GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY

FEBRUARY 7, 2012

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The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 1:00 p.m., Meridith Moldenhauer, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH MOLDENHAUER, Chairperson
NICOLE SORG, Vice Chairperson
LLOYD JORDAN, Board Member
JEFFREY HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Zoning Commissioner
MICHAEL TURNBULL, Zoning Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Public Meeting held on February 7, 2012.

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

1:24 p.m.

CHAIRPERSON MOLDENHAUER: This meeting will please come to order. Good afternoon, ladies and gentlemen.

We're located in the Jerrily R. Kress Memorial Hearing Room located at 441 4th Street. Today is February 7, 2012. Public meeting of the Board of Zoning Adjustment for the District of Columbia.

My name is Meridith Moldenhauer, Chairperson.

Joining me today to my left is Vice Chair Nicole Sorg, Mayoral Appointee. To my right is Lloyd Jordan, Mayoral Appointee. To my far right is Jeffrey Hinkle representative of the National Capital Planning Commission and to my far left is Michael Turnbull representative of the Zoning Commission.

Copies of today's meeting agenda are available to you and are located to my

left on the wall bin near the door.

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

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

Mr. Secretary, do we have any preliminary matters?

MR. MOY: Madam Chair, we have a host of preliminary matters and the staff would suggest that the Board address those matters when I call each case separately.

CHAIRPERSON MOLDENHAUER: Sounds good. Thank you.

So, why don't we start off with our first case.

MR. MOY: The first action before the Board is the Expedited Review Calendar

which today consists of two zoning applications.

The first is Application Number 18303. This is of David Rosenblatt and Karen Hoerst pursuant to 11 DCMR 3104.1 for a special exception to allow a rear deck addition to an existing one-family row dwelling under Section 223 not meeting the lot occupancy (Section 403), rear yard (Section 404) and nonconforming structure (Subsection 2001.3) requirements in the R-4 District at premises 520 T Street, N.W. The property is located in Square 3093, Lot 36.

This special exception 223 case is on the expedited calendar. It satisfies the eligibility standards pursuant to Section 3118.2 and noise requirements on the ANC review period standards pursuant to Section 3118.3 and 3118.4.

In your case folders, Madam Chair, you have the affidavit of posting which is identified as Exhibit 29. The ANC 1B report

is filed under Exhibit 26 and the Office of Planning report is filed under Exhibit 28.

And as of this moment, there's no filing requesting to remove the application from the Expedited Review Calendar.

So, the Board should act on the merits of the Expedited Review Calendar pursuant to Section 3118 requirements for special exception relief under Section 223.

That completes the status briefing, Madam Chair.

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

As indicated, this is an expedited case for 223 for a rear deck. We have Office of Planning's support. We have ANC's support and I believe the Applicant has presented a sufficient case to satisfy the 223 standard.

That being said, I'd like to see if any Board Members have any questions or any additional comments.

VICE CHAIRPERSON SORG: Madam

Chair, I don't have anything further. Only also would note that our files indicated that HPO has approved on a staff level and DDOT also had no issues in their report. I would support a motion.

CHAIRPERSON MOLDENHAUER: Thank you and I just want to make sure for clarification people under -- it's clear with the record we had an initial letter from the ZA indicating that there might be variance relief necessary. That was Exhibit 6, but then the ZA's referral letter was refined and included that it was just for a special exception 223 in the Exhibit 14. So, that's the only thing that we're seeking or reviewing today. Is just the 223 relief that was identified in the ZA's referral letter, Exhibit 14.

That being said, I will if there's no -- there's no additional comments from Board Members?

Seeing none, then I'll submit a

motion, a motion to approve application 18303 pursuant to 11 DCMR 3104.1 for a special exception to allow a rear deck addition to an existing one-family dwelling under Section 223 not meeting the lot occupancy under 403, the rear yard under 404 and nonconforming structure under 2001.3 requirements in an R-4 District at premises 520 T Street, N.W.

The motion has been made. Is there a second?

VICE CHAIRPERSON SORG: Second.

CHAIRPERSON MOLDENHAUER: The motion's been made and seconded. All those in favor say aye.

(Ayes.)

MR. MOY: Staff would record the vote as 5 to 0 to 0. This on the motion of Chairperson Moldenhauer to approve the special exception relief 223 request. Second the motion Ms. Sorg. Also in support of the motion Mr. Turnbull, Mr. Jordan and Mr. Hinkle.

So, again, the final vote is 5 to 0 to 0 and the motion carries.

CHAIRPERSON MOLDENHAUER: Thank you very much, Mr. Moy, and seeing that there's no opposition in this case, the Board would like to waive the requirements and ask that a summary order to issued.

MR. MOY: Thank you, Madam Chair.

The second and last application on the Expedited Review Calendar is Application Number 18331. This Frederic and Laure-Anne Badey pursuant to 11 DCMR 3104.1 for a special exception to allow a rear addition to an existing one-family row dwelling under Section 223, not meeting the lot occupancy requirements under Section 403 in the R-4 District at premises 541 14th Street, S.E. Property located in Square 1043, Lot 860.

Again, this is a special exception Section 223 case on the Expedited Calendar.

In your case folders, Madam Chair, you have the Applicant's affidavit of

posting identified as Exhibit 25, the ANC 6B report is identified under Exhibit 22 and the Office of Planning report is filed under Exhibit 27.

There are two other filings from organizations. One is from the Department of Transportation -- the District Department of Transportation and that filing is identified under Exhibit 23 and the last filing in your case folder is a letter in support from the Capitol Hill Restoration Society and that is identified as Exhibit 26.

And again, the Board should act on the merits of the Expedited Review Calendar requirements under Section 3118 for special exception relief under Section 223.

CHAIRPERSON MOLDENHAUER: Okay. One of the things we're just looking at, I think that this case in general is fairly straightforward, but there are some issues about the relief that's specifically being requested.

But, just to kind of address that first, there is a lot of support for this case both from DDOT, the ANC and neighbors. The question is in OP's report they identify that there's an additional relief that's being needed to the minimal lot width and then closed court dimension.

That being said, I think that it's a self-certified application. The Applicant could, if they wanted to, amend the application and then be put on the Expedited Review Calendar for next month.

But, if we were to decide this case right now based on the relief being requested, the Applicant than potentially may need to come back before the Board with another submission and pay another fee for additional relief. If at that point they took the current plans the way they are to the Zoning Administrator to get the plans approved, that would need to be reviewed.

But, I just want to ask and I'm

explaining that generally.

Is the Applicant present today? Okay.

As I said, we don't take testimony unless the Board asks someone to come forward. So, I'm going to ask you to come forward.

And I'm going to ask you first to stand and have the oath administered to you.

MR. MOY: Do you solemnly swear or affirm that the testimony you're about to present in this proceeding is the truth, the whole truth and nothing but the truth?

You may consider yourself under oath.

CHAIRPERSON MOLDENHAUER: If you can turn on the microphone pressing the button so that the light is green and then introduce yourself stating your name and home address.

MR. BADEY: I am Frederic Badey. I live at 541 14th Street, S.E. and I am the Applicant for this case.

CHAIRPERSON MOLDENHAUER: Okay.

Good afternoon, Mr. Badey.

Do you understand what I was saying earlier about the fact that the Office of Planning indicated that there's two additional forms of relief that would be needed? It's still needed under the 223.

However, this is a self-certified application. So, if you were to orally amend the application, we could then still consider it and I guess that would be a question for OAG.

Whether we can still consider it today if the application is orally amended at this point in time on an expedited review or if we'd have to wait until next month potentially and have it received in writing.

MS. GLAZER: Well, my view, there's no problem with hearing the case today on the Expedited Calendar after the Applicant makes a request to amend the application. It's still the same 223 relief. It's just by virtue of some additional sections. It's a

very technical amendment.

CHAIRPERSON MOLDENHAUER: I'm happy. Thank you for that comment.

So, if you like at this point in time, you have the option to orally amend your application asking for additional relief under lot width and closed court dimensions.

MR. BADEY: So, I -- I will be pleased if you accept the new amendment to the application in -- in order to process on the Expedited Review just today.

CHAIRPERSON MOLDENHAUER: Okay. Thank you very much then.

Then at this point in time, do Board Members have any questions for the Applicant on those issues? Thank you.

Then at this point in time, you can step back and we'll continue on in our deliberation.

MR. BADEY: Thank you.

CHAIRPERSON MOLDENHAUER: Thank you.

That being said, as I indicated earlier, we have support for this application from the ANC which would receive great weight which is our Exhibit 22. We have support from DDOT or rather no objection from DDOT which is our Exhibit 23 and no objection from two neighbors which is our Exhibit Number 6 and the Applicant, I believe, has made sufficient case for 223 relief and as we indicated, the application has now been amended to address all relief that Office of Planning had identified in their support letter.

That being said, I'll open up the floor to any additional deliberation on this case.

MS. GLAZER: Madam Chair, I am sorry to interject. The Secretary just mentioned that he did not believe that 2001.3 was mentioned as an additional section as well and that OP had pointed out that that section might be needed.

So, I'm raising this for

clarification purposes so that the application can be amended to include that as well.

CHAIRPERSON MOLDENHAUER: I think based on our comments that was implicit in the relief that was being requested and so, I think we can move forward and just include that as we identify a final motion.

But, before we get there, I just want to see if there's any additional comments from Board Members.

VICE CHAIRPERSON SORG: Madam Chair, I agree with your analysis. I only would mention that I noticed in our filings the two letters that were received from the neighbors, only one was readily visible as the adjacent neighbor. But, I wanted to mention that in their report, OP does note that both of the letters do actually come from the adjacent neighbors and also that we had included a letter of support from Capitol Hill Restoration Society.

So, I would be in support of the

motion.

CHAIRPERSON MOLDENHAUER: Thank you. Thank you.

If there's no other comments from Board Members, then I would submit a motion, a motion to approve Application 18331 pursuant to 11 DCMR 3104.1 for a special exception to allow a rear addition to an existing one-family row dwelling under Section 223, not meeting the lot occupancy under Section 403, not meeting the closed court width requirements under 406, not meeting the lot width requirements under 401 and not meeting the nonconforming structure under 2001.3 at premises 541 14th Street, S.E.

A motion has been made. Is there a second?

MEMBER HINKLE: Second.

CHAIRPERSON MOLDENHAUER: The motion's been made and seconded. All those in favor say aye.

(Ayes.)

MR. MOY: Staff would record the vote as 5 to 0 to 0. This is on the motion of Chairperson Moldenhauer to approve the amended application as cited by the Chair. Second the motion Mr. Hinkle. Also in support of the motion, Mr. Turnbull, Ms. Sorg and Mr. Jordan. Again, the final vote is 5 to 0 to 0. Motion carries.

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

Seeing there's no opposition in this case, the Board would like to waive the requirements and ask that the summary order be issued.

MR. MOY: Very good. Thank you, Madam Chair.

CHAIRPERSON MOLDENHAUER: Thank you.

MR. MOY: The next application for action before the Board is Application Number 18306. This is of 1919 14th Street, LLC on behalf of 14th Street Properties pursuant to

11 DCMR 3104.1 and 3103.2 for a variance from the court requirements of Section 776.3, a variance from the off-street parking requirements of Section 2101.1, a variance from the compact space requirements of Section 2115.2, a variance from the off-street loading requirements of Section 2201.1, a special exception from the roof structure requirements pursuant to 411.11 and a special exception from the roof structure height limitation of Section 1902.1(a). This is to allow the construction of a new residential building with ground floor retail and service uses in the ARTS/C-3-A District at premises 1905 - 1917 14th Street, N.W., Square 237, Lots 179, 194 and 195).

As the Board will recall on January 24th, 2012, the Board completed public testimony, closed the record and scheduled its decision on February the 7th. The Board requested additional information to supplement the record by Friday, February the 3rd, 2012.

In your case folders, Madam Chair, I'm going to go through these filings one by one and most of these have preliminary matters.

The first acceptable filing is a DDOT letter dated January 31st, 2012 identified as Exhibit 44 which was received into the record February the 3rd.

There are two letters submitted in opposition. The first is an individual letter from William Isasi, that's spelled I-S-A-S-I, dated January 31st, 2012. Received into the record February the 2nd. Identified as Exhibit 45.

The second filing in opposition is identified as a letter in opposition from "Concerned Neighbors of Ward 1 and 2" dated February 2nd, 2012. Received February 3rd, 2012. Identified as Exhibit 46. Signed by Daniel McKay, Lisa Kelly and Caroline Mariz.

In conjunction with Exhibit 46, there's a later filing identified at Exhibit

50. Which are additional supplemental documents from Daniel McKay which were received into the record February the 6th, 2012.

ANC 1B submitted a letter clarifying its earlier position. This was received February the 3rd, 2012. Identified as Exhibit 47.

A letter from the Applicants dated February 3rd, 2012. Received on the same day. Which contains proposed conditions and addresses the issue of enforceability of the residential permit parking restriction identified as Exhibit 48.

To the first two exhibits I identified which is Exhibit 45 and 46, there is a letter from the Applicant dated February 6th, 2012 identified as Exhibit 51 which is a motion to strike those two exhibits 45 and 46.

The last two filings, one is identified as Exhibit 49. A letter in opposition from Larry McAdoo. That's Exhibit

49. Actually, I should say Karen Hardy-McAdoo and Larry McAdoo. Exhibit 49. Received -- oh, is dated February 3rd. Received February the 6th. So, this is untimely filing and they did testify at the public hearing.

The last exhibit in your case folders was submitted this morning at 10:51. Identified as Exhibit 52 from a G. Ronald Renchard R-E-N-C-H-A-R-D.

With that, the Board is to act on these preliminary matters before acting on the merits of the requested multiple variance relief.

That concludes the status briefing, Madam Chair.

CHAIRPERSON MOLDENHAUER: Thank you, Mr. Moy.

So, let me first just go through the preliminary matters that we have. Rather just start off with this to indicate I was not present during the entire hearing, but I did read the record and so, now, to address the

preliminary matters that we have.

We have some submissions that were submitted into the record late and in reviewing both the office's file in regards to what documentation was being permitted and the record, I do think that it was general -- allowing individuals to orally testify, to present written testimony.

So, in that case, I'll indicate that, you know, we will be admitting obviously the DDOT letter which is Exhibit 44.

We will not be admitting Exhibit 45 because William Isasi did not testify and thus was not included in part of the purpose for leaving the record open. So, that document will be stricken.

The submission Exhibit 46 was submitted by McKay and Kelly and Mariz and the three of them did testify. Even though it was identified as the Concerned Neighborhood, the individuals that signed that document were individuals that testified and so, that will

be admitted into the record.

Exhibit 47 will be admitted into the record from the Council, the ANC Commission.

The DDOT letter will be submitted into the record for purposes of the RPP.

The Applicant's submission I believe is the next document and that will be admitted.

We then have -- just want to go through this one by one. Have Exhibit 49 by McAdoo and they testified as well. That will be admitted.

And then we've got -- I'm looking at Exhibit 50 which I believe may also have been attached to Exhibit 46. So, if that's the case, if 50 was also attached to 46, I'm seeing a nod from the Secretary. So, then that would be admitted.

And then we have -- obviously, so, I'm addressing the motion to strike which is Exhibit 51 in a sequenced order.

And then we have a submission 53 which was just submitted this morning and, sorry, 52 which was just submitting this morning which was not an individual who had testified. So, that will be stricken from the record as well.

I believe that addresses of the preliminary matters in regard to the documents.

That being said, at this point to start off deliberation, I'll turn to Vice Chair Ms. Sorg to start us off.

VICE CHAIRPERSON SORG: Thank you, Madam Chair.

To start off with, as was mentioned in the summary, this is a case that is requesting several areas of relief that are not unusual for this type of a project, but what we have seen in this case is a great deal of weigh in from the community.

So, what I'll do is in my remarks I'll go through the variance and 223 tests and

then I'll talk a little bit about the concerns that were widely expressed from several of the community members both in their oral testimony at the hearing as well as in subsequent written submissions.

With regard to the area variances, I agree with -- the Applicant identified several extraordinary and exceptional situations in their hearing statements as well as in their testimony itself. I tend to agree with an instruction made by the Office of Planning. Which is that really with regard to their variances going towards the relief that's requested, there are a few among those that were mentioned that I think are particularly relevant.

With regard to the variance in the loading requirement, I do find for that first prong of the variance test, the, you know, site being bordered by a narrow alley of 15 feet as exceptional based upon the density that can be built on the site not going to

loading.

Regarding to the historic preservation context and the design review and approvals that this project has already gone into the process of, I do find in this case in the overlay district abutted by at least one historic building, I do find that as contributing to the unique condition of the site and in particular, to the practical difficulties related to, you know, roof height and court width requests for relief.

With regard to the court width, I think that as the Applicant demonstrated, the historic building that is adjacent to the court, the height of that would be controlled by its historic status and, therefore, I think it's a sensible design selection as well as request for relief.

With regard to what I think is an additional relevant, extraordinary condition is in this case the ground water and soil conditions which leads us to the request for

reduced requirement -- variance relief for reduced parking and this, in my mind, is actually a significant request from 83 spaces to 34 spaces.

We did hear testimony and have filings on what the additional cost would be to construct a second level of underground parking on this site and I think to my mind with regard to the request for parking variance that high cost combined with the requirement for ground floor retail within the overlay district as well as the organization and size of the units themselves as to the market I think from a technical standpoint gets me past the first prong of that test with regard to the parking.

So, that is the area variances that are being requested with regard to the special exceptions.

I think that the uniform roof structure height was discussed and several questions were asked there. As well, the

total height of the building. That relief, I think, was well explained as a fairly, actually, de minimis measure of relief. I think it was said that the relief is for about 330 square feet of the elevator which is about 7 percent of the roof area and that itself, I think, is set back about 75 feet.

So, to my mind, the Applicant has demonstrated along with the presence of Office of Planning support as well as conditional in this case ANC support including several letters of support for the application and the support of a group called the U Street Neighborhood Association, I think for me the case is made on the technical level with regard to the relief requested.

That brings us to some of the concerns of the individuals in opposition and in particular, I understood their concerns to be very much related to the parking request. Which I think -- driving through that neighborhood every morning and evening myself,

I know that it is difficult to park there and spend -- you know, the development is proceeding rapidly and I know that the current residents are -- and the availability of on-street parking is stressed in that neighborhood.

But, I think that what the Applicant is offering and what the ANC is conditioning their support on has come in line and I think that we heard from some of those individuals that spoke in opposition that the language of a condition of a prohibition for the life of this building of residents, renters or buyers, regardless of the ownership of there being a prohibition on obtaining residential parking permits does go a certain -- it does go some distance to alleviating what is clearly a potential adverse impact.

I think actually that that is something -- I think that's an offering, you know, because this is a BZA case not a PUD. That's an offering I think that is pretty

significant in my mind and so, that in combination with, you know, some of the other TOD strategies that the Applicant has apprised us of in their testimony does also lead me to be in support of that variance.

I think with regard to late-breaking submissions having to do with the width of the alley and turning radius I would defer to other Board Members who may have other questions about that, but I did look over the -- you know, the traffic study and the studies that were done by the Applicant and the architect as well as the testimony there and it seems to me, I mean, it's not a lot safe. But, I didn't see personally a major red flag with the evidence that had been submitted in support of that request.

I think several of the other concerns had to do with construction. While that's not under our jurisdiction, we did, of course, advocate that the Applicant engage with a construction management with the

community and so forth.

I've said a lot. So, I'll hand back the talking stick to somebody else.

But, I think, you know, my overall conclusion is that while I'm certainly at least as a business resident close in that neighborhood, I'm certainly sensitive to the residents' concerns about the pace and scale and density that's coming to that neighborhood. But, I think in case that -- and I'm hopeful that the Applicant, you know, will as is -- as is their burden continue or their onus to continue to work with the community to as much or a greater extent and I do believe that their demonstrations here are enough for my support.

Thank you.

CHAIRPERSON MOLDENHAUER: Thank you very much, Ms. Sorg. I think that that was a very thorough analysis, but I want to see if there's other comments from Board Members. There's a lot of different issues

that are brought up on this case.

Mr. Turnbull.

COMMISSIONER TURNBULL: Madam Chair, I just wanted to add for the record just in -- the Vice Chair was talking about the -- we did have a follow-up letter. It's Exhibit 47 from ANC 1B clarifying their vote on the level 2 development in which they specifically mention that they're in support as long as they can restrict the residential zone on-street parking permits for the development.

And the follow up is Exhibit 48 from Mr. Freeman at Holland & Knight in which, and I quote, "The Applicant shall include language in all documents related to the lease of the residential units that the residents of the building are prohibited from applying for residential permit parking stickers from the District of Columbia regardless of the building's ownership and for the life of the building" and he mentions that we've added

this before in our orders.

I mean just -- I'm just adding that as supplementing the Vice Chair's remarks for the record.

VICE CHAIRPERSON SORG: Thank you, Mr. Turnbull.

Actually, I will just jump in quickly again, and I appreciate your clarifying that, to note also that one of the major questions -- requests for information that we had at the close of the last hearing was whether or not this was something that was enforceable and I was pleased to get the letter from DDOT saying that yes, in fact, it was something that was enforceable and that seems -- that they've done before and is perhaps not only possible, but routine I would hazard to say.

Thank you.

CHAIRPERSON MOLDENHAUER: Thank you. I'll see if there's any additional comments.

MEMBER JORDAN: Yes, and I -- I would like to say that I've reviewed the hearing tape from the last meeting when the testimony was given. So, I will participate.

I'm not real clear that DDOT said this was enforceable. I just think that DDOT said it wasn't designated if I was reading properly. That the area is not designated for presently getting residential parking permits so that -- and there's no need to ask for it going forward.

But, I think that I agree with everything you said, Ms. Sorg, but I believe -- my concern certainly was the substantial impact to the community and neighborhood on the parking. But, I think that the Applicant has made a strong case in regards to not only the physical, but the economic issues with the parking.

That being said, I would have a slight concern with the proposed conditions except for the fact that it's voluntary to

enter condition. So, I can think we can then think that we would be protected under the case law that says that they are by proposing it and voluntarily agreeing to this condition that there's no impact upon them in the long term.

So, that that's a condition I would find to be acceptable and the only question I guess -- well, not that it's going to run with the land and how they're going to do it to their -- to the subsequent tenants, I don't see anything there, but I think I can accept everything else.

VICE CHAIRPERSON SORG: I think, Mr. Jordan, I agree that that is a concern. I would just point out also, and I agree with what you're saying, in DDOT's letter, they do indicate DDOT is authorized to issue a memorandum to the D.C. Department of Motor Vehicles instructing them to remove the site address from the RPP system.

So, my reading of that is that not

now and not in the future.

CHAIRPERSON MOLDENHAUER: I think that the distinction that Mr. Jordan was making, just to chime in, was that right now there is no RPP zone in this area. So, it wouldn't be necessary right now, but if they deem to do it or if in the future there was an opportunity for somebody at that address or that block to get a parking permit, DDOT is telling us in this report that they have the authority if we conditioned it so to remove that address so that if in the future there was residential parking permits provided, they could then eliminate that address from the record or from the permitted parking requirements.

I'm just going to jump in and kind of identify some of my comments for the record. I think that everyone's really talked about a lot of them, but one of the issues obviously is parking.

We have a lot of submissions from

the Applicant or the opposition rather indicating other projects that have parking and other concerns that they have in regard to the general parking in the neighborhood.

Ms. Sorg obviously indicated the fact, you know, she does recognize that, you know, there is a challenge, but I think that with the potential agreed upon condition that none of the potential future owners or tenants could ever park on the street as a permitted use. Obviously, that doesn't stop them from parking there and getting tickets, but there's nothing that we as a Board could do to stop someone from parking in a two-hour zone and just getting a whole bunch of tickets and getting their car booted or something to that effect or parking in a two-hour zone and feeding the meter. Something to that effect as well.

But, I do think that by potentially agreeing to put an RPP restriction on a building, it does take away from any

substantial impact and it's not as though they're providing zero parking spaces. I think they are providing -- they're providing a few and they are then just providing compact spaces.

Obviously, you know, it's not ideal for any area especially seeing a large number of developments, but I know there was also presentations or submissions in the record from the new filings that I did admit into the record talking about other projects on the block.

One of the things that we say all the time to applicants and individuals in public is that you can't always compare. Every case is unique and while other projects may be providing parking, here from Office of Planning support, there's not just an issue of the ground water, but there's a confluence of factors and I don't think that there's ever one case which you can indicate or point to another case that is the exact same situation.

That being said, I just want to jump into the issue of loading and I think that there was some very interesting submissions and I think Mr. Turnbull had made some comments as well during the hearing in questioning the issue of the loading berth and the loading access in comparison to what's currently on the site. But, based on my reading of the record and my review of the plans, the current condition is going to be changed based on the size of the building.

And we just approved, I'm going to just kind of parallel, we just approved another case recently in another area of the city where they were going to be providing zero loading.

Here I think that they're going to be providing some loading. While obviously, you know, it would be ideal to have an applicant or a project satisfying all of the standards, I think that in this case they are providing while reduced loading berth and

loading space it is something that I don't feel rises to the level of substantially being a detriment to the public good because of the fact that there is -- it's not a complete reduction to zero of that loading requirement.

That being said, I would -- just in regard to, I think, Mr. Jordan's comment, if we were to recommend this case with a condition for the RPP, I would just indicate that it would have to either run with the land for any -- if these units are sold or would be a required condition on any lease so that we don't have any potential issues or concerns with that condition not being enforced or satisfied.

And just in regards to the variance standard, I don't believe that there's any one factor alone that in my view satisfies the standard and I think that OP identifies certain factors that I think on their own I would definitely not consider, but I think that as a confluence of factors, this

site does create an exceptional circumstance that was asked by the variance standard.

That being said, I see if there's any final comments.

Is there a motion?

VICE CHAIRPERSON SORG: I can submit a motion, Madam Chair. I'll submit a motion to approve Application Number 18306 for 1919 14th Street, LLC on behalf of 14th Street Properties pursuant to 11 DCMR 3104.1 and 3103.2 for a variance from the court requirements Section 776.3, a variance from off-street parking requirements Section 2101.2, a variance from the compact space requirements in Section 2115.2, a variance form the off-street loading requirements of Section 2201.1 and special exceptions from the roof structure requirements pursuant to Section 411.11, special exception from the roof structure height limitation of Section 1902.1(a) to allow the construction of a new residential building with ground floor retail

and service uses in the ARTS/C-3-A District at 1905 - 1917 14th Street, N.W. subject to the following two conditions.

The Applicant shall include language -- condition number 1, the Applicant shall include language in all documents related to the lease or sale of the residential units that residents of the building are prohibited from applying for residential permit parking stickers from the District of Columbia regardless of the building's ownership and for the life of the building.

And number 2, the Applicant shall have the flexibility to modify the design and internal layout of the building to address any comments from the Historic Preservation Office and the Historic Preservation Review Board during final review of the project so long as the modifications do not require any additional areas of zoning relief.

COMMISSIONER TURNBULL: Second.

CHAIRPERSON MOLDENHAUER: Motion's been made and seconded. All those in favor --

MEMBER JORDAN: How about on the radius? And the only part I think we said about it being a -- some type of covenant that was going to run with the land and I didn't hear that in the motion.

CHAIRPERSON MOLDENHAUER: It said I think for the life of the building. But, I think maybe when we finalize the order, we indicate shall run with the land rather than for the life of the building. I think that that -- but, I think that just legally -- run with the land is a more accurate term for purposes of the covenant. So, than for the life of the building or running with the ownership.

Is that okay, Mr. Jordan? Any beef on that then -- that modification?

A motion has been made and seconded. All those in favor say aye.

(Ayes.)

MR. MOY: Staff would record the vote as 5 to 0 to 0. This on the motion of Vice Chairperson Ms. Sorg to approve the application per the multiple relief she cited. Second the motion Mr. Turnbull. Also in support of the motion Ms. Moldenhauer, Mr. Jordan and Mr. Hinkle. So, again, the final vote is 5 to 0 to 0. Also with the two conditions as cited. The motion carries.

MEMBER JORDAN: Madam Chair, I would just want in the -- when the order is drafted that we be sure that we include that was the voluntary condition that we accepted and that -- so, that we don't have any problem with the question later if someone's saying about we didn't do an impact review or something.

CHAIRPERSON MOLDENHAUER: Yes, and I think that -- I think that's positive and I think that typically, you know, there -- I think rather than having a summary order for this case seeing the extent of the opposition,

I think that we'll ask for a full order for this and that will also clarify for opportunities to elaborate upon the conditions and provide that.

That being said, if -- Mr. Moy, we can go on to the next case and I'm not sure -- if you can call Case 18002.

MR. MOY: This would be -- the next application before the Board is a Motion for a Two-Year Time Extension of the Validity of the Order to Application Number 18002. This is of Gould Property company through Square 374, LLC pursuant to 3130 of the Zoning Regulations.

For the record, the original application was approved on December 8, 2009 as amended and the caption read as follows:

Pursuant to 11 DCMR 3104.1 and 3103.1 for (1) a special exception under Subsections 777.1 and 411.11 for relief from the requirements of Subsection 411.3, 411.4 and 411.5 to allow two separate rooftop

enclosures of varying heights; and second, a special exception under Subsection 2202.2 for relief from the requirements of Subsections 2204.9 and 2201.5 to allow a non-dedicated service and delivery space and (3) a variance from the requirements of Subsections 777.1, 411.2 and 400.7(c) to allow elevator penthouses with a maximum height of 22 feet 6 inches, to allow the construction of a new office building with ground floor retail in the DD/C-3-C District (and Downtown Urban Renewal Area) at premises 900 New York Avenue, N.W. The property located in Square 374, Lot 45.

The Applicant filed their request for this time extension on December 13, 2011. This filing is identified in your case folders under Exhibit 39.

The second filing in your record is an Office of Planning report identified as Exhibit 40.

Other than that, then the Board is

to act on the merits of the request to extend the life of the order pursuant to the requirements to Subsection 3130 and specifically 3130.6(a) through (c).

And that completes the status briefing, Madam Chair.

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

As indicated in this application, it is a request for a two-year extension. We have in our submission statements that there's going to be no substantial change, material change, to the relief that's being sought or to the project.

The Applicant has, in my opinion, provided a sufficient good cause shown under the standard including the outlined submissions and statements along with an attached exhibit of the financial costs that have gone into the project since -- in order to pursue the project and continue with the project. Along with an Exhibit C which is

submitted by the Applicant and signed by the Project Executive for Gould Property Company identifying the steps that it's been taking to try to pre-lease and obtain financing based on that pre-leasing and the challenges that it's had in that regard.

And based on that, I would find that the Applicant has presented us substantial evidence satisfying the good cause shown under Section 3130.6(c),

That being said, I would be in favor in supporting this application.

Is there any additional deliberation from Board Members?

Seeing none, then at this point in time, I would submit a motion. A motion to approve Application 18002 for a motion to extend the application at location 900 New York Avenue, N.W. to June 29th, 2014.

The motion has been made. Is there a second?

MEMBER HINKLE: Second.

CHAIRPERSON MOLDENHAUER: Motion's been made and seconded. All those in favor say aye.

(Ayes.)

MR. MOY: Staff would record the vote as 4 to 0 to 1. This is on the motion of Chairperson Moldenhauer to approve the request for a two-year time extension pursuant to the requirements under Section 3130. Second the motion Mr. Hinkle. Also in support of the motion Ms. Sorg and Mr. Jordan. The Zoning Commissioner not participating on this application. So, again, the final vote is 4 to 0 to 1. The motion carries.

The next application for Board action is Application Number 18304. This is of Rui E. Lu (Andy's Carryout) pursuant to 11 DCMR 3104.1 for a special exception. This is to allow a fast food establishment under Section 733 in the C-2-A District at premises 5001 Georgia Avenue, N.W. Property located in Square 3007, Lot 67.

As the Board will recall, on the 24th of January 2012, the Board completed public testimony, closed the record, scheduled its decision on January or rather February the 7th.

The Board requested additional information to supplement the record from the Applicant with filings due by February the 3rd, 2012.

In your record, in your case folders are two filings from the Applicant, Exhibit 30 and 31. Exhibit 31 contains a revised page 3.

Finally, the last filing in your record is an OP report dated February 3rd, 2012 identified as Exhibit 32.

And with that, then the Board is act on the merits of the special exception relief to allow a fast food establishment.

That completes the status briefing, Madam Chair.

CHAIRPERSON MOLDENHAUER: Thank

you very much, Mr. Moy.

I am not participating in this case. So, I will turn the record over to Ms. Sorg.

VICE CHAIRPERSON SORG: Thank you, Madam Chair.

I'm very pleased with the submissions that we received in this case after the hearing. This is a request for a special exception under 733 actually to continue a fast food establishment that's been in operation for ten years and is stemming from a ZA referral.

I felt that the application materials that were submitted by the Applicant as well as the OP report which recommends approval and the testimony and the questions that were answered before this Board combined to form a very complete record.

I also would note we had a letter from DDOT saying that they had no objection in this case.

Therefore, I think with the subsequent memo from OP in our Exhibit 32 as well as the submission from the Applicant in which the property owner confirms that they agree to build the requested enclosure around the trash dumpsters on the property which really was our -- in the hearing and was really my own only question regarding the Applicant's ability to satisfy and be consistent with each of the prongs of 733.

So, that being said, we see a drawing that has been submitted here. The owner has agreed. OP has also reviewed this submission.

I would be in support of the application and I would also be in support of approving the application subject to a condition and I would suggest that the condition read as follows:

The property owner shall construct and maintain a gated, pressure treated wooden stockade fence enclosing all trash and grease

dumpsters located on the property.

Any additional deliberation?

COMMISSIONER TURNBULL: I would only add -- I don't know if you mentioned it or not. The special exception is for no expiration date.

VICE CHAIRPERSON SORG: Correct. I agree with that as well.

COMMISSIONER TURNBULL: Okay.

VICE CHAIRPERSON SORG: But, I wasn't --

COMMISSIONER TURNBULL: It was implicit in the OP report.

VICE CHAIRPERSON SORG: It was in the OP and also, I don't believe that that would require a condition --

COMMISSIONER TURNBULL: Right.

VICE CHAIRPERSON SORG: -- to a potential order.

MEMBER JORDAN: Madam Vice Chair, I just want to make for the record I did review the video on this of the testimony and

so, I'll be participating.

VICE CHAIRPERSON SORG: Excellent. Thank you, Mr. Jordan.

Any further deliberations?

MEMBER HINKLE: Yes, Madam Vice Chair, thank you.

I was having difficulties with this application in terms of requiring the Applicant which at the time was the tenant to instruct screening for all the dumpsters on the site, but like you mentioned, I'm very pleased as well with the supplemental information. The owner has agreed to screen all the dumpsters on the site and I think that's really a positive move.

VICE CHAIRPERSON SORG: Absolutely. I agree and thank you for bringing that up, highlighting that, Mr. Hinkle.

So, without further ado, I will submit a motion to approve Application Number 18304 of Rui E. Lu (Andy's Carryout) pursuant

to 11 DCMR 3104.1 for a special exception to allow a fast food establishment under Section 733 in the C-2-A District at premises 5001 Georgia Avenue, N.W. subject to the condition as follows:

That the property owner shall construct and maintain a gated pressure treated wooden stockade fence enclosing all trash and grease dumpster located on the property.

And this would be an approval with no expiration date.

A motion has been made. Is there a second?

MEMBER HINKLE: Second.

VICE CHAIRPERSON SORG: Is there a second?

MEMBER HINKLE: Well, Madam Chair, we have a question.

VICE CHAIRPERSON SORG: Oh, apologies.

MEMBER HINKLE: Do we need to

waive Section 733.4 which requires a brick enclosure?

MEMBER JORDAN: Madam Chair, yes, the -- it's specific as to brick and they're going to do the wooden fence and I think we have to just include that.

VICE CHAIRPERSON SORG: I agree. Yes, that was what -- something that we discussed in the hearing, but I don't -- I mean if we need to include language that we're waiving that in the condition itself, then that can be certainly added.

MEMBER HINKLE: Yes, I just not sure what the procedure is.

MS. GLAZER: I don't think you need to include it in the condition itself, but --

VICE CHAIRPERSON SORG: The condition --

MS. GLAZER: -- it was -- Mr. Jordan brought up a good point. So --

VICE CHAIRPERSON SORG:

Absolutely.

MS. GLAZER: As long -- I think the Board by consensus can agree to waive that -- the requirement of that section.

MEMBER HINKLE: Thank you.

VICE CHAIRPERSON SORG: Great. Thank you for bringing that up.

MEMBER JORDAN: And now, I'll second.

VICE CHAIRPERSON SORG: Great. Motion has been made and seconded. All those in favor say aye.

(Ayes.)

VICE CHAIRPERSON SORG: Mr. Moy, can you please read back the vote?

MR. MOY: Yes, with pleasure. The staff would record the vote as 4 to 0 to 1. This on the motion of Vice Chair Sorg to approve the special exception relief under Section 733 with the condition as cited by the Vice Chair which also includes by consensus the waiving of the requirements under Section

733.4. Second the motion Mr. Jordan who read the record to participate. Also in support of the motion, Mr. Turnbull and Mr. Hinkle. Yes, Mr. Hinkle. So, again, the final vote is 4 to 0 to 1. The motion carries.

VICE CHAIRPERSON SORG: Thank you and can we call for a summary order in this case please?

MR. MOY: Yes, thank you.

The next application before the Board for action is Application Number 18291. This is the application of Mt. Olive Baptist Church.

This application as the Board will recall has been amended to withdraw special exception relief from Section 205 which calls for requirements under the DCD, child development center, and has included variance relief from the rear yard subsection for -- or rather rear yard requirements under Section 404.

So, in its entirety, the relief

requested would be variance relief from the lot occupancy requirements under Section 403, variance from the nonconforming structure provisions under Subsection 2001.3, variance from the off-street parking requirements under Subsection 2101.1 and variance from the rear yard requirements under Section 404.

The Board had closed the record for any additional documents. Although, left the record somewhat open to allow the Applicant the opportunity to consult with the Zoning Administrator. No? Yes.

But, if so, then the Board would have to act on the filing from the Applicant which is their filing of February the 2nd, 2012 received on the 3rd of February under Exhibit 38.

So, other than that, the Board is to act on the merits of the requested variance relief.

That completes the status briefing, Madam Chair.

CHAIRPERSON MOLDENHAUER: Thank you very much, Mr. Moy. One moment.

We had closed the record and I think Mr. Moy was referencing some potential issue in order to -- maybe leaving the record open to talk with the ZA about a different size footprint or something to that affect. But, that's not what the last submission, Exhibit 38, was addressing. That was simply just, I guess, reiterating the case. So, since we're trying to maintain a strong line in regards to closing the record, we will strike 38 and continue with the case.

That being said, we have a submission before us which has been modified during the course of the hearing, but what we have is we have a request for relief that I believe while it's a challenged argument or it's the institutional necessity for the CDC, I do think that it does satisfy the standards under Draud.

While I had asked the Applicant in

regards to whether this was going to be a child development center that was, I guess, putting forth its religious beliefs and it is not, it is a child development center that is going to be, I believe, from this testimony and the submissions on the record something that is in the mission and the intent of the church and something that the church's constituents and community as it's one of its mission to, you know, provide services to the community does provide for.

And I believe that under Draud, it specifically talks about public service and having inadequate facilities to apply a variance to expand into the, you know, adjacent areas of the common ownership and I think that here we do have an area where there is public service that the Applicant is pursuing under the institutional necessity of the church and that being said, I do feel as though the Applicant, you know, does -- would receive that type of reduced scrutiny in

regards to the first prong of the variance standard.

That being said, in regard to the question of whether or not the Applicant satisfies the standard in general in regards to exceptional circumstances, I do think that the age of the building, the fact that it's been unused for a long period of time, the fact that there's actually an existing parking lot or parking path that actually runs directly through an existing lot, I think is quite unique and exceptional and I think based on those factors, I would find that that does satisfy the standards.

In addition to that, I then kind of just jump into the discussion of whether the Applicant satisfies the standard for the parking relief that it's seeking.

Here I think that there's a question of, you know, is there any other place on the site that they could potentially provide that parking and I think we had a in-

depth discussion and conversation about the alley and the alleyway and if there was room.

While currently the property is not utilizing or using, there's a fence that's not actually to the edge of their property line. Could they still potentially provide those two spaces on the lot? The Applicant testified that while they could that there would be some potential challenges with that both safety-wise and then the question is the Applicant -- can the Applicant satisfy the standards and not provide those spaces and at the same time not provide a substantial detriment to the public good and I think that here in this situation I feel that they can.

That, you know, based on testimony in regards to the current parking I guess demand on the street that it's not going to create a substantial detriment to have, you know, those two spaces that may potentially have been able to be squeezed onto the rear of the lot by the alley and so, I would be in

support of that relief as well.

That being said, I think I've kind of just gone through a precursory review of the different relief that's being sought here and my view in regards to how they satisfy those standards. Obviously, in discussing the issue of the parking that also incorporates the rear yard relief that they're seeking and I would be in support of the application.

I'll see if there's any additional deliberation from Board Members.

VICE CHAIRPERSON SORG: Madam Chair, I agree actually with your analysis.

I was having some trouble myself in thinking about this application, but I think your discussion of Draud and the way that this application and the relief that's being requested by this particular applicant falls under that.

It was with that understanding I think that I was able to sort of come away. I think from the confluence of factors that you

mentioned, you know, regarding the vacant charge and also I think you alluded to this. But, really, the configuration of this building, you know, which was combined and is considered one building for the purposes of zoning does present a challenge and is actually unique with regard to the request that's being made.

And with regard to the amount of space that's being allotted to the new CDC, I think based on prior -- reading of prior cases and Draud and so forth, the concerns that I had regarding are they giving too much space for the children, you know, what is the size of this were allayed.

I also do commend. Although it doesn't come into my consideration of the first two prongs, I would commend the Applicant for actually portions of the design which do hold back the massing from the front of the building and organizes the addition in a way that despite the relief that it incurs

is, in my mind, sensible.

That's all I wanted to add. Thank you.

MEMBER JORDAN: And I would just -- to ditto that. I agree that this meets all the tests and it's worthy of the relief that they're requesting. Particularly in regards to the parking, I don't have any difficulty. I think they give adequate evidence that there is mechanical equipment in the back. The trash disposals. A narrow alley. The issue about making a turn that they can't make and even regarding the aspect of neighbors talking about the impact. I think it was not really proved. I think that was just kind of in passing. I didn't see anything that was really of substance for me grab hold to except for just the various complaint by the neighbor.

So, I would agree with you. I think this is one to which we can grant the relief.

VICE CHAIRPERSON SORG: I say I would pipe up again and agree with Mr. Jordan that if there's one thing that neighbors care about, and we all do, it's parking and nobody said a thing about it.

So, while that, of course, doesn't satisfy the first two prongs of the test, it certainly speaks toward the sentiment of the community with regard to the church and those programs using street parking.

CHAIRPERSON MOLDENHAUER: And just to that point, I'll just indicate that we do have in our record a unanimous support from the ANC. Our Exhibit 26 which received great weight.

We also have numerous letters. I dare not even count from neighbors and members of the church which is Exhibit 25 and like I said, there's numerous letters that are all part of 25. All recommending approval for the application and for the variances here that were being requested.

You know, that being said, I do agree with the Board Members in regards to the support and I do think that the Applicant satisfies the standard especially in light of Draud and the National Black Child Development Institute.

That being said, I will submit a motion. A motion to approve Application 18291 under 11 DCMR 3104.1 and 3103.2 for a special exception for a child development -- sorry. Sorry. That's not actually the relief that's being sought anymore. For a variance from the lot occupancy requirements under Section 403 and a variance for the nonconforming structure provision under 2001.3 and a variance from the off-street parking requirement under Section 2001.1 and relief from Section 404 to construct an additional to an existing church structure at 1140 6th Street, N.W.

A motion has been made. Is there a -- N.E. Looking at the end, N.E. N.E.

A motion has been made. Is there

a second?

COMMISSIONER COHEN: Second.

CHAIRPERSON MOLDENHAUER: The motion's been made and seconded. All those in favor say aye.

(Ayes.)

MR. MOY: The staff would record the vote as 4 to 0 to 1. This on the motion of Chairperson Moldenhauer to approve the application per the variance relief that the Chair has just cited. Second the motion Ms. Cohen. Also in support of the motion Ms. Sorg, Mr. Jordan and Mr. Hinkle or rather -- strike that. Rather Mr. Hinkle is recused, not participating. So, again, the final vote is 4 to 0 to 1. The motion carries.

CHAIRPERSON MOLDENHAUER: Thank you very much, Mr. Moy and seeing that there's no opposition in this case, the Board would like to request -- waive the requirement and ask a summary order be issued.

MR. MOY: Yes, thank you, Madam

Chair.

The next application for Board action is Application Number 18294 of Paul and Emily Thornell pursuant to 11 DCMR 3104.1 for a special exception to allow a rear addition to an existing one-family semi-detached dwelling under Section 223 not meeting the lot occupancy requirements under Section 403 and rear yard requirements under Section 404. This is in the R-2 District at premises 3011 Ordway Street, N.W. Property located in Square 2067, Lot 76.

On January 17th, 2012, the Board completed public testimony, closed the record, scheduled its decision on February the 7th.

The Board did allow additional information to supplement the record by Thursday, February 2nd, 2012.

There are two filings in the record, Madam Chair, in your case folders. The first is from Susan Finston, party opponent. That filing is dated -- rather that

filing is under Exhibit 38 and from the Applicant, under Exhibit 39.

With that, then the Board is to act on the merits of the special exception relief under Section 223.

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

And to start us off with deliberations, we heard in this case from the Applicant as well as hearing from some neighboring property owners both in support and in opposition to this case.

The major, I guess, opposition to this case was from the Finston family and that's the individual who submitted some additional submissions.

What we're here for is we're here for -- to review relief under 223 for a two-story plus cellar rear addition. The relief that's being sought here is a relief to -- going beyond the 40 percent permitted lot occupancy to 43.5. Which is obviously a 3.5

percent increase on the permitted lot occupancy. Which is based on OP's report approximately 99 square feet.

That being said, we have to evaluate the case under the 223 standard and determine whether or not this requested addition would have any unduly affect on the light and air of any neighboring properties or have any impact on the use and enjoyment of neighboring properties again to the degree of whether it would unduly compromise the privacy, use and enjoyment of neighboring properties.

That being said, the question I think that, you know, we have to answer is, you know, does this project create an undue influence or undue affect on the Finston's property.

I do believe that the property, Ms. Finston's property, is within the purview of being a neighboring property based on the fact that the rear of her property would be

looking up the hill onto the rear of Ordway Street based on the fact of just how the topography is located and the alley is located since the -- even the 30th Street obviously, they're faraway if you're looking. If you're driving, you're looking from the rear of the property. They do have a relationship to each other.

The question then is this -- again, to the question to the degree of unduly affecting, is there a shadow that would be cast and I don't think that anything submitted by Ms. Finston was addressing that fact or was alleging that there was going to be an increased quantity of shadow.

But, rather, that there was going to be a change in potentially the feeling of her rear yard because of the fact that -- of the topography of the location where you have the houses on Ordway Street that are so high in regards to the rear of property and how it would potentially feel as she used, I believe

in the hearing a number of times, it would be looming over the rear of her property.

While I feel for her and I feel that obviously, you know, there's obviously a relationship here in regards to the two lots and everything, I don't -- in my view after reviewing the facts, reviewing her additional submission that she provided on Exhibit 38, hearing her testimony, I don't see as though it creates a substantial or an undue affect.

I think that the relief that is being sought is such a small degree. Only 99 square feet and I believe I asked her, and I'm paraphrasing here now, I don't remember the exact terminology, but I asked her that even if their project was as a matter of right would it still create the same concerns and her answer was not specifically direct, but I think that the reality was that no matter what there was going to be some concerns for her whether the property did not have an additional 99 square feet, whether that was

pulled back. I think it pretty much was the same size of a deck portion.

Her main concern in my view, in my understanding of her presentation both orally and her submission, was the scale and the feel of it in regards to the two-story nature. The fact that this was going to be a cellar as well as an addition to the rear. But, unfortunately, in viewing the standard, that cellar, that ability is within the Applicant's right in regards to a matter-of-right project.

And so, even if we were to ask the Applicant I think to pull the project back and only provide the development at the 40 percent lot occupancy, I don't believe that it would eliminate the concerns and because of that analysis, I then don't believe that the relief here would create an undue affect by providing that additional 99 square feet in the rear of the project.

That being said, again, I do understand her concerns, but I don't believe

they rise to the level in regards to allowing us to have to reject this application for a 223.

We do have a letter from the ANC expressing no objection.

We have HPRB approving the application in regards to the concept drawings.

And we have Office of Planning's support as well.

That being said, I'll open up the floor to any additional deliberation from Board Members.

COMMISSIONER COHEN: Madam Chair, I would concur with your analysis in this case.

CHAIRPERSON MOLDENHAUER: Any additional deliberation?

MEMBER HINKLE: No, I think that was fairly clear, Madam Chair. I certainly agree with that analysis as well.

CHAIRPERSON MOLDENHAUER: That

being said then, I'll submit a motion.

A motion to approve Application 18294 pursuant to 11 DCMR 3104.1 for a special exception to allow a rear addition to an existing one-family semi-detached dwelling under Section 223 not meeting the lot occupancy under 403 and the rear yard under 404 at premises 3011 Ordway Street, N.W.

A motion has been made, is there a second?

VICE CHAIRPERSON SORG: Second.

CHAIRPERSON MOLDENHAUER: Motion's been made and seconded. All those in favor say aye.

(Ayes.)

MR. MOY: Staff will record the vote as 5 to 0 to 0. This is on the motion of Chairperson Moldenhauer to approve the application special exception relief from Section 223. Second the motion Ms. Sorg. Also in support of the motion, Ms. Cohen, Mr. Jordan and Mr. Hinkle. So, again, the final

vote is 5 to 0 to 0 and the motion carries.

The next application is Application Number 18296. This is the application of Daniel T. Merlis pursuant to 11 DCMR 3104.1 for a special exception to allow a rear deck addition to a one-family detached dwelling under Section 223 not meeting the rear year (Sections 404 and 2503.1) requirements in the R-2 District at premises 3825 Morrison Street, N.W. Property located in Square 1859, Lot 62.

On January 17th, 2012, the Board completed public testimony, closed the record, scheduled its decision on February 7th, 2012.

The Board requested additional information to supplement the record. Filings due by Wednesday, February the 1st, 2012.

In your case folders, Madam Chair, the Applicant has submitted a proposed landscape plan which is dated by receipt of email on Wednesday, February the 1st. Identified as Exhibit 54.

The Applicant also submitted under separate cover a written narrative which staff believes goes to Exhibit 55. Which was filed on Thursday, February 2nd. Which would be filed under Exhibit 55.

If the Board believes that this is a separate exhibit, then it should be treated as untimely submitted by one day.

The party opposition made a filing dated and received February 6, 2012 identified as Exhibit 56. This would be untimely since this filing would also have been due by February the 1st.

And finally, for the record, after the public hearing on January the 17th, the party opposition submitted written drawings that were shown on the exhibit boards at the public hearing. On January the 17th. Which is identified as Exhibit 53.

The Board is to act on the merits of the special exception relief.

And that completes the status

briefing, Madam Chair.

COMMISSIONER COHEN: Madam Chair, I would just like to state for the record that I have to leave early, but I did read the public record and watched the video.

CHAIRPERSON MOLDENHAUER: That being said, there's obviously the submissions that were submitted into the record, Exhibits 54, 55 and 56 and obviously, those are all going to be admitted as part of the record and are obviously significant in regards to the deliberation on the case.

We had submitted in 55 a submission from the Applicant indicating that they had met and provided a revised and final landscape plan.

Just to kind of go back, the case before us is a case for 223 relief. However, it's a unique factual background in this situation in regards to the fact that the majority of the project -- rather a substantial -- the project has already been

constructed. While that's not something that we're taking into consideration, it's just a factual situation that obviously I want to make note of because some of the factors you can visually see versus just having -- in pictures that were presented by the Applicant rather than simply looking at plans.

However, we are taking it as though it's a 223 and they're constructing this, you know, as of tomorrow or whenever potentially if or when we were to approve the application.

That being said, we have two parties in opposition in this case, Kolker and Miles-McLean and they submitted a late submission, a submission on February 6th. Which is Exhibit 56. Which indicates that they're willing to withdraw their opposition to the application provided that the plan landscape architect Barbara Balman, dated January 26, 2012 and revised on January 28th, 2012, is made a condition to the approval of

the special exception.

That being said, they had also previously submitted some documentation in regards to filling in the parking space, but that was something that they're obviously willing to waive and considering the fact that the Applicant is now willing to dig up the portions of the driveway which are on both the -- I'm awful with -- north and east side. Especially when the submissions don't actually show north and east. But, on either side of the driveway, the Applicant is now submitting that they would dig up the concrete and provide planting areas on either side edging it with cobblestone and planting two trees on both of those corners and also providing fencing along the corner by Mr. Miles-McLean and planter boxes providing a buffer zone as well on the fence area on the north and south side of the driveway.

Thank you. I'm a lawyer not an architect. I got to see what's on the plans

and sometimes it's --

So, that being said, I think that, you know, based on the submissions and based on the fact that the Applicant is now submitting that they would be willing to modify their application and to be conditioned upon that submission of the Balman plan, you know, I would be obviously in favor of supporting the application.

I think that this was a very contentious case and I'm, you know, very, you know, happy to see that the parties have been able to sit down and, you know, work together and try to come up with a solution that, you know, both parties are agreeable to and, you know, provides some relief in regard to the light and air of both parties in that regard.

I'm just looking at a document and kind of having -- with Ms. Sorg that just -- it is a little confusing because we do have a submission and I don't have an exhibit number on this, but it's submitted as of February

3rd, 2012 from a Mr. and Mrs. Miles-McLean indicating that they were still in opposition to the case. However, they indicated they also signed Exhibit 56 which is signed by them on page 3 of Exhibit 56 which was signed on February 3rd, 2012. So, they're both dated the same date.

I'll open it up to other Board's comments in that regard as to the --

VICE CHAIRPERSON SORG: Madam Chair, I agree that it was a little bit confusing for me especially given that these were submitted on the same date.

But, I think -- I believe that the letter from Mr. and Mrs. Miles-McLean indicates a similar sentiment or is in the end in keeping with the agreement that's signed regarding the Balman landscape plan and requesting -- in the last paragraph of their letter, encouraging, you know, screening and fencing and permanent physical elements to screen the deck addition.

So, I mean for me -- from my part, you know, what I can gather from that is that the plan that is contained within that exhibit that's submitted on February 3rd meets with their approval in that regard.

CHAIRPERSON MOLDENHAUER: I agree with you and I think that question now is just, you know, if I submit a motion to approve the application, you know, how -- I believe, you know, the submission is quite clear in regards to the type of trees. It indicates the planters on each side will have evergreens. So, it's describing the exact type of tree. That in regards to the buffering trees, it provides that as well. Planted in the ground. You know, flowering trees. Based with flowering trees.

So, I think that this definitely provides sufficient description and detailing to confirm that this would for the life of the property have these required landscaping maintained as part of the property and for the

life of the property.

And the reason why I'm saying that is I think it's some of the comments in regards to our training this morning and making so that that's clear as part of the record and so, to make sure that there's no issue in regards to potential orders or in regards to permitting or in the future, any enforcement issues.

That this is obviously a significant aspect of how -- why we're approving this relief and I think that that should also give some solace to the parties in opposition that they have the ability to enforce this as part of the condition, you know, for the life of the property to confirm that obviously this has to be maintained as, you know, as provided in the Balman plan.

That being said, I think I'll submit a motion.

A motion to approve Application 18296 pursuant to 11 DCMR 3104.1 for a special

exception to allow a rear deck addition to a one-family detached dwelling under Section 223 not meeting the rear yard requirements under 404 and 2503.1 at premises 3825 Morrison Street, N.W.

This application would be approved upon the condition that the Applicant construct and conform with the landscape diagram provided in the Balman landscape design plan which was dated January 26, 2012 and revised on January 28th, 2012 and that that plan would be maintained for the life of the property and is also provided in Exhibit 54 of our record.

A motion has been made. Is there a second?

MEMBER HINKLE: Second.

CHAIRPERSON MOLDENHAUER: Motion's been made and seconded. All those in favor say aye.

(Ayes.)

MR. MOY: Staff would record the

vote as 5 to 0 to 0. This is on the motion of Chairperson Moldenhauer to approve the application from special exception relief Section 223 not meeting rear yard, 404 and Section 2501.3 relief on the condition that the application is in conformance with the submitted landscape plan in the record pursuant to the Balman drawing dated January 26, 2012 and revised January 28, 2012 as exhibited in Exhibit Number 54. Seconded the motion Mr. Hinkle. Also in support of the motion Ms. Cohen, Ms. Sorg and Mr. Jordan. So, again, the final quote is 5 to 0 to 0. The motion carries.

MS. GLAZER: Is there a question regarding the type of order that's required?

CHAIRPERSON MOLDENHAUER: I'd prefer a full order unless Mr. Secretary believes we can do some sort of hybrid that's a summary order, but still provides sufficient disclaimers in regard to the condition. I mean I personally would just rather have a

full order.

MR. MOY: Yes, I would concur.

CHAIRPERSON MOLDENHAUER: Just for the record, the Applicant asked for leniency or flexibility in regards to their ability to go forward. That's not something that obviously we're ruling on. We're going to provide a full order and --nor as to the flexibility and leniency of them being able to start landscaping prior to the order being finalized.

MS. GLAZER: I'm somewhat puzzled because the -- as I interpreted, the opposition was withdrawn.

CHAIRPERSON MOLDENHAUER: Yes, but that doesn't mean that we are required to waive our requirements and --

MS. GLAZER: Okay.

CHAIRPERSON MOLDENHAUER: -- I think that based on that there was opposition in this case, in order for any future owner to review it or to understand anything, it's

better to have a full order to understand exactly what happened in this case.

MS. GLAZER: Okay. Very well.

MR. MOY: The next application before the Board for action is Application Number 18297. This is Mohammad Pishvaeian pursuant to 11 DCMR 3103.2 for a variance from the lot area requirements under Subsection 401.3 to convert a rooming house to a three-unit apartment building in the R-4 District at premises 3609 13th Street, N.W. Property located in Square 2829, Lot 62.

On January 17th, 2012, the Board completed public testimony, closed the record and scheduled its decision on February the 7th. The Board did not request any post-hearing filings. Therefore, the Board is to act on the merits of the variance relief from the lot area requirements.

And that completes the status briefing, Madam Chair.

CHAIRPERSON MOLDENHAUER: I'm

going to turn to over to Ms. Sorg as I've recused myself in this case. Thank you.

VICE CHAIRPERSON SORG: Thank you, Madam Chair.

As the Secretary mentioned, this is a request for a variance under 401.3 to convert an 11-room rooming house into a three-unit apartment building.

I'll start from the side of support. We've got in this case clear ANC support. DDOT indicates in a letter that they don't have any issues. Additionally, the Applicant submitted, I believe, 14 letters of support along with their application. So, that's good.

And then we come to the Office of Planning who in their report indicated that they cannot recommendation approval of the variance.

I believe that this is a challenging case and certainly a challenging case to find classical cases of uniqueness and

exceptional narrowness -- of uniqueness with regard to exceptional narrowness, shallowness or topography of the property as OP testified that those were the only things that they were looking for.

But, I think that in individual specific cases and in my mind, this is such a case, we are able to see a confluence of contributing factors that combined -- combine to rise to the level of satisfying the first prong of the area variance test.

In this case, I think based on the Applicant's testimony and submissions and the images of the property and its context, I can find that the property has been vacant and also that this property is in significant disrepair as we saw from the photographs that were submitted.

Also, for me a factor, though not significant in my mind on its own as a factor, is the organization of the building internally combined with its unique access and egress

situation into the alley compared to those properties in its immediate context.

I also believe that this decline in use, that of a rooming house, while it is a matter of right especially in this larger area, has become, as I said though matter of right, actually atypical of the development residential character of the neighborhood.

And these are the areas in which in my analysis I differ from OP who indicates, as I mentioned, that they cannot support the application.

So, therefore, I would find that the first prong necessitating uniqueness for the area variance test is met through this confluence of factors.

Subsequently, in testimony, OP indicated that regarding the second prong they did not take any economic factors into consideration. But, I think in this case that there were -- the record with regard to the economic factors was detailed and significant

and so, the factors that I mentioned in my mind do lead to the practical difficulties for the Applicant in adhering to the Zoning Regulations in this regard.

The Applicant submitted documentation -- detailed documentation sharing the financial difficulty in restoring the property to a matter-of-right use. The economic factors were not taken into account as I said by OP, but in this case, I do believe that the economic hardship for the specific characteristics of the site are related to the practical difficulties set out in the application and this again is documented through construction budgets and profit and loss analyses provided and discussed at pretty good length in the hearing.

And a market -- well, my colleague is mentioning the market analysis. To me, that actually factored in somewhat less than the construction budget and the profit and

loss analyses based on the existing conditions and the type of construction there. But, I did find actually that the testimony in that regard as well as the financial submissions by the client were compiling.

You know, these analyses clearly compare the cost of construction and potential sale prices for the two matter-of-right uses and it does demonstrate the practical difficulty in my mind in that regard which would result in losses on both of those counts, but with the proposed project not a financial loss.

So, that takes care of in my mind through this confluence of factors viewing the unique history and condition -- existing condition of the property through the economic difficulties of putting that towards a matter-of-right use leads to the third prong of the test.

I don't believe that there is substantial harm to the Zone Plan in approving

the application as it does actually decrease the density from an 11-unit rooming house to a three-unit flat. Also, that the amount of density being requested above the matter-of-right use is not exceptionally large with regard to what is allowed as a matter of right in the R-4 Zone.

I would mention also something that the Office of Planning indicates in a footnote, I suppose, in their report. Which is that the purpose of the R-4 Zone is to stabilize low density zone and so forth residential and I think the word stabilization is actually significant with regard to the merits of this case. Taking a building that is vacant and had for a very long period of time a use that is declining in the area and bringing it to a lower density and rehabbing the property itself, in my mind, is exactly what contributes to the stabilization of this type of residential fabric.

So, those are my thoughts and so,

therefore, I would say that based on the sort of -- the unique factors here and also the confluence of factors with regard to the area variance test, I can be in support of the application.

And I'll open it up for discussion from other Board Members.

MEMBER HINKLE: Thank you, Madam Chair -- Vice Chair.

VICE CHAIRPERSON SORG: Whatever.

MEMBER HINKLE: I'm really in complete agreement with you on your analysis. In particular, on the first prong as well as the third prong of the test.

In terms of the second prong, I just wanted to, you know, note that I appreciate really the thorough process analysis that was done for this project. I recently voted against a similar case simply because I didn't think we had sufficient documentation in that respect.

But, in terms of the market

analysis which you mentioned, I think that also feeds into the practical difficulty in terms of, you know, there's really a high cost of purchasing these properties throughout the city now and then to, you know, add on to that the redevelopment cost, it's getting hard to make some of these properties actually meet some matter-of-right uses. Which is, you know, becoming an issue through the city I think. So, the market analysis was also appreciated in terms of thinking about how there's really economic and practical difficulties related to this project.

So, that's all I have to say.

VICE CHAIRPERSON SORG: Thank you, Mr. Hinkle. I appreciate your addition and I agree.

Is there any further deliberation?

Seeing none, then I will submit a motion to approve Application Number 18297, Mohammad Pishvaeian pursuant to 11 DCMR 3103.2 for a variance from the lot area requirements

under Subsection 401.2 to convert a rooming house to a three-unit apartment building, R-4 District at premises 3609 13th Street, N.W.

A motion has been made. Is there a second?

COMMISSIONER COHEN: Second. Second.

VICE CHAIRPERSON SORG: A motion has been made and seconded. All those in favor say aye.

(Ayes.)

VICE CHAIRPERSON SORG: Mr. Moy, can you please back the vote?

MR. MOY: Staff would record the vote as 4 to 0 to 1. This is on the motion of Vice Chair Sorg to approve the application for variance relief from lot area requirements under 401.3. Second the motion Ms. Cohen. Also in support of the motion Mr. Jordan and Mr. Hinkle. Ms. Moldenhauer is recused and not participating. So, again, the final vote is 4 to 0 to 1. The motion carries.

VICE CHAIRPERSON SORG: Thank you, Mr. Secretary and we can waive our requirements and request a summary order in this case.

MR. MOY: Very good. Thank you.

CHAIRPERSON MOLDENHAUER: Thank you. I think we have one last case on the calendar. I think we have one last case for Mr. Moy to call on the calendar.

MR. MOY: Indeed. This last application before the Board is a motion for a Minor Modification to Condition Number One of BZA Order Number 18147 of Eun Sun Kim pursuant to Section 3129 of the Zoning Regulations. The original application was approved on December 14th, 2010 and that application was pursuant to 11 DCMR 3104.1 for a special exception to allow a fast food establishment under Section 733 in the C-2-A District at premises 1100 Eastern Avenue, N.E. Property located in Square 5200, Lot 805.

As the Board will recall, the

Board convened this request from the Applicant on January the 10th, 2012 and on the Board's own motion, the Applicant's request was rescheduled for a decision to January the 7th to allow the record to be open to receive supportive documentation.

As of this moment, Madam Chair, there is no additional filing in your case folders. So, with that, it's up to the Board on how the Board would like to take action on this application.

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

At the last hearing, we indicated to the Applicant that we were going to provide him one month, postponing this from January 10th, to provide additional supplemental documentation to address the issues that Office of Planning identified in regards to the distinctions in the addresses and the lack of then jurisdiction we have. We have received nothing and based on that, I'd like

to move to dismiss this case.

Is there any additional deliberation from Board Members before I submit a formal motion?

VICE CHAIRPERSON SORG: Oh, I was going to second.

CHAIRPERSON MOLDENHAUER: Then I motion to dismiss this case 18147. Is there a second?

VICE CHAIRPERSON SORG: Second.

CHAIRPERSON MOLDENHAUER: Motion's been made and seconded and all those in favor say aye.

(Ayes.)

MR. MOY: Staff would record the vote as 4 to 0 on the motion. This is on the motion of Chairperson Moldenhauer to dismiss the request for a minor modification. Second the motion Ms. Sorg. Also in support Mr. Jordan and Mr. Hinkle. Mr. Schlater not present not voting. So, again, the final vote is 4 to 0 to 1. The motion carries to

dismiss.

CHAIRPERSON MOLDENHAUER: Thank you very much, Mr. Moy, and I believe then that concludes our day and we will reconvene next Tuesday. Thank you.

(Whereupon, at 3:21 p.m., the meeting was adjourned.)