 Calendar items are zoning applications where the
5 Applicant waives the right to a public hearing,
6 and applications are subject to either Board
7 approval or removal from the calendar for
8 rescheduling to a future date, pursuant to
9 Section 3118.

10 There are two filings in the record in
11 your case folders, Madam Chair, from the Office
12 of Planning -- an OP report and an ANC report,
13 the OP report is identified as Exhibit 26 and the
14 ANC report identified as Exhibit 25. There are
15 no other filings in the record.

16 The Board is to act on the calendar
17 consisting of Application No. 18264, pursuant to
18 the requirements under Section 3118.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much, Mr. Moy.

21 We have before us an application for 223
22 relief for lot occupancy from a 60-percent to

1 65-percent relief, to add a third floor addition
2 to a building. We have OP's approval on this
3 application. We also have the ANC's approval,
4 which is our Exhibit 26, which indicates that the
5 ANC-1A recommended BZA grant the relief sought in
6 the application.

7 In addition to that, we have letters of
8 recommendation from the neighboring property
9 owners, Richard Klugman, Exhibit No. 24,
10 indicating that he has reviewed the property, and
11 that it would be an improvement from the existing
12 state of disrepair, and that he also recommends
13 approval.

14 The Applicant has indicated this property
15 has been vacant for many years, and that they are
16 looking at renovating it and putting on a third
17 floor to the property, which would obviously need
18 this review.

19 Sometimes I'm not as keen on some of
20 these large third floor additions, especially
21 with the historical roof structure that's
22 provided on a building like this, but seeing that

1 it is a corner lot, I think that it can probably
2 handle the additional height in a more aesthetic
3 manner, especially not being potentially in the
4 middle of the lot, where all of a sudden you're
5 seeing something sticking up.

6 And I think the additional 5-percent lot
7 occupancy is a very minimal relief that's being
8 sought, and I think that with the limited to
9 rather nominal impacts on light and air by the
10 neighbors and the letters and recommendation for
11 the neighbors and then no indication there is
12 going to be any effect on privacy or use, I would
13 be willing to move forward and approve this
14 application.

15 That being said, I'll open up the floor
16 to my other esteemed colleagues and see what they
17 think.

18 MR. TURNBULL: Madam Chair, I really
19 don't have much of an issue with this. My only
20 concern is from an impact on the adjacent
21 structure.

22 We have this Exhibit No. 8, photos, and

1 I'm just concerned that now this is going to be
2 up another floor. You have this turret on the
3 corner, and I'm just wondering since there is a
4 party wall here, normally -- I'm not sure how
5 this actually meets, and I guess the owner is
6 okay with building. But I'm just concerned from
7 a construction impact if they need to address how
8 they are going to separate and allow and not
9 impact the existing -- I'm just concerned about
10 construction from the standpoint of once the
11 build up a third floor, there is probably a
12 water/rain issue, and I'm just wondering if that
13 needs to be addressed by the owner of the
14 building that wants to be renovated.

15 Again, it's not quite a zoning issue, but
16 it's an impact issue of building the third floor.

17 That's my only concern.

18 MS. SORG: I think, Mr. Turnbull, I can
19 respond.

20 In my reading of the application, it
21 looks like the neighbor had come and received
22 relief from us in the past couple of years, and

1 they themselves are building a third floor. So
2 it sounds --

3 MR. TURNBULL: Oh, this? Oh.

4 MS. SORG: Mm-hmm.

5 MR. TURNBULL: Oh.

6 MS. SORG: So it sounds like the question
7 that you had may be more based on that, the
8 construction that's happening. It sounds like
9 currently --

10 MR. TURNBULL: It just moves on down the
11 line for the next --

12 MS. SORG: Right, I guess so.

13 [Laughter.]

14 MR. TURNBULL: Because that's the same.

15 MS. SORG: True, of course.

16 MR. TURNBULL: I mean, it's similar all
17 the way down.

18 Okay, thank you.

19 MS. SORG: And I guess as far as my
20 comments on the application, I agree, Madam
21 Chair, with your comments, and I would just note
22 from the Applicant's statement that this is a

1 property that's been, according to them, vacant
2 for at least 10 years and was previously used as
3 a rooming house. So I think that putting it to
4 good use, especially as the owner will also be a
5 resident, is a positive thing for the
6 neighborhood.

7 Thank you.

8 CHAIRPERSON MOLDENHAUER: It appears
9 there are no other comments, and I think that
10 based on that, we are at a point where I can
11 hopefully present a motion. And I'll present a
12 motion to approve Application No. 18264 for 223
13 relief at location No. 3601 13th Street to
14 provide special exception to allow an addition to
15 an existing dwelling for use as a flat under
16 Section 223, not meeting the lot occupancy under
17 403, and non-conforming structure under Section
18 2001.3.

19 That being said, a motion has been made.

20 Is there a second?

21 MR. HINKLE: Second.

22 CHAIRPERSON MOLDENHAUER: Motion has been

1 made and seconded. All those in favor, say
2 "aye."

3 [Chorus of ayes.]

4 MR. MOY: The staff would record the vote
5 as 5 to 0 to 0. This motion of Chairperson
6 Moldenhauer to approve the Application No. 18264
7 under the 223 relief, pursuant to being on the
8 Expedited Calendar under 3118, second the motion,
9 Mr. Hinkle, also in support of the motion, Mr.
10 Turnbull, Mr. Lloyd Jordan, and Ms. Sorg. So,
11 again, the vote is 5 to 0 to 0.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much, Mr. Moy.

14 And seeing that there's no opposition and
15 this is an Expedited Calendar, we would like to
16 waive our requirements and have a Summary Order
17 be issued.

18 MR. MOY: Thank you, Madam Chair.

19 CHAIRPERSON MOLDENHAUER: Thank you.

20 **Application No. 18240**

21 MR. MOY: The next item for board action
22 is Application No. 18240. This is of the

1 District of Columbia Public Library, pursuant to
2 11 DCMR 3103.2. This is for a variance from the
3 rear yard requirements under Section 404 to allow
4 an addition to the existing Mount Pleasant
5 Library in the R-5-D District at premises 3160
6 16th Street, N.W., property located in Square
7 2595, Lot 830.

8 On July 19th, 2011, the Board completed
9 public testimony, closed the record, and
10 scheduled its decision on December 13th. The
11 Board requested additional information to
12 supplement the record by August the 8th, 2011, as
13 well as providing for responses by September the
14 8th, 2011.

15 The post-hearing documents are filed in
16 your case folders, Madam Chair. The Applicant's
17 filing is identified as Exhibit 53. There are
18 two response documents from ANC-1D identified as
19 Exhibits 55 and 56 in your case folders.

20 The Board must act on the merits of the
21 variance relief on the rear yard requirements
22 that would allow the addition to an existing

1 Mount Pleasant Library.

2 That completes the status briefing, Madam
3 Chair.

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

6 Okay. This is one of these cases that we
7 have a lot of material. We had a very extensive
8 hearing and discussion on the case, so I'm just
9 going to walk through. And if any Board members
10 want to jump in and have, I think, a dialogue or
11 a discussion at any point in time during the
12 deliberation, I would just suggest that you go
13 ahead and that we do that, rather than simply
14 having it where I go through a whole discussion
15 and you try to respond to all the different
16 aspects of the case. So I'm just trying to make
17 sure that we -- if you have a point to something
18 I made, let's just jump in and have a real kind
19 of back-and-forth dialogue on that.

20 This is a request for a rear yard
21 variance relief, and this is a case in which was
22 before us for appeal, and the appeal was granted.

1 Thus the Applicant is now taking the same
2 application and presenting a request for the rear
3 yard relief to go from 15 feet all the way to
4 zero, where they would be able to build all the
5 way back to the end of the property line.

6 That being said, under a variance relief,
7 there's a three-prong test. The first prong is
8 whether the property exhibits some specific
9 uniqueness, and here, I think that we do have a
10 property that is uniquely shaped. We do have a
11 property -- in some cases, we do take appeal or
12 histories of the property to consider potentially
13 a factor of uniqueness. I don't really know if
14 that would be the case here since obviously that
15 was already an issue to start with, and I don't
16 know if I would really qualify that in this case
17 as being something that would be a factor for its
18 uniqueness.

19 But we also have to look at this project
20 in regards to Monaco and the first prong, as
21 Monaco only really applies to the first prong in
22 regards to a public service facility, and the

1 fact that the BZA should consider the needs of
2 the organization as a possible other
3 extraordinary or exception situation or condition
4 of the particular piece of property. So here, we
5 don't even have to look just at the fact that
6 there is potentially a unique lot shape or the
7 fact that one of the bordering properties would
8 have windows at risk, but we can also look at
9 potentially the needs of the organization here,
10 the DCPL.

11 And then we had a lot of discussions back
12 and forth, I think, during the hearing and in the
13 submissions about, well, is this something that
14 actually qualifies as an institutional necessity
15 or an institutional need in regards to applying
16 that additional factor for qualifying as an
17 exceptional circumstance. We have to look
18 whether the design it wants to build constitutes
19 an institutional necessity and not merely the
20 most desired of various options and precisely how
21 the needed design features is required by a
22 specific variance sought.

1 fighting.

2 And I find it to be quite shocking
3 personally that you're having something which is
4 such a great resource to the community, yet that
5 resource is not working with the community, that
6 there's rather this constant strife between what
7 the community is trying to obtain and then what
8 the city is trying to give to the community. It
9 seems that there should be the ability for both
10 the community citizens to work with and to obtain
11 a desire for a perfect library for the future,
12 and I understand that, obviously, the intent of
13 the library program is to provide libraries that
14 will be there and will be able to be used for
15 many, many years from now.

16 And I think that that is a commendable
17 task, but I think at the same time, we need to
18 try to figure out how that works well with the
19 community and in this case the question of
20 whether or not this programmatic need is
21 absolutely a necessity or whether it's just a
22 design that is desired by the architect or by the

1 Applicant.

2 We did hear testimony about the
3 requirement or the desire to have a single
4 entrance, and how that was really driving a lot
5 of the need to go to the rear of that property in
6 order to provide ADA compliance, access, and then
7 a single foyer and single entrance. We did ask
8 the DCPL architect about why couldn't you at
9 least pull back some of the building from that
10 property line, especially in my view requesting a
11 100-percent variance in regards to the rear yard,
12 not just simply requesting, okay, instead of 15
13 feet, we want 10, you know, "I can only provide,
14 you know, a 5-foot rear yard." Something to that
15 effect would go into zero.

16 And I think the response was that the
17 need for that lobby really requires that the rest
18 of the structure be pushed into the rear of that
19 side yard rather than to the rear yard.

20 One of my concerns was that both -- and I
21 think both parties have failed to really satisfy
22 an aspect in regards to providing the most they

1 could to the Board. I think that opposition
2 indicated that there was a lot of other options.
3 They presented options of -- what was it? --
4 Scheme G, I think it was, that they argued or
5 presented to us as being an ideal option, but I
6 don't think that they really showed us a way that
7 DCPL could satisfy their programmatic needs as
8 they presented them, kind of taking -- saying,
9 "Well, you know, even if you have all these
10 needs, there's other ways, other designs that you
11 can meet them." And I don't think that the
12 opposition ever really showed that that was
13 really possible.

14 And due to the fact that I have an
15 absence of information in that regard, in regard
16 to them maybe providing an architect or an expert
17 or somebody that could say that they could
18 satisfy a majority of their desires and
19 programmatic and institutional needs that they
20 have identified but by using another layout, by
21 using another design, "Look, here it is" -- I
22 can't remember, but we've had numerous other

1 cases, even where we've had small residential
2 developments. And you've had an architect come
3 in and say, "This is obviously very rough, but
4 look, this is what they could have done." I
5 don't see that, and so in that regard, my
6 question is, you know, I don't --

7 And the architect on direct questioning
8 from Board members did indicate that this was
9 really the only way for the lobby to be situated
10 and then to also satisfy those requirements and
11 then not potentially impact those at-risk
12 windows, and I think that that is a factor that
13 we should consider in that regard, so that's
14 where --

15 MR. TURNBULL: But did the library ever
16 really explain to the community at the time all
17 of those issues and explain to the adjacent
18 neighbors the issues that were totally at hand?

19 I mean, normally in a variance case, we
20 normally have support from the neighbors, and
21 they agree that there would be no issues, but I
22 don't think here we've got neighbors that are in

1 support, especially the neighbor -- the neighbor
2 most directly impacted at the rear, I don't think
3 that the library went out and got a letter from
4 him saying, you know, "Are you in support of our
5 concept here?"

6 I think that's one troubling aspect of
7 the variance. You know, homeowners, when we've
8 had, you know, a third-story or second-story or
9 things going back in the yard, we normally get
10 letters in support from neighbors saying, "No, we
11 agree this will not impact us." Here, we don't
12 have that.

13 We have, in fact, a very contentious
14 group of people who are upset by the 100 percent
15 request for a variance, and I'm not sure the
16 library did their due diligence on trying to
17 involve the community as much. That's just one
18 of my concerns.

19 MR. JORDAN: I would disagree with that
20 aspect of what the library attempted to do in
21 this. I don't know if we're going to ever have a
22 complete agreement in the neighborhood on this.

1 I think if you look at the record and
2 indicate some of the earlier hearings that were
3 held, even with Councilmember Jim Graham, this
4 thing has been kind of hashed through the
5 community for a long time, and I think we might
6 be at the point of not in my back yard. But then
7 also, there is a Government need to provide the
8 library services, and I think it was directed by
9 Council, it's directed by a series of mayors
10 before, that not only required programming but
11 that particular aspect, and that the City
12 throughout the city have equal-sized libraries.

13 So I think it becomes at some point where
14 you've taken all the comments, but Government had
15 to make some steps to move in the direction
16 that's necessary for the good of the whole and
17 not just those people who appeared here.

18 MR. TURNBULL: I concur with some of what
19 you said.

20 Here's my concern, then. Is the
21 Government going to make a concession to the
22 property owner in the rear if they want to put

1 bay windows or balconies or some extension on
2 their building? We have 20 feet separating the
3 two structures now, but the 20 feet is the rear
4 yard of the property owner behind. So it's
5 almost like first come, first served. I've got
6 mine in now. I've taken advantage of getting a
7 variance for 100 percent. Can the property owner
8 in the next lot, the rear lot, go for a variance
9 for any changes to their building at the rear?

10 I think if I was sitting on the case, I'd
11 probably say no, because he's going to be getting
12 too close, especially if he wants 10 feet or 8
13 feet. I'd be saying, "No, we're getting a little
14 bit too close to the other building, then."

15 I mean, normally you need 15. I believe
16 it's 15 feet is the minimum, so a 5-foot addition
17 or change for balcony or bay window is the only
18 thing you could do on the rear building.

19 My concern is that it's almost like first
20 come, first served. The government got in, we
21 did it, and now the other property owner is
22 stuck. Your 20 feet is our safety, is our

1 separation. If there was an alley here which was
2 10, 15 feet, I don't think it's as contentious,
3 but here, you know, OP just said, well, there's a
4 20-foot separation. Well, but the 20-foot
5 separation is another property owner's yard.

6 I think that just sticks in my craw. I
7 just think that the library, knowing that, could
8 have made a more diligent effort in trying to
9 talk to people and saying -- and just getting
10 buy-in on that. That's my own concern.

11 I understand the needs, the Government
12 needs, and what they're trying to do. I'm just
13 upset by the process that the library took and
14 not getting totally active and getting buy-in on
15 something like this. That's all.

16 CHAIRPERSON MOLDENHAUER: I do think that
17 they did reach out, and we do have a lot of
18 evidence in the record talking about multiple
19 meetings. And I think that Mr. Jordan does make
20 a point in regards to the fact that there
21 probably is just a group of people that are very,
22 very much for this. And you probably have,

1 obviously, the more obvious individuals that are
2 vocal that are very much against it in the
3 community.

4 But I think my main concern about the
5 variance is we see cases where someone is asking
6 for 100-percent lot occupancy, and we say, "Wow!
7 That's just way too much of a variance." You're
8 asking we have to compare. One of the factors
9 that we do is we compare the requested relief to
10 then the way in which the Applicant satisfies the
11 standards, and I feel like if you look at this
12 case, you're talking about a 100-percent rear
13 yard relief.

14 And in regards to your comment, Mr.
15 Turnbull, the Applicant never said, well, let's
16 see if we can't maybe give them a 2-foot rear
17 yard, or let's see if we can't pull it back a
18 little bit and make some minor concession and
19 give some space. We see a lot of cases where
20 someone's like, "Okay. Well, I want 100-percent
21 lot occupancy." Okay. We'll pull it back, and
22 we'll only ask for 87. Something in that regard,

1 I don't see anything in this case where that was
2 done, and that's maybe going more towards your
3 point. I don't know if that pushes me over the
4 edge to potentially not approving the
5 application, but I do see that as a sticking
6 point.

7 MR. HINKLE: Madam Chair, I just wanted
8 to back up a little bit and say I agree with the
9 discussion, that I think there's been a lack of,
10 as Mr. Turnbull said, due diligence on the
11 library's part in terms of working with the
12 neighbors.

13 And having myself worked in, you know,
14 the realm of public planning for many years now
15 and having experienced many hearings and public
16 meetings, I was a little bit shocked as well to
17 see that we had, from my count, eight people come
18 and testify against this project, but it's really
19 somewhat -- if you consider it a positive project
20 for the neighborhood -- and there was nobody that
21 came in, in support of that.

22 I think we had one letter in our record

1 in support, but there's so many documents here,
2 I've lost count.

3 But in terms of the setback itself, I
4 want to remind the Board that within this zone,
5 they could go 100 percent on the side yards, and
6 I think there was a compromise made in this
7 design in that they didn't go that 100 percent on
8 the side yards. And there were a couple reasons
9 for that. There's the at-risk windows on the
10 south side, and there were some comments made
11 from CFA in terms of working on the northwest
12 side. So they did choose to go on the back side,
13 and I think to accommodate the program, they had
14 to stretch it to the rear yard lot line.

15 And, you know, this isn't perfect. I
16 don't think it's perfect, but I think it's a
17 reasonable compromise in terms of how they design
18 the project.

19 MR. JORDAN: If I could again about the
20 community effort, I think the community effort
21 was extensive.

22 My concern regarding the conversation

1 about the rear, the neighbor and to the rear,
2 that's not before us. We don't know what they
3 may do in the future, if ever they make a request
4 for additional -- for a variance. We can't sit
5 here and do that.

6 The community effort is not part of the
7 standard for our review; however, we do require
8 we -- least we want the community to participate
9 in this. But I'm kind of concerned about our
10 dialogue. Yes, we want community, a consensus
11 with the community by anybody who's coming in
12 looking for a variance. On something like this,
13 though, it sounds like we're talking about, well,
14 there should have been a vote by the -- the
15 public library should have asked for a vote of
16 the neighborhood or something, because that's
17 just what I'm picking up in our dialogue, and I'm
18 concerned about that.

19 And we didn't --

20 MR. TURNBULL: I never -- just to be
21 clear for the record, I never --

22 MR. JORDAN: No, no. You didn't.

1 MR. TURNBULL: -- mentioned any -- I
2 didn't say anything like that.

3 MR. JORDAN: Oh, no. No, no, no, no. I
4 said I'm just kind of getting that flair.

5 But again, because of basically what the
6 precedential law said and what we know in regards
7 to Government, sometimes Government has to do
8 some things that everybody is not going to be in
9 agreement with. It's just what you have to do,
10 and then those consequences are picked up on the
11 back end by our voters that deal with that issue,
12 but I don't think those things are before us
13 today.

14 CHAIRPERSON MOLDENHAUER: Well, let's get
15 back to maybe some of the prongs of the test, and
16 I think in regards to the uniqueness, we ought to
17 have a dialogue.

18 I think one of the aspects that might be
19 talking about in regards to the neighboring
20 properties is more the third prong in regards to
21 is there -- is granting this relief without a
22 substantial detriment to the public good, and I

1 think the question obviously is do we have
2 evidence in our record that there is a potential
3 detriment to the public good.

4 Obviously, we have something from Office
5 of Planning indicating that Office of Planning is
6 in support of the application. We have in
7 regards to their analysis, I believe that this
8 would not impact the intent of the regulations,
9 and that they also -- I know the question of how
10 much can we review the issue of fire safety and
11 fire access came up in our hearing, and I think
12 what we indicated was that we took in a lot of
13 that testimony, but we were going to weigh it as
14 was appropriate when we came to deliberation.

15 And I think that there was some testimony
16 from the opposition in regards to the fact that
17 they wouldn't be able to get a truck in or they
18 wouldn't be able to get a ladder up because of
19 this expansion of the property.

20 I think that in those regards, in my
21 view, while, yes, it may create some additional
22 challenges for the Police Department, we do have

1 OP saying that the Fire Chief indicated that it
2 would be adequate for fire protection, access in
3 the rear, that the building was not required.

4 And we also have the fact that this is a
5 property line. There is no public alley here.
6 There is no access here that was previously even
7 existing. We're not talking about a prior
8 existing access that is now being taken away or
9 was potentially used in the past. Unfortunately,
10 there never was access. The access that was
11 referred to by the opposition would have required
12 the demolition of a retaining wall, and so in
13 that view, I can't create a hypothetical
14 situation, because there never was access to
15 this. It doesn't really change that factor in my
16 mind.

17 And I don't think that the opposition
18 parties really -- the ANC-1D really presented any
19 valid argument in my view in regards to the fact
20 that something previously existed and that
21 there's a new concern here in that regard. While
22 obviously safety and fire safety for any of our

1 citizen residents of the District is very
2 important and obviously any of the fires that
3 have occurred and loss of life is obviously a
4 tragedy, I don't think that, unfortunately, we
5 can evaluate this project in that regard.

6 I do think that we have to rely upon the
7 agencies and the chiefs of those agencies, such
8 as the Fire Marshal and Office of Planning who is
9 representing to us that information to indicate
10 that they have evaluated the plans as they are
11 and that it would be sufficient.

12 That being said, there was testimony in
13 regards to the loss of the public space -- not
14 public space, but the loss of open space in the
15 rear behind the library. I do think that the
16 original historic design of this library is quite
17 beautiful in regards to the shape of the
18 building, the fact that the rear was open, and I
19 do think that Ms. Hargrove in his testimony made
20 some references to that. I think there were also
21 some other individuals who testified in
22 opposition that did make reference to that.

1 And I think that while OP indicates
2 eventually there's on impact or that there's no
3 impact on the regulation, I think the reason for
4 the regulation to have a rear yard is to maintain
5 that open space, and so I think that we should
6 have a potential dialogue or discuss that issue
7 as to whether this case may satisfy the first and
8 second prong, but is there potential -- or where
9 does this case in regards to satisfying the
10 relief for the third prong.

11 MR. TURNBULL: Madam Chair, I would agree
12 with your comments.

13 I think part of the issue is -- at least
14 I never, ever really considered it in any of my
15 deliberations -- was that the whole fire, life
16 safety issue with the rear yard is not a zoning
17 issue. To me, that was not before us. To me,
18 that's something that we can't consider. That's
19 a D.C. decision of the Fire Department. It was
20 an issue with the ANC to work out programs within
21 the neighborhood. That's not really a zoning
22 issue before us with the property that we have.

1 My concern has always been strictly with
2 zoning with the property, how it meets the Zoning
3 Regulations. To me, this rear yard variance
4 stems from the fact that the Zoning Administrator
5 erred in his decision and made the library feel
6 that this was a side yard, so that's why they've
7 wanted to build out to the end of the property
8 line, that it was a side yard. And he erred in
9 that, and we deliberated with the previous case.

10 So what's before us is them asking for a
11 rear yard variance based upon the three prong
12 test, nothing to do with fire safety or life
13 safety or fire trucks or anything else. It's
14 just based upon the merits of the three prong
15 test and the needs of the library, and I would
16 agree that the needs of the library are great,
17 but I've already made my comment son this before,
18 so I won't go on further.

19 CHAIRPERSON MOLDENHAUER: Any other
20 deliberation or comments that Board members want
21 to make or any additional points that need to be
22 discussed?

1 MS. SORG: Thank you, Madam Chair. I'll
2 jump in at the end a little bit and I guess make
3 two comments that have entered my mind regarding
4 the community process.

5 This project has been going on for a
6 long, long time. I think the first time I
7 remember hearing about their solicitation was --
8 I don't know -- 4-1/2 years ago. I know they've
9 been having meetings even since before then, the
10 library folks.

11 And whether or not it was a perfect or
12 imperfect or really imperfect community process,
13 you know, we live in Washington, D.C., and there
14 is no project that has ever been, you know,
15 pursued by a public agency that hasn't had to go
16 through a significant amount of community input
17 and process. And I think that is something that
18 people in the city and, you know, community
19 groups and activists and people who deal in this,
20 in this industry, from every different
21 perspective have a different point of view on.
22 But it is something in my view that makes our

1 city unique and makes our process inclusive.

2 And I don't believe that the library
3 could have gotten away without significant
4 community input, and I think that there is, you
5 know -- to me, the merits of this case regarding,
6 you know, the use as a public library, as a
7 public service, and in fact, the way that the
8 project satisfies the prongs, including, you
9 know, the design limitations that we heard about,
10 you know, that were imposed or suggested by HPRB
11 and CFA, the mandate for, you know, single
12 entrance for ADA purposes, which is not just
13 something that the library has imposed upon
14 itself, and, you know, the fact that this is a
15 smaller lot, on 16,000-and-some-change square
16 feet, that a lot of the other libraries that are
17 serving similarly densely populated areas like
18 Georgetown or Benning Road and so forth.

19 So I agree with your comments, and also,
20 I think while I'll try, like Mr. Turnbull, to
21 stay away from our last case, I think that the
22 presence of so much discussion about the fire and

1 life safety was -- you know, while the events
2 that happened in this neighborhood were
3 unfortunate, were tragic, and hopefully the
4 correct City agencies and groups have done their
5 work to remedy what happened, I found that
6 discussion to be a distraction and not relevant
7 to what really is at the core of this case.

8 So that's all I'll say.

9 MR. TURNBULL: Ms. Sorg, you said 16,000
10 square feet?

11 MS. SORG: Of land.

12 MR. TURNBULL: The library? Oh, I
13 thought you were talking about square footage of
14 the library.

15 MS. SORG: Land area, lot, property, I
16 think. Someone can correct me if I'm wrong.

17 MR. TURNBULL: Well, because the library,
18 I believe, is 20,000 square feet-plus.

19 MS. SORG: I think that --

20 MR. TURNBULL: Maybe 22 or 21, I'm not
21 sure.

22 MS. SORG: I will check my numbers, but I

1 meant the land area.

2 MR. TURNBULL: I'm not nitpicking. I
3 just wanted to clarify the library's footprint,
4 square footage.

5 [Pause.]

6 CHAIRPERSON MOLDENHAUER: I think that
7 issue has been clarified.

8 [Laughter.]

9 CHAIRPERSON MOLDENHAUER: But that being
10 said, just to kind of summarize, I think that in
11 my view and I think from what it sounded like
12 from the Board, while obviously there's a lot of
13 challenges with this case, I do think that the
14 Applicant has satisfied the three prongs. I do
15 think that the property is unique based on a
16 confluence of factors and based on the
17 programmatic needs and the design actually
18 addressing those needs.

19 Specifically, I think that the practical
20 difficulty does arise from that confluence of
21 factors: the at-risk windows, the HPRB
22 limitation to expand the streetscape, the prior

1 history of the case, and also the need for the
2 single entrance, the desired meeting room
3 requirements. So I think that based on all of
4 those factors, they do specifically relate to the
5 practical difficulty that would arise from not
6 being able to build all the way back.

7 That being said, I don't see also that
8 there's any significant or substantial -- sorry,
9 not "significant" -- substantial detriment to the
10 public good. I do think that there could have
11 been better ways to meet the goals, and I think I
12 would always like to see more community input or
13 more compromise from any Applicant, whether it's
14 a District agency or whether it's just, you know,
15 a single homeowner. I always like to see those
16 types of compromises. I think that it's good
17 for, as I said in an earlier case, a healthy
18 balance between the mixed uses of the city that
19 we live in.

20 But that being said, I do think that this
21 Applicant does satisfy the three prongs, and I
22 will submit a motion for this case.

1 MR. JORDAN: Madam Chair, I'll second.

2 CHAIRPERSON MOLDENHAUER: I have to get a
3 formal motion out first.

4 [Laughter.]

5 CHAIRPERSON MOLDENHAUER: A formal motion
6 to approve Application No. 18240 for a rear yard
7 relief for a variance under Section 404 to allow
8 a rear yard of zero or 15 feet is required.

9 I have made a motion. I believe that Mr.
10 Jordan may second.

11 MR. JORDAN: Right. I was just giving
12 you the intent that I would second.

13 [Laughter.]

14 CHAIRPERSON MOLDENHAUER: A motion has
15 been made and seconded. All those in favor, say
16 "aye."

17 [Chorus of ayes.]

18 CHAIRPERSON MOLDENHAUER: All those
19 opposed?

20 MR. TURNBULL: No.

21 CHAIRPERSON MOLDENHAUER: Mr. Moy, do you
22 want to read back the record of the --

1 MR. MOY: Yes. Staff would record the
2 vote as 4 to 1 to 0. That's on a motion of
3 Chairperson Moldenhauer to approve the
4 application for a variance relief, the rear yard,
5 under Section 404. Second the motion, Mr.
6 Jordan. Also in support of the motion, Ms. Sorg
7 and Mr. Hinkle. Opposed to the motion is Mr.
8 Turnbull. Again, the final vote is 4 to 1 to 0.
9 The motion carries.

10 MR. TURNBULL: Madam Chair, if I could
11 just make one comment?

12 I hope the library takes to heart what's
13 gone on in this hearing and goes back and
14 restructures how they work with the communities
15 and library projects and understands that these
16 hearings are a waste of public money in going
17 through this, and thus, the process reverses
18 itself and takes to heart some of the comments
19 that have been said here, because the Zoning
20 Commissioner can always sua sponte and go back
21 and drag this on. But I don't think there would
22 be any benefit in doing that.

1 with and addressing the concerns raised by the
2 opposition party, filing to be made by September
3 9, 2011.

4 Their documents are in your case folders,
5 Madam Chair, two filings. The first is from the
6 party opposition. This is the letter from Edna
7 and Clay Wellborn, identified as Exhibit 37. The
8 second filing is Exhibit No. 38, which is from
9 the Applicant confirming the content of the
10 opposition party's letter.

11 The Board is to act on the merits of the
12 Applicant's request for a special exception to
13 continue use of the playing field under Section
14 206.

15 And that completes the staff's briefing,
16 Madam Chair.

17 [Pause.]

18 CHAIRPERSON MOLDENHAUER: We have before
19 us an application for an outdoor playing field in
20 a residential community that had previously been
21 approved and is now seeking to expand its hours
22 and to continue this recreational use since it

1 had previously been approved based on a term.

2 That being said, we initially had an
3 application that was opposed by neighboring
4 property owners who had indicated their concerns
5 over the noise level and use of the property and
6 potential non-school use of the property during
7 non-school hours.

8 That being said, we just received very
9 late yesterday, giving the Board not a lot of
10 time to go over everything, but a motion from a
11 letter from the counsel for the Applicant
12 indicating that the Wellborns had reached a
13 determination that they had actually renegotiated
14 the agreement, and that they submitted a letter
15 on September 9th indicating that they were in
16 support of the application, the request for the
17 10-year term.

18 That being said, the submission that we
19 received yesterday doesn't actually -- it shows
20 the old agreement. It shows the old agreement
21 from February 2008. It doesn't -- the cover
22 letter indicates that the application is going to

1 be updated or that the Applicant agrees to update
2 the terms.

3 MR. JORDAN: Madam Chair, the letter from
4 the neighbors actually say that -- it doesn't
5 talk about renegotiating an agreement, but that
6 they misunderstood some things, and the agreement
7 is going to stay in place.

8 CHAIRPERSON MOLDENHAUER: Okay. I was
9 looking actually, potentially for an addendum,
10 and so thank you for that clarification.

11 MS. SORG: I think also in the letter,
12 Madam Chair, it sounds like they're looking and
13 speaking about making possible modifications, but
14 that as things stand, they agree with the
15 proposal from the Blessed Sacrament as they're
16 making it.

17 CHAIRPERSON MOLDENHAUER: I'm just trying
18 to -- as I said, I'm going through this right
19 now.

20 Based on that, I think that a lot of the
21 concerns that were raised have been addressed,
22 and while I think it is a challenge always for

1 our Board to try to make sure that different
2 individual needs in regards to property use also
3 confirms then with the neighboring properties,
4 and I think that the question here is a --
5 previously, we had talked about a 3-year term or
6 things to that effect, I have written down in my
7 notes. I know that the request is for a 10-year
8 term. The question is, is a 10-year term
9 sufficient or short enough to try to potentially
10 address some new concerns that might arise.

11 In addition to that, you know, while we
12 do have certain individuals addressing their
13 current concerns, property owners switch,
14 property owners change. There may be some new
15 needs of the community, and I'm just throwing it
16 out there for a discussion. A 10-year term may
17 be adequate, but the question is in regards to
18 representing the public as a whole and maybe not
19 just those individuals that specifically come
20 down and present testimony before us, you know,
21 is a 10-year term the best in that regard for
22 providing such a playfield in a residential

1 community that does abut multiple homes and
2 multiple properties.

3 MS. SORG: If I can respond, Madam Chair,
4 to that question.

5 I think actually that a 10-year term is
6 perfectly adequate. I think that we have letters
7 of support from four other surrounding neighbors,
8 and I fairly felt from the testimony of the
9 Wellborns that we saw in the hearing, it wasn't
10 contentious by any means. They clearly were --
11 from my understanding of their testimony and also
12 their letter, they clearly were, you know, like
13 90-percent happy with what was going on with the
14 field since it was built, which was I can't
15 remember how many years ago, but it's been around
16 -- from our understanding, from the input that
17 we've gotten on the case, most of the neighbors
18 have been happy.

19 So, with regard to, you know, the
20 one-party status and the Wellborns, which we've
21 obviously seen has been withdrawn, I felt like
22 they simply were interested in ensuring that

1 there was a conversation between them and the
2 Applicant, because, of course, it's clear that
3 they are significantly affected by this use over
4 there.

5 Two other sort of -- perhaps somewhat off
6 the subject, although I think relevant to the
7 merits of the case, two other comments, and one,
8 I think this is a beautiful field, beautifully
9 maintained. Clearly, this school takes great
10 care of it. Clearly, this school, from the
11 testimony that we've heard and the submissions
12 that we've seen, takes great care in trying to be
13 a good neighbor to this community. And I think
14 that, you know what, this is, in my personal
15 opinion, one of the special benefits of living in
16 an urban area. So property owners may change,
17 but, you know, too bad.

18 [Laughter.]

19 MS. SORG: No. I mean, not too bad, but
20 I think, you know, that this is we live in an
21 urban area. There is a school. This field has
22 been here. They've clearly had no -- very little

1 trouble, and so I think -- I shouldn't have said
2 that.

3 [Laughter.]

4 MS. SORG: The beauty of an open meeting.

5 MR. TURNBULL: We have a feisty official
6 in the Vice-Chair.

7 MS. SORG: Well, I think that, you know,
8 it's our job on this Board to sort of balance the
9 various and sometimes competing needs of
10 different uses that have to coexist in densely
11 populated urban areas, and I think that, in fact,
12 this is a positive one. Maybe that's a better
13 way to say it.

14 Thank you very much.

15 MR. HINKLE: Yeah, Madam Chair. I tend
16 to agree with Ms. Sorg in terms of the 10 years.

17 This field has been in place, and there's
18 been minimal opposition to it. And just in
19 reading the recent letter from the Wellborns,
20 they're certainly in support of the 10-year term,
21 and that helps guide me to be in support of 10
22 years.

1 MR. TURNBULL: I would agree, Madam
2 Chair.

3 I mean, OP's -- we should go on the
4 record. OP's report is talking about a 3-year
5 period of time, which I think is inadequate. I
6 mean, I would have said either 5 or 10 years.
7 I'm perfectly adequate with going with 10. If
8 you feel more prone to go 5, I could go along
9 with 5, too.

10 But I agree with the Vice-Chair in her
11 comments. Most of her comments, anyway.

12 [Laughter.]

13 CHAIRPERSON MOLDENHAUER: I think that
14 it's always good -- I mean, I always feel like
15 terms are very positive checks and balances
16 system in, as Ms. Sorg indicated, an
17 always-evolving city that we live in. While it
18 is fantastic, I think that sometimes terms do
19 provide that check and balance in regards to who
20 knows what may happen or how certain things may
21 be used.

22 But that being said, I'll see if there's

1 any additional deliberation in regards to the
2 difference between maybe a 5- or 10-year. If
3 everyone seems that a 10-year seems adequate,
4 let's hear additional deliberation.

5 [No audible response.]

6 CHAIRPERSON MOLDENHAUER: Is there a
7 motion?

8 MR. TURNBULL: Madam Chair, I would --
9 yes, I would have a motion that we approve BZA
10 Application 18236, request for a special
11 exception under Section 206 to continue the use
12 of an existing playschool for a private school at
13 3637 Patterson Street, N.W., for a 10-year
14 period.

15 CHAIRPERSON MOLDENHAUER: Motion has been
16 made. Is there a second?

17 MS. SORG: Sorry. Before we -- I will
18 second, but do you want to incorporate the other
19 conditions?

20 CHAIRPERSON MOLDENHAUER: Yes. I believe
21 that they would be incorporated.

22 MS. SORG: Okay. Then I'll second.

1 MR. TURNBULL: What did I miss?

2 CHAIRPERSON MOLDENHAUER: The other
3 previously identified conditions identified in
4 the OP report, which we can just simply
5 incorporate.

6 MR. TURNBULL: Oh, yeah. The
7 recreational -- the time of operation. The
8 recreational playing field may be used between 9
9 a.m. and 6:30 p.m., and in no event shall the
10 field be used after sunset.

11 But I think isn't there days? Is this
12 every -- no. This is only Monday through -- is
13 this Monday through Friday? I'm trying to look
14 through the record here. I think that's Monday
15 through Friday.

16 MR. JORDAN: Monday through Friday.

17 MR. TURNBULL: Monday through Friday?

18 MS. SORG: I think that this refers to
19 the entire operation of the field, which can be
20 for this school or the community, until 6:30 on,
21 you know, weekends and holidays and when the
22 school isn't in session. That would be the

1 condition of the use in general, I think.

2 MR. HINKLE: If you read Condition 9,
3 that separates out how the field can be used
4 between the schools and the neighborhood.

5 MR. TURNBULL: Right.

6 CHAIRPERSON MOLDENHAUER: I would just
7 indicate that if we don't want to change any of
8 the conditions that are already existing on the
9 prior BZA order, we just simply incorporate them
10 all --

11 MR. TURNBULL: Right.

12 CHAIRPERSON MOLDENHAUER: -- except for
13 changing potentially Term No. 11, which was the
14 prior 3-year term, and modifying that.

15 MR. TURNBULL: And modifying No. 1 from
16 9? No. Is that still --

17 MS. SORG: No. They would all be in
18 effect, except you change 11.

19 MR. TURNBULL: Yeah, okay.

20 MR. JORDAN: But, Madam Chair, didn't the
21 Applicant ask for changing those hours, if I'm
22 not incorrect? I think that was one of the bases

1 of the request.

2 CHAIRPERSON MOLDENHAUER: I believe you
3 are correct, and they were requesting a change of
4 hours from 00

5 MR. TURNBULL: 9 to 6:30. Before, it was
6 10 a.m. to 6:30, but I guess -- I think they are
7 agreeing from 9 to 6:30.

8 CHAIRPERSON MOLDENHAUER: Yes. I believe
9 it's an increase in the morning hours --

10 MR. TURNBULL: Right.

11 CHAIRPERSON MOLDENHAUER: -- to
12 accommodate as they -- the Applicant indicated
13 currently they can only allow a certain number of
14 the children to be able to go out and play, and
15 they're trying to accommodate more of their
16 classes on the field, so they're asking for an
17 increase to 9 a.m.

18 MR. TURNBULL: So one term, Item 1,
19 changes from -- and then Item 11 changes, then.
20 I stand then with my motion.

21 CHAIRPERSON MOLDENHAUER: Is the motion
22 seconded?

1 MS. SORG: Second.

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

5 [Chorus of ayes.]

6 MR. MOY: The staff would record the vote
7 as 5 to 0 to 0. This is on the motion of Mr.
8 Michael Turnbull to approve the special exception
9 request under Section 206, modifying the
10 conditions in the original order, which is
11 Condition No. 11, from 3 years to 10 years, and
12 also Condition No. 1, change of hours of
13 operation to nine o'clock a.m. to 6:30 p.m.
14 Second the motion, Chairperson Sorg. Also in
15 support of the motion, Ms. Moldenhauer, Mr.
16 Jordan, and Mr. Hinkle. Again, the final vote is
17 4 to 0 to 0.

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much, Mr. Moy.

20 And seeing that the only parties in
21 opposition have withdrawn their opposition and
22 indicated a support, we have no other opposition

1 parties, we'd like to waive our requirements and
2 ask that a Summary Order be issued.

3 MR. MOY: Yes, thank you. And again, the
4 vote was 5 to 0 to 0.

5 CHAIRPERSON MOLDENHAUER: Thank you.

6 And I think we have one last case for the
7 day, for the morning.

8 **Application No. 18116**

9 MR. MOY: The next and last item for
10 Board action is Application No. 18116 of Kerry
11 Bedar, pursuant to 11 DCMR 3103.2, for a variance
12 from the floor area ratio requirements under
13 Section 402, for variance from the lot occupancy
14 requirements under Section 403, variance from the
15 rear yard requirements under Section 404, and a
16 variance from the nonconforming structure
17 requirements under Subsection 2001.3. This is
18 for a construction of a rear addition, including
19 garage, serving a one-family row dwelling in the
20 DC/R-5-B District at premises 2023 N Street,
21 N.W., Square 97, Lot 47.

22 In summation, Madam Chair, this

1 application has been before the Board for its
2 decision on December 7, 2010; February 1, 2011;
3 April 12, and now September 13th.

4 In your package, Madam Chair, is a letter
5 from the Applicant, identified as Exhibit 36,
6 dated September 9, 2011, and again asking that
7 the Board delay its decision.

8 With that, that completes the status
9 briefing, Madam Chair.

10 CHAIRPERSON MOLDENHAUER: Thank you very
11 much.

12 Seeing that there is a request for
13 postponement and in this circumstance in which
14 we're waiting for DCRA to formally address this
15 case, obviously, we can postpone it. Why don't
16 we postpone it to end of November, and that way,
17 hopefully, by that time, this case -- I think
18 what we'll do is we'll formally indicate that if
19 this case is not withdrawn or addressed at that
20 time, we will address this case at that time.

21 MR. TURNBULL: Madam Chair, is that
22 November 2011 or 2012? I just want to clarify.

1 [Laughter.]

2 CHAIRPERSON MOLDENHAUER: I think we will
3 go for November 2011.

4 MR. TURNBULL: Thank you.

5 CHAIRPERSON MOLDENHAUER: Thank you for
6 that clarification. You just never know.

7 MR. MOY: Madam Chair, I just want to add
8 in terms of the scheduling, as you know, the
9 Board -- I mean, there's always exceptions, but
10 generally, the decision cases are slated for the
11 first Tuesday of the month, which would be
12 November 8th in this case or December --

13 CHAIRPERSON MOLDENHAUER: Then let's put
14 it in December. Let's put it --

15 MR. MOY: December 6th.

16 CHAIRPERSON MOLDENHAUER: Let's do
17 December 6th.

18 MR. MOY: 2011, right?

19 CHAIRPERSON MOLDENHAUER: Yes.

20 MR. MOY: I just want to be clear on
21 that.

22 CHAIRPERSON MOLDENHAUER: Yes.

1 Lloyd Jordan, Mayoral Appointee. To my left, who
2 will join us, will be the Vice-Chairperson,
3 Nicole Sorg. To my far left is a representative
4 of the Zoning Commission, Michael Turnbull.

5 Copies of today's agenda are available to
6 you and are located to my left in the wall bin
7 near the door.

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

13 When presenting information to the Board,
14 please turn on your microphone, first stating
15 your name and home address. When you are
16 finished speaking, please turn off the
17 microphone, so that the microphone is no longer
18 picking up sounds or background noise.

19 All persons planning to testify either in
20 favor or in opposition are to fill out two
21 witness cards. These cards are located on the
22 table in front of me and are to be provided to

1 the court reporter sitting to my right.

2 If you wish to provide written testimony
3 or additional support for documentation today,
4 please submit 12 copies to the Secretary for
5 distribution. If you do not have the requisite
6 number of copies, you can produce copies on a
7 machine the Office of Zoning located across the
8 hall.

9 The order of procedures for special
10 exception and variances are as follows: one,
11 statement of the Applicant and Applicant's
12 witnesses; two, parties and persons in support;
13 three, parties and persons in opposition; four,
14 government reports, including the Office of
15 Planning and Department of Transportation; five,
16 reports from the ANC; and six, rebuttal and
17 closing statements from the Applicant.

18 Pursuant to Section 3117.4 and 3117.5,
19 the following time constraints will be
20 maintained. The Applicant, Appellant, persons,
21 and parties, except an ANC in support, including
22 witnesses, will be given 60 minutes collectively.

1 Appellees, persons, and parties, except an ANC
2 in opposition, will be given 60 minutes
3 collectively. Individuals will be given 3
4 minutes, and organizations will be given 5.

5 These time restrictions do not include
6 cross-examinations or questions from the Board.
7 Cross-examination is permitted by an Applicant or
8 party. The ANC within which the property is
9 located is automatically a party to a special
10 exception or a variance case. Nothing prohibits
11 the Board from placing reasonable restrictions on
12 cross-examination, including time limitation and
13 limitation on the scope of the cross-examination.

14 The record will be closed at the
15 conclusion of each case, except for any materials
16 specifically requested by the Board. The Board
17 and the staff will specify at the end of the
18 hearing exactly what is expected and the date
19 when the person must submit that evidence to the
20 Office of Zoning. After the record is closed, no
21 other information will be accepted by the Board.

22 The Sunshine Act requires that a public

1 hearing on each case be held in the open and
2 before the public. Pursuant to Section 405(b)
3 and 406 of the Open Meeting Act, the Board may,
4 consistent with the rules and procedures in the
5 Open Meeting Act, enter into a closed meetings or
6 closed emergency meetings on a case pursuant to
7 seeking legal advice and counsel pursuant to
8 Section 405(b)(4) and/or deliberating on a case
9 pursuant to Section 405(b)(13) of the Act, but
10 only after providing the notice, necessary Public
11 Notice and taking a roll call vote.

12 The decision of the Board in these
13 contested cases must be based exclusively on the
14 record before us. To avoid the appearance to the
15 contrary, the Board requests that persons present
16 not engage members of the Board in conversation.

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

20 The Board will now consider any
21 preliminary matters. Preliminary matters are
22 those which relate to whether a case will or

1 should be heard today or whether a request for
2 postponement, continuance, withdrawal, or proper
3 adequate notice for the hearing has been given.

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

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

10 MR. MOY: The staff is not aware of any
11 major preliminary matters this afternoon, Madam
12 Chair.

13 CHAIRPERSON MOLDENHAUER: Thank you.

14 Then why don't we proceed with the
15 agenda. I believe we are modifying the agenda
16 slightly this afternoon.

17 **Application No. 18234**

18 MR. MOY: Yes, Madam Chair.

19 Good afternoon, Madam Chair, members of
20 the Board. My understanding is that there's been
21 a change in the lineup, and that the first
22 application for Board to hear is Application No.

1 18234. This is the application of Utku Aslanturk
2 and Erin Gorman, pursuant to 11 DCMR 3103.2.
3 This is for a variance from the alley lot width
4 and building requirements under Subsection
5 2507.2. This is to allow the construction of a
6 one-family dwelling on an alley lot in the R-4
7 District at premises, the rear of 1300 block of D
8 Street, S.E., property located in Square 1042,
9 Lot 810.

10 Shall I also administer the oath?

11 CHAIRPERSON MOLDENHAUER: Why don't we
12 before we administer the oath, yes. Let's -- all
13 individuals wishing to testimony today, if you
14 can please stand, and the oath will be
15 administered to everybody.

16 MR. MOY: Do you solemnly swear or affirm
17 that the testimony you are about to present in
18 this proceeding is the truth, the whole truth,
19 and nothing but the truth?

20 [Witnesses sworn en masse.]

21 MR. MOY: Ladies and gentlemen, you may
22 consider yourself under oath.

1 CHAIRPERSON MOLDENHAUER: The parties for
2 the first case can step forward, please.

3 [Pause.]

4 CHAIRPERSON MOLDENHAUER: Good afternoon.

5 If you can introduce yourselves for the record?

6 MS. FOWLER: I'm Jennifer Fowler, 1819 D
7 Street, S.E.

8 CHAIRPERSON MOLDENHAUER: I don't know if
9 your microphone is on, actually.

10 MS. GORMAN: Erin Gorman, 1732
11 Massachusetts Avenue, S.E.

12 MR. ASLANTURK: Musa Utku Aslanturk, 1732
13 Massachusetts Avenue, S.E.

14 CHAIRPERSON MOLDENHAUER: Thank you.

15 And I'll turn it over to the Applicant to
16 -- I know we had an initial preliminary hearing
17 on this. I know you've supplemented the record
18 on this, so I'll turn it back to you to present
19 your case.

20 MS. GORMAN: Thank you. Good afternoon.

21 Since we were last hear at the last
22 hearing, my understanding is that -- I wasn't

1 present, but my husband and Jennifer Fowler were.

2 My understanding is that you asked us for
3 additional information related to the use
4 variance and the issue of whether or not the
5 construction of the permitted matter-of-right
6 uses would pose an undue hardship.

7 And we have also, as you'll notice from
8 our supplemental application -- we've had to
9 request an additional area relief related to the
10 area, the square footage of the lot.

11 So, as you may have noticed in reading
12 through our supplemental materials, we've had
13 some help. We have looked at more closely,
14 following your request, at the construction of an
15 artist studio and a garage specifically. There
16 are a number of matter-of-right uses which we did
17 not explore in depth, because they appear to be
18 impractical, and those are enumerated at the
19 beginning of our supplemental materials, those
20 specifically related to antennas, underground
21 transport, circuses, et cetera.

22 With respect to the construction of the

1 artist studio and the garage, what we
2 specifically considered were whether or not the
3 construction of these two would be economically
4 feasible from our perspective, and what we did is
5 that we contracted a real estate broker to assist
6 us with a scoping of the market for both resale
7 and for rental for artist studios.

8 What we looked at was whether or not the
9 construction of an artist studio and a garage
10 would enable us to then, if either on the resale
11 market or on the rental market, allow us to
12 basically service the debt on that construction,
13 and what we discovered is that it in fact would
14 not.

15 What our broker looked at on our behalf
16 was we considered that the construction cost of
17 an artist studio would be approximately \$253,000,
18 which would leave us, in a best case scenario,
19 with a mortgage estimate that we were given,
20 which was on a commercial loan, for about \$1,863
21 per month, and this would be Acacia Bank. And
22 you can see this in our supplemental materials.

1 What they confirmed for us is that this
2 would be a very optimistic and very beneficial to
3 use estimate. So they were saying even if there
4 were a financial vehicle that would be available
5 for us at a 6.5 percent interest rate on a 7-year
6 loan, that they thought that the approximate
7 service would be 1,863 per month.

8 We also looked at a wide range of artist
9 studios on the market. We looked in all the
10 quadrants of the city, and what we found is that
11 the things that would be most applicable to what
12 we could actually construct would have rental
13 rates of about \$650 a month and at a pro rata for
14 what we could actually construct on the lot would
15 be about 4-, 450-square-foot artist studios. We
16 would not be able to rent the artist studios for
17 an amount that would be sufficient to service the
18 debt, and in our estimation, this would really
19 provide what we found to be an economic burden or
20 an undue hardship.

21 We looked similarly at the construction
22 of a six-car garage and reached very similar

1 conclusions regarding our ability to service the
2 debt on the construction of these sorts of
3 properties.

4 I'm not sure if you would like me to
5 stop, so that you can ask me questions, or if you
6 just want me to keep going forward.

7 CHAIRPERSON MOLDENHAUER: Please just
8 keep going.

9 MS. GORMAN: Okay.

10 What we found in the other related prongs
11 of the test for the use variance, so undue
12 hardship is only one of them, with respect to the
13 first prong -- and I think we addressed this in
14 our initial presentation -- was that on the --
15 regarding exceptional extraordinary conditions,
16 the lot is unusually large for an alley lot.
17 It's close to 2,500 square feet, and it's a
18 corner lot, so there's a 16-foot alley lot but
19 also a 30-foot alley lot that border our lot.

20 There are two other lots adjacent to ours
21 that are quite small, and the other lots on the
22 square are either residential and there are

1 houses on the lots already or they are zoned
2 commercial. The most significant of the
3 commercial lots is the Safeway that is just
4 across the alley from our lot.

5 Our lot probably is most unusual because
6 of its historic use. It had at one point been a
7 part of a total commercial square, and it was
8 attached to the lot across the alley where the
9 Safeway now sits, which was historically a
10 brewery. And on our lot -- and this was a part
11 of the initial information that we submitted --
12 there was a base map from 1909 as well as
13 historic photographs of our square showing that
14 at the time that it was attached to the
15 commercial lot, there were four rowhouses that
16 were worker houses for the brewery.

17 Over the course of time, the lot was
18 severed from the commercial lot but was continued
19 to be associated with commercial use, and then in
20 1988, it was sold to an individual.

21 In 2008, that property was lost in a tax
22 sale, and in 2010, we purchased it as an R-4

1 zoned buildable lot.

2 Our understanding from what we could find
3 in the historic record and also from what we
4 could find in talking to the neighbors is that
5 our lot has in recent history been a nuisance,
6 and even our inspection of our neighboring lot as
7 late as this weekend, the neighboring lot is
8 quite overgrown and strewn with trash.

9 Our lot previously had been a dumping
10 ground for trash and mattresses and had been
11 regarded anywhere from a nuisance to a hazard by
12 the neighbors, and so which brings me to the
13 third and final prong of the use variance test,
14 is that we -- our intention is to restore that
15 lot with a family home for our family. That
16 would be in the spirit of the residential
17 construction in the neighborhood.

18 There are other houses on our square in
19 addition to the Safeway and the school that is
20 just behind our lot, and we have support from the
21 ANC, from our neighbors, from the Capitol Hill
22 Restoration Society. So we feel that there would

1 be no harm to the Zoning Plan in allowing us to
2 build a family home on a square that's surrounded
3 by other family homes.

4 In fact, we have nobody that's opposing
5 us, and so we feel that we've demonstrated that
6 we meet the third prong.

7 With respect to moving on to the area
8 variance, which is an addition in this
9 supplement, the area variance is required, as we
10 understand it, because there's a
11 4,000-square-foot lot area minimum for
12 single-family detached dwellings. Again, as I
13 mentioned earlier, historically there had been
14 four row homes on this property. We meet a
15 practical difficulty of reaching the
16 4,000-square-foot requirement for a single-family
17 detached family, but we meet the
18 1,800-square-feet for what would be a row
19 dwelling. But obviously, there's a practical
20 problem of the other row dwellings don't exist
21 anymore for us to attach this to.

22 We also face a problem of we can't expand

1 the lot in either direction because we don't own
2 the surrounding lots.

3 I think the other matters that are
4 addressed in our supplemental material were, as
5 you probably gathered, provided to us with some
6 legal assistance, who is not present today. I'm
7 happy to answer questions about it but probably
8 would be me just reading you what you've already
9 had if I kept going at this point, so I think
10 I'll stop.

11 MR. TURNBULL: Excuse me. Did you say
12 there were four rowhouses previously?

13 MS. GORMAN: According to the research
14 that we've done and research that was also
15 supplemented by the Capitol Hill Restoration
16 Society, in the early part of the 1900s, there
17 were four row dwellings that were present on that
18 square -- or on that lot, on Lot 810. Now, this
19 is going quite far back, so this is going back to
20 1909.

21 These houses haven't been there. The
22 last rowhouse that was previously there, as far

1 as we can tell, was taken down in the late part
2 of the 1950s.

3 MS. FOWLER: The original filings had a
4 base map image that showed the row dwelling son
5 that lot, as well as an image of the dwellings as
6 taken from the current International Graduate
7 University window.

8 MR. TURNBULL: Yeah, I see that. Thank
9 you.

10 CHAIRPERSON MOLDENHAUER: Do Board
11 members have any questions for the Applicant?

12 MR. TURNBULL: So those houses actually
13 fronted on the 16-foot alley?

14 MS. FOWLER: That's the way it appears
15 from the photograph.

16 MR. TURNBULL: Right. Okay.

17 MS. FOWLER: I'd just like to add one
18 other item to what Erin was saying, is that they
19 -- talking to mortgage lenders, I think they were
20 advised that it might be difficult to even get
21 financing for an artist studio in that they can't
22 -- it's really difficult for the bank to even

1 come up with an appraisal amount, because it's
2 not a typical kind of building type, so that's
3 something that we addressed in the filing as
4 well.

5 MS. SORG: Actually, that was a question
6 I was going to ask, and I did read that in your
7 supplemental statement.

8 If you could maybe go into a little bit
9 about the conversations that you had in terms of
10 financing, I think you mentioned in your
11 discussion of the artist studio maybe as well as
12 the parking garage -- I think you mentioned it
13 there as well.

14 MS. GORMAN: Sure.

15 So, in the conversations that we had with
16 -- so I spoke to four banks/mortgage lenders,
17 three of whom, there's not much to say. They
18 weren't interested in providing me with a quote.

19 I specifically went to them with the
20 information about the artist studios, and what
21 they were asking was similar to the question that
22 we were asking ourselves, which is what is the

1 resale market for this, to which the evidence
2 that they were looking was very similar, as what
3 artist studios have been sold. And that was part
4 of how they were attempting to determine what
5 would be considered the fair market value for the
6 artist studio.

7 We were not able to find any artist
8 studios that had been sold that met the
9 description -- that met the technical zoning
10 description, i.e., non-residential places for an
11 artist's work.

12 We did find things that had been marketed
13 as, quote/unquote, "artist studios," but what
14 they really were, were apartments above garages,
15 and in some cases where apartments of garage is
16 being used that weren't conforming to the zoning
17 requirements.

18 So putting those aside, they weren't
19 really able to determine what the market value of
20 this particular item was, and then once they
21 started questioning us about the rental rates and
22 we were able to show them what we found, their

1 question was, well, how are you even going to be
2 able to pay -- service this.

3 I think in part, why the estimate that
4 they gave us was wildly optimistic -- so this is
5 a quote that shows a 6.5 percent interest rate on
6 a commercial loan, which is significantly below
7 market; I mean, we would be paying much more than
8 that -- was in part because I think they just
9 didn't believe what we were describing to them as
10 being possible.

11 MR. JORDAN: And did I notice that the
12 loan that was recited was 7-year? Was that
13 correct?

14 MS. GORMAN: Yes. It would be a 7-year
15 with a balloon at the end.

16 MR. JORDAN: But how is it amortized?

17 MS. GORMAN: It's amortized as 25-years
18 but with a balloon payment at the end.

19 [Pause.]

20 CHAIRPERSON MOLDENHAUER: I have some
21 questions. You indicated that -- did you
22 purchase this property from a tax sale?

1 MS. GORMAN: No. We purchased it from an
2 individual. That person, we believe purchased it
3 in the tax sale, but we didn't purchase it in a
4 tax sale. We purchased it from an individual.

5 CHAIRPERSON MOLDENHAUER: So you found
6 the property on like MRIS?

7 MS. GORMAN: MRIS, yes.

8 CHAIRPERSON MOLDENHAUER: Okay.

9 I think you already answered this
10 question on the record, but I'm just going to ask
11 you. Do you feel comfortable kind of outlining
12 -- in your initial -- additional submission that
13 you provided, there was some argument in regards
14 to whether or not a use variance or an area
15 variance should apply in this case. Do you feel
16 comfortable articulating that, or would you like
17 us to just simply rely upon the submission that's
18 already been provided?

19 MS. GORMAN: I wish that I could argue
20 that, but as I'm not a lawyer, I think I'd just
21 like you to refer to the documents. Thank you.

22 CHAIRPERSON MOLDENHAUER: That's fine.

1 We can do that.

2 Are there any other questions from Board
3 members of the Applicant at this time? We can
4 always go back if there's any additional
5 questions.

6 [No audible response.]

7 CHAIRPERSON MOLDENHAUER: Thank you.

8 At this point, is that everything you
9 have to submit on your behalf?

10 MS. GORMAN: Yes, I believe so.

11 CHAIRPERSON MOLDENHAUER: At this time,
12 I'll see if there's any individuals in the
13 audience in support of this application.

14 [No audible response.]

15 CHAIRPERSON MOLDENHAUER: Is there any
16 individuals in the audience in opposition of this
17 case?

18 [No audible response.]

19 CHAIRPERSON MOLDENHAUER: Seeing none,
20 then I'll turn to the Office of Planning to see
21 if they have --

22 MS. BROWN-ROBERTS: Good afternoon, Madam

1 Chairman and members of the Board. I am Maxine
2 Brown-Roberts from the Office of Planning.

3 We didn't get the supplemental
4 information until late Friday afternoon, and
5 therefore, we were not able to fully review and
6 submit a second review.

7 However, I think if you believe that the
8 Applicant has met -- because one of our concerns
9 was that the Applicant had not demonstrate a
10 hardship, and I think if you believe that the
11 Applicant has fully demonstrated that in this
12 case, we would go along.

13 As you know, the Zoning Regulation sets a
14 high standard for residential use, especially for
15 building on the alley lot. The Applicant has
16 submitted an argument that there were residential
17 use along the alley prior to that for sometime
18 ago. The regulations were written subsequent to
19 that -- state that they do not want to have
20 houses along the alley.

21 So, because residences were built there
22 before, I don't think it's an argument that while

1 this is sufficient to say, "Yes, we can
2 accommodate residences along here," we did
3 outline our concern about the impact of the
4 supermarket and the noise that would be generated
5 from there that may impact on the residence.

6 And also, the Applicant also stated that
7 there were activities at the college that may
8 impact the residence. Again, nothing was
9 provided to show what is the extent of that
10 impact.

11 Regarding if granting of the variance
12 would result in a substantial detriment to the
13 public good, we agree that this residence would
14 not have an impact on the surrounding uses, and
15 also that it wouldn't impact any traffic or
16 pedestrian walking. However, I think it's the
17 impact of the other uses that we are concerned
18 about.

19 And therefore, I think we will sort of
20 defer to the BZA on recommendation. Thank you.

21 CHAIRPERSON MOLDENHAUER: Thank you very
22 much for providing that.

1 I guess my only, my one question would be
2 Office of Planning's perspective in regards to
3 the Applicant not satisfying the
4 4,000-square-foot lot requirement for a
5 single-family home and Office of Planning's
6 review on that relief that's being requested.
7 It's a 2,448-square-foot lot, I think, something
8 like that, and it's a 4,000-square-foot
9 requirement for a single-family.

10 MS. BROWN-ROBERTS: Well, again, it's one
11 of the things that don't meet the requirement,
12 and that's -- I mean, you know, when you look at
13 the regulation and it sets out except for uses,
14 it specifically goes to one-family dwellings and
15 prohibiting them, so I think this is just another
16 factor that would say -- that would lead us to
17 say, you know, that this use may not be
18 appropriate.

19 MS. SORG: Can I ask a follow-up question
20 on that one?

21 So, in your opinion, I mean based on what
22 they have -- I know that you've gotten the

1 supplemental submission a little bit late, but
2 you think that the lot area variance is required?

3 Because it seems to me --

4 MS. BROWN-ROBERTS: Actually, I didn't
5 review -- I didn't review that.

6 MS. SORG: Because to me, there's sort of
7 a question in my mind, and I don't know whether
8 other Board members have thoughts on this. In
9 the R-4, a row dwelling would be allowable on
10 this size of lot, correct?

11 MS. BROWN-ROBERTS: That's correct.

12 MS. SORG: And the building of a row
13 dwelling has nothing to do with whether or not
14 there's other row dwellings on the other side,
15 correct?

16 MS. BROWN-ROBERTS: No. Correct. Yes,
17 that's correct.

18 MS. SORG: So, based on that, I'm just
19 not sure that this -- if we've gone to this
20 stage, I'm not certain whether this belief would
21 be required, but maybe that's something we can
22 figure out.

1 CHAIRPERSON MOLDENHAUER: But an alley
2 lot doesn't allow for row dwellings. It only
3 allows for single-family homes, so, thus, you'd
4 have to have the side yard requirements of a
5 single-family home versus having the requirements
6 of a row dwelling.

7 MS. SORG: Is that single-family home
8 versus flats? Because detached versus row
9 dwelling is a different thing from single-family
10 versus flats, and I think that you have to go
11 with the R-4 allowances.

12 CHAIRPERSON MOLDENHAUER: I think I'm
13 reading into this. It says except for the use of
14 a one-family dwelling which could then be row
15 dwelling or single-family.

16 MS. BROWN-ROBERTS: Right, right.

17 CHAIRPERSON MOLDENHAUER: So I think
18 you're right. I'm sorry. I was reading in -- I
19 was reading too much into the initial definition.
20 So a row dwelling would be permitted on an alley
21 or a single-family home.

22 MS. BROWN-ROBERTS: No. I was just

1 saying that it reads except shall not be erected,
2 so I think you have to read it carefully.

3 MS. SORG: I think the regulation in
4 2507, it's my understanding talking about the use
5 with regard to the habitation, not necessarily,
6 yeah, the sort of orientation or the way that the
7 structure occupies the lot itself.

8 MR. JORDAN: Let me ask. Are there other
9 alley dwellings in this neighborhood?

10 MS. BROWN-ROBERTS: I think so. I don't
11 know exactly where, but there are a number of
12 them on Capitol Hill.

13 MR. JORDAN: In reference to this
14 property?

15 MS. BROWN-ROBERTS: I don't know exactly.
16 I couldn't give you an exact location.

17 CHAIRPERSON MOLDENHAUER: Mr. Jordan,
18 would you like to ask the Applicant that same
19 question? They may have a better understanding.

20 MR. JORDAN: Yeah, if I can follow up.
21 Yeah. Good.

22 Are there other alley dwellings in the

1 vicinity?

2 MS. GORMAN: Yes. Actually, there's one
3 that we referenced in our supplemental material.
4 It's the 1216 -- I believe it's C or -- between
5 C and D Street, and this is the property that was
6 part of Case 18017 that was decided in March of
7 2010. This was a warehouse on an alley lot that
8 has now been converted to two residential flats,
9 and so this is within four blocks of where we are
10 -- sorry -- two blocks. Apparently, I can't
11 count. Two blocks.

12 MR. JORDAN: Do you happen to know the
13 dimension of the alleys for those other units,
14 for those other properties?

15 MS. FOWLER: There's another one where
16 there's a narrow alley, probably 15-foot alley
17 leading to the street with a 30-foot alley that
18 the property fronts on, which is very similar to
19 what we're looking at here.

20 MR. JORDAN: And the last question, I
21 think I believe during the testimony the last
22 time we were here that you said you knew about

1 the restriction prior to purchasing the property.

2 MS. GORMAN: No. We knew about -- we
3 didn't know about the restriction prior to
4 purchasing the property. We knew about the
5 restriction when we went down to the permitting
6 office.

7 MR. JORDAN: Okay. And that was --

8 MS. GORMAN: So, when we bought the
9 property, we knew that it was R-4, and when we
10 bought the property, we knew it was buildable.
11 We didn't know that there was a restriction about
12 the building on alley lots until we went down to
13 DCRA, and at that time, they told us that we
14 couldn't build anything on the lot. They said it
15 was zoned R-3.

16 We then went to the Office of Zoning to
17 get the certification, found out that they were
18 wrong and that it was R-4, and it was only then
19 that we started to understand that there was an
20 issue that had to deal with the alley lot,
21 construction on an alley lot.

22 MR. JORDAN: Maybe my notes are wrong,

1 but I thought the testimony was that -- in fact,
2 I think I have it clear that you knew the issue,
3 but you didn't really understand what the alley
4 issue meant.

5 MR. ASLANTURK: Well, on my testimony, I
6 did say I knew it's buildable, and I didn't know
7 that its restriction. It's the same thing my
8 wife is saying.

9 When I purchased that lot, when we
10 purchased the lot, the real estate agent show us
11 the MRIS papers, and on the MRIS papers, it says
12 it's buildable. And I didn't question myself
13 it's buildable, but what we can build, because it
14 was R-4 it was shoring on the MRIS.

15 CHAIRPERSON MOLDENHAUER: Do any Board
16 members have any other questions for the Office
17 of Planning?

18 [No audible response.]

19 CHAIRPERSON MOLDENHAUER: Does the
20 Applicant have any questions for the Office of
21 Planning?

22 [No audible response.]

1 CHAIRPERSON MOLDENHAUER: If you can
2 actually just indicate that on the record,
3 please.

4 MS. GORMAN: Sorry. We have no
5 questions. Thank you.

6 CHAIRPERSON MOLDENHAUER: I'll wait a
7 moment. We may have some other Board questions
8 for the Office of Planning.

9 MR. TURNBULL: Yeah. Madam Chair, I just
10 had a question for Ms. Brown-Roberts.

11 There's six rowhouses on E Street, and
12 there's one on D Street, which all are impacted
13 by the Safeway to one degree or another. We've
14 got a funny little slice of property in here,
15 residential property between the IGU and the
16 Safeway.

17 So, essentially, are any of those
18 residential properties -- face the same impacts
19 from the Safeway?

20 MS. BROWN-ROBERTS: I agree, except that
21 this one is closer. It's the closest.

22 MR. TURNBULL: It is. Well, although the

1 one on D Street is like right next to it on the
2 alley.

3 I mean, I'm looking at it from a
4 standpoint of what remains of those properties,
5 and the two properties that are next to what the
6 Applicant has, I don't know what you do with
7 those. I mean unless some of the other
8 residential owners could buy slices of that
9 property and have bigger yards. We've got a
10 funny unusable set of pieces of land here in what
11 is a very unique kind of cut.

12 Do you see any hardships there with the
13 fact that in a residential zone, you've got
14 properties that -- at least this one is a
15 buildable site.

16 MS. BROWN-ROBERTS: There are impacts,
17 and, I mean, you know, I think it's for each
18 Applicant to come in and demonstrate that.

19 MR. TURNBULL: Right.

20 MS. BROWN-ROBERTS: This is a use
21 variance, and so --

22 MR. TURNBULL: Well, I think as you had

1 indicated, there is really no impact on the Zone
2 Plan, per se.

3 MS. BROWN-ROBERTS: Right, right.

4 MR. TURNBULL: It's basically there are
5 some variance issues that we would have to come
6 to grips with.

7 MS. BROWN-ROBERTS: That's exactly -- I
8 agree.

9 MR. TURNBULL: I think it's hard to put a
10 fair or a circus or a carnival, temporary use
11 here.

12 [Laughter.]

13 MS. BROWN-ROBERTS: I agree with that,
14 too.

15 MR. TURNBULL: I think that would be a
16 stretch for the owner to try to do.

17 CHAIRPERSON MOLDENHAUER: Can I ask one
18 other question of Office of Planning? Section
19 2507.4 indicates that the height of a structure
20 erected or constructed on an alley shall not
21 exceed the distance from the opposing side of the
22 abutting alley to the opposite wall of the

1 structure nearest the alley. I'm kind of looking
2 at it and wracking my brain about that.

3 So I think what it is saying, that the
4 height can't exceed the width of the alley, and
5 if the building is set back from the alley, you
6 cannot count the alley plus the distance set back
7 from the property line, if I read that correctly.

8 So that would mean that on the front
9 portion of the property, the width of the alley
10 is 30-feet wide, so the house is 29.5 or 29 feet,
11 5 inches -- yes -- high, so that would be
12 sufficient to satisfy that requirement. But the
13 property actually is -- it's an L-shaped alley,
14 so it's abutting two separate alleys. It's
15 abutting the 30-foot-width alley, and it's also
16 abutting a 16-foot-width alley. So that's 16,
17 and then there's a side yard of 8 feet, which
18 would give 24 feet. Does that mean the height of
19 the building couldn't be more than 24 feet?

20 And if Board members have insight, you
21 have an invitation as well.

22 MR. TURNBULL: Well, I would think that

1 the 30-foot alley would govern, but I'm not sure.

2 CHAIRPERSON MOLDENHAUER: I'm not sure
3 either. I've never dealt with that section of
4 the regs. I'm just looking at it.

5 MR. TURNBULL: If two of them, right.

6 CHAIRPERSON MOLDENHAUER: Typically, an
7 alley structure is going to be on the alley and
8 not -- this is a unique alley where you actually
9 have an L-shaped alley.

10 MR. TURNBULL: Right.

11 CHAIRPERSON MOLDENHAUER: And so you have
12 two separate distances. Here, you're considering
13 both the 30-foot and the 16-foot alley in regards
14 to this -- what is it? Section 2507.3. So why
15 wouldn't you consider a smaller alley in regards
16 to the other section as well?

17 MR. TURNBULL: Well, I'm just guessing
18 that technical -- I mean, I think the regs say
19 that you can only build on a 30-foot alley. I
20 think you have to look at it from the -- if we're
21 basing one on 16-foot, I don't think we could --

22 CHAIRPERSON MOLDENHAUER: Well, that's

1 the relief they're seeking, though, too.

2 MR. TURNBULL: I know, yeah.

3 CHAIRPERSON MOLDENHAUER: So, I mean, I
4 think that they would also then be limited on the
5 height of the building as well.

6 MR. JORDAN: But would it not, because
7 it's on that L-shape, given the opportunity to
8 choose, which would --

9 MS. SORG: Right.

10 MR. TURNBULL: Right.

11 MR. JORDAN: -- serve as a determining
12 factor?

13 MS. SORG: Remember that whole --

14 CHAIRPERSON MOLDENHAUER: I'm asking OP
15 here. So let's put it back in the vote of OP and
16 see.

17 MS. BROWN-ROBERTS: I am not sure. I
18 think there are a number of things operating here
19 that could impact an interpretation of this.

20 CHAIRPERSON MOLDENHAUER: This might be
21 something where we put the decision off on
22 another date and we ask OP --

1 MS. BROWN-ROBERTS: To go look at it.

2 CHAIRPERSON MOLDENHAUER: -- to kind of
3 chime in on that, because, again, I was just
4 reading through this right now, and I haven't had
5 a chance really to analyze that section either.
6 But I think it's just a point.

7 I'll look back at the Applicant and see
8 if the Applicant has any perspective, or if
9 you've already analyzed that section of the regs
10 and determined that it doesn't apply or however
11 your analysis is, maybe you've already looked at
12 it.

13 MS. FOWLER: Yeah. What we did, we
14 assumed the setback requirement on both sides, so
15 you have a 30-foot building, but if you notice
16 from the elevations, we have a two-story
17 structure abutting the side alley with an 8-foot
18 setback, so we already accommodated for that, not
19 being 100-percent sure what that requirement was.
20 So it's basically a two-story structure facing
21 the 16-foot alley, plus a side yard, and then it
22 only becomes 30 feet when it's sufficiently away

1 from the alley on that side.

2 CHAIRPERSON MOLDENHAUER: Okay. Thank
3 you. I think that that helps, again, looking at
4 that right now, because we're jumping into a
5 whole bunch of exciting topics.

6 Are there any other questions for the
7 Office of Planning?

8 MS. SORG: Maybe I'll ask one more
9 question. This may be going back a few chapters,
10 but you treat this as a use variance in your
11 report, and I'm wondering, you know -- we've had,
12 I think, leanings both ways on how to treat this,
13 whether it's a use variance or an area variance.

14 MS. BROWN-ROBERTS: We have always
15 treated buildings on the alley lot as use
16 variance. That's the interpretation we got from
17 the Zoning Administrator.

18 CHAIRPERSON MOLDENHAUER: Any other Board
19 questions or follow-ups on that issue?

20 [No audible response.]

21 CHAIRPERSON MOLDENHAUER: Seeing none at
22 this time, we can always go back if any Board

1 members wish.

2 At this point in time, we will turn to
3 see if there's anybody in the audience from the
4 local ANC to present any testimony.

5 [No audible response.]

6 CHAIRPERSON MOLDENHAUER: Just for the
7 record, ANC-6B voted to support this application
8 at a regularly called, duly noticed meeting with
9 a quorum present of 10 to 0 to 0, so that letter
10 would receive great weight as our Exhibit No. 23.

11 That being said, we would at this point
12 turn back to the Applicant for any additional
13 remarks or closing statements.

14 MR. TURNBULL: Madam Chair, before they
15 start that, I just want to ask a question. The
16 site plan that you show, I think you've currently
17 got a fence around it. What's going to remain
18 there? Are you keeping a fence?

19 I mean, I see it looks like there is a
20 fence indicated around your parking area. You're
21 not putting up a garage. It's just a parking
22 space, and there looks like a fence going around.

1 MS. FOWLER: Well, we haven't really
2 gotten into that level of detail, but we'll
3 probably have a low fence or something along the
4 16-foot alley with some vegetation, some
5 plantings.

6 MR. TURNBULL: Okay.

7 MS. FOWLER: And then there will be a
8 fence along the west line and the south line.

9 You know, the parking, I'm not sure if
10 it's going to be secured or open. Again, we
11 haven't really gotten into that level of --

12 MR. TURNBULL: You won't be coming back
13 for a garage, will you?

14 MS. FOWLER: No.

15 MR. TURNBULL: Okay. Just curious.

16 MS. FOWLER: I asked the question before.
17 They don't want a garage.

18 MR. TURNBULL: Okay.

19 MS. FOWLER: It's just open.

20 MR. TURNBULL: Thank you.

21 Oh. On the 30-foot alley, you're
22 abutting the house right on the property line

1 with the alley.

2 MS. FOWLER: That's correct.

3 MR. TURNBULL: Okay.

4 MS. FOWLER: Well, let me clarify. There
5 is a vestibule that's --

6 MR. TURNBULL: No, I do see that, but the
7 rest of the building lines up.

8 It's mostly brick and HardiPlank or
9 siding?

10 MS. FOWLER: Yes, that's correct.

11 MR. TURNBULL: HardiPlank.

12 MS. FOWLER: Brick with HardiPlank.

13 MR. TURNBULL: Okay, thanks.

14 [Pause.]

15 CHAIRPERSON MOLDENHAUER: I'm trying to
16 look at this, and I'm just -- I'm questioning.
17 The more recent submission asks for relief in
18 regards to a single-family detached dwelling, and
19 maybe this is where I was getting confused
20 earlier.

21 The house is a semi-detached, correct,
22 because it's bordering one property line?

1 MS. FOWLER: That's correct.

2 CHAIRPERSON MOLDENHAUER: Okay.

3 Do any Board members have any other
4 questions for the Applicant?

5 [No audible response.]

6 CHAIRPERSON MOLDENHAUER: Seeing there
7 are no further questions, seeing none, then at
8 this point in time, we will conclude the hearing,
9 and I'll look to my Board members to see if you
10 want to deliberate this case now or if we'd like
11 to wait and have some time to kind of review the
12 record and set this for a decision.

13 MR. TURNBULL: I was just wondering about
14 final comments, but --

15 CHAIRPERSON MOLDENHAUER: I thought I had
16 asked, but I will ask again if there are any.

17 MR. TURNBULL: Well, I think I
18 interrupted.

19 CHAIRPERSON MOLDENHAUER: Oh, did you
20 interrupt? I'm sorry.

21 MR. TURNBULL: Yeah. So I took away
22 their --

1 CHAIRPERSON MOLDENHAUER: You took away
2 their moment of time?

3 MR. TURNBULL: Yeah.

4 CHAIRPERSON MOLDENHAUER: And then I was
5 even taking it away further.

6 [Laughter.]

7 CHAIRPERSON MOLDENHAUER: I'll turn back
8 to the Applicant for any closing remarks.

9 MS. GORMAN: Thank you.

10 I think the only thing that we wanted to
11 say in closing is that, clearly, we feel that the
12 construction of a house for our family on this
13 lot would be an improvement to the use of the
14 lot.

15 Because we've chosen to put our house
16 there and in some ways because we've chosen to
17 live in a city, we are not feeling as if we would
18 be particularly negatively impacted by a Safeway
19 or a surrounding school or traffic anymore so
20 than we are by the fire station that's two blocks
21 from our house right now and wakes us up in the
22 middle of the night.

1 So I feel as if it's all part of the
2 vibrancy of living in a community, and so while I
3 can appreciate the Office of Planning's concern,
4 it's obviously a concern that we've considered.

5 I want to thank you for your time.
6 That's all.

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much to the Applicant.

9 I'm just going to look again to the Board
10 to see if there's something we'd like to wait and
11 hold off on or make a decision today.

12 MS. SORG: I think I have a --

13 CHAIRPERSON MOLDENHAUER: The hearing is
14 not yet closed, so we're going to go back into
15 questions.

16 MS. SORG: I think I have a final
17 question that will help me to know whether I feel
18 prepared to deliberate today, and that question,
19 I think, may be to OP and may be to anybody else
20 who wants to answer it.

21 [Laughter.]

22 MS. SORG: Or offer an opinion.

1 So the question, I guess, is if you were
2 to buy that a property such as this, given what
3 we've seen in the supplemental submissions, if
4 one -- if it was shown that the property would be
5 unduly burdensome to use the property as a
6 matter-of-right use, would that in your opinion
7 get you over the first prong of the variance test
8 by itself?

9 MS. BROWN-ROBERTS: Oh. Yes, that is the
10 test.

11 MS. SORG: In addition to some other like
12 typographical X, Y, and Z?

13 MS. BROWN-ROBERTS: Yes. It needs to
14 meet the test.

15 MS. SORG: Yeah. Okay, thanks.

16 [Pause.]

17 CHAIRPERSON MOLDENHAUER: Okay. At this
18 point in time, what we'll do is we will conclude
19 this hearing, but we will actually then enter
20 directly into deliberation. At this point in
21 time, we will no longer take any information from
22 the Applicant, but we will start the deliberation

1 process on the case.

2 I'll see if any other Board members --
3 what we have before us is we have a request to
4 construct a brand-new single-family dwelling on
5 an alley lot which is less than 30 feet in width.

6 As indicated, this is a T-shaped alley. One
7 section of the alley actually is 30 feet, and one
8 section is 16 feet. And so they are seeking
9 relief from that 30-foot requirement, and there
10 are submissions in regards to whether or not this
11 should be considered as a use variance or an area
12 variance.

13 Office of Planning is indicating that it
14 should be used as a use variance. Here, I think
15 we've had other cases which the Applicant
16 actually referred to, which is a couple blocks
17 away, where the Applicant was seeking a flat. I
18 think potentially in that case, we actually
19 referred to that as a use variance, because it
20 was a different type of use than was permitted in
21 regards to it was not a single-family, rather it
22 was a flat, a two-family dwelling.

1 Here, where it's a single-family
2 dwelling, which is permitted by the regs, other
3 than for the fact that it has a smaller alley
4 width than is permitted, I would actually apply
5 the area variance standard in this case.

6 That being said, we evaluate the case in
7 regards to whether or not the property has a
8 unique aspect, and here, while I do see certain
9 aspects that are unique, I think that it has to
10 definitely qualify in regards to a confluence of
11 factors, because I don't see that one factor
12 alone would actually satisfy the standard in my
13 mind.

14 While yes, the lot is large, it's
15 obviously not as large as would actually be
16 required for a single-family home, so I think
17 that also detracts from the uniqueness. But I do
18 think that the fact that it does have limited
19 types of, I guess, useful applications or uses
20 for the property do make the property unique in
21 the fact that the types of matter-of-right uses
22 are relatively limiting and mostly infeasible as,

1 I think, sufficiently proven by the Applicant,
2 both in their supplemental submission, which was
3 provided to us and on September 7th and also
4 elaborated to us by the Applicant, they went
5 through the different types of matter-of-right
6 uses, such as art studio, parking garage, or a
7 car-share space and I think provided, in my view,
8 sufficient evidence that those uses are not
9 viable on this location based on cost, based on
10 construction, financing, and ability to provide a
11 reasonable return on investment in regards to
12 construction.

13 In addition to that, we did hear
14 testimony about the inability to most likely
15 obtain financing in that regard as well.

16 That being said, I think that those
17 factors, along with the other factors that are
18 provided for in regards that it's an isolated
19 ownership, the Applicant cannot acquire
20 additional properties to consolidate in order to
21 satisfy certain requirements, and I believe it
22 would satisfy the first prong of the test.

1 And then in regards to the second prong,
2 I do believe that that then creates a practical
3 difficulty, and I don't see that there's any
4 major implication in regards to creating a burden
5 on the Zoning Plan.

6 I know that Office of Planning typically,
7 as they did here, has a policy and a review of
8 these types of alley dwelling cases in which they
9 do feel that it does impact the Zoning Plan;
10 however, I think that there is a slow evolution
11 in the city to permitting these in a more
12 frequent basis, and thus, in this case, I don't
13 see how it would dramatically or substantially
14 create a detriment to the public good or to the
15 Zoning Plan, especially with having the different
16 letters of recommendation and approval from the
17 neighboring properties and also from the Capitol
18 Historic Restoration Society.

19 That being said, Office of Planning also
20 did note some of the conditions, the potential,
21 Safeway being next door, and I think that the
22 Applicant did identify the fact that as a

1 resident and an individual living in the city
2 that you do, I think, accept a lot of the
3 varieties of -- benefits and the burdens of city
4 life. And I think that that is one of them,
5 which obviously this property owner understands
6 going into it.

7 That being said, in regards to a need for
8 relief of an area variance for Section 401 in
9 regards to minimum lot area, the Applicant
10 submitted a supplemental report, which actually
11 is not completely accurate. It indicates that
12 the required lot size would be 4,000 square feet,
13 whereas the current lot is only 2,448, but for a
14 semi-detached structure in an R-4 zone, it's
15 actually a 3,000-square-foot lot requirement. So
16 I think with a little over 500-square-foot
17 difference, I don't see that as being a relief
18 that's that drastic, and I mostly likely would
19 apply the same standards in regards to satisfying
20 the area variance in that regard.

21 That being said, I'll turn to my other
22 Board members to see if they have any additional

1 deliberation.

2 MS. SORG: Thank you, Madam Chair.

3 I agree, generally speaking, with your
4 analysis. I will say for my part with regard to
5 the first prong of the test, I think actually
6 that treated an area variance, I agree that the
7 Applicant has met their burden with regard to
8 showing practical difficulty.

9 I actually think that I've kind of gotten
10 just over the hump of even shown as a use
11 variance, that the Applicant has shown that it
12 would be unduly burdensome to use the property
13 for a matter-of-right use, based on their
14 supplemental information only.

15 I personally agree with the OP in their
16 report that the size, the large size of the lot
17 to me doesn't contribute to its uniqueness, nor
18 does the historical use, but I think that the
19 completeness of information that we got with
20 regard to the financial piece of it and the
21 artist studio, the parking, garages, and the
22 effort that the Applicant went to show how they

1 had researched those things to me gets over the
2 first prong.

3 And then I also agree with regard to your
4 analysis of the second and third prong.

5 And the question of the Safeway and other
6 commercial uses, but for the 16-foot alley, this
7 would be a matter of right, and so it's up to
8 them if they want to look at the back of the
9 Safeway.

10 CHAIRPERSON MOLDENHAUER: Thank you. Any
11 additional deliberation from Board members?

12 MR. TURNBULL: Madam Chair, I'm often
13 troubled by alley lots and residences, but I do
14 see a lot of them up on Capitol Hill area. In
15 fact, any special exceptions that the BZA gets
16 comes to our office first for a look at it, and I
17 think I sent on one -- there's one coming up in
18 October, between 1st and 2nd, around C Street,
19 behind the National Republican Headquarters, and
20 there's a lot of carriage houses there. I mean,
21 it's quite common.

22 So, in that sense, I'm growing more

1 accustomed to that, and I think in this
2 particular area here, those six rowhouses, had
3 they been -- three of them go all the way back to
4 the 30-foot alley, and the other three sort of
5 just end, rather short lots.

6 And then on D Street and then there's
7 more, I guess I'm not opposed to this. I could
8 -- I think that I appreciate the information that
9 they've provided with the cost scenarios. I
10 think I could see from the documentation that
11 it's going to be a struggle.

12 I would not be opposed to granting this.
13 I think that there is enough there in what we've
14 heard from the Applicant and in what they've
15 tried to do to make a case for this. I'm not
16 sure other than -- I don't know what you would do
17 with this property otherwise.

18 MR. JORDAN: I would agree with
19 everything that was said, and I think the last
20 thought that's been running through my mind is no
21 harm, no foul. And the question about what other
22 use could you do with this property, I think

1 there's another use.

2 And I think the other thing that was
3 important here is that the problems with this
4 property and the hardship that we take a look at
5 was not self-imposed. They were told that this
6 was buildable. It was marketed, and so they kind
7 of just fell into this, even though they learn on
8 the back side.

9 So I would agree with everything else
10 that was said.

11 CHAIRPERSON MOLDENHAUER: I do have just
12 a -- I don't know that I totally agree with Mr.
13 Jordan in regards to the fact that I think
14 there's typically a burden on any property, and I
15 think we've had a lot of cases where someone has
16 built something and it's not to Zoning
17 Requirements where everybody has to pursue some
18 due diligence. And I think that, obviously,
19 there's a lot of people that do understand the
20 requirements of an alley lot, the restrictions of
21 alley lot, so I don't know I totally agree with
22 that comment, but in general, I think we are on

1 the same page.

2 MR. JORDAN: Well, I didn't say about
3 everybody. I said this group, this family, this
4 householder, the circumstances in which they
5 went, it was advertised in a certain way,
6 different than it not being advertised, so that's
7 kind of where I am.

8 CHAIRPERSON MOLDENHAUER: Thank you for
9 that clarification, because I do think there's a
10 lot of times where people will say, "Oh. Well,
11 you made this comment in one case," and it may
12 not be applicable to another case, so I just want
13 to make sure that that is distinct.

14 Is there any additional comments from
15 Board members in the deliberation?

16 MS. SORG: I didn't in my earlier
17 comments speak to the additional area of relief
18 that was requested by the Applicant in their
19 supplemental filings, and I'm sort of just
20 looking at the site plan now. And I'm not -- I'm
21 still not certain whether what kind of relief
22 that they need for this.

1 I agree with you in terms of the lot
2 area, and I think we should come to a conclusion
3 on that.

4 CHAIRPERSON MOLDENHAUER: What's your
5 view on the potential relief or maybe your
6 question?

7 [Pause.]

8 MR. TURNBULL: Maybe the Applicant could
9 explain for us on Drawing C-2.

10 Are you back from the property line, not
11 on the alley side, but on that far side, or are
12 you up to it? Is there a setback? It's hard to
13 tell what's the exact property line.

14 MS. FOWLER: On the west side?

15 MR. TURNBULL: Yeah.

16 MS. FOWLER: There's a little skinny
17 property that abuts their property, and so we are
18 building up to their property line.

19 MR. TURNBULL: Oh, you're kidding.

20 That's --

21 MS. FOWLER: There's just a little skinny
22 -- yeah, there's a skinny property right there.

1 Yeah, it's 3-feet wide.

2 MS. SORG: So that one belongs to Lot
3 808, it looks like maybe?

4 MS. FOWLER: Correct.

5 MS. SORG: Oh, my Lord.

6 MS. FOWLER: It's an L-shaped lot.

7 MS. SORG: Oh, cute.

8 MS. FOWLER: Yeah.

9 MS. SORG: Okay. Thank you. Actually,
10 that clears it up. So it seems like we're in a
11 semi-detached situation, and so then I would
12 agree with your comments in that regard, also.

13 [Pause.]

14 MS. SORG: I can submit a motion, if you
15 like. I'll submit a motion to approve
16 Application No. 18234, alley lot, the 1300 block
17 of D Street, S.E., for approval of an area
18 variance pursuant to 11 DCMR 3103.2 and 2507.2 as
19 well as variance to the minimum lot area under
20 401.3 to allow the construction of a three-story
21 single-family semi-detached dwelling which fronts
22 on a 30-foot-wide alley connected to D and E

1 Streets, S.E., via 16-foot-wide alley.

2 CHAIRPERSON MOLDENHAUER: A motion has
3 been made. Is there a second?

4 MR. HINKLE: I'll second.

5 CHAIRPERSON MOLDENHAUER: Motion has been
6 made and seconded. All those in favor, say
7 "aye."

8 [Chorus of ayes.]

9 MR. MOY: Staff would record the vote as
10 5 to 0 to 0. This is on the motion of
11 Vice-Chairperson Sorg to approve the application
12 for the variance relief to the alley lot width
13 under 2507.2 and a lot area, 401.3. Second the
14 motion, Mr. Hinkle. Also in support of the
15 motion, Mr. Turnbull, Ms. Moldenhauer, and Mr.
16 Lloyd Jordan. So, again, that's a vote of 5 to 0
17 to 0, and the motion carries.

18 MR. TURNBULL: Happy Building!

19 CHAIRPERSON MOLDENHAUER: Since there's
20 no opposition, the Board would like to waive the
21 requirements and ask that a Summary Order be
22 issued.

1 MR. MOY: Thank you, Madam Chair.

2 CHAIRPERSON MOLDENHAUER: Thank you.

3 **Application No. 18243**

4 MR. MOY: The next item before the Board
5 for hearing is Application No. 18243. This is
6 the application of Vanessa Manchester, pursuant
7 to 11 DCMR 3104.1 and 3103.2. This is for a
8 special exception to construct a free-standing
9 garage addition serving an existing one-family
10 row dwelling under Section 223. This is not
11 meeting the lot occupancy requirements under
12 Section 403 and a variance from the accessory
13 structure height and story limitations under
14 Subsection 2500.4. This is in the R-4 District
15 at premises 1231 F Street, N.E., property located
16 in Square 1007, Lot 113.

17 CHAIRPERSON MOLDENHAUER: Good afternoon.
18 If you could introduce yourself for the record.

19 MS. MANCHESTER: Good afternoon, Madam
20 Chair and Board members. Vanessa Manchester. I
21 live at 1231 F Street, N.E., Washington, D.C.
22 20002.

1 MR. RAG: Good afternoon. My name is
2 Patrick Rag. I live at 24 Logan Circle, N.W.

3 CHAIRPERSON MOLDENHAUER: The Applicant
4 would like to present their case?

5 MS. MANCHESTER: Thank you, ma'am.

6 Again, I'm Vanessa Manchester. I'm the
7 homeowner, and I reside there at 1231 F Street,
8 N.E.

9 We're coming to you today to talk about
10 replacing my current dilapidated garage with a
11 new garage. Based on unique site conditions, we
12 are actually here in front of you requesting a
13 special exception and a variance.

14 I just wanted to make sure that you've
15 received all of our letters of support. We have
16 one from the Capital Hill Restoration Society,
17 our adjacent neighbors. There's a total of four
18 letters for that. There is an ANC-6A letter of
19 support, and we did submit the Affidavit of
20 Posting as well that was required.

21 [Pause.]

22 CHAIRPERSON MOLDENHAUER: We're checking

1 our file. I don't believe we have the ANC
2 report. If you have a copy, you can maybe --

3 Does any other Board members have the ANC
4 report? I don't think so.

5 MR. HINKLE: Madam Chair, there was also
6 a mention of four letters of support.

7 Is that correct?

8 MS. MANCHESTER: Yes. There should be --

9 MR. HINKLE: And I have two in my file.

10 CHAIRPERSON MOLDENHAUER: Mr. Moy, what's
11 our new protocol? Should we have the Applicant
12 go across the way and make copies or --

13 MR. MOY: Well, I can handle that,
14 because if it's in our file, then I believe --

15 CHAIRPERSON MOLDENHAUER: I don't believe
16 it's in our file at all. I think this is a
17 supplemental document that was not previously in
18 our file.

19 MR. MOY: I think that would be helpful,
20 since we don't have that.

21 CHAIRPERSON MOLDENHAUER: Okay. If you
22 can go across the hall and make a copy of that,

1 that would be helpful.

2 MS. MANCHESTER: The copy I have from the
3 ANC-6A was a letter that they gave me a copy of
4 that they were supposed to actually mail to Mr.
5 Moy. So I just want to let you know that's what
6 that is.

7 CHAIRPERSON MOLDENHAUER: Oh, okay.

8 MS. MANCHESTER: And I'll make a copy of
9 these real quick.

10 CHAIRPERSON MOLDENHAUER: Thank you.

11 MS. MANCHESTER: You need 12 copies?

12 CHAIRPERSON MOLDENHAUER: Our office will
13 take care of it actually, so if you want to just
14 provide that.

15 MS. MANCHESTER: Thank you.

16 [Pause.]

17 CHAIRPERSON MOLDENHAUER: While we're
18 waiting for those copies, if you want to just
19 continue with your presentation. Thank you.

20 MS. MANCHESTER: Thank you.

21 With that said, I would like to introduce
22 my architectural designer, Patrick Rag. He's

1 going to walk you through the plans and review
2 over the submission for the request for the
3 special exception and the variance.

4 CHAIRPERSON MOLDENHAUER: Thank you.

5 MR. RAG: Thank you for hearing our case
6 today.

7 This project is unique in that it has a
8 very unique site condition. If you would turn to
9 page A-001 of the photos, just to get this out of
10 the way and clear.

11 The grade at the alley is approximately
12 6.7-feet higher than the grade in the rear yard.

13 So, when dealing with an accessory structure,
14 measuring the height of the building is required
15 from the house side of the rear yard, and in
16 doing so is where we run into issues with lot
17 coverage and building height for variance.

18 So, with regard to the lot coverage,
19 we're asking for a special exception from 60
20 percent, which -- to 65.9 percent. The reason we
21 need the exception is because a circulation stair
22 is required to go from the rear yard up to the

1 garage level. That can be seen on A-202. In
2 doing so, building a garage that will house
3 modern cars in addition to the stair toward
4 increases our lot occupancy.

5 In addition to this stair, we're also
6 asking -- we're also proposing to replace the
7 landing and stairs at the back of the existing
8 house. They do not meet code. They don't have a
9 landing currently, and adding that landing will
10 add to the lot occupancy.

11 We are not asking to change the use of
12 the structure. It would continue to be a garage.

13 And then moving on to the variances,
14 again, because of the difference in grade, the
15 homeowner is required to build an extensive
16 foundation for the garage. On three sides, it
17 would be almost as if they're building a lower
18 level.

19 Because they're incurring this cost, this
20 financial difficulty, we're asking that they be
21 able to use that space as a storage/basement
22 space.

1 Again, that space would not be visible
2 from the alley side. It would be visible from
3 the rear yard side of the house or from the
4 property.

5 You would enter at the rear yard into
6 that storage space and then proceed up the
7 circulation stairs to the garage.

8 The third piece of our case involves the
9 height. If we were to measure the height of the
10 building from the rear yard, 15 feet, it would
11 produce a garage that was impractical of cars.
12 It would have a 7-foot ceiling height max.
13 That's if the roof was flat.

14 If you can look on page A-203, the
15 homeowner is attempting to use it as a two-car
16 garage.

17 So we are asking if you would consider
18 increasing the height to make a usable garage and
19 also consider that from the alley side, our
20 height is -- the garage is within a 15-foot
21 acceptable limit.

22 The final piece of the project is the

1 pop-up or rooftop access. That can be seen in
2 the elevations on the A-400s.

3 Since the homeowner is required to use
4 more of their rear yard to build the stair to
5 bring the other stair up to compliance, they're
6 losing some of the enjoyment of their rear yard,
7 and they'd like to recover that by having a
8 rooftop access. That access would not impede on
9 the privacy of their neighbors.

10 If you also look at the photo, you can
11 see that it's set back a significant distance
12 from the other properties. On one side, there's
13 vegetation that's actually blockain the view, and
14 as Vanessa mentioned, we do have letters of
15 support from all the neighbors regarding that
16 aspect of the job.

17 Thank you.

18 CHAIRPERSON MOLDENHAUER: At this point
19 in time, I will open up the floor to questions
20 from Board members.

21 MS. SORG: Thank you, Madam Chair.

22 You testified to this, but I'll just ask

1 you one more time. What are the uses that are
2 proposed to be contained in this structure?

3 Either one.

4 MS. MANCHESTER: The main level would be
5 the garage, and then the basement would just be a
6 storage area.

7 MS. SORG: And the stair that you're
8 proposing is enclosed, correct?

9 MR. RAG: That's correct.

10 MS. SORG: Why the inclusion of the bath?

11 MS. MANCHESTER: Mainly for water access
12 and a dry sink, which you can often find in
13 garages.

14 MS. SORG: Okay.

15 I think for me so far, based on the
16 submissions and your testimony, I can definitely
17 get your argument behind the height and
18 measurement from the alley for sure.

19 How much more of -- how much are you
20 losing in terms of square feet from the rear
21 yard?

22 MR. RAG: It's approximately 100 square

1 feet.

2 MS. SORG: And that leaves you with how
3 big a rear yard for your enjoyment?

4 MR. RAG: The width of the lot is 20
5 feet. I don't have the exact measurement from
6 the house to the new garage, but I would
7 approximately 20 to 25 feet.

8 MS. SORG: Okay. Thank you.

9 Those are my questions so far.

10 MR. JORDAN: I'm a bit confused. You
11 said the rear yard is 100 feet? Did you say 100
12 feet? What did you say? What did you use the
13 term "100" -- you said 100 something?

14 MR. RAG: She asked how much we would
15 lose of the rear yard, and I said 110 square
16 feet.

17 MR. JORDAN: 100 square feet, okay.

18 CHAIRPERSON MOLDENHAUER: Thank you.

19 Any other questions, Board members, of
20 the Applicant?

21 [No audible response.]

22 CHAIRPERSON MOLDENHAUER: I'm just going

1 to ask the architect. Can you walk me through
2 what areas you included in your FAR calculation?

3 MR. RAG: Are you asking lot coverage?

4 CHAIRPERSON MOLDENHAUER: Lot coverage.

5 MR. RAG: The front porch encroaches, so
6 you have to count a portion of the front porch.

7 Are you talking with the new structure,
8 also?

9 CHAIRPERSON MOLDENHAUER: Yes.

10 MR. RAG: In the rear yard, the new
11 landing area that comes out of the existing
12 house, that portion would count towards lot
13 coverage, and then obviously, the new garage
14 would also count towards lot coverage.

15 We had this verified by the Office of
16 Zoning.

17 CHAIRPERSON MOLDENHAUER: And the
18 bathroom is going to have just a toilet and a
19 sink, not a full shower, correct?

20 MS. MANCHESTER: Correct.

21 CHAIRPERSON MOLDENHAUER: Okay.

22 I don't have any other questions of the

1 Applicant. Do any other Board members have any
2 questions of the Applicant?

3 [No audible response.]

4 CHAIRPERSON MOLDENHAUER: Seeing none, at
5 this time I'll see if there's anybody in the
6 audience wishing to testify in support of this
7 application.

8 Please step forward. If you can turn on
9 your microphone and first state your name and
10 home address.

11 MR. GOLDMAN: My name is Seth Goldman,
12 and my address is 1235 F Street, N.E., Unit A.
13 And if it pleases the Board, I'm also the
14 president of the condo association of the
15 boutique building adjacent to the Manchesters'
16 property, address 1233 and 1235, comprising four
17 units.

18 I'm here basically reiterating our
19 support. One of the letters of support you have
20 is from our building from a unanimous meeting
21 where we looked over all of the Manchesters'
22 plans, and we are convinced that her submission

1 and the request of this Board both will enhance
2 the neighborhood and the alley and not encroach
3 at all on the four homeowners that are
4 immediately adjacent to her.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much, Mr. Goldman.

7 Are there any questions from Board
8 members for Mr. Goldman?

9 [No audible response.]

10 CHAIRPERSON MOLDENHAUER: Seeing none,
11 thank you, and we also have your letter of
12 support as our Exhibit 7 in the record.

13 MR. GOLDMAN: Thank you.

14 CHAIRPERSON MOLDENHAUER: Thank you.

15 Are there any other individuals in the
16 audience in support or in opposition of this
17 case?

18 [No audible response.]

19 CHAIRPERSON MOLDENHAUER: Seeing none,
20 then we will turn to see if there's anybody in
21 the audience from ANC-6A.

22 [No audible response.]

1 CHAIRPERSON MOLDENHAUER: Seeing no one,
2 we do now have a letter in our record, which
3 indicates that at a properly noticed and
4 scheduled meeting on June 9th, 2011, the ANC met
5 and voted 7 to 0 to 0 with a quorum present to
6 support this application. That being said, that
7 letter is -- it's actually not signed, so what we
8 can do, since it's not signed, we can acknowledge
9 the letter, but it will not receive great weight.
10 And we'll also just indicate the letter from the
11 Capitol Hill Restoration Society.

12 At this point in time, I'll turn to the
13 Office of Planning for their remarks.

14 MS. THOMAS: Good evening, Madam Chair,
15 members of the Board.

16 The Office of Planning is recommending
17 approval of the special exception request and
18 variance relief to permit two stories where one
19 is required and 27 feet in height for the garage,
20 where 15 feet is permitted.

21 I'd just like to correct for the record
22 in our report, we did say on page 1 -- we did say

1 22 feet, and that's a typo, typograph. It's
2 supposed to say 27 feet.

3 We don't anticipate any substantial
4 detriment to the public good by having the garage
5 as proposed. We would just condition, though,
6 that the area below the garage is used for
7 storage purposes only.

8 I'll be happy to take any questions.

9 MS. SORG: I can ask one question, Madam
10 Chair.

11 We have a letter from the Capitol Hill
12 Restoration Society. They seem to be generally
13 in support of the project, but not of the pop-up
14 piece. I may not be seeing it correctly in your
15 report, but what's your opinion on that piece?

16 MS. THOMAS: I did have some concerns
17 with respect to the pop-up at first, but upon
18 further examination, we just thought that it was
19 -- when you did look at how much difference it
20 was in terms of the 7 feet, we thought that the 7
21 feet was equivalent to what was being asked for
22 in the grade difference, and it was not much more

1 than the grade difference. So I think that
2 dissuaded our concerns a bit, and it does meet
3 the height required for a door to get up onto the
4 roof.

5 Essentially, we don't have any more
6 concerns beyond that.

7 One additional thing. If you could ask
8 the Applicant again. I can't remember the exact
9 amount of feet with respect to the difference
10 from the horizontal, if you measure from the rear
11 yard, basically the rear yard to the top of that
12 roof. I would ask the Applicant to just state
13 what is the height there again.

14 [Pause.]

15 MS. THOMAS: I'm just saying that if it
16 did go straight across from the -- I can't
17 explain it properly. If it did go --

18 CHAIRPERSON MOLDENHAUER: Can you just
19 identify what page you're looking at, so everyone
20 can be on the same --

21 MS. THOMAS: That's A-302.

22 CHAIRPERSON MOLDENHAUER: A-302, okay.

1 MS. THOMAS: If the Applicant can just
2 state what that height would be, you would see
3 that it wouldn't be sufficient access to the roof
4 measured straight across horizontally, so that's
5 why you had to have that piece pop right up.

6 CHAIRPERSON MOLDENHAUER: Can you say
7 that again? I'm sorry.

8 MS. THOMAS: Yeah.

9 MR. RAG: I think I can answer that.

10 CHAIRPERSON MOLDENHAUER: If you can
11 articulate that.

12 MR. RAG: Yes. As you measure from the
13 alley, if you look at A-401 from the alley side
14 to the top of the majority of the stair tower,
15 it's 15 feet. The last portion that pops up,
16 that small portion that we need for head height,
17 is an additional 2-foot, 10, and that's why it
18 does pop up in that area to get up there.

19 Does that answer your question?

20 MS. THOMAS: I'm sorry, yes. So I just
21 wanted this height. If you can explain the
22 height from the top of the garage roof?

1 MR. RAG: From the top of the parapet?

2 MS. THOMAS: Yeah, to --

3 MR. RAG: To the top of the pop-up?

4 MS. THOMAS: Yes. Not to the top of the
5 pop-up exactly, but if you only put this height
6 across here, you wouldn't be able to get a door.

7 MS. MANCHESTER: She's talking about the
8 height from here to here.

9 MR. RAG: Yes.

10 MS. THOMAS: Right?

11 MR. RAG: That's correct.

12 MS. THOMAS: And if you could explain
13 what that height is and the difference in that
14 height?

15 MR. RAG: The difference from the ceiling
16 inside is 2 foot, 10 1/2. So the top of the
17 stairtower is -- not the pop-up portion, just the
18 stairtower is 2-foot, 10, lower than the pop-up
19 portion. Is that clear?

20 CHAIRPERSON MOLDENHAUER: No. Can you
21 say that again?

22 MR. RAG: Okay. I believe what she's

1 asking, on page A-302, you're looking at a
2 section through the stairtower. On the left side
3 of the stairtower is obviously the little pop-up
4 section. On the right is the landing area for
5 the stairs to go up there, and I believe she's
6 asking what's the difference in height from the
7 landing area to the pop-up area, the ceiling of
8 the landing area to the ceiling of the pop-up
9 area. And that difference is 2-foot, 10 1/2.

10 MS. SORG: And then what you were saying
11 before is that the height of that landing area as
12 measured from the alley is where 15 feet is?

13 MR. RAG: Correct.

14 MS. SORG: Oh, that's the ceiling height.
15 Your total height is 22 feet.

16 MR. RAG: The total height from the rear
17 yard is 27 feet, 2 1/2. From the -- to the top,
18 the very top of the structure.

19 MS. SORG: The pop-up place.

20 MR. RAG: Yes.

21 MS. SORG: And that height from the alley
22 side is 22 feet?

1 MR. RAG: From the alley side, it would
2 be 17 feet, 10 1/2, I believe.

3 MS. SORG: Okay, okay. Thank you.

4 CHAIRPERSON MOLDENHAUER: Are there any
5 other questions of the Board from the Office of
6 Planning?

7 [No audible response.]

8 CHAIRPERSON MOLDENHAUER: Does the
9 Applicant have any questions? Does the Applicant
10 have any questions for the Office of Planning?

11 MS. MANCHESTER: No, ma'am.

12 CHAIRPERSON MOLDENHAUER: No? Okay.

13 Do Board members have any other questions
14 of the Applicant prior to the Applicant
15 presenting their closing remarks?

16 MR. HOOD: Madam Chair, I'm just curious.
17 The ANC is showing a notice. It's not signed.
18 Is there a reason it wasn't signed?

19 MS. MANCHESTER: That was the copy that
20 they delivered to me after the meeting, just as a
21 reference, and they were supposed to actually
22 mail it to Mr. Moy.

1 MR. HOOD: Okay.

2 MS. MANCHESTER: And I believe we could
3 check online. They're supposed to post those
4 notices online as well.

5 MR. HOOD: I think that actually reading
6 this letter, I'm actually familiar, as we all
7 are, with Mr. Holmes and Mr. Rodenberg [ph], with
8 all the work that they do.

9 Depending upon how you want to proceed --
10 or you proceed not today, we proceed --
11 regardless of whether we deliberate or whatever
12 the case is. I still think even after the case
13 -- and I know Ms. Glazer will correct me if I'm
14 incorrect, but we still wait for this letter, so
15 we can afford them the great weight that is due.
16 Any time you have a voluntary group, I believe
17 you have to do all you can do to try to give them
18 great weight, so that's my 2 cents worth.

19 MS. GLAZER: I think Mr. Moy just went to
20 check to see if there's a copy that's signed.

21 CHAIRPERSON MOLDENHAUER: Do Board
22 members have any other comments or questions to

1 the Applicant?

2 [No audible response.]

3 CHAIRPERSON MOLDENHAUER: I guess my
4 question is I'm still trying to get around
5 whether or not the pop-up is absolutely crucially
6 necessary or if it's something that's obviously
7 an additional request, since you are losing a
8 little bit of area in regards to the rear lot.

9 And does this case -- I'm just trying --
10 I've got to pull it up in my file. Was this a
11 self-certified application, or is this a ZA
12 referral?

13 MR. RAG: ZA referral.

14 CHAIRPERSON MOLDENHAUER: A ZA referral.
15 The reason why I ask that is we have -- we take
16 the application as it exists based on the
17 building plans. We can't approve a certain
18 section and then not approve another section. We
19 have to base it on the plans that are in front of
20 us.

21 Why don't we just -- we'll wait 5 minutes
22 and see if we can get a copy of the ANC letter,

1 and then we'll go back on the record.

2 [Pause.]

3 MR. MOY: Excuse me, Madam Chair. For
4 the record, we do have a signed copy from Mr.
5 Holmes. The staff is making copies for the Board
6 to view.

7 CHAIRPERSON MOLDENHAUER: Wonderful. I
8 appreciate that. Then as soon as we get that,
9 obviously the letter then would receive the great
10 weight required.

11 Once we get that, we can close the record
12 and either deliberate now or set this for
13 deliberation.

14 I'm still -- I guess I'm a little
15 concerned still about the pop-up in regards to
16 the fact that, you know, you did testify about
17 the fact that the rear yard is still 20 by 20,
18 and I may ask the Applicant, you know, if you
19 would maybe want -- because right now, as I said
20 before, we have to make a decision on the case as
21 it is as a whole, but if you wanted to, you could
22 always take the case and ask us to hold off and

1 maybe revise the plans or at least provide an
2 alternative for us to review this application
3 maybe for the garage without maybe having the
4 additional roof access and roof deck.

5 I'll just provide that to you as a
6 thinking point.

7 MS. MANCHESTER: Can I ask the process,
8 if I choose to let you go ahead and vote today
9 and it's negatively voted upon? Do we start the
10 process all over?

11 CHAIRPERSON MOLDENHAUER: Yes, you would
12 have to start the process all over.

13 MS. MANCHESTER: Okay. Would you give me
14 a moment, please?

15 [Pause.]

16 CHAIRPERSON MOLDENHAUER: Are there any
17 other questions of the Board members of the
18 Applicant?

19 [No audible response.]

20 CHAIRPERSON MOLDENHAUER: Does the
21 Applicant have any additional --

22 MS. MANCHESTER: Is it the request for a

1 deferral? Is that what you said earlier?

2 CHAIRPERSON MOLDENHAUER: We can also
3 just put this on a decision calendar for next
4 month, and you can provide any additional
5 submissions or revised plans if you wanted to at
6 that point.

7 MS. MANCHESTER: Okay.

8 CHAIRPERSON MOLDENHAUER: Is that what
9 you'd like to do?

10 MS. MANCHESTER: Yes.

11 CHAIRPERSON MOLDENHAUER: Okay. Then why
12 don't we -- we have a November -- our first
13 November -- no, next month is October. I'm
14 sorry.

15 [Laughter.]

16 CHAIRPERSON MOLDENHAUER: You get me off
17 for one month, and then all of a sudden to get
18 started in September.

19 So I think we put this in for a decision
20 for the first week of October? Mr. Moy, what's
21 our decision date for that?

22 MR. MOY: That would be the 4th of

1 October, Madam Chair.

2 CHAIRPERSON MOLDENHAUER: The 4th of
3 October.

4 So then what we would do is we put this
5 on for a decision for October 4th, and you would
6 be able to submit any additional revisions to the
7 office by -- let me just look at the calendar
8 here -- submitted to the office prior to the --
9 on the 26th, so the 26th would be the deadline to
10 submit any changes or revisions, and then we
11 would have this as a decision case for October
12 4th.

13 MS. GLAZER: Madam Chair, if you're
14 leaving the record open for the Applicant to
15 submit revised plans, do you want to make
16 provisions or set a time table for any responses
17 by either the ANC or OP to do a supplemental
18 review?

19 CHAIRPERSON MOLDENHAUER: I don't know if
20 that's necessary. I mean, I think that any plans
21 would be having me potentially -- obviously, the
22 plans come back and they require more relief,

1 then I think obviously on that decision date, we
2 can always postpone further for additional time
3 frame, but I don't think that they will come back
4 with plans that need more relief. So I don't
5 think a supplemental review would be necessary.

6 MS. GLAZER: Well, is the Board going to
7 specify, then, that the record is open only to
8 submit revised plans that require the same relief
9 as requested?

10 CHAIRPERSON MOLDENHAUER: Yes. Thank
11 you.

12 MS. SORG: I just sort of, Madam Chair,
13 wanted to jump in. I think that limiting that --
14 I'm not sure I'm wanting to limiting the
15 Applicant only to revising the plans. I think
16 that, you know, I'm sure that the Applicant has
17 gotten a flavor of kind of from our questions and
18 so forth perhaps. I think additionally, another
19 submission may be additional reasoning towards
20 some of the relief that's being requested.
21 That's a choice. I'm not advocating for one or
22 the other, but I think that it's fairly clear

1 that there is at least one part of this
2 application that I think is requiring either
3 revision or explanation.

4 CHAIRPERSON MOLDENHAUER: I think that's
5 a positive clarification.

6 So we'll leave the record open then for
7 any additional submissions, and obviously, that
8 would not increase the relief sought.

9 MS. MANCHESTER: Thank you.

10 CHAIRPERSON MOLDENHAUER: Thank you.

11 And this is then set for October 4th, and
12 any additional submissions can be submitted prior
13 to September 26th.

14 MS. MANCHESTER: Is that the morning or
15 afternoon session?

16 CHAIRPERSON MOLDENHAUER: It will be the
17 morning. The decisions are all in the morning.

18 MS. MANCHESTER: Okay, thank you.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much for your time.

21 Mr. Moy, when you're ready, we can call
22 the next case.

1 **Application No. 18245**

2 MR. MOY: Yes. Thank you, Madam Chair.

3 The next case for the Board to hear is
4 Application No. 18245. This is the application
5 of Tod and Barbara Master, pursuant to 11 DCMR
6 3103.2 for a variance from the lot occupancy
7 requirements under Section 403, a variance from
8 the rear yard requirements under Section 404, and
9 a variance from the nonconforming structure
10 requirements under Subsection 2001.3. This is to
11 allow the expansion of a rear deck serving a
12 one-family row swelling in the R-4 District at
13 premises 930 Quincy Street, N.W., property
14 located in Square 2901, Lot 95.

15 CHAIRPERSON MOLDENHAUER: Good afternoon.
16 If the Applicant can please introduce themselves?

17 MR. MASTER: Good afternoon. My name is
18 Todd Master. I live at 930 Quincy Street, N.W.

19 CHAIRPERSON MOLDENHAUER: Good afternoon,
20 Mr. Master. If you can present your case,
21 please?

22 MR. MASTER: I'd be glad to.

1 I actually have a little bit of
2 clarifying document here, if that would be
3 helpful.

4 CHAIRPERSON MOLDENHAUER: Yes. Did you
5 make copies?

6 MR. MASTER: Yes.

7 CHAIRPERSON MOLDENHAUER: Thank you.
8 Provide it to Mr. Moy, and he'll distribute it.

9 MR. MASTER: Good afternoon, Madam Chair,
10 members of the Board. My name is Todd Master. I
11 live at 930 Quincy Street, N.W. I live in a
12 rowhouse in the Petworth neighborhood. If you've
13 ever been to a Petworth rowhouse, you've probably
14 been to my house, because they're all pretty much
15 exactly the same in terms of layout. We call it
16 "Wardman style-type rowhouse."

17 The layout of the house is there's a
18 small set of steps to get up to the front to the
19 main floor, and then out the back, there is also
20 a set of stairs. There's a small landing and a
21 set of stairs that allow egress out of the back
22 to the small back yard.

1 To the rear of the property is the city's
2 Raymond Recreation Center, so there's no
3 neighbors to the rear.

4 The variance I'm seeking is to replace
5 the current landing and set of stairs with ones
6 that are Code-compliant and in addition to expand
7 that landing into a deck in order to enable use
8 of that back area.

9 The reason I'm seeking a variance is that
10 the lot size is exceptionally short. R-4
11 specifies 1,800 square feet for a lot size. Mine
12 is 1,193. As a result, I have a significantly
13 truncated back yard. So I have space to park a
14 car, but I don't have space to use it for both
15 parking the car and for recreational use.

16 So what I propose to do is expand the
17 deck to the width of the house to be able to
18 utilize the outdoor space while retaining the
19 parking spot.

20 That is the main crux of what I'm looking
21 for. Like I said, the main point here is that
22 the lot is about two-thirds less than a standard

1 R-4 size, and as a result, the 60 percent or even
2 the 70 percent allowed by special exception
3 Zoning Requirements don't enable any actual
4 building to be created beyond, much beyond the
5 original landing house that's there now.

6 CHAIRPERSON MOLDENHAUER: Do you have any
7 additional information that you'd like to share
8 with the Board?

9 MR. MASTER: Yes. So you should have in,
10 I guess, part of the file a letter of approval
11 from our ANC as well as letters of support from
12 both of the adjoining neighbors.

13 CHAIRPERSON MOLDENHAUER: We don't have
14 any letters of support or an ANC letter in our
15 record.

16 MR. MASTER: Okay. The ANC submitted it
17 directly to --

18 CHAIRPERSON MOLDENHAUER: Oh, wait.
19 Actually, we do have the ANC letter. We don't
20 have the letters of support, though.

21 MR. MASTER: Okay.

22 CHAIRPERSON MOLDENHAUER: I did find

1 that. Sorry. That's our Exhibit No. 19, but we
2 don't have letters of support from neighbors.

3 MR. MASTER: Okay. I have those. I
4 don't have copies. The ANC had said that they
5 would submit it with the package.

6 CHAIRPERSON MOLDENHAUER: We have the ANC
7 letter.

8 MR. MASTER: Okay.

9 CHAIRPERSON MOLDENHAUER: We don't have
10 the neighbors, the neighbor letters. So you have
11 those.

12 MR. MASTER: So I can provide those?

13 CHAIRPERSON MOLDENHAUER: If you could
14 provide those, that would be great, to Mr. Moy.

15 [Pause.]

16 CHAIRPERSON MOLDENHAUER: And when you
17 get back to the microphone, are those your
18 adjacent neighbors to your right and left?

19 MR. MASTER: Yes. Those are both the
20 adjacent neighbors.

21 The other point I would make, that it's
22 on the block, the construction I'm looking for is

1 expanding what's basically just a landing right
2 now. So there's not room to use that landing for
3 anything really beyond a couple of potted plants
4 and getting down the stairs to the back yard.

5 What I'm proposing to do is expand it the
6 width of the yard, which has actually already
7 been done by four neighbors on the block, so it's
8 not unprecedented for the area. It's anything
9 that's actually already fairly common. The total
10 expansion that I'm talking about is about 163
11 square feet, so it's on the small side, we push
12 the total lot to 82 percent.

13 And I did show you a drawing up there. I
14 considered, obviously, the special exception
15 case. The issues I have with that is it still
16 does not allow for that deck to be usable space
17 for recreation. In addition, it also then
18 encroaches into the area where the parking space
19 is. If you were to make the deck any sort of
20 usable size, it basically inhibits me from being
21 able to park a car there, because there's going
22 to be a support pole, basically.

1 MS. SORG: Can you clarify that?

2 MR. MASTER: Mm-hmm.

3 MS. SORG: So you're testifying that
4 there would necessarily be a beam in a place that
5 would prevent you from parking your car under it
6 if you were to go for a deck that kept you 70
7 percent or less in lot occupancy?

8 MR. MASTER: Well, my main argument
9 against that would be that the deck size at 70
10 percent is still small enough that I couldn't
11 really fit a table and chairs on there that would
12 be useful, but I suppose you could design a deck
13 different than I have that has some sort of an
14 overhang or something like that. That was not
15 directly supported on the corners, in that case I
16 could.

17 Where the supports for the deck are now,
18 if they were to be placed any further to the
19 right as you see it in your drawing, they would
20 basically get in the way of the parking space.

21 It should also be noted that there's
22 basically a half carport underneath the enclosed

1 porch there. You can see it in the picture on
2 the first page of my application. If you were to
3 move those poles over, you would not really be
4 able to move that car into that area.

5 CHAIRPERSON MOLDENHAUER: Do other Board
6 members have any other questions for the
7 Applicant?

8 MR. HOOD: Yes. Are these your immediate
9 neighbors to your left and right?

10 MR. MASTER: Yes.

11 MR. HOOD: On the sides, I mean.

12 MR. MASTER: Mm-hmm.

13 MR. HOOD: Do you have anyone in front or
14 back of you? I think back, it's open field?

15 MR. MASTER: Right. In back of me is a
16 city rec center, so it's just open space.

17 MR. HOOD: Okay, all right. Good, good.
18 Thank you.

19 MR. JORDAN: I'm looking at your Figure
20 No. 12. The neighbor, I guess, to -- if you're
21 facing the front of the house to your right, is
22 that -- what's the size of that deck? Do you

1 know?

2 MR. MASTER: It's basically the same
3 square footage that I'm looking for. They're
4 approximately 12 feet out, so you can see -- so
5 two lots over, not my immediate neighbor, but the
6 one past them and then past them and then past
7 them, basically they're Lots 93, 92, and 91.
8 Each have similar construction to what I'm
9 seeking to build here. All three of those
10 actually have a full garage door opener, sort of
11 an assembly constructed over there. So, in terms
12 of something new or unique to the block, it
13 wouldn't be.

14 CHAIRPERSON MOLDENHAUER: Sorry. The
15 Board is just -- some Board members did not get
16 Exhibit No. 4, and they're just getting that now.

17 MR. MASTER: Okay.

18 CHAIRPERSON MOLDENHAUER: We're just
19 going to review that for a second.

20 MR. MASTER: I do have an extra copy if
21 you need it.

22 CHAIRPERSON MOLDENHAUER: We just got

1 them, and actually, they provide a whole bunch of
2 diagrams. We're going to catch up. So, if you
3 just bear with us. If there's additional
4 questions that Mr. Lloyd would like to ask, feel
5 free.

6 [Pause.]

7 CHAIRPERSON MOLDENHAUER: I'm looking at
8 page 2 now of Exhibit 4.

9 MR. MASTER: Okay.

10 CHAIRPERSON MOLDENHAUER: And this is
11 showing, I guess, that -- I guess when I'm
12 looking at this document in comparison to the new
13 exhibit you showed us, they don't seem to gel.

14 MR. MASTER: Okay.

15 CHAIRPERSON MOLDENHAUER: It looks like
16 you actually have a large -- that your property
17 line would allow you to park your car, from page
18 2, further into the property or further away from
19 the property and provide outdoor space on the
20 lower level, outdoor recreational space on the
21 lower level instead of having to expand the deck.

22 MR. MASTER: In addition to having a car

1 parked there?

2 CHAIRPERSON MOLDENHAUER: You could just
3 park your car further against the rear of the
4 property.

5 MR. MASTER: Against the rear of the
6 property?

7 CHAIRPERSON MOLDENHAUER: Instead of
8 pulling the car all the way into the car part, it
9 looks as though on page 2 that you could create a
10 parking pad that's open-air parking pad close to
11 the alley and use that area where your car
12 currently is as an outdoor recreation area.

13 MR. MASTER: I think because of the width
14 of the alley, are you saying something that would
15 go maybe the length of there? I don't believe I
16 could park the car necessarily lengthwise along
17 that property, and even if I could, I'm not sure
18 I would be able to make that turn into the
19 property with the way that the gates are
20 configured.

21 They just installed new telephone poles
22 in the alley, which are basically directly behind

1 my property, so it's not in the pictures, because
2 it was literally about 2 weeks ago.

3 CHAIRPERSON MOLDENHAUER: Oh, I'm not
4 talking about parallel parking the car.

5 MR. MASTER: Okay.

6 CHAIRPERSON MOLDENHAUER: I'm just saying
7 if you were to pull the car in and stop it. I'm
8 just trying to figure out the length of your
9 property. By the picture on page 2, it looks
10 like you could have enough room to stop the car
11 further in the rear of the property and have a
12 significant area as just a recreational area
13 closer towards your carport where it currently
14 is.

15 MR. MASTER: The problem with that, there
16 is still the landing, which is constructed there
17 and regardless will take up a fair amount of that
18 remaining space.

19 In addition, there's basically a space
20 for garbage can storage and a City drain that
21 drains into there, so it's not really something I
22 think you could necessary build a patio over or

1 --

2 CHAIRPERSON MOLDENHAUER: Where is the
3 City drain that you're referring to?

4 MR. MASTER: If you see where that blue
5 can is in Figure 2, there is actually drainage
6 right directly underneath there that provides
7 drainage from the yard. The yard is at a slight
8 grade towards the house, so the drain is
9 important to keep it from flooding in the
10 basement.

11 CHAIRPERSON MOLDENHAUER: You mean the
12 blue can with the trash can?

13 MR. MASTER: Yeah. It's directly next to
14 that.

15 CHAIRPERSON MOLDENHAUER: By that step,
16 okay.

17 MR. MASTER: Mm-hmm.

18 CHAIRPERSON MOLDENHAUER: I'm just taking
19 a look at this exhibit. Do any Board members
20 have any other questions?

21 [No audible response.]

22 CHAIRPERSON MOLDENHAUER: Seeing no

1 questions at this time, is there any additional
2 comments that the Applicant wishes to make?

3 MR. MASTER: Sure. I think if you look
4 at the exhibit that I handed you, the point I'm
5 trying to make is that the 60 percent requirement
6 or even the 70 percent under special exception,
7 which is tuned to the 1,800 square feet, those
8 two obviously were intended to go together. That
9 has a substantial impact on my property because
10 of the fact that I don't have 1,800 square feet.

11 So it really limits my maximum space there to
12 about -- well, it's 715 at the 60-percent level,
13 which is actually less than the size of the house
14 itself, and at the 70-percent level, 835, which
15 does not really allow for any additional space.

16 My understanding also is that if i were
17 to remove that parking space in order to put --
18 to use the outdoor space to the full extent, that
19 that in and of itself would require me to come
20 and get a variance. Is that correct?

21 MR. JORDAN: Let me ask you. What is
22 particularly unique about your back yard as

1 opposed to those other neighborhoods, your other
2 neighbors?

3 MR. MASTER: If you look -- so the house
4 construction type that I have, if you look to all
5 of the blocks to the north as the Petworth
6 neighborhood expands, all of those lots are 1,800
7 to 2,000 square feet, with very, very few
8 exceptions. So the thing that is unique, it's
9 because you have the cross-cutting of that
10 diagonal alley with the rec center behind it,
11 it's truncated, those lot lengths, quite a bit.

12 So I do have a handful of neighbors.
13 There's probably about four or five neighbors who
14 would be in the same boat as me; however, as I
15 mentioned, there's already -- four of them have
16 already built out their properties. I don't know
17 whether or not those are permanent. I can't
18 speak to that, obviously.

19 So, really, the part that makes it unique
20 is the fact that it is quite small and that I
21 don't have any impact from any -- abutting any
22 neighbors or encroaching on any neighbors to the

1 rear because of the rec center.

2 MR. HINKLE: Yeah. Can I ask you what's
3 keeping you from using your yard without the yard
4 -- I mean without the car for recreational
5 purposes?

6 MR. MASTER: If you look at the size,
7 it's actually -- it's really the size of it more
8 than anything. I don't have that square footage
9 available, but, I mean, the yard is probably -- I
10 mean, if you look at -- I guess it's best
11 evidence if you look at that Exhibit 4, the first
12 photo there. You can see the space that's taken
13 by those stairs. Those stairs are actually under
14 the required width for Code, so they need to be
15 reconstructed up to Code. So, once you have that
16 and the car both parked there, the remaining
17 space is in tens of square feet. It's really not
18 anything I can use effectively for any sort of
19 function with the car parked there.

20 MR. HINKLE: But without the car parked
21 there, there's nothing restricting you from
22 actually enjoying that outdoor space?

1 MR. MASTER: Right. The only problem
2 there is I would have to build something that --
3 or I would choose to use that in such a way that
4 I would put a table out there. I would use it
5 as, you know, a patio or a deck, and pulling the
6 car into that would -- I wouldn't really have
7 space to do both. So I don't know if I'd be
8 moving furniture every time I pulled the car in
9 or --

10 MR. HINKLE: Okay. Thank you.

11 CHAIRPERSON MOLDENHAUER: At this point
12 in time, I'll see if there's anybody in the
13 audience in support or in opposition of this
14 case?

15 [No audible response.]

16 CHAIRPERSON MOLDENHAUER: Seeing none,
17 then I'll turn to the Office of Planning for
18 their report.

19 MS. THOMAS: Madam Chair, members of the
20 Board, Karen Thomas with OP.

21 We couldn't recommend approval of this
22 application due to the existing nonconformity

1 with respect to its lot occupancy, existing lot
2 occupancy, and any further addition on the
3 property would go way beyond Section 223, what is
4 permitted, under Section 223 at 70 percent. So
5 we believe our hands are tied with respect to
6 that existing nonconformity.

7 Then we did not find any unique situation
8 of the property besides the fact that it's small,
9 which is quite common for other R-4 properties
10 throughout the District, and on that basis, we
11 couldn't recommend approval of the requested
12 deck.

13 CHAIRPERSON MOLDENHAUER: Does the
14 Applicant have any questions for the Office of
15 Planning?

16 MR. MASTER: So I guess a question would
17 be that the current construction is not to Code.
18 It's a poorly constructed structure. If that
19 needs to be even just replaced, what does that
20 require in terms of --

21 MS. THOMAS: Yeah. Well, I did discuss
22 this with Mr. LeGrant at DCRA, the Zoning

1 Administrator, and he did tell me, yes, in fact,
2 you know, you would have to have relief to have
3 the same if you had to go and do it the same way.
4 But -- yeah.

5 CHAIRPERSON MOLDENHAUER: Can you repair
6 an existing nonconforming structure?

7 MS. THOMAS: Well, if he -- if he broke
8 it --

9 CHAIRPERSON MOLDENHAUER: If he raised it
10 and totally demolished it and then wanted to
11 rebuild it, that would be one thing.

12 MS. THOMAS: Yeah, if he demolished it
13 and wanted to rebuild it.

14 CHAIRPERSON MOLDENHAUER: Okay. But if
15 he just wanted to repair it as-is, he could do
16 that?

17 MS. THOMAS: Yeah, he could repair it.

18 CHAIRPERSON MOLDENHAUER: Without needing
19 any sort of zoning relief.

20 MS. THOMAS: Right. That's correct. I'm
21 sorry.

22 MR. MASTER: Even though it's needed in

1 terms of safety, it still would not enable me to
2 use the outdoor space. If I rebuilt it even up
3 to the 70-percent limit, you can see the space
4 that's available. Once you consider what's not
5 being blocked by the doors and the stairs, it's
6 pretty small. I guess probably that landing as
7 it is, is 50 square feet. The expansion would
8 let me add another 17 onto it, but when I take
9 into account that the egress from the stairs
10 blocks about 20 percent of that, we're back down
11 to something in the neighborhood of 40 square
12 feet.

13 CHAIRPERSON MOLDENHAUER: Do you have any
14 questions for Office of Planning or any other
15 questions for Office of Planning?

16 MR. MASTER: No, I do not.

17 CHAIRPERSON MOLDENHAUER: Do any Board
18 members have any questions for Office of
19 Planning?

20 MR. HOOD: Yeah, I do.

21 The other properties that are adjacent to
22 this property, do we know, did they receive a

1 variance with a grandfather for the expanded
2 decks that they have?

3 MS. THOMAS: We have no idea how they got
4 those decks.

5 We did look and search some records. We
6 found no approvals.

7 MR. MASTER: I will note that the one on
8 the corner of Quincy Street, which is Lot No. 89,
9 actually does have -- if you look in the Zoning
10 Map, does have a grandfathered structure that
11 they built a deck on top of, so again, there are
12 things within the -- even within the Zoning Map
13 that show that there are some permitted
14 structures out there.

15 CHAIRPERSON MOLDENHAUER: Are there any
16 other questions from Board members of the Office
17 of Planning?

18 [No audible response.]

19 CHAIRPERSON MOLDENHAUER: Seeing none,
20 then we'll turn to the ANC. Do we have anybody
21 here for ANC-4C present?

22 [No audible response.]

1 CHAIRPERSON MOLDENHAUER: Seeing no one,
2 I'll just indicate that we do have Exhibit No. 19
3 which indicates that at a properly noticed
4 meeting on July 13th, 2011, with a quorum
5 present, there was a vote to approve the
6 requested variance, and this is signed by ANC-4C
7 Chair and Vice-Chair. This letter would receive
8 great weight in support of the application.

9 That being said, we'll turn back to the
10 Applicant for closing remarks.

11 MR. MASTER: Thank you.

12 So, in closing, what I'm trying to look
13 for in terms of this deck will really enable my
14 use of my outdoor space in a way that I can't do
15 right now. I have support of my neighbors,
16 support of the ANC. With the rec center behind
17 us, which often has issues associated with crime
18 and people conducting things out there that most
19 of us would rather not notice, the security of
20 the overall neighborhood will definitely be
21 improved by having additional people outside
22 enjoying their outdoor space with eyes on the rec

1 center and overall will increase the quality of
2 our neighborhood by being able to use our outdoor
3 space and share it with our neighbors.

4 So I thank the Board for their time and
5 appreciate it.

6 CHAIRPERSON MOLDENHAUER: Do Board
7 members have any final questions for the
8 Applicant?

9 MR. JORDAN: Yes. In this diagram,
10 looking at the current condition, if you take
11 your deck all the way across, which is less
12 expansive than that which you're requesting,
13 isn't that possible?

14 MR. MASTER: If I take the deck all the
15 way across the house?

16 MR. JORDAN: Mm-hmm.

17 MR. MASTER: If I were to do that, I
18 think it would only be about a foot or two deep.

19 MR. JORDAN: Foot or two.

20 MR. MASTER: Because of the 70 percent
21 restriction. I can only add -- to what I have
22 right now, I can add approximately 17 square

1 feet, which would -- well, it would be a
2 1-foot-wide deck the whole way across, or it
3 would be a 1-foot-wide addition the whole way
4 across.

5 MR. JORDAN: But there's alternatives
6 than be as -- it doesn't have to be as deep or as
7 long, deep into the yard?

8 MR. MASTER: Right. But the issue that I
9 run into is regardless of how I redesign it, it
10 still exceeds the 70 percent. I mean, I could
11 consider a case to have it shorter, and if there
12 were a way to say that if it's under 80 percent,
13 that would be more favorable or under 78 percent
14 that's more favorable, I'd be glad to redesign
15 it. If somebody could tell me if that's the
16 case, that would be helpful, if there's some
17 number.

18 From my understanding, it's if I exceeded
19 the 708 percent, I don't know if there's another
20 number that is better. Is 79 better than 80? I
21 don't know.

22 MS. SORG: What I think I'll say in

1 general, less is easier.

2 [Laughter.]

3 MR. MASTER: Less is more.

4 MS. SORG: But once you get over 70
5 percent, it's hard.

6 MR. MASTER: I understand.

7 CHAIRPERSON MOLDENHAUER: We look at the
8 degree of relief sought in comparison to the
9 degree in which the Applicant satisfies the
10 prongs. So, obviously, if you have a really
11 strong case, a very unique property, but you were
12 seeking a lot of relief, that kind of goes hand
13 in hand. If you have a very -- case where you're
14 really on the fence and you're still seeking a
15 lot of relief, it's not going to obviously go in
16 your favor.

17 MR. MASTER: I will say that I did choose
18 the size. Obviously, I could have picked any
19 indiscriminate size and made it 14 feet or 16
20 feet, but I did choose a size, so that it was the
21 same size as the other three that were on the
22 block, so that it wouldn't be out of character

1 with what's already there.

2 CHAIRPERSON MOLDENHAUER: Unfortunately,
3 I mean, just to make a general comment, while
4 there are at times, which we don't like to see,
5 cases where people do build decks without getting
6 the required approval, there are times in general
7 over your appeals, people do construct things
8 illegally. That cannot bear any weight in
9 regards to our evaluation. You're asking for a
10 variance, which is one of the higher standards
11 that we have to review. We have to review each
12 case based on the standard of the law that the
13 regs require us to.

14 MR. MASTER: Sure.

15 CHAIRPERSON MOLDENHAUER: So, while
16 obviously the information you're providing us
17 about the neighboring property, it unfortunately
18 really does not weigh in regards to our
19 evaluation of the application.

20 MR. MASTER: Understood.

21 CHAIRPERSON MOLDENHAUER: That being
22 said, do Board members --

1 MR. HOOD: Madam Chair, I just have one
2 quick question, and I know Board Member Jordan
3 has already asked this. I just didn't remember
4 what the answer was. He asked you what was
5 unique about your property, and I can't remember
6 your response.

7 MR. MASTER: Right. I would content in
8 the variance language, one of the words written
9 there is "exceptional shallowness," and I would
10 say because I'm two-thirds of what the typical
11 property -- the R-4 specified property in the
12 regulation is that I would consider that to be
13 exceptional.

14 MR. HOOD: Does anyone else share that in
15 that area? I'm not talking about the illegal
16 here. We can't control that.

17 MR. MASTER: Sure. Understood.

18 MR. HOOD: I'm just wondering does any
19 one of your other neighbors share that exact
20 attribute?

21 MR. MASTER: On the block that I'm on,
22 it's shared by -- like I said, it's about six or

1 seven of the properties on that block. If you go
2 to any of the adjacent blocks on the other side
3 of Quincy Street or on Randolph Street or 10th
4 Street or Kansas Avenue or any of the neighboring
5 blocks to the north, that is not the case.

6 MR. HOOD: Okay. Because there is a
7 typical order on unique threshold on which we
8 have to go by, and -- I'm sorry? Okay.

9 MR. MASTER: If it pleases the Board, I
10 can come back and present data for all of the
11 areas. I've started to compile that data already
12 that basically shows if this was on the next, the
13 adjacent square or the adjacent square, the
14 adjacent square, that the number of properties
15 that are affected in the same way, and you'll
16 realize out of that data that there's only really
17 a handful in the whole area that would be in this
18 situation.

19 MR. HOOD: Okay. All right. Thank you.

20 Thank you, Madam Chair.

21 CHAIRPERSON MOLDENHAUER: Chairman Hood,
22 I've been going down the same question that you

1 are in my head, I think, and I guess one thing to
2 the Applicant, you know, we typically look at --
3 especially for variances, we look at the square.

4 We don't have the ability to look at kind of the
5 overarching area, nor do we typically look at the
6 zone in general or the minimum lot area for a
7 specific zone.

8 MR. MASTER: I do actually have a
9 representation here of the square that I can
10 share, also.

11 CHAIRPERSON MOLDENHAUER: I think Figure
12 13 in Exhibit 4 kind of shows. Is that what
13 you're going to show right here?

14 MR. MASTER: Yeah. I actually have
15 something else that will show a little bit more
16 details of which of the lots would be in the same
17 compliance cases I am and which ones --

18 CHAIRPERSON MOLDENHAUER: Okay. Do you
19 have multiple copies of that?

20 MR. MASTER: Yeah.

21 CHAIRPERSON MOLDENHAUER: Okay,
22 fantastic.

1 Once Board members get it, we'll just
2 give ourselves some time to take a look at it.

3 MR. MASTER: Okay.

4 [Pause.]

5 CHAIRPERSON MOLDENHAUER: I think the
6 Board has kind of had a chance to review this
7 submission. Do you have any additional testimony
8 you would like to provide in regards to analyzing
9 this diagram?

10 MR. MASTER: The only other testimony I'd
11 add, if it's helpful, I can provide some of that
12 data for some of the adjacent squares. Like you
13 said, I'm not sure if that's particularly useful
14 or if you consider only the square in question.

15 CHAIRPERSON MOLDENHAUER: I mean,
16 obviously, you can provide whatever -- if you'd
17 like to submit additional requirements, we will
18 -- and you ask that we postpone our decision
19 until you can submit that, we can take that into
20 consideration.

21 I don't know if I would find it as
22 persuasive personally, but I will obviously look

1 at other Board members to see if they would be
2 interested in seeing that information.

3 I am getting a consensus that I think
4 this is probably most relevant information.

5 I will just turn to OP and see if based
6 on this additional submission if that might
7 revise any of OP's evaluation in regards to the
8 uniqueness of the lot, in regards to the
9 shallowness, as the Applicant is arguing.

10 MS. THOMAS: I can see his position a
11 little bit clearer.

12 You can also see to some extent that the
13 way the alley is constructed or alternatively how
14 -- the intrusion of the park area into that
15 section, it sort of cut off the horizontal alley,
16 the east-west alley by creating that strange
17 diagonal for an alley, which cuts off a lot of
18 lot area for some of the lots, which is closer to
19 17th -- is that 17th Place?

20 MR. MASTER: It's 11th.

21 MS. THOMAS: 11th Place. Yeah.

22 MR. MASTER: I'm sorry. That's actually

1 9th Place.

2 MS. THOMAS: 9th Place. I'm sorry for
3 the record.

4 And so you can see where the lot is
5 closer to 9th Place has a slight -- has some
6 disadvantage and is unique within that square.

7 CHAIRPERSON MOLDENHAUER: So is it OP's
8 report that you think that there are lots that
9 are smaller or more narrow than this lot, and
10 thus making this lot not unique? I'm just trying
11 to make sure I understand what it is.

12 MS. THOMAS: I think it belongs to the
13 group of lots in this square that are unique to
14 that group, that special group. It belongs to
15 that group. It's a part of that group which is
16 smaller.

17 CHAIRPERSON MOLDENHAUER: So you would
18 then find the property to be uniquely small? I'm
19 just trying to understand what it is OP is --

20 MS. THOMAS: Within the square, yes.
21 Yes.

22 CHAIRPERSON MOLDENHAUER: Within the

1 square, yes.

2 MS. THOMAS: Yeah, mm-hmm.

3 CHAIRPERSON MOLDENHAUER: Okay. Is there
4 any additional submissions of the Applicant or
5 final closing remarks?

6 MR. MASTER: No. My only other comment
7 would be I think we already established that
8 having the data for other lots would not
9 necessarily be useful. If that were the case, I
10 would request a postponement and bring that data
11 forward, but if it's really considered just in
12 the scope of the square, then I have no other
13 remarks.

14 CHAIRPERSON MOLDENHAUER: Yes. I don't
15 think that additional data would be helpful in my
16 eyes, and I don't think the other Board members
17 -- I think they've all agreed.

18 That being said, are there any closing
19 remarks of any Board members?

20 MR. HOOD: I just wanted to ask Ms.
21 Thomas one thing.

22 With this latest development that she has

1 already mentioned which was revised in this
2 latest handout, I'm just curious. Under the new
3 ZRR process, would there be a tool or a
4 mechanism? And if you can't answer now, this is
5 something I need to know at a later date, but is
6 there a tool or mechanism for him to be able to
7 accomplish part or any part or at least
8 three-quarters of what he's trying to do, if not
9 all?

10 MS. THOMAS: I can't be sure right now.
11 We still look into that process, especially with
12 respect to these requests for decks on small lots
13 and doing comparative studies in terms of lot
14 sizes and looking at any potential adverse
15 impact, so we still --

16 MR. HOOD: And the reason I brought that
17 up, Ms. Thomas, was I know that one of the things
18 that we're looking at in this whole process is
19 tailoring it to certain neighborhoods, and I
20 think that would fall right in line with what
21 we're doing, but unfortunately, that's not
22 flavored or that's not ready yet. So I just was

1 wondering, so when that question comes up,
2 hopefully we'll be able to attack it or deal with
3 it at that time.

4 MS. THOMAS: Yeah.

5 MR. HOOD: So thank you.

6 MS. THOMAS: I would bring that up.

7 MR. HOOD: Okay. Thank you, Ms. Thomas.

8 CHAIRPERSON MOLDENHAUER: Yeah. I think
9 that in regards to exceptional conditions for
10 this property, it is just a challenge based on
11 the way the current Zoning Regulations are
12 written.

13 That being said, I think probably what
14 we'll do is we'll set this case for decision, and
15 we'll leave the record open. If the Applicant
16 wishes to provide any additional persuasive
17 information or provide any changes, that
18 obviously can be presented.

19 MR. MASTER: Okay.

20 CHAIRPERSON MOLDENHAUER: That being
21 said, we'll put this on decision for October 3rd
22 -- 4th. I don't want people to come in on

1 Monday. October 4th.

2 That being said, what we'll do, I know
3 we've got one last case in the afternoon. I see
4 people getting ready to come forward. What we're
5 going to do is we're going to take a quick
6 15-minute recess, and we'll reconvene, let's just
7 say -- why don't we just say at 4:15 for the
8 afternoon session.

9 Thank you. Your case is being set for
10 decision for October 4th.

11 MR. MASTER: Okay. To clarify, the
12 record remains open if additional data wants to
13 be supplied.

14 CHAIRPERSON MOLDENHAUER: Yes.

15 MR. MASTER: And is there a cutoff for
16 that.

17 CHAIRPERSON MOLDENHAUER: The 26th.

18 Thank you.

19 [Recess from 3:58 p.m. to 4:21 p.m.]

20 CHAIRPERSON MOLDENHAUER: We're back on
21 the record, and we'll call our last case for the
22 day.

1 **Application No. 18244**

2 MR. MOY: Yes. Thank you, Madam Chair.

3 The next application for the Board's
4 attention is the -- well, actually the next and
5 last case for the afternoon is Application No.
6 18244. This is an application of CAS -- and I
7 think it's pronounced -- Riegler Real Estate
8 Development, pursuant to 11 DCMR 3103.2, for a
9 variance from the lot occupancy requirements
10 under Section 772, a variance from the rear yard
11 requirements under Section 774, variance from the
12 open court requirements under Subsection 776.3.
13 This is for the construction of a rear addition
14 to a row dwelling to facilitate its conversion to
15 a multifamily residential building in the C-2-C
16 District at premises 1109 M Street, N.W., Square
17 314, Lot 3.

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much, Mr. Moy.

20 If the parties can introduce themselves
21 for the record?

22 MR. KADLECEK: Good afternoon. Cary

1 Kadlecek from the law firm of Goulston & Storrs
2 on behalf of the Applicant.

3 We actually have a couple of preliminary
4 matters. The first is you'll see from our August
5 30th prehearing submission that we requested an
6 amendment to the application to change the relief
7 from open court to closed court relief. Is that
8 something the Board is willing to allow us?

9 CHAIRPERSON MOLDENHAUER: Yes.

10 MR. KADLECEK: Okay. Secondly, you
11 should have received the résumé for Mr. Sean
12 Pichon. We would like to proffer him as an
13 expert in architecture.

14 CHAIRPERSON MOLDENHAUER: He has not been
15 qualified as an expert before, has he?

16 MR. KADLECEK: Yes, he has been qualified
17 before.

18 CHAIRPERSON MOLDENHAUER: What is his
19 last name?

20 MR. PICHON: Pichon, P-i-c-h-o-n.

21 CHAIRPERSON MOLDENHAUER: I'm looking in
22 our record here. It indicates that we had

1 qualified him previously on September 22nd, '09,
2 in a prior BZA case. So, unless any Board
3 members have any objections, he will be so
4 qualified.

5 MR. KADLECEK: Great. Thank you.

6 Then finally, the third preliminary
7 matter is we submitted a revised sheet, A-5.1.
8 There was a minor adjustment to that plan that
9 you should also have before you.

10 CHAIRPERSON MOLDENHAUER: Yes, we have
11 that. Thank you.

12 MR. KADLECEK: Okay, great.

13 As I said, I am Cary Kadlecek from the
14 law firm of Goulston & Storrs.

15 CHAIRPERSON MOLDENHAUER: Can I just ask
16 you a preliminary question as well?

17 MR. KADLECEK: Sure. Mm-hmm.

18 CHAIRPERSON MOLDENHAUER: We have the
19 Office of Planning report which indicates nine
20 units, but then in your preliminary statement,
21 you refer to 11 units.

22 MR. KADLECEK: Yes.

1 CHAIRPERSON MOLDENHAUER: Can you just
2 clarify that?

3 MR. KADLECEK: Yes. It is in fact 11
4 units, and I know the Office of Planning was
5 intending to clarify that as well.

6 CHAIRPERSON MOLDENHAUER: Okay.

7 MR. KADLECEK: With me today is Allison
8 Prince, also of Goulston & Storrs. She is
9 sitting behind me. Directly to my right is Mr.
10 Sean Pichon. To his right, also of P.G. and
11 Architects [ph] is Tony Hensley, and then finally
12 to his right is Kevin Riegler of CAS Riegler, the
13 developer.

14 We believe that there is a very full
15 record in this case, and we are happy to rest on
16 the record and to answer questions and be
17 available for questions. We are also ready to
18 give a full presentation if the Board so desires,
19 but we'll look to you for what you would like us
20 to do.

21 CHAIRPERSON MOLDENHAUER: I think I hear
22 some Board members saying ask questions.

1 I have definitely some questions about
2 the exceptional conditions of the property in
3 that regard as to the satisfaction of that prong.

4 Do other Board members wish to just ask
5 specific questions or to have a full presentation
6 presented?

7 I think it seems we can probably do an
8 adequate job of just asking directed questions.

9 MR. KADLECEK: Sure.

10 CHAIRPERSON MOLDENHAUER: But I'll just
11 ask you to give a very limited discussion on how
12 you see that the property satisfies the first
13 prong of exceptional conditions.

14 MR. KADLECEK: Sure. And I'll just give
15 you a little bit of an overview first, and then
16 we can go a little bit into that and also have
17 Mr. Pichon address that as well.

18 The case before you, I believe, is quite
19 a simple one. The Applicant wants us to add a
20 rear addition to an existing historic building to
21 accommodate 11 residential condominium units.
22 The amount of variance relief requested for lot

1 occupancy, for rear yard, and for closed court is
2 quite small and will have negligible, if any,
3 impacts on the surrounding neighborhood.

4 The C-2-C zone in which the site is
5 located allows a maximum height of 90 feet, a
6 maximum FAR of 6.0, and a maximum lot occupancy
7 of 80 percent.

8 Under inclusionary zoning, the maximum
9 FAR and lot occupancy are even greater, but
10 because this project is unable to use any bonus
11 density, it is not able to take advantage of the
12 greater lot occupancy.

13 The need for variance relief in this case
14 arises out of the necessity to accommodate both
15 an inclusionary unit and historic concerns in a
16 building that will be considerably smaller in
17 terms of bulk and height than is otherwise
18 permitted as a matter of right. In fact, the
19 provided height and density is almost half of the
20 matter-of-right limits.

21 CHAIRPERSON MOLDENHAUER: Could I just
22 ask you to go back, and can you actually walk

1 through the explanation as to why bonus density
2 is unable to be used on the project, just for the
3 record, please?

4 MR. KADLECEK: Well, for the record,
5 because of basically accommodating the historic
6 concerns, the building can't go above -- I can't
7 remember exactly what the FAR is. I think it's
8 about a 3.8.

9 Is that correct?

10 MR. RIEGLER: Yeah. It's 3.8 provided, 6
11 would be allowable, and if you utilized bonus
12 density MIZ, you would be able to access that
13 additional 20 percent, but because of historic,
14 obviously we're limited in height based upon all
15 the various concerns within the District, so the
16 variance is required due to the fact that we are
17 not technically getting bonus density, because
18 we're so far under the allowable FAR to begin
19 with.

20 MR. KADLECEK: Right. And we've gotten
21 guidance from the Office of Planning that, as
22 indicated, if you cannot even use 1 foot of the

1 bonus density, that you can't then access the
2 bonus lot occupancy and the bonus height for
3 under IZ. In this case for this zone, there is
4 no bonus height, but there is a bonus lot
5 occupancy. But we're not able to use the bonus
6 density, so therefore, we're constrained to the
7 80-percent lot occupancy limit.

8 CHAIRPERSON MOLDENHAUER: Thank you.

9 MR. KADLECEK: I'd like to say one last
10 thing before we begin with questions.

11 I'd also like to note importantly that
12 the BZA once before approved an area variance for
13 this property, and while the requested relief in
14 that case was somewhat different, the proposed
15 project in that case was very similar in terms of
16 bulk and height. So we, therefore, request that
17 the Board strongly take this precedent into
18 account when considering the requested relief
19 here.

20 And finally, I'd like to note that the
21 Applicant has support of both the ANC, ANC-2F,
22 and the Office of Planning.

1 So, with that, we're happy to answer
2 questions.

3 CHAIRPERSON MOLDENHAUER: I'll open the
4 floor to Board members. Are there any questions?

5 MR. JORDAN: Let me ask this quickly.
6 It's my understanding that the other -- that
7 other properties in the square are also
8 multifamily, multi-unit.

9 MR. PICHON: Yeah. We are surrounded by
10 high-density residential zones, and many of those
11 properties are occupied by multi-story
12 residential buildings.

13 The actual block that we're on has a
14 historic nature, three-story townhouses and
15 two-story houses on one side and three-story on
16 the other, but across the street and on the
17 surrounding blocks, there are high-density
18 residential.

19 MR. JORDAN: What about that square?
20 What about the same square?

21 MR. PICHON: Oh, within that square, it's
22 a mix. There's a seven-story building within the

1 square, and along 12th Street, there's several
2 multifamily buildings that are much denser than
3 our site.

4 MR. JORDAN: And the other thing, do we
5 have letters from the neighboring properties?

6 MR. KADLECEK: There are no letters from
7 the neighboring properties, although maybe Kevin
8 can explain a little bit the interactions he's
9 had with the neighbors and the outreach he's
10 done, because he's actually done extensive
11 outreach and contact with the neighbors to keep
12 them aware of the project.

13 MR. RIEGLER: Sure. Yes. You know,
14 obviously there's two main constituents that are
15 directly affected. Directly to the west, there's
16 1111 M Street, N.W., which is a very similar
17 scale, bulk, multi-unit, former rowhouse
18 conversion that was renovated, I believe, about
19 10 years ago, and then directly to the east is
20 the portion of the Frontier Condominiums, which
21 has a couple, and it's a much larger group, some
22 over on 14th and R. But the 13 owners are on

1 directly to the east of us.

2 Both groups, we've begun conversations
3 with 6, 7 months ago informing them of our plans.

4 We've met with them multiple times, fielded
5 questions, concerns, et cetera.

6 We have signed DCRA construction
7 notification letters from the entire Frontier
8 community, obviously not direct support per se,
9 but they're understanding the scope and
10 construction of our project, and then to the
11 east, 1111, again, we don't have a formal support
12 letter, but we have a slew of meetings, e-mails,
13 and then a neighbor agreement that we've been
14 working with them on outlining our process and
15 the like.

16 So, again, no formal support per se, but
17 a longstanding, I think, record of working
18 together.

19 CHAIRPERSON MOLDENHAUER: Just following
20 up on that, is there a reason why you couldn't
21 get letters of support? Were they not willing to
22 provide that? Did you ask them for one?

1 MR. RIEGLER: I don't want to speak
2 directly for them, but my understanding from the
3 1111 in particular, as Cary noted, in 2006, this
4 case, they had the same group they opposed, a
5 similar case that was ultimately approved. And
6 so, when we just started our conversations with
7 them, they just did not oppose, but then were
8 also vocal that they didn't want to formally put
9 on the record anything of support. But that's, I
10 believe, the reason why they also haven't written
11 a letter of opposition either. They just wanted
12 to remain neutral and work with us to make it as
13 seamless as we could.

14 CHAIRPERSON MOLDENHAUER: And what about
15 the Frontier Condominiums? Did that board
16 indicate --

17 MR. RIEGLER: To be quite frank, they
18 were not the most organized of boards, so we had
19 a direct conversation with -- or we've had direct
20 conversations with what seemed like the
21 ringleader that was able to coordinate our
22 conversations and her questions regarding parking

1 and how their property is going to be affected
2 and then ultimately the signatures for our DCRA
3 construction notification. But we've been
4 certainly very proactive in our plans.

5 CHAIRPERSON MOLDENHAUER: Do Board
6 members have any other questions for the
7 Applicant?

8 MR. HOOD: I just want to -- I pretty
9 much know the answer, but I'm going to ask Mr.
10 Kadlecek anyway.

11 Why did you feel compelled to tell us
12 what happened on this site previously?

13 MR. KADLECEK: I think it's important to
14 note that the Board has previously found this
15 site to be unique, and it's still constrained
16 with the exact same conditions.

17 I think that while a previous BZA case is
18 not binding on what you guys decide here today, I
19 think it does provide some guidance on, you know,
20 how it could be looked at.

21 I think the fact that there was a full
22 written order in that case also provides some

1 guidance on how you can help think about the way
2 this case should be considered, especially since
3 that project was so similar to this.

4 MR. HOOD: So did that case mirror this
5 exact situation? Was there anything different
6 about that?

7 MR. KADLECEK: I think what was different
8 about that was the relief requested and the fact
9 that the 1111 building, to which Kevin
10 referenced, was a party in opposition; whereas,
11 obviously in this case, they're neutral. There
12 is nothing either way from them.

13 But I think as far as the bulk and
14 height, as I mentioned previously, very similar,
15 so I think you could draw a lot of analogies
16 between that case and this one.

17 MR. HOOD: Okay. Thank you.

18 CHAIRPERSON MOLDENHAUER: Was the other
19 case asking for the same 90 percent lot
20 occupancy?

21 MR. KADLECEK: No. That case asked for
22 court relief and residential recreation space,

1 which as you know is no longer a requirement in
2 the Zoning Regulations.

3 CHAIRPERSON MOLDENHAUER: So then my
4 question is I don't know if I agree with you if
5 it's asking for the same bulk if it wasn't asking
6 for a full 90 percent lot occupancy.

7 MR. KADLECEK: Well, their rear yard was
8 greater, i.e., their building wasn't as far back
9 into the rear yard as ours is, but we're
10 encroaching into the rear yard by about 6 feet.
11 But I think that that 6 feet is really quite
12 negligible considering the fact that the building
13 itself, once this addition is made, will be
14 almost more than twice as long as the existing
15 building, as was the case for that previous case.

16 I think that that additional 6 feet that we're
17 dealing with here versus the prior case, I think
18 it's quite negligible when you're considering the
19 overall impacts that this project would have
20 versus the ones that the prior case would have.

21 CHAIRPERSON MOLDENHAUER: Do you believe
22 the fact that you cannot utilize the additional

1 bonus density from IZ, do you believe that's also
2 a factor in regards to evaluating a confluence of
3 factors for the exceptional condition of the
4 property?

5 MR. KADLECEK: Yeah, absolutely. I think
6 that that's an important consideration. You
7 know, when you are sort of given the stick and
8 then not allowed to take the carrot, I think that
9 definitely influences something that creates a
10 unique situation for the property.

11 CHAIRPERSON MOLDENHAUER: Do Board
12 members have any other questions for this
13 Applicant?

14 [No audible response.]

15 CHAIRPERSON MOLDENHAUER: Seeing none at
16 this time, then we'll turn to see if there's any
17 individuals in the audience in support or in
18 opposition of this case.

19 If they are, you can step forward. You
20 can turn on the microphone. First, state your
21 name and home address and then whether you're in
22 support or in opposition, and you'll be given 3

1 minutes.

2 MS. AZAROFF: Sure. My name is Rachel
3 Azaroff, and I live at 1111 M Street, N.W., Unit
4 6, and I'm here in opposition.

5 I just moved in about a month ago and
6 just learned of these plans a few weeks ago. So,
7 despite the outreach efforts, the last 6 or 7
8 months, I wasn't privy to them personally.

9 In my unit, I have six windows, and five
10 of them will be negatively affected by these
11 plans, and one of the main reasons I bought the
12 unit was the great light and kind of the
13 non-obstructed views that I will no longer have.

14 So I do think that these plans will
15 adversely affect me and my living experience in
16 my unit.

17 Also, you know, as part of the outreach,
18 they have been corresponding with our building,
19 and that's been really great. And I just wanted
20 to speak about some of our concerns and some of
21 the things we have discussed with them on the
22 record.

1 The adjacent wall that will be facing our
2 building, we have discussed it will have no
3 windows, and they'll choose a light color to
4 better reflect the sun. So, since they are
5 blocking a lot of our light, that we will still
6 have a better reflection.

7 And also that the HVAC placement on the
8 roof will be done so as to not be disruptive to
9 Unit No. 7 in our building which has a roof jack
10 and just to our building in general.

11 Also, that during construction, that
12 they're maintaining physical and safety security
13 with the gates, which so far has been good.

14 And as you probably saw in the plans, we
15 share like our back alley or our kind of side of
16 the building to get to the back is shared with
17 their property, so maintaining access for us
18 during construction and kind of minimizing the
19 mess, and when they add the lighting of their
20 building, just making sure that it's facing down
21 into that alley and not into our windows of our
22 tenants, of our owners.

1 CHAIRPERSON MOLDENHAUER: I'm just
2 looking at the plans, and I'm just trying to
3 understand potentially where your existing
4 windows are.

5 MS. AZAROFF: Sure. If you could --

6 CHAIRPERSON MOLDENHAUER: Does the
7 Applicant have a copy?

8 That looks like the alley view on page
9 A-05, is that right, that's being shown up top
10 there right now?

11 MS. AZAROFF: I'm essentially at the top
12 floor in the back half of 1111 M.

13 CHAIRPERSON MOLDENHAUER: We actually
14 have a portable microphone if you're going to be
15 speaking.

16 MR. HENSLEY: On page A-0.5, it's the
17 same slide basically, upper right-hand
18 photograph, view of project rear towards alley.

19 CHAIRPERSON MOLDENHAUER: So, to the
20 Applicant, my question is, are all these windows
21 that are being shown on this neighboring property
22 going to be closed in by a party wall?

1 MR. PICHON: That is correct. The
2 building, the addition will extend back to the
3 length of the property of 6 feet beyond the
4 building.

5 MR. RIEGLER: I want to be clear. It's
6 not a party wall condition in that particular
7 instance. There is separation of somewhere
8 between 3 and 6 feet along the entire facade, so
9 they're not literal -- risk windows that are on
10 the property line. So, to her -- Rachel's
11 comment about materiality and the like, it's not
12 completely closed in but certainly not -- right
13 now they've had the benefit -- because of no
14 addition on that property currently, they've had
15 the benefit of that open light and air.

16 CHAIRPERSON MOLDENHAUER: Okay.

17 MR. RIEGLER: There's a parking lot
18 that's back there behind the Frontier
19 Condominiums, you know, landscape and the like.

20 CHAIRPERSON MOLDENHAUER: I'm sorry.
21 Rachel, what was your last name?

22 MS. AZAROFF: Its' Azaroff,

1 A-z-a-r-o-f-f.

2 CHAIRPERSON MOLDENHAUER: Do any Board
3 members have any questions for Ms. Azaroff?

4 MR. HOOD: It sort of looks like more
5 than Ms. Azaroff's windows are being affected.
6 It's much more than that.

7 MS. AZAROFF: Yeah. It will be me,
8 myself, Unit 6, Unit 4, and Unit 2.

9 MR. HOOD: So we got about, what, 12, 16
10 windows? Is that how many?

11 MS. AZAROFF: It will be, I guess, 15.

12 MR. HOOD: Okay, 15 minutes.

13 MS. AZAROFF: We all have five.

14 MR. HOOD: And, Mr. Kadlecek, since you
15 brought up what happened previously, was this an
16 issue in the previous case? I'm just curious.

17 MR. KADLECEK: It was, and in fact, I
18 have the order with me. The Board ultimately
19 decided, which I was going to reiterate, that
20 this is a building code issue. It's not really a
21 zoning issue. Even if we build a compliant rear
22 yard, those windows would still be blocked.

1 So it is unfortunate for Ms. Azaroff, but
2 the fact of the matter is that if we built a
3 conforming building, those windows would still be
4 blocked because they are at-risk windows.

5 MR. HOOD: And I understand about the
6 case law and about views and everything, but what
7 is the distance between her residence and what's
8 being proposed again? Is it 6 feet, 3 feet?

9 MR. KADLECEK: It varies. Their building
10 has a court and kind of a side yard setback as
11 well, and so it kind of varies. So I think
12 primarily her unit, that portion of the building
13 is about 6, 5 or 6.

14 MR. HOOD: She's getting 6 feet, and some
15 of her other neighbors will be getting 3 feet?

16 MR. KADLECEK: Correct. But then they
17 also might look into that courtyard, where they
18 never really had the view that she's had the
19 benefit of. They might have one window that's
20 blocked. The rest is looking towards the
21 courtyard that's not changing.

22 MS. AZAROFF: It's actually about half

1 and half, because the front part is the bedroom
2 and then the kitchen, and then that's kind of
3 after the kitchen is where the taper happens.

4 MR. HOOD: Okay. Thank you.

5 CHAIRPERSON MOLDENHAUER: I guess my
6 question then -- thank you very much, Ms.
7 Azaroff, for your testimony and for coming down
8 today. I have some other questions following up
9 from the Applicant.

10 You have a close court on the -- I guess
11 it's the west side of the building?

12 MR. RIEGLER: It's on the east side.

13 CHAIRPERSON MOLDENHAUER: Thank you. I
14 appreciate that. I'm looking at the drawing.

15 On the east side of the building. Is
16 there a reason why maybe design-wise, you
17 couldn't move the court to the west side to
18 provide more of a light for the people at 1111 M
19 Street?

20 MR. PICHON: Yes. There are a couple of
21 reasons. We did entertain that thought, but the
22 first reason would be the natural circulation

1 within the historic building happens on the
2 property line directly adjacent to their
3 building, which that's where the entry door is.
4 That's where our corridors are internally, and
5 the second was concern for privacy and not having
6 windows looking into other windows for their
7 purpose and for ours.

8 CHAIRPERSON MOLDENHAUER: And there was
9 no way that you could design an area such as like
10 a bathroom that would have a window on that court
11 that would have a frosted glass that we've seen
12 in other applicants where you're providing the
13 openness but at the same time not creating the
14 privacy issue?

15 MR. PICHON: There are those
16 possibilities, but the main reason why the court
17 is on the opposite property line is because of
18 the internal circulation. We have a corridor
19 that runs from the entry door straight back of
20 the building, and the units are on the opposite
21 side. So the court is placed to provide air and
22 light for the units within our building.

1 CHAIRPERSON MOLDENHAUER: Do Board
2 members have any other questions of the
3 Applicant?

4 [No audible response.]

5 CHAIRPERSON MOLDENHAUER: Seeing none,
6 thank you.

7 Is there anybody else in the audience --
8 is there any other comments that you'd like to
9 make?

10 MS. AZAROFF: No, thank you.

11 CHAIRPERSON MOLDENHAUER: Thank you.
12 Thank you very much.

13 Are there any other individuals in the
14 audience in support or in opposition of this
15 case?

16 [No audible response.]

17 CHAIRPERSON MOLDENHAUER: Seeing none,
18 then at this time, we'll turn to the Office of
19 Planning for their report.

20 MR. MORDFIN: Good afternoon, Chairman,
21 members of the Board. I'm Stephen Mordfin with
22 the Office of Planning.

1 And first, I would like to note that the
2 Office of Planning report is in error indicating
3 that there are nine units proposed. The correct
4 number is 11.

5 And the subject property is unique in
6 that it is long and narrow, making the adaptive
7 reuse of this building difficult.

8 Provision of a modern stairwell and the
9 continued use of the existing building entrance
10 results in an inefficient layout of the building.

11 By expanding the building back into the lot,
12 increasing the lot occupancy, and reducing the
13 rear yard, the Applicant is able to more
14 efficiently utilize the space.

15 The granting of these variances would not
16 result in substantial detriment to the public
17 good, as a rear yard would still be provided
18 allowing light and air to the units at the rear
19 of the building, and no substantial harm for the
20 Zoning Regulations would result, as the variances
21 would permit the building to be used as a
22 multifamily residence, a use permitted as a

1 matter of right within this zone.

2 The narrowness of the lot also results in
3 the variance relief requested for the closed
4 court. The closed court would provide it as
5 required. It would leave only 8.25 feet for the
6 width of the building, insufficient for the
7 provision of a quarter and living space.

8 No detriment to public good or the Zoning
9 Regulations would result as the court would be
10 sufficient to allow for light and air into the
11 units at the center of the building.

12 Thank you.

13 CHAIRPERSON MOLDENHAUER: Thank you.

14 Do any Board members have any questions
15 of the Office of Planning?

16 MR. JORDAN: You said that no substantial
17 harm to the public good. Did you take into
18 consideration the building next door and the
19 window issue?

20 MR. MORDFIN: As it relates to extending
21 the building back?

22 MR. JORDAN: Yes, mm-hmm.

1 MR. MORDFIN: Well, being that it's a --
2 within the zone, you are allowed to build to the
3 property lines on either side. Extending the
4 building back further would extend the building,
5 would extend the lot line, but the amount that
6 it's extending back is 3 feet. That is the
7 difference between what is the rear yard -- it's
8 required to be 15 feet. They're proposing 12, so
9 it makes a difference of only 3 feet, and the
10 Office of Planning did not view that as a
11 significant amount.

12 CHAIRPERSON MOLDENHAUER: Do any Board
13 members have any other questions of the Office of
14 Planning?

15 [No audible response.]

16 CHAIRPERSON MOLDENHAUER: Does the
17 Applicant have any questions for the Office of
18 Planning?

19 MR. KADLECEK: We have no questions.
20 Thank you.

21 CHAIRPERSON MOLDENHAUER: I will now ask
22 if there is anybody present from ANC-2F.

1 [No audible response.]

2 CHAIRPERSON MOLDENHAUER: Seeing no one,
3 I'll just indicate that we have Exhibit 24, which
4 is a letter in our record indicating that at a
5 duly called meeting on June 1st, 2011, with a
6 quorum present, the ANC-2F voted unanimously 4 to
7 0 to advise the Board to support the pending
8 variance request. The letter is signed by the
9 Vice-Chairperson of ANC-2F, and based on that,
10 the Board would give that letter of support great
11 weight.

12 That being said, I would turn back to the
13 Applicant for closing remarks, but I would also
14 just ask you to reference or address the concerns
15 of Ms. Azaroff in regards to the mechanical
16 equipment. I'm just looking at the revised
17 diagram for your roof and all of the equipment
18 that I guess is on that east wall, and so I'm
19 just asking if you can address that concern.

20 MR. KADLECEK: Sure, we're happy to, and
21 in fact, I think for our closing remarks, I would
22 just ask Mr. Riegler to document all the

1 accommodations that they've made to account for
2 concerns from that building, including the
3 placement of the decks and shielding of the decks
4 and a placement of the mechanical units.

5 MR. RIEGLER: Sure. Ms. Azaroff's
6 primary concern was there's one in particular
7 roof, that private roof deck that is placed near
8 where it says mechanical equipment above the
9 court area. So, originally, we had our
10 mechanical farm right there, which obviously
11 would have churned a lot of noise during
12 enjoyment of their roof deck. So we've spread
13 them out kind of across the roof away from those
14 two, that primary area.

15 As far as other accommodations, I think
16 most have been on record, but a lot of it relates
17 to the materiality of that wall, given that we
18 are certainly going to be blocking the light, how
19 we can best make that experience somewhat
20 enjoyable.

21 As it relates to the egress that you'll
22 probably see that we'll be creating by our new

1 wall and where they exit out to enter their rear
2 parking garage, we're going to be providing
3 security lighting and working with them on a
4 lighting scheme to make that obviously a secure
5 but also some sort of ambient light to make that
6 as good as it can be.

7 Then as Rachel outlined, in our
8 construction process, we have agreed to various
9 working hour considerations outside of just
10 normal DCRA requirements, maintaining the
11 security of their egress and parking area, as
12 well as cleanliness and the usual things that we
13 attempt to do during construction processes.

14 CHAIRPERSON MOLDENHAUER: I'm just
15 looking at the revised diagrams that we received,
16 which is the side elevation, and I'm trying to
17 read. Along with everybody else, I can't really
18 read the description. It said painted paneling
19 on the side. That's obviously going to be
20 facing. Is that a full description of what
21 you're going to be providing as benefit?

22 MR. RIEGLER: The way we have left is

1 with the Board is that our intuition is to make
2 it some sort of light-colored Hardi-panelish type
3 of material, but we've very much been -- we're
4 still open to that. Nothing has been decided.
5 So, obviously, you know, we don't want to get
6 into any ornate zinc paneling or anything, but
7 we're very much open to suggestions and all that.

8 The point of it here was to say this
9 isn't going to be red brick and just a completely
10 dark cavernous area, so we wanted to -- and we're
11 still in the process of working with them on
12 that.

13 CHAIRPERSON MOLDENHAUER: Thank you.

14 Do you have any other closing remarks?

15 MR. KADLECEK: Nothing further, other
16 than we would like to request that the Board
17 issue a Summary Order in this case.

18 Thank you very much for your time.

19 CHAIRPERSON MOLDENHAUER: Thank you.

20 Are there any final comments or questions
21 from Board members of the Applicant?

22 [No audible response.]

1 CHAIRPERSON MOLDENHAUER: Seeing none,
2 then I'll turn to the Board members to see if
3 we'd like to deliberate this case today, as in
4 this case is closed or --

5 [Pause.]

6 CHAIRPERSON MOLDENHAUER: I think that
7 what we'll do is we'll put this on decision and
8 just review everything and go through the
9 comments that were made by the opposing witness
10 and then review just the additional submissions,
11 and we'll schedule this for a decision on October
12 3rd.

13 MS. SORG: 4th.

14 CHAIRPERSON MOLDENHAUER: 4th. The 3rd
15 is just -- I don't know. I really want everyone
16 to come back on Monday, a little special Monday
17 treat, October 3rd.

18 I don't believe that we need any
19 additional submissions.

20 Does the Applicant wish to request the
21 record be left open?

22 MR. KADLECEK: No. We have no request to

1 keep the record open.

2 CHAIRPERSON MOLDENHAUER: Okay. Then
3 what we'll do is we'll consider what we have
4 submitted. If there is obviously any additional
5 discussions with the neighboring properties,
6 obviously -- what we'll do is we'll -- actually,
7 let's leave the record open for any additional
8 information potentially regarding discussions
9 that may happen between 1111 M Street or any
10 other neighboring properties until the 26th.

11 And we'll set this for a decision on the
12 morning of October 4th.

13 That being said, I believe that concludes
14 our cases for today. Thank you very much, and
15 we'll reconvene next week.

16 [Whereupon, at 4:55 p.m., the Public
17 Meeting was adjourned.]

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