

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JULY 16, 2013

+ + + + +

The Regular Public Hearing
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 9:54 a.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
S. KATHRYN ALLEN, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN RICE, Zoning Specialist
STEPHEN VARGA, Zoning Specialist
PAUL YOUNG, Zoning Data Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS

STEVEN COCHRAN

ELISE VITALE

The transcript constitutes the minutes from the Public Hearing or held on July 16, 2013.

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

2 9:54 a.m.

3 BZA CHAIR JORDAN: Will the
4 hearing please come to order?

5 Good morning, ladies and
6 gentlemen. We're located at 441 4th Street,
7 N.W. Today's date is July 16th, 2013. We're
8 here for the meeting of the Board of Zoning
9 Adjustment public hearing today.

10 My name is Lloyd Jordan,
11 Chairperson. To my left is Anthony Hood,
12 Chairperson of the Zoning Commission. To my
13 right is S. Kathryn Allen, Vice Chair of the
14 Board. And to her right, Jeffery Hinkle,
15 Board Member.

16 Please be advised that this
17 proceeding is being recorded by a court
18 reporter and is also being Web cast live.
19 Therefore, I'm going to ask you to refrain
20 from any disruptive noises here in the hearing
21 room.

22 The Board's processes and

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1 procedures are contained in a document that's
2 by the door to my left, so please feel free to
3 pick up a copy to understand how we process
4 applications and appeals here.

5 So let's begin today's hearing
6 docket. All those who are going to testify in
7 any cases today or provide any testimony
8 either by statement or as testimony, please
9 stand and take the oath or affirmation from
10 the Board's secretary.

11 And before you begin, while I have
12 you standing, the same people will also
13 complete two witness cards for each one of
14 you. Each one of you complete two witness
15 cards. And prior to your testimony please
16 give them to the court reporter sitting over
17 there to my right who's saying please make
18 sure it happens. So let's do it.

19 Mr. Moy?

20 MR. MOY: Yes, thank you, Mr.
21 Chairman. Good morning.

22 (Whereupon, the witnesses were

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1 sworn.)

2 MR. MOY: Ladies and gentlemen,
3 you may consider yourselves under oath.

4 BZA CHAIR JORDAN: Okay. Let's
5 see where we are today. Case number 18 -- I
6 just want the representative to come forward
7 on 18587 -- no, not. Excuse me. I'm sorry
8 about that. The wrong case. Which one is
9 that, Cliff?

10 MR. MOY: That would be --

11 BZA CHAIR JORDAN: Eighteen-five-
12 sixty?

13 MR. MOY: That's one of them.

14 BZA CHAIR JORDAN: Okay. That's
15 fine the represent people 18560. And is the
16 person who requested party status here?

17 (No audible response.)

18 BZA CHAIR JORDAN: In case 18560
19 is the person here who requested party status?

20 (No audible response.)

21 BZA CHAIR JORDAN: Then I'm going
22 to ask the two of you to go out and meet --

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1 have some discussion about if there's some
2 part of resolution that you can make before we
3 call your case. Please do so.

4 I want the parties -- the person
5 who's pending party status and the applicant's
6 representative to have conversation about the
7 opposition to it, just to have some
8 discussion. As I've said before, we have
9 learned that people in opposition to
10 applications at the time and the applicant
11 sometimes have not had conversations. And
12 we've resolved matters here that could have
13 been resolved outside of this hearing room by
14 just simply having conversation. Whether or
15 not you resolve or not is a different thing,
16 but I least want to make sure you're having a
17 conversation.

18 MR. MOY: That's application
19 18586.

20 BZA CHAIR JORDAN: Those in 18586,
21 is the applicant's representative here?
22 Eighteen-five-eight-six?

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1 MR. BROWN: Good morning.

2 BZA CHAIR JORDAN: And those with
3 party status -- seeking party status in the
4 case, have you met and had conversation?

5 MR. BROWN: We've had discussions
6 this morning, so we will continue to talk. I
7 think we're there and that -- I think we're
8 there.

9 BZA CHAIR JORDAN: All right. You
10 guys go out and huddle again before we call
11 your case, as I've said, and see where we are.
12 Oh, you think you're done? You think you
13 still have opposition?

14 MR. BROWN: I have some -- I would
15 like to express some views on the case.

16 BZA CHAIR JORDAN: Yes, it doesn't
17 stop that, but I want to make sure the hard
18 nuts are done.

19 MR. BROWN: Right. I think we're
20 very close, yes.

21 BZA CHAIR JORDAN: Okay.

22 MR. BROWN: And I want to make you

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1 aware that there's another person seeking
2 party status who's not here yet.

3 BZA CHAIR JORDAN: Yes. And let
4 you know, for most parties people seeking
5 party status everybody's not going to have
6 party status, especially in these cases where
7 people are repeating the same kind of
8 interest. It's just not going to happen. And
9 so you're also going to be required to
10 consolidate. So party status, groups of party
11 status' people ought to have a conversation
12 about who's going to represent the party if
13 it's allowed. Okay?

14 MR. BROWN: All right.

15 BZA CHAIR JORDAN: Thank you.
16 Okay. Mr. Moy, let's then call our first
17 case, please.

18 MR. MOY: Okay. Just before I do
19 that, Mr. Chairman, I just wanted to announce
20 for the record, for the transcript that
21 application No. 18573 of Kathleen Sullivan has
22 been withdrawn from the agenda.

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1 So with that, the first
2 application for hearing is a application No.
3 18587. This is the application of Lester
4 Foote. This is pursuant to 11 DCMR 3104.1,
5 for a special exception under section 223, not
6 meeting lot occupancy, side yard and non-
7 conforming structure provisions.

8 BZA CHAIR JORDAN: Would the
9 persons or parties for this case please come
10 forward? Eighteen-five-eight-seven.

11 Mr. Moy, we did receive an
12 authorization letter on this?

13 MR. MOY: (No audible response.)

14 BZA CHAIR JORDAN: Would you come
15 forward and please take a seat at the witness
16 table. I'm sorry. And would you identify
17 yourself for us?

18 MS. JOSEPH: Yes. Is the mic on?

19 BZA CHAIR JORDAN: Yes, push that
20 -- no, that's not it. It's in front of you.
21 Bright green button. Say something.

22 MS. JOSEPH: Hello?

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1 BZA CHAIR JORDAN: No, push the --

2 MS. JOSEPH: Hello?

3 BZA CHAIR JORDAN: Yes, there you
4 go.

5 MS. JOSEPH: Yes, hi, my name is
6 Lyndl Joseph from Alexandria, Virginia. I'm
7 here to represent my client Mr. Foote and in
8 support of this application.

9 BZA CHAIR JORDAN: Thank you. And
10 we do have your authorization letter.

11 That's correct?

12 MR. MOY: Yes, sir.

13 BZA CHAIR JORDAN: Does the Board
14 have any issues with this particular
15 application? I think we've all had the
16 opportunity to look at it and examine it. I
17 don't see anything that I have any issues that
18 we need to address. Does anyone on the Board
19 have any issues that they would like the
20 applicant to address? I think what has been
21 submitted would certainly support their
22 request for 223 relief. Does anyone have any

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1 questions that we need to ask of the
2 applicant?

3 (No audible response.)

4 BZA CHAIR JORDAN: You have the
5 opportunity certainly to present testimony to
6 the Board in support of the application,
7 however, the testimony usually goes to try to
8 persuade the Board whether or not we need to
9 grant this. Right now the Board appears that
10 there is sufficient information in the file,
11 in the record already in this case that we
12 believe that the application probably should
13 be granted. So you can take the risk of going
14 forward and saying something else that might
15 make us go the other way, or you can simply
16 continue to let the process roll.

17 MS. JOSEPH: (No audible
18 response.)

19 BZA CHAIR JORDAN: Okay. I'm
20 taking it by the shake of the head, for the
21 record, that that means yes she's going to
22 waive presenting testimony at this time. But

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1 you, certainly if something comes up as we go
2 through this process, have the right in
3 rebuttal to say what you want to say.

4 MS. JOSEPH: Thank you.

5 BZA CHAIR JORDAN: So let's turn
6 to the Office of Planning. Is there anything
7 in addition that the Office of Planning would
8 like to add to what they've already submitted
9 in the record?

10 MS. VITALE: Good morning, Mr.
11 Chair, Members of the Board. Elise Vitale
12 with the Office of Planning. We'll rest on
13 the record. We support the requested relief
14 and I can answer any questions you may have.

15 BZA CHAIR JORDAN: Does the Board
16 have any questions for the Office of Planning?

17 (No audible response.)

18 BZA CHAIR JORDAN: Does the
19 applicant have any questions for Office of
20 Planning?

21 MS. JOSEPH: (No audible
22 response.)

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1 BZA CHAIR JORDAN: Is there a
2 representative here from the Department of
3 Transportation?

4 (No audible response.)

5 BZA CHAIR JORDAN: We have a
6 letter from the Department of Transportation
7 saying no objection to the requested relief,
8 and that's our Exhibit 20. So we will accept
9 that.

10 Is anyone here from ANC 4A?
11 Anyone here from ANC 4A?

12 (No audible response.)

13 BZA CHAIR JORDAN: We have a
14 letter, Exhibit 27, from ANC 4A that
15 recommends approval, however, it does not meet
16 the qualification for giving great weight, but
17 certainly we will give deference to their
18 support for this particular project.

19 Is there anyone in the audience
20 wishing to speak in support of this
21 application other than the applicant? Is
22 there anyone here wishing to speak in support?

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1 (No audible response.)

2 BZA CHAIR JORDAN: Anyone wishing
3 to speak in opposition? Anyone in opposition?

4 (No audible response.)

5 BZA CHAIR JORDAN: Then we
6 normally would turn back to the applicant to
7 have them present any rebuttal testimony
8 and/or do closing, but since this has been
9 going so smoothly for you, then I believe
10 you'll give me permission to go ahead and
11 close the record on this matter as it stands.
12 Would that be correct?

13 MS. JOSEPH: Yes.

14 BZA CHAIR JORDAN: Then we will
15 close this hearing based upon the record
16 already decided by this Board and it would be
17 my motion that we grant the applicant's
18 request for the 223 relief as submitted.

19 ZC CHAIR HOOD: I'll second the
20 motion. I think the merits in the record is
21 complete.

22 MS. JOSEPH: Thanks very much.

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1 BZA CHAIR JORDAN: Well, we got to
2 vote.

3 MS. JOSEPH: Oh.

4 (Laughter.)

5 BZA CHAIR JORDAN: You're getting
6 with the program, but a little bit ahead of
7 us.

8 All those in favor of the motion,
9 signify by saying aye?

10 (Chorus of ayes.)

11 BZA CHAIR JORDAN: Those opposed,
12 nay?

13 (No audible response.)

14 BZA CHAIR JORDAN: The motion
15 carries. Mr. Moy?

16 MR. MOY: Yes, sir, staff would
17 record the vote as 4-0. This is on the motion
18 of Chairman Jordan to approve the application
19 for special exception relief, not meeting
20 sections 403, 405 and 2001.3. Seconding the
21 motion, Mr. Hood. Also in support Vice
22 Chairperson Allen. Also Mr. Hinkle. And we

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1 have a board seat vacant. Motion carries.

2 The vote 4-0.

3 BZA CHAIR JORDAN: Thank you.

4 Then we'll have a summary order, please?

5 MR. MOY: Yes, sir.

6 BZA CHAIR JORDAN: Thank you very
7 much.

8 Now you can thank us. And thank
9 you very much. We appreciate you coming.

10 Thank you.

11 Mr. Moy, I want to take one out of
12 sequence. Would you call 18588 for me,
13 please?

14 MR. MOY: Okay. That would be
15 applicant 18588. This is the appeal of Alexi
16 Stavropoulos, I believe. Hope I pronounced
17 that correctly. Pursuant to 11 DCMR 3100
18 and 3101, from a February 5th, 2013 decision
19 by the Department of Consumer and Regulatory
20 Affairs, not to permit an addition to an
21 accessory garage that exceeds the height limit
22 in the WH/R-1-B District at premises 3215 4th

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1 Street, N.W. Property: Square 1606, Lot 819.

2 BZA CHAIR JORDAN: Okay. Would
3 you please identify yourselves for us, please?

4 MR. SURABIAN: Good morning.
5 Assistant Attorney General Jay Surabian on
6 behalf of DCRA.

7 MR. LeGRANT: Good morning.
8 Matthew LeGrant. I'm the Zoning Administrator
9 of DCRA.

10 MR. STAVROPOULOS: Good morning.

11 BZA CHAIR JORDAN: Make sure your
12 microphone is turned on, please. Yes.

13 MR. STAVROPOULOS: Good morning.
14 My name is Alexi Stavropoulos. I represent
15 Stavropoulos Associates and Mr. Harding, the
16 owner of the residence.

17 BZA CHAIR JORDAN: And did you
18 complete witness cards?

19 MR. STAVROPOULOS: I do have some,
20 yes, sir.

21 BZA CHAIR JORDAN: Oh, you need to
22 give them to the court reporter, please.

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1 All right. We have certainly read
2 all the briefs in this matter and submissions
3 of documents, and we completely understand
4 where we are with this matter. Is it
5 Stavfofolus?

6 MR. STAVROPOULOS: Stavropoulos.

7 BZA CHAIR JORDAN: Stavropoulos.

8 And it looks very contentious for your part.
9 I think the rule is very clear. So you want
10 to make additional argument other than what
11 you submitted? Because what the District has
12 submitted in their brief is pretty much what
13 the law is. And so you need to provide us --
14 I'm giving you the opportunity to provide us
15 any testimony you want, any argument that you
16 want, not testimony, argument that you may
17 want further in support in your appeal.
18 However, I would just want to let you know up
19 front that the basis in the law here is very
20 clear. So wanted to give you the opportunity
21 to rebut the submission by the government if
22 you would like.

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1 MR. STAVROPOULOS: Yes, I
2 appreciate that. And I do understand and we
3 do understand what the regulations are. And
4 pretty much the request was based on the fact
5 that because of the age of the home and when
6 the structure was built the location of the
7 structure that we're trying to put a 10-foot
8 addition on, which is not visible from the
9 street, doesn't seem to pose a negative effect
10 on the neighborhood, I would suspect. That we
11 were just trying to see if there was any way
12 that we could have some kind of a relief in
13 that, you know, law to allow us to extend the
14 roof line, you know, based on what's there.

15 Again, agree with what it is and
16 how everything goes, but we did meet with the
17 ANC; we also had a couple of neighbors who
18 were there, and didn't seem to have a problem
19 with it. They were okay with it, you know, as
20 a result of where it is.

21 We didn't want to have to try to
22 change the design. The idea is to maintain

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1 the look of the structure with the age of it
2 using the existing brick and just, you know,
3 provide our client with a larger garage that
4 can store his cars and a little shop. Nothing
5 more than that.

6 BZA CHAIR JORDAN: Yes. Is there
7 anything else?

8 MR. STAVROPOULOS: (No audible
9 response.)

10 BZA CHAIR JORDAN: I understand
11 completely then what you're trying to do, but
12 you're using the wrong mechanism to get there.

13 MR. STAVROPOULOS: Understood.

14 BZA CHAIR JORDAN: And we cannot,
15 in my opinion based upon what you've
16 submitted, grant you relief. As you've
17 admitted, the regulation 2001.3 is very
18 clear --

19 MR. STAVROPOULOS: Yes.

20 BZA CHAIR JORDAN: -- regards to
21 an enlargement or addition of a nonconforming
22 use. You're asking us to take some type of

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1 variance route or special exception, but the
2 process that you use is not the process you
3 use to get that type of relief, and you can't
4 do it upon appeal of the Zoning
5 Administrator's decision.

6 Does the Board have any other
7 questions or issues or something would like to
8 discuss with the appellant?

9 MR. STAVROPOULOS: May I?

10 BZA CHAIR JORDAN: Yes, please.

11 MR. STAVROPOULOS: The reason why
12 I'm here honestly is at the time when we went
13 through the process with the permit and we did
14 -- everything went through with the exception
15 of Zoning, I asked the gentleman; and I don't
16 recall his name, is there someone I could
17 speak to to find out what would be next, and
18 was advised that this is pretty much it. Is
19 there something? And he said you can file an
20 appeal with the BZA. Had he had mentioned to
21 go the other route, I would have done so.

22 The, you know, reason why I kind

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1 of continued this was because there was a cost
2 associated with filing the appeal. And if I
3 need to go for a variance, I believe there's
4 probably an additional cost to apply for that
5 and to go through the process. And, you know,
6 this process started back in February, then
7 April, and here we are in July. I figured I'd
8 pursue this and just see if there was any way
9 to allow some kind of a special acceptance in
10 this case.

11 I will proceed the other avenue,
12 if that's what you advise, but --

13 BZA CHAIR JORDAN: Yes.

14 MR. STAVROPOULOS: -- just trying
15 also to save some time and cost involved with
16 this --

17 BZA CHAIR JORDAN: Yes.

18 MR. STAVROPOULOS: -- for my
19 clients.

20 BZA CHAIR JORDAN: And I
21 appreciate that, and I'm sorry you've gone
22 through that route. However, the -- probably

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1 -- and I don't know the situation --

2 MR. STAVROPOULOS: Right.

3 BZA CHAIR JORDAN: -- that the
4 person you spoke to is probably telling you
5 right, that normally in a decision that you
6 don't believe is correct by the Zoning
7 Administrator can be appealed. But you
8 realize what they're saying was right,
9 however, you wanted to try to get some relief.
10 And that's why we say here that be sure that
11 you get the proper representation --

12 MR. STAVROPOULOS: Right.

13 BZA CHAIR JORDAN: -- from someone
14 who actually knows zoning and the zoning rules
15 and regulations, because we have to follow the
16 law ourselves.

17 MR. STAVROPOULOS: Understood.

18 BZA CHAIR JORDAN: And so I know
19 you've spent money to be here, but sometimes
20 it's like pay somebody now or pay somebody
21 else later.

22 MR. STAVROPOULOS: Right.

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1 BZA CHAIR JORDAN: And maybe pay
2 twice.

3 MR. STAVROPOULOS: This was I was
4 advised to do. I would have rather gone
5 upstairs and tried to get some more info, but
6 I was --

7 BZA CHAIR JORDAN: Yes. Okay.

8 MR. STAVROPOULOS: -- advised not
9 to by that person. Again, I'm not blaming the
10 person, but this was what they advised me to
11 do. They said go to BZA. That's why.

12 BZA CHAIR JORDAN: Got you. Yes.

13 Does the Board have any additional
14 questions or items to discuss with the
15 applicant, I mean the appellant?

16 (No audible response.)

17 BZA CHAIR JORDAN: Then let's turn
18 now to DCRA to see if there's anything that
19 they think they need to really say here, other
20 than what's already been written, which we've
21 read, which we all understand is the law. I
22 don't want to block you.

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1 MR. SURABIAN: I don't really have
2 a lot additional to say. I would just concur
3 with what the Chair said, that I think the
4 appellant's using the wrong mechanism here.
5 It should have been an application. And I
6 would just also point out that in the plan
7 correction notes that the reviewer did
8 indicate that relief from the BZA in the form
9 an application should be requested and --

10 BZA CHAIR JORDAN: Okay.

11 MR. SURABIAN: -- if Mr.
12 Stavropoulos was unhappy with that, then the
13 only path would be an appeal. So I think that
14 the advice he got at the counter was correct.

15 BZA CHAIR JORDAN: Very good.
16 Thank you. And any questions for DCRA, Board?
17 Anyone?

18 (No audible response.)

19 BZA CHAIR JORDAN: Anything you
20 want to say in rebuttal?

21 MR. STAVROPOULOS: (No audible
22 response.)

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1 BZA CHAIR JORDAN: Then I move
2 that we deny the requested relief from the
3 applicant and rule in favor of -- yes, go
4 ahead.

5 VICE CHAIR ALLEN: I'm sorry.

6 BZA CHAIR JORDAN: Oh, no. No.

7 VICE CHAIR ALLEN: Before you just
8 rule, did you not understand or did your
9 client not understand the direction that was
10 given? I guess I'm just --

11 MR. STAVROPOULOS: I guess
12 somewhere along the line my office may have
13 misunderstood something. Kind of have to --

14 VICE CHAIR ALLEN: Okay. I just
15 wondered. It's very confusing to me why you
16 went this --

17 MR. STAVROPOULOS: Well, yes, at
18 this point, I think again, because of the
19 direction at that point that we thought, you
20 know, money -- since we incurred with this, it
21 would be good to pursue. And that's why we
22 went by the ANC and did what we did.

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1 BZA CHAIR JORDAN: Okay.

2 VICE CHAIR ALLEN: Okay. Thank
3 you.

4 BZA CHAIR JORDAN: And my motion
5 is that we sustain the decision of the Zoning
6 Administrator.

7 VICE CHAIR ALLEN: Second.

8 BZA CHAIR JORDAN: Motion made and
9 seconded. Any unreadiness?

10 (No audible response.)

11 BZA CHAIR JORDAN: All those in
12 favor, signify by saying aye?

13 (Chorus of ayes.)

14 BZA CHAIR JORDAN: Those opposed,
15 nay?

16 (No audible response.)

17 BZA CHAIR JORDAN: The motion
18 carries. Thank you, all. Appreciate it.

19 MR. SURABIAN: Thanks for your
20 time.

21 BZA CHAIR JORDAN: Thank you. I
22 hope you get it worked out.

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1 MR. MOY: For the record staff
2 would record the vote as 4-0. This on the
3 motion of Chairman Jordan to deny the appeal.
4 Seconding the motion, Vice Chairperson Allen.
5 Also in support Mr. Hood and Mr. Hinkle and we
6 have a Board seat vacant. Motion carries.

7 BZA CHAIR JORDAN: Okay. Then
8 let's call 18589, please.

9 MR. MOY: That would be
10 application No. 18589. This is the
11 application of the D.C. Housing Authority,
12 pursuant to 11 DCMR 3104.1. This is for a
13 special exception to construct a new 24-unit
14 multi-family residential development under
15 section 353, in the R-5-A District at premises
16 400-408 Atlantic Street, S.E. and 401-407
17 Condon Terrace, S.E. Property located in
18 Square 6156, to 119.

19 BZA CHAIR JORDAN: Okay. Thank
20 you, Mr. Moy.

21 Would you please identify
22 yourselves?

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1 MR. GREEN: I'm Stephen Green from
2 the District of Columbia Housing Authority,
3 Director of the Office of Capital Programs at
4 1133 North Capitol Street.

5 MS. LEATHAM: Erica Leatham, an
6 attorney with Ballard Spahr representing the
7 District of Columbia Housing Authority.

8 MR. SALAZAR: Alex Salazar. I'm
9 an architect with Torti Gallas & Partners.

10 MS. O'NEILL: Cheryl O'Neill,
11 principal at Torti, Gallas & Partners.

12 BZA CHAIR JORDAN: Okay. Is there
13 anybody here -- is DDoT here? Public Space?
14 Anybody from Public Space?

15 MR. COCHRAN: No, sir. They did
16 ask if they needed to attend. They gave me
17 their information.

18 BZA CHAIR JORDAN: Yes, okay. We
19 have their information.

20 MR. COCHRAN: So blame me, not
21 DDoT.

22 BZA CHAIR JORDAN: Oh, yes? Okay.

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1 So you're going to take their heat then?

2 Okay.

3 MR. COCHRAN: Happy to.

4 BZA CHAIR JORDAN: Oh, Steve, we
5 appreciate it.

6 This is a matter which I think,
7 you know, is very straightforward in a sense
8 except for the fact that there's a dispute
9 between two government agencies regarding what
10 to curb cut. However, we can take a look at
11 this, and I think it's something we've done in
12 the past. But I think that we can take care
13 of -- take our actions subject to any Open
14 Space Committee action, as we normally defer
15 to another committee or activity.

16 MR. COCHRAN: Yes, sir, I've
17 actually -- I've got the wording out on that.

18 BZA CHAIR JORDAN: Oh, do you now?
19 Thank you.

20 Is there anything that the Board
21 thinks they need to hear from this applicant
22 outside of that particular issue, or further

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1 discussion on it? Because I think this is --
2 as I said, we spend hours before these
3 hearings going through these documents, like
4 we don't have anything else to do, but we go
5 through them and we understand the relief
6 that's requested in this case and the need for
7 it.

8 Anyone have any questions that we
9 -- or anything we need to hear from the
10 applicant? Yes, Mr. Hinkle?

11 MEMBER HINKLE: Yes, thank you. I
12 don't think this has any bearing on the relief
13 being requested, but I was just trying to get
14 some clarification in terms of the number of
15 existing units. I think I read 24, but it
16 seems to me if you look at the structure it
17 looks like there's only 8. Is that correct
18 or --

19 MR. SALAZAR: Yes, in the area of
20 work that we're actually building the new 24-
21 unit building there are 8 existing units.

22 MEMBER HINKLE: Okay. Great.

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1 Thank you. And then it will be 24 units?

2 MR. SALAZAR: It will be 24 units
3 and that's part of replacement of units that
4 need to occur to keep the overall development
5 at 208 units.

6 MEMBER HINKLE: Okay. Thank you.

7 BZA CHAIR JORDAN: Okay. Then is
8 there anything that you believe that you need
9 to present to the Board?

10 MS. LEATHAM: I do, just a couple
11 housekeeping matters.

12 BZA CHAIR JORDAN: You really do,
13 huh?

14 MS. LEATHAM: I do.

15 BZA CHAIR JORDAN: Okay. Some
16 people have done that before and stepped into
17 it, but just okay.

18 MS. LEATHAM: I understand. I
19 just want to point out that the Office of
20 Planning had requested some additional
21 documentation prior to the hearing. We've
22 provided that to Mr. Cochran. If the Board

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1 would like copies, we can submit those as
2 well. Oh, Mr. Moy has them.

3 BZA CHAIR JORDAN: Okay. But if
4 it doesn't change the --

5 MS. LEATHAM: It represents a
6 refinement of what had previously been
7 submitted. There's no substantive change.

8 BZA CHAIR JORDAN: Okay.

9 MS. LEATHAM: Mr. Cochran had
10 requested for informational purposes only.

11 BZA CHAIR JORDAN: I saw that.
12 Got it.

13 MS. LEATHAM: Right. The same
14 with the green area ratio.

15 BZA CHAIR JORDAN: Okay. Is there
16 anything else you want to present to the Board
17 that you believe is necessary?

18 MS. LEATHAM: No, we'll reserve
19 anything else for rebuttal.

20 BZA CHAIR JORDAN: Very good.
21 Then let's turn now to the Office of Planning
22 if there's anything that you would like to add

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1 to this.

2 MR. COCHRAN: Thank you, Mr.
3 Chair. For the record, Steve Cochran, D.C.
4 Office of Planning.

5 Yes, the applicant submitted the
6 information we asked for. I'd like to note
7 that they're the first applicant ever to
8 submit information about the green area ratio,
9 which isn't even effective until October.

10 BZA CHAIR JORDAN: Very good.

11 MR. COCHRAN: But I asked and they
12 submitted it. So OP is recommending approval
13 of the application and permission for the
14 applicant to have site plan flexibility if
15 needed to accommodate a future Public Space
16 Committee decision regarding a curb cut on
17 Condon Terrace.

18 BZA CHAIR JORDAN: Does the Board
19 have any questions for the Office of Planning?

20 MR. COCHRAN: I would like to
21 clarify just for the record OP and DDoT are
22 not in dispute on this.

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1 BZA CHAIR JORDAN: Say that again?

2 MR. COCHRAN: You had mentioned
3 that there were two government agencies that
4 were in dispute on the curb cut. We're not.

5 BZA CHAIR JORDAN: Oh, who? I
6 wasn't talking about you.

7 MR. COCHRAN: Oh, okay. Sorry.

8 (Laughter.)

9 MR. COCHRAN: I should have
10 listened to your advice to the applicant on
11 not saying anything.

12 (Laughter.)

13 BZA CHAIR JORDAN: That's okay.
14 Most people don't. Just step in it. No, no.
15 Okay.

16 Any questions? Does the Board
17 have any questions for Office of Planning?

18 (No audible response.)

19 BZA CHAIR JORDAN: Does the
20 applicant have any questions for opinion?

21 MS. LEATHAM: No, we don't.

22 BZA CHAIR JORDAN: Okay. Then

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1 while Department of Transportation's not here.
2 We do have their report and we've talked about
3 their particular -- well, they have actually
4 recommended approval, but the issue with the
5 curb cut is something that's still
6 outstanding. Not approval. No objection.
7 That's their language. No objection to the
8 application. But you can't have an objection
9 and have an objection, but I don't know how
10 that works. But they said we have no
11 objection, but we have objection to. So
12 anyway, we're all aware of that.

13 Is there anyone here from ANC 8E?

14 MS. ARMSTEAD: I am.

15 BZA CHAIR JORDAN: Please come
16 forward, please. And could you make sure your
17 -- where the button says "push" that you have
18 a bright glowing green light there.

19 MS. ARMSTEAD: Okay.

20 BZA CHAIR JORDAN: Good. Thank
21 you. Would you identify yourself?

22 MS. ARMSTEAD: Yes, I'm

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1 Commissioner Karlene Armstead. 8E-06 is my
2 single member district.

3 BZA CHAIR JORDAN: Thank you.
4 Welcome. Thank you for taking the time to
5 come down. We did receive the letter of
6 recommendation of 8E for approval and a vote
7 was taken of 4-1. However, please feel free
8 to provide us any other input that you wish.

9 MS. ARMSTEAD: On the date that
10 they had the meeting the chair -- we discussed
11 -- we had a discussion at our executive
12 meeting that we would not housing comment that
13 particular time because I would not be able to
14 be present. I wanted ample notification of
15 the community so that everyone could be there,
16 those who are on the property, as well as
17 those that are off the property.

18 BZA CHAIR JORDAN: So let me stop
19 you a second. So you're not here testifying
20 in behalf of the ANC? So we need to ask you
21 just to pause and we'll call you back in
22 opposition.

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1 MS. ARMSTEAD: Sure.

2 BZA CHAIR JORDAN: And that's
3 probably my error for not seeking the
4 representative of the ANC on this particular
5 matter. And I should have done that. Okay.
6 But don't go too far. You can sit there.
7 You're comfortable. Don't run away.

8 Is there anyone else here
9 representing the ANC?

10 (No audible response.)

11 BZA CHAIR JORDAN: We do have in
12 the record then a properly submitted support
13 from ANC 8E, which we will give great weight
14 regarding their support for approval of this
15 matter. They voted 4-1 on April 1st, 2013 in
16 support of this application.

17 Is there anyone here wishing to
18 speak in support of this application? Anyone
19 here wishing to speak in support?

20 Please come forward and take a
21 seat, please. And did you complete witness
22 cards for us?

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1 MS. PONDEXTER-MOORE: (No audible
2 response.)

3 BZA CHAIR JORDAN: Yes, and will
4 give them to the court reporter.

5 MS. PONDEXTER-MOORE: (Off
6 microphone.)

7 BZA CHAIR JORDAN: Yes, but please
8 give the cards first.

9 MS. PONDEXTER-MOORE: Oh.

10 BZA CHAIR JORDAN: And just sit --
11 yes. And you see the button that says "push"
12 and it should be a glowing green light.

13 MS. PONDEXTER-MOORE: Yes, it's
14 on.

15 BZA CHAIR JORDAN: Okay. Would
16 you please identify yourself?

17 MS. PONDEXTER-MOORE: My name is
18 Schyla Pondexter-Moore.

19 BZA CHAIR JORDAN: Thank you, Ms.
20 Moore. You have three minutes to say whatever
21 you want to say to us.

22 MS. PONDEXTER-MOORE: Well, here's

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1 the thing: You're asking am I a proponent or
2 an opponent. I'm split. And I say that
3 because -- I am a proponent because I was
4 moved off of the property along with over 100
5 families. And we were moved back in 2010 and
6 we were promised to come back. We have a
7 settlement saying that we all can return.
8 However, there was an issue with the bedroom
9 configuration and the Housing Authority told
10 us that in order for everybody to return, they
11 would have to make this multi-family building.
12 So we've been waiting, waiting and waiting,
13 waiting. Everybody's ready to come back. And
14 we've been kind of strung along.

15 So I do want the permit so that
16 this -- these renovations can be completed and
17 that everybody can come home. However, only
18 thing I would oppose is that the community get
19 proper notice, because I don't think everybody
20 knows what's getting ready to happen. And in
21 our communities in Southeast and Ward 8 the
22 government makes decisions about our

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1 communities and they never consult the
2 community. They kind of just come and tell.
3 So I think the only people who know -- I only
4 knew about this -- I knew that there was a
5 permit that needed to be gotten, but I didn't
6 even know about the zoning hearing until like
7 a couple days ago.

8 So I am a proponent. Like I want
9 the permit so that the renovations can be
10 completed, however, the community, everybody
11 who lives in that community should be properly
12 notified about what's getting ready to happen.

13 BZA CHAIR JORDAN: Okay. Thank
14 you. Appreciate your comment, and we'll get
15 to that.

16 Anyone else wishing to speak in
17 support? Support?

18 MS. ARMSTEAD: Do I get up now?

19 BZA CHAIR JORDAN: No, no. You
20 can sit there if you want until we -- you want
21 -- anyone wishing to speaking to opposition?
22 We have -- yes, we do have Ms. Armstrong is

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1 it?

2 MS. ARMSTEAD: Armstead.

3 BZA CHAIR JORDAN: Armstead.

4 MS. ARMSTEAD: Well, I guess I'm
5 not in opposition pretty much as far as the
6 proper notification. And like she said, when
7 the initial renovation was taking place I was
8 the ANC commissioner then, and it was the
9 manner in which the tenants were moved out
10 that we objected. We took Housing to court
11 because they've been treated like cattle.
12 You have no notification. You just move
13 because we say so and this is how it's going.
14 Then when we finally got a handle on how
15 things should have been happening -- HUD had
16 regulations that Housing needed to follow.
17 And then we put that in place and things kind
18 of moved a little bit smoother.

19 The only concern that I have is
20 that I want the tenants that are off the
21 property to know what's going on on the
22 property, because they've been off, like she

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1 said, for four years almost and nothing's been
2 going on. When Housing says they have funding
3 and then there's a question is there really
4 funding? Because when they initially started
5 the project, they said they had funding. Then
6 they didn't have funding. So people are still
7 waiting to go whether this money is actually
8 an actuality, is actually happening.

9 Once they started this project, if
10 you didn't have money to do the renovations,
11 how are going to do a tear-down and then a
12 renovation as well? So where is all of this
13 pot of money coming from to make all of this
14 happen? And how long do the tenants have to
15 stay off? For how much longer? They've
16 already been off four years. So is it another
17 two years? So there's six. So that means
18 that are they really coming back?

19 BZA CHAIR JORDAN: We appreciate
20 your testimony and coming down to speak. And
21 the problem is everything that you talked
22 about is not within our wheelhouse.

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1 MS. ARMSTEAD: I understand.

2 BZA CHAIR JORDAN: But I'm sure
3 the Housing Authority -- Mr. Green, you've
4 heard the comment about the notice that needs
5 to get out, the desire for that. Certainly we
6 could take that within our realm and seeing
7 about how the community is affected and
8 stretched to that, however, I know probably
9 you hearing that means that you did in and
10 make sure that the -- what you hear today is
11 taken care of. But it really has nothing that
12 we can do --

13 MS. ARMSTEAD: Yes.

14 BZA CHAIR JORDAN: -- as the Board
15 of Zoning, nor the coordination. We do know
16 from our records that -- and you can tell me
17 if I'm wrong, that there was a notice placed
18 -- would have been posted for this particular
19 hearing and those people within a 200-foot
20 radius would have received letters. So that's
21 our process for notice.

22 Regarding what the Housing

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1 Authority does for the planning, the
2 processing and their whole shebang is not
3 before us, nor do we control that. And again,
4 but I think you've put on the record, you've
5 made a public appeal that -- to the Housing
6 Authority to let people know a lot more about
7 what's going on, because it's hard to live in
8 a -- not knowing what tomorrow is going to
9 bring. I can understand that.

10 ZC CHAIR HOOD: And I can say,
11 while I know the Board of Zoning Adjustment
12 doesn't deal with it, but if this was in front
13 of the adverse conditions, we actually would.

14 I'm just curious, was there a plan
15 put in place when we left? And the Housing
16 Authority, did they work with the residents to
17 say what their returning program would be? I
18 know in some other instances back in the late
19 '90s that issue was done. Did they do that
20 with you all?

21 MS. PONDEXTER-MOORE: Well, when
22 they first came to us and told us that they

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1 were going to renovate, they just said
2 everybody's going to come back. But there was
3 nothing -- well, no, that everyone would have
4 the right to come back. And that's where the
5 issue lie, because of history and from past
6 experience people thought they weren't going
7 to be able to return. This is a trick.

8 ZC CHAIR HOOD: Do you all have a
9 tenants association or something?

10 MS. PONDEXTER-MOORE: At the time,
11 no, we did not have a resident council.

12 ZC CHAIR HOOD: Okay.

13 MS. PONDEXTER-MOORE: We had
14 nothing.

15 ZC CHAIR HOOD: That's what it --
16 a residents council?

17 MS. PONDEXTER-MOORE: Yes.

18 ZC CHAIR HOOD: Okay.

19 MS. PONDEXTER-MOORE: So that's
20 where we wanted something in writing,
21 something official saying that we would
22 return.

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1 ZC CHAIR HOOD: Okay.

2 MS. PONDEXTER-MOORE: And in order
3 for all of us to return, the Housing Authority
4 said that they would need to make this multi-
5 family unit because of the bedroom
6 configurations, you know? Some people had to
7 get downsized and up-sized and so forth.

8 ZC CHAIR HOOD: Well, I would
9 agree with the Chairman in this case. Mr.
10 Green is sitting right next to you. They've
11 all heard you and I'm sure they would --
12 they've been around a long time and how to do
13 business -- do business well. So I'm sure
14 that they will take your concerns.

15 Okay. Thank you, Mr. Chair.

16 BZA CHAIR JORDAN: Anybody else
17 wishing to speak in opposition?

18 MS. ARMSTEAD: Can I ask you a
19 question? The effect that it's going to have
20 on the community as far as the traffic impact,
21 I noticed that was one of the things that had
22 not been addressed, and now that because we're

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1 losing also the school that -- the community
2 school that is in the neighborhood, and it's
3 going to be a charter school, I guess, at some
4 point.

5 BZA CHAIR JORDAN: Thank you.

6 MS. ARMSTEAD: Recreation is going
7 as well. So is that going to -- will that
8 traffic pattern cause an impact on the rest of
9 the community; 4th Street, Valley Avenue and
10 Condon Terrace, Atlantic Street as well?

11 BZA CHAIR JORDAN: Great.
12 Appreciate the question. And as a great
13 segue, we turn back to the applicant. Please
14 respond. Let us know in your rebuttal, but
15 present us -- let us know about the traffic
16 pattern, traffic input -- impact and what's
17 going to happen with the school, if you --
18 yes.

19 MS. LEATHAM: Sure. Let me also
20 point out there's a letter of support from the
21 resident council in your package, so the
22 resident council has been made aware of these

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1 plans.

2 BZA CHAIR JORDAN: Good. Yes.

3 MS. LEATHAM: With respect to
4 traffic, they're utilizing the existing alley
5 for parking, so there will be no change to the
6 traffic pattern as a result of this new
7 building.

8 With respect to the school, I
9 can't really --

10 VICE CHAIR ALLEN: Excuse me. I'm
11 sorry, can you just say what -- I just didn't
12 hear what you just said about the --

13 MS. LEATHAM: The existing alley
14 off Atlantic Avenue, that's being maintained
15 and that will provide parking for the multi-
16 family building.

17 MR. GREEN: And I might add that,
18 you know, this 24-unit building that's
19 replacing 6 -- 8 units that's on the site is
20 part of a 208-unit development. And when
21 we're done, it will be 208 units. So the land
22 area that's known as Highland Dwellings

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1 doesn't change. So we're shifting a little
2 bit of density from one part to another, but
3 I don't think it has a -- there's no real
4 change in traffic patterns. The alley remains
5 one of the spines to the neighborhood,
6 etcetera.

7 As to the school, we're as
8 disappointed as anyone that it's closing and
9 hope that it's a very constructive reuse of
10 the school.

11 BZA CHAIR JORDAN: And that was
12 independent of this project. That's a part of
13 that downsizing of the number of school real
14 estate that --

15 MR. GREEN: We lobbied hard to
16 keep the school open. We think a neighborhood
17 school is very much a part of a thriving
18 vibrant community and would like that school
19 to have stayed open as much as anyone.

20 BZA CHAIR JORDAN: Okay. All
21 right.

22 MS. LEATHAM: I just want to add

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1 then on page 2 of DDoT's report it speaks to
2 roadway capacity and operations.

3 BZA CHAIR JORDAN: Right.

4 MS. LEATHAM: And concludes that
5 there's no net change and impact on the
6 District's transportation network.

7 BZA CHAIR JORDAN: And if you'll
8 be sure to make sure that a copy is given to
9 Ms. Armstead of the DDoT report --

10 MS. LEATHAM: Absolutely.

11 BZA CHAIR JORDAN: -- did their
12 evaluation and had no objection to this
13 application, that would be great.

14 Can't ask anymore questions or
15 other comments. You only have that one time,
16 but --

17 MS. PONDEXTER-MOORE: How do I get
18 documents? Is that public now?

19 BZA CHAIR JORDAN: Yes. Yes, it
20 is.

21 MS. PONDEXTER-MOORE: Okay.

22 ZC CHAIR HOOD: Mr. Chairman, do

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1 we know what exhibit -- I know you all
2 probably just could pull it right up, because
3 I'm doing it the old way. Do you know what
4 exhibit the residents council letter was? I
5 mean the exhibit number? Or maybe you can let
6 me know what the exhibit number -- I may have
7 missed it.

8 MS. LEATHAM: Absolutely. It was
9 part of our prehearing statement. It was the
10 second page under tab 3. I probably have
11 extra copies, if that's --

12 ZC CHAIR HOOD: That's all right.
13 I'm sure somebody will let me see it. Thank
14 you.

15 BZA CHAIR JORDAN: Exhibit 25? Is
16 that 25? Did you see it? Here it is right
17 here. Yes, it's signed by Renee Patterson,
18 president of the Highland Dwelling Resident
19 Council.

20 Is there anything else that the
21 applicant would like to provide to the Board?

22 MS. LEATHAM: No.

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1 BZA CHAIR JORDAN: Does the Board
2 have any additional questions of the
3 applicant?

4 (No audible response.)

5 BZA CHAIR JORDAN: I will close
6 the hearing based upon the record already
7 derived in this matter and I would move that
8 we grant the relief requested by the applicant
9 with site plan flexibility subject to Public
10 Space and DDoT's requirements. That would be
11 my motion.

12 VICE CHAIR ALLEN: Second.

13 BZA CHAIR JORDAN: Motion made and
14 seconded. Any unreadiness?

15 (No audible response.)

16 BZA CHAIR JORDAN: All those in
17 favor, signify by saying aye?

18 (Chorus of ayes.)

19 BZA CHAIR JORDAN: Those opposed,
20 nay?

21 (No audible response.)

22 BZA CHAIR JORDAN: Motion carries.

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1 Mr. Moy?

2 MR. MOY: Yes, sir. Staff for the
3 record would record the vote as 4-0. This is
4 on the motion of Chairman Jordan to approve
5 the application for the relief requested along
6 with site plan flexibility. Seconding the
7 motion, Vice Chairperson Allen. And also in
8 support Mr. Hood and Mr. Hinkle. And a Board
9 seat vacant. Motion carries.

10 BZA CHAIR JORDAN: And thank you.
11 This is ripe for a summary order, please.

12 MR. MOY: Yes, sir.

13 BZA CHAIR JORDAN: We thank
14 everyone for coming down and presenting, and
15 especially those citizens who took the time to
16 come down, and the ANC representative,
17 etcetera, because it means a lot for us to
18 hear from you in these cases. So again, we
19 would dismiss this hearing at this point.
20 Thank you.

21 MR. MOY: Thank you.

22 BZA CHAIR JORDAN: We're going to

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1 take an eight-minute break. Eight minutes.

2 (Whereupon, at 10:35 a.m. off the
3 record until 10:48 a.m.)

4 BZA CHAIR JORDAN: Okay. Mr. Moy,
5 let's call 18585.

6 MR. MOY: Yes, sir. Thank you,
7 sir. That would be application No. 18585 of
8 Ronald J. and Maria Webb Gomes, I believe
9 pronounced, pursuant to 11 DCMR 3103.2.
10 This is for a variance to allow a flat, a two-
11 family dwelling, under subsection 320.3, in
12 the R-3 District. This at premises 446 Emerson
13 Street, N.W. Property in Square 3251, Lot
14 214.

15 BZA CHAIR JORDAN: All right.
16 Thank you. Did we get the ANC letter in this
17 one?

18 MR. MOY: No, sir, there's no
19 filing in the official record.

20 BZA CHAIR JORDAN: Okay. Would
21 you please identify yourselves?

22 MS. FOWLER: Hi, my name is

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1 Jennifer Fowler with Fowler Architects.

2 MS. WEBB GOMES: I'm Maria Webb
3 Gomes and I'm the property owner.

4 MR. GOMES: And I'm Ron Gomes, the
5 co-property owner, I guess.

6 BZA CHAIR JORDAN: I was just
7 wondering if you just kind of cut him out.
8 Okay.

9 (Laughter.)

10 BZA CHAIR JORDAN: No, I
11 understand. All right. This is the property
12 that when you purchased it -- it's our
13 understanding it was already set up as a flat.
14 Would that be correct?

15 MS. WEBB GOMES: It was a single-
16 family with an in-law unit.

17 BZA CHAIR JORDAN: Okay. And are
18 you living in the property?

19 MS. WEBB GOMES: Yes.

20 BZA CHAIR JORDAN: That's right.
21 And you want to have the basement unit for
22 rentable purposes. So, but you had been using

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1 the property as a single -- as two units. You
2 were operating it as a single-family for
3 awhile?

4 MS. WEBB GOMES: Right.

5 BZA CHAIR JORDAN: Until like
6 2005, or something? You moved out and then --

7 MS. WEBB GOMES: Purchased it --

8 BZA CHAIR JORDAN: -- purchased in
9 two-thousand --

10 MS. WEBB GOMES: -- in 2005.
11 Lived there for two years with my brother
12 being my tenant in the in-law unit downstairs.
13 I married in 2007 and moved to my husband's
14 home in Virginia, but we've now returned to
15 the District as of last year.

16 BZA CHAIR JORDAN: And what's the
17 cost of restoring this property as a single-
18 family? What would be the cost?

19 MR. GOMES: I'll speak to that.

20 BZA CHAIR JORDAN: Oh.

21 MR. MOY: We got four estimates,
22 so there's a range of estimates, but

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1 approximately without finishes and stuff about
2 \$155,000. The reason it's so high is there's
3 a lot of issues below the slab necessitating
4 us to break up the slab floor, take out the
5 rotten areas and rebuild it.

6 BZA CHAIR JORDAN: Does the Board
7 -- somebody -- you have any other questions,
8 please join in. So that's the cost of doing
9 any work to the house, even if it was going to
10 be operated as a single-family? What's the
11 cost if it was going to be operated --

12 MR. MOY: To repair the water
13 damage in the floor, the excavation work and
14 plumbing is approximately \$38,000 of that.

15 BZA CHAIR JORDAN: That's for
16 making sure that you have flat work -- making
17 it into a flat, isn't that right, because
18 that's what I saw in your --

19 MR. MOY: It's to excavate the
20 floor.

21 MS. FOWLER: I can clarify
22 perhaps.

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1 BZA CHAIR JORDAN: Yes, please.

2 MS. FOWLER: There are significant
3 water issues with the basement. The estimates
4 we've received to waterproof the basement, put
5 in the drainage systems are approximately
6 \$40,000. But then there's also the cost to
7 kind of refurbish the space, because in order
8 to do that you need to remove the walls,
9 remove the finishes. So it ends up being like
10 a \$100,000 project to renovate the basement
11 regardless of whether it's a rental or not.

12 BZA CHAIR JORDAN: So whatever the
13 use is it's still going to cost --

14 MS. FOWLER: Right. Yes.

15 BZA CHAIR JORDAN: That's what I
16 was getting at.

17 MS. FOWLER: There's water issues.
18 There's mold. You know, it's just been a
19 problematic space.

20 BZA CHAIR JORDAN: Got you.

21 MS. FOWLER: So the overall
22 estimates we have to put the front entrance in

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1 and to make it a legitimate rental has been
2 around 155, in that range.

3 BZA CHAIR JORDAN: And this is a
4 single-family. You're still --

5 MS. FOWLER: Well, to convert to
6 two units.

7 BZA CHAIR JORDAN: Yes. But I'm
8 saying just to get the house back up and
9 running where it needs to be, even if it was
10 going to operate as a single-family, it would
11 cost over \$100,000 --

12 MS. FOWLER: Correct.

13 BZA CHAIR JORDAN: -- is what I
14 understand.

15 MS. FOWLER: Correct.

16 BZA CHAIR JORDAN: Okay. Board
17 have any additional questions? Anything you
18 want to hear from this applicant? Anyone?

19 (No audible response.)

20 BZA CHAIR JORDAN: Then I think
21 we're pretty comfortable with what's been
22 submitted.

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1 MS. FOWLER: Thank you. Can I
2 address the ANC? We do have the ANC
3 commissioner here today. There was not a
4 letter in -- but Ms. Gomes did go to the
5 hearing, to the meeting.

6 BZA CHAIR JORDAN: And you said
7 the ANC commissioner is here?

8 (No audible response.)

9 BZA CHAIR JORDAN: Okay. Then
10 let's wait and you can do whatever you need to
11 say in -- well, if it's part of the case in
12 the chief, you can talk about whatever you
13 want to say. Or you can come back in rebuttal
14 if there's a necessary for rebuttal.

15 MS. FOWLER: We'll just wait and
16 have them testify. Thank you.

17 BZA CHAIR JORDAN: Okay. All
18 right. Any other questions for the -- okay.

19 Turning now to Ms. Vitale, Office
20 of Planning.

21 MS. VITALE: Good morning again,
22 Mr. Chair, Members of the Board, Elise Vitale

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1 with the Office of Planning.

2 The Office of Planning supports
3 the requested relief to continue use as a flat
4 in the R-3 Zone, and we will rest on the
5 record. I can answer any questions. Thank
6 you.

7 BZA CHAIR JORDAN: Thank you.
8 Anyone -- Board, questions?

9 (No audible response.)

10 BZA CHAIR JORDAN: Anyone here
11 from the Department of Transportation?

12 (No audible response.)

13 BZA CHAIR JORDAN: We do have a
14 letter from the Department of Transportation
15 of no objections to the application.

16 Let me go back again to the
17 applicant and ask you a question. Do you have
18 any support letters from neighbors, because I
19 didn't see any in the file. Any letters from
20 neighbors in support?

21 MS. WEBB GOMES: No. No, I
22 verbally spoke with the neighbors. One

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1 neighbor is Jose Contreras who operated his
2 home as a two-unit, which was a reason that we
3 wanted to move forward with making ours a
4 legal separate unit. And he is out of the
5 country, so he was unable to attend.

6 And my next door neighbor to the
7 other side, I guess to the east of me, just
8 purchased, so that home had been under
9 renovation. And the new neighbor just moved
10 in. And they also verbally gave support, but
11 no letter.

12 BZA CHAIR JORDAN: Okay. All
13 right. So now let's turn to -- is there a
14 representative from ANC 4D present? ANC 4D?

15 MS. COLBERT: Yes.

16 BZA CHAIR JORDAN: Would you come
17 forward, please? Yes, there. And did you
18 complete witness cards for us?

19 MS. COLBERT: Yes.

20 BZA CHAIR JORDAN: Okay. Good.
21 And gave them to the court reporter?

22 MS. COLBERT: Yes.

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1 BZA CHAIR JORDAN: Okay. Good.
2 Thank you. All right. If you can make sure
3 your microphone is turned on. It's on?

4 MS. COLBERT: Yes.

5 BZA CHAIR JORDAN: Okay. Would
6 you please identify yourself for us?

7 MS. COLBERT: My name is Lisa
8 Colbert and I'm an ANC commissioner for Single
9 Member District 4D-03.

10 BZA CHAIR JORDAN: And let me ask
11 you, did the full ANC 4D meet on this
12 application?

13 MS. COLBERT: No, not the full.

14 BZA CHAIR JORDAN: Okay. So we
15 don't have -- so there was no vote taken by
16 the full ANC 4D. And you're here commenting
17 just either in support of opposition as a --

18 MS. COLBERT: As the commissioner
19 of 4D-03 I'm here to comment. I reached out
20 to the neighbors.

21 BZA CHAIR JORDAN: I mean then
22 just so -- and I want you to continue, but as

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1 we go forward and in the future we have a
2 provision where the ANC, the full ANC is a
3 party --

4 MS. COLBERT: Yes.

5 BZA CHAIR JORDAN: -- that has
6 this particular opportunity to present to the
7 Board and/or other things. If it's not a true
8 act of the ANC, the full ANC; in this case 4D,
9 and we have the authorization letter of who's
10 going to testify is how we normally process.
11 So I just want you to know for future and so
12 that others who are also maybe listening and
13 watching how we actually proceed and how we
14 have to count the ANC in regards to our
15 overall deliberation. But your comments plus
16 or minus support or opposition is still
17 something that we will certainly consider. So
18 if you would proceed, you have three minutes
19 to tell us what you may want.

20 MS. COLBERT: All right. Thank
21 you. Two point I want to make: One is I
22 spoke to some of my colleagues about this and

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1 they were in support of it, but we did not do
2 it at the public meeting. It was a discussion
3 we did a few days after. Our next public
4 meeting is going -- has been rescheduled to
5 the end of the month. We need to put it
6 forward to make it official in the minutes.
7 But we did discuss it at our last meeting.

8 Secondly, that I went and talked
9 to some of the residents before we were going
10 to have the public meeting to discuss it.
11 That's what I had to do. I did about half the
12 block to see what concerns they had about the
13 Gomeses converting their place into a rental
14 property.

15 And the concerns I -- the
16 residents were concerned about parking. They
17 said parking is very bad in the area. The
18 Gomeses are addressing that. They said they
19 were giving up a parking space in the back.
20 They were going to allow that in the back.

21 Others were concerned about the
22 type of people being -- coming to the

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1 neighborhood because they had some robberies
2 or something before. I spoke to the Gomeses
3 about that and they will be on the property.
4 The residents were okay as long as they were
5 going to be on site.

6 There were -- oh, and the other
7 was the entrance to -- a front entrance. And
8 the Gomeses said they were addressing that
9 issue. So in light of that, you know, I
10 support them and I plan to bring it forth in
11 our next meeting, which is going to be July
12 30th.

13 BZA CHAIR JORDAN: Okay. Thank
14 you. Thank you for taking the time and
15 talking to us, and taking the time of
16 consulting and speaking with the others in the
17 block and in the neighborhood.

18 MS. COLBERT: Yes.

19 BZA CHAIR JORDAN: Does the Board
20 have any questions they'd like to ask of this
21 witness? Ms. Allen?

22 VICE CHAIR ALLEN: (No audible

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1 response.)

2 BZA CHAIR JORDAN: Okay. Then
3 thank you. We appreciate it.

4 MS. COLBERT: Thank you.

5 BZA CHAIR JORDAN: Is there anyone
6 else in the audience wishing to speak in
7 support of this application? Anyone wishing
8 to speak in support?

9 (No audible response.)

10 BZA CHAIR JORDAN: Anyone wishing
11 to speak in opposition? Anyone wishing to
12 speak in opposition?

13 (No audible response.)

14 BZA CHAIR JORDAN: Then let's turn
15 back now to the applicant for any rebuttal and
16 additional questioning. Ms. Allen, you had
17 some questions.

18 VICE CHAIR ALLEN: I just didn't
19 understand what you meant by that you're going
20 to give up parking. Could you explain that a
21 little bit?

22 MS. WEBB GOMES: Certainly. We

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1 currently have two parking spaces in our rear.
2 So we have a parking pad that's existing now
3 and it will continue. And so what we will do
4 is give up one of our spaces in the rear so
5 that our tenant will be able to have a space
6 there.

7 BZA CHAIR JORDAN: Any additional
8 questions for the applicant?

9 (No audible response.)

10 BZA CHAIR JORDAN: Is there any
11 rebuttal or any other statement you'd like to
12 make?

13 MS. FOWLER: No, thank you.

14 BZA CHAIR JORDAN: No? Okay.
15 Does the Board have any additional questions?

16 (No audible response.)

17 BZA CHAIR JORDAN: Then seeing
18 none, we'll close this hearing based upon the
19 record that we have before us and we will move
20 to deliberation. The Board ready to
21 deliberate?

22 (No audible response.)

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1 BZA CHAIR JORDAN: I would move
2 then that we grant the relief requested by the
3 applicant on this matter.

4 ZC CHAIR HOOD: Second.

5 BZA CHAIR JORDAN: Motion made and
6 seconded. Any unreadiness?

7 (No audible response.)

8 BZA CHAIR JORDAN: All those in
9 favor, signify by saying aye?

10 (Chorus of ayes.)

11 BZA CHAIR JORDAN: Those opposed,
12 nay?

13 (No audible response.)

14 BZA CHAIR JORDAN: The motion
15 carries. Mr. Moy?

16 MR. MOY: Yes, sir. Staff would
17 record the vote as 4-0. This is on the motion
18 of Chairman Jordan to approve the application
19 for the relief request, which is the variance
20 relief under subsection 230.3. Also in
21 support Mr. Hood -- seconded rather. And also
22 in support Vice Chairperson Allen and Mr.

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1 Hinkle, and a Board seat vacant. Motion
2 carries 4-0.

3 BZA CHAIR JORDAN: All right.
4 Thank you, Mr. Moy. And a summary order,
5 please?

6 MR. MOY: Yes, sir.

7 BZA CHAIR JORDAN: And we thank
8 you all for coming down and thank you so much.

9 MR. GOMES: Thank you for your
10 time.

11 BZA CHAIR JORDAN: Whenever you're
12 ready, Mr. Moy, you can call the next case.

13 MR. MOY: Which one?

14 BZA CHAIR JORDAN: No, call them
15 in order.

16 MR. MOY: They are in order.

17 BZA CHAIR JORDAN: Okay.

18 MR. MOY: Well, in that case, that
19 would be application No. 18560. This is the
20 application of 3545 13th Street, LLC, pursuant
21 to 11 DCMR 3103.2. This is for a variance.
22 This is as previously advertised as a variance

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1 from the lot area requirements to allow the
2 conversion of a flat into a four-unit
3 apartment house under subsection 401.3, in the
4 R-4 District at premises 3545 13th Street,
5 N.W. Property: Square 2833, Lot 120.

6 We have, Mr. Chairman, as you
7 know, a party status request and a letter from
8 ANC 1A that was entered into the record today,
9 July 16th, so this ANC letter would be
10 untimely.

11 BZA CHAIR JORDAN: We have an ANC
12 letter that? Mr. Moy?

13 MR. MOY: Yes, sir. ANC 1A filed
14 a letter dated yesterday, but was late last
15 night.

16 BZA CHAIR JORDAN: Did they
17 provide a reason for their tardiness and a
18 request for us to waive?

19 MR. MOY: There was no indication
20 of a request to waive the time requirement.

21 BZA CHAIR JORDAN: But we did have
22 a letter or something from them -- previous

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1 something that they indicated --

2 MR. MOY: We did.

3 BZA CHAIR JORDAN: What was --

4 MR. MOY: There is a previous ANC
5 letter.

6 MS. MOLDENHAUER: Mr. Jordan, if I
7 may? We had actually asked this case to be
8 postponed so we could go back to the ANC. And
9 there was tight timeline between the ANC
10 meeting and this current meeting. They may
11 not have indicated that. But because
12 obviously I think your calendar for the next
13 couple of Tuesdays before you recess in August
14 -- so they may not have explained that, but
15 that is some of the rationale as to why it's
16 potentially late.

17 BZA CHAIR JORDAN: Okay. Does the
18 Board have any issues with accepting the ANC
19 letter?

20 (No audible response.)

21 BZA CHAIR JORDAN: We'll accept
22 it, Mr. Moy.

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1 MR. MOY: Yes, sir.

2 BZA CHAIR JORDAN: And we do have
3 a person seeking party status, is that
4 correct?

5 MR. MOY: Yes, sir.

6 BZA CHAIR JORDAN: Is it -- I'm
7 trying to read --

8 MR. MOY: It should be Richard
9 Klugman.

10 ZC CHAIR HOOD: Klugman? Mr.
11 Klugman? Are you Mr. Klugman?

12 MR. KLUGMAN: Yes.

13 BZA CHAIR JORDAN: Please identify
14 yourself for the record, please.

15 MR. KLUGMAN: My name is Richard
16 Klugman of 3603 13th Street, N.W.

17 BZA CHAIR JORDAN: And I am
18 understanding that -- excuse me one second.

19 I understand your issues raised by
20 your application, but it's generally some of
21 the same issues that the Board is required to
22 address in our examination of this relief.

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1 Can you tell us how you're uniquely affected
2 by this application other than that which we
3 would go over, or that Office of Planning, or
4 that which this Board is required to examine
5 for the variance relief being sought by this
6 applicant?

7 MR. KLUGMAN: Yes, if I may? The
8 case has an effect on me not only financially,
9 because it does increase property taxes in the
10 neighborhood due to artificial inflation of
11 the market, but more importantly socially.
12 And I want this message to be heard by the
13 Board. The neighborhood that I chose for my
14 future is Columbia Heights in the R-4 Zone
15 that was designed for lower density to
16 maintain family character.

17 BZA CHAIR JORDAN: I need you to
18 tell me, if you can concisely; not give your
19 testimony, if you will, so we could first
20 decide whether or not we're going to let you
21 be a -- have party status. If it's your
22 intent to cross-examine -- is that your

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1 intent, or just to be able to talk on the
2 record? What are you seeking from the Board?

3 MR. KLUGMAN: I am seeking from
4 the Board party status.

5 BZA CHAIR JORDAN: Okay. All
6 right. So tell us why you're uniquely
7 situated other than what we would normally go
8 -- what we will examine and for the public in
9 general as required by the regulations.

10 MR. KLUGMAN: Because as a close
11 neighbor to the property; I am seven
12 properties away, that this is the third such
13 conversion from a single-family home or what
14 was built as a single-family home within a
15 one-block radius of me, and I feel that it is
16 important, and the neighborhood feels that it
17 is important not just to sign a petition or
18 show up at the ANC, but for some voice to
19 actually be heard and speak out at the BZA
20 hearing so all of our concerns as a
21 neighborhood, as neighbors, are all heard and
22 addressed, in brief.

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1 BZA CHAIR JORDAN: Okay. Does the
2 Board have a thought? Yes?

3 MS. MOLDENHAUER: If I might have
4 an opportunity to --

5 BZA CHAIR JORDAN: Yes, go ahead.
6 Respond, please.

7 MS. MOLDENHAUER: -- respond? I
8 mean as the applicant we would object to this
9 request for party status. Under section
10 3106.2 the Board -- the regulations say that
11 you can only approve party status if the
12 applicant can show not just by basic evidence,
13 but a clear demonstration that they are
14 specifically or uniquely affected.

15 One, Mr. Klugman has indicated in
16 his initial application a misstatement
17 actually, a false statement. He indicates
18 that he's 70 feet from the property. He is
19 not. He's beyond the 200-foot radius. And,
20 you know, he did not -- if you look at the OTR
21 submission that's in the initial submission,
22 he's beyond that in regards to the 200-foot

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1 radius. He's actually more like 250, 248 feet
2 from the property. So that in his initial
3 application is actually an incorrect
4 statement. So he does not I believe fall
5 within the geographical nexus that would help
6 the Board provide additional evidence as to
7 how he is uniquely affected.

8 Additionally you've heard his
9 testimony that he's really providing general
10 concerns of the neighborhood, not aspects that
11 will create an individual harm or individual
12 effect to his property.

13 And he also states potentially an
14 increase in financial property value. And,
15 you know, that is --

16 BZA CHAIR JORDAN: Of property
17 taxes.

18 MS. MOLDENHAUER: Property taxes.

19 BZA CHAIR JORDAN: Okay.

20 MS. MOLDENHAUER: And that's
21 speculative and it's not imminent in regards
22 to the harm considered. And that was recently

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1 determined in a court of appeals case in
2 regards to property values in Paudo vs. ABC.

3 BZA CHAIR JORDAN: Does the Board
4 have any thoughts towards this party status?

5 ZC CHAIR HOOD: I would say that
6 due to the testimony given by Mr. Klugman that
7 he does not -- at least I would not typically
8 grant party status, but I think his point are
9 very valid and there's an opportunity for him
10 to be able to present the points to the Board.
11 As my counsel has stated, he's not uniquely
12 affected more than the general neighbors, so
13 I think he basically did his self in by
14 telling us that he was basically representing
15 his whole neighborhood. But I think his
16 points -- I don't want this to fall on deaf
17 ears, but I think his points are very valid
18 and I would be looking forward to hearing his
19 testimony.

20 BZA CHAIR JORDAN: Certainly. And
21 I would -- you must have been a chairperson of
22 a zoning board.

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1 ZC CHAIR HOOD: I learned from
2 Angel Clarens.

3 BZA CHAIR JORDAN: But I would
4 agree with that assessment, and my ruling
5 would be that we not allow you to be party
6 status. However, I want to give you an
7 extended time to present your testimony that
8 you can present whatever you want to say to
9 this Board and give you five minutes as
10 opposed to what's normally given to present
11 your input in this process. So that would be
12 the ruling regarding party status. You
13 certainly have the opportunity to do five
14 minutes worth of testimony before us, and that
15 would be the rule.

16 Okay. So then let me have the
17 applicant then introduce themselves.

18 MS. MOLDENHAUER: Good morning,
19 Chairman and Members of the Board. My name is
20 Meridith Moldenhauer. I'm here on behalf of
21 the applicant, 3545 13th Street, LLC. To my
22 right I have Mohammad Pishvaeian, who is

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1 representative and owner of --

2 BZA CHAIR JORDAN: I'm sorry, the
3 name again?

4 MS. MOLDENHAUER: Pishvaeian. To
5 his right is Alan Dalton from RE/MAX via ADMC
6 Realty Group. And to his right is Mr. James
7 Killette from Killette & Associates, the
8 architect on the property. And we also have
9 an individual neighbor who we'll be calling as
10 a witness, Ms. Allison Campbell.

11 That being said, I'd just like to
12 provide a quick summary and point out a couple
13 of things that we'll be focusing on during
14 this hearing.

15 One, I'd just like to point that
16 we did amend the application following the
17 request for postponement last time to include
18 additional three compact spaces and we are
19 asking for additional relief under section
20 2001.15 based on that additional parking
21 that's being provided.

22 That being said, the major point

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1 of relief that we're asking for is only one
2 area of relief, which is under 401.3 seeing
3 one additional unit. The property as a matter
4 of right -- first of all, the individual, Mr.
5 Klugman, had indicated a single-family home.
6 The property is currently -- has a Certificate
7 of Occupancy as a two-unit flat with a unique
8 twist, which we'll explain in a little more
9 detail, which is a storage basement. And
10 we'll provide a copy of the Certificate of
11 Occupancy for the record.

12 In addition to that we will focus
13 on supplementing the record regarding
14 additional facts and photographs regarding the
15 dilapidated condition of the basement and the
16 basement condition as it currently exists; as
17 indicated, a copy of the existing Certificate
18 of Occupancy and testimony about the
19 basement's condition, the fact that it's not
20 been habitable and not been used; supplement
21 the record also with a letter from a Mr. Pedro
22 Portillo who lives -- is not an adjacent

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1 property owner, but lives one house away from
2 the property and provides supplemental
3 information regarding his personal
4 observations of the non-residential use at the
5 property over the last period -- some period
6 of time; and additional testimony from the
7 architect regarding specific aspects of how
8 the property is unique.

9 That being said, I'd just like to
10 also respond to some submissions and some
11 comments in regards to references to some case
12 law. There were some references to Myrick and
13 Capital Hill Restoration Society cases. Those
14 cases focus specifically on applicants that
15 were trying to use a historic district as a
16 factor for exceptional uniqueness. Here we'll
17 go through actually a complement of factors
18 concerning five different factors which all
19 together make the property exceptional
20 including the prior non-residential use, a
21 non-compliant stairs, unique layout,
22 dilapidated property and the rear grade.

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1 The applicant will explain how
2 three units is not a viable project and how
3 he's requesting just one additional unit.
4 That one additional unit will go towards the
5 question of degree of relief, and as we'll
6 focus a little bit more in Gilmartin as the
7 Board knows, the degree of relief is important
8 in regards to the question of balancing the
9 amount of burden that the applicant has.

10 In this case we are asking for an
11 18 percent relief, which is minor in regards
12 to other comparisons of other cases that this
13 Board has recently approved in regards to 401
14 relief. And we'll focus and frame the case on
15 some court of appeals cases such as the
16 Downtown Cluster case and Fairmont where the
17 court of appeals in those cases -- in the
18 Downtown Cluster confirmed, you know, the
19 aspects of reasonable return.

20 That being said, at this point in
21 time I'd like to turn it over to Mohammad
22 Pishvaeian to provide again some background

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1 focusing on those point I outlined and that
2 we'll be supplementing the record that were
3 not included your submissions.

4 BZA CHAIR JORDAN: I think we're
5 abreast on the law and understand about
6 reasonable return and the -- really it's more
7 for the Board to determine what they find to
8 be fair in that regard on return. But I do
9 think continuing on, and now that we have the
10 Chairman of the Zoning Commission, might be
11 something that the Commission might want to
12 take a look at as to how we adopt a standard,
13 because this has been coming before us a lot
14 regarding people making the argument that
15 they're not getting a fair return, or what
16 that aspect is. And it's varying from case to
17 case, even those thinking that it's 18
18 percent. Some are presenting that it's 20
19 percent. And that even goes against the tide
20 of the National Council of Real Estate
21 Investment Fiduciaries.

22 And so I would just want to

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1 suggest that through the Commission and maybe
2 take a look at setting whatever that standard
3 rate is, you know, industry-wide, whether or
4 not it's -- was above 8.4. Do you include
5 cost of living, you know, all those kind of
6 factors because it becomes -- to build
7 consistency and predictability in our system,
8 I think that's something that's necessary.
9 But okay. We'll see.

10 MS. MOLDENHAUER: And obviously
11 that would be greatly appreciated by any
12 applicant, I think, to have some more clarity
13 on that. But we'll turn again to the
14 applicant to kind of just start going through
15 some additional factors.

16 MR. PISHVAEIAN: Good morning. My
17 name is Mohammad Pishvaeian. I'm a builder
18 focused on small residential condominiums and
19 homes in the District of Columbia. I have
20 done properties anywhere from Anacostia to
21 Northeast to across the river in Southeast and
22 9th Street and 11th Street. And now this

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1 property happens to be on 13th Street, which
2 is a busy major road on 13th Street. I'll try
3 to just give you the facts that it hasn't been
4 mentioned or it wasn't said. So not to bore
5 you, just race through real quick to give you
6 the facts and we'll come back for questions.

7 As you know, I'm here. I know I
8 have 2,900 square feet of land. I know I can
9 have three units as a matter of right. I'm
10 here to just ask for one extra relief.

11 This is just the neighborhood,
12 that it's showing 9 block -- 9 -- 12 houses
13 down there's an apartment building of 22
14 units, or 19 units. Directly across the
15 street from me I have a four-unit
16 condominiums, the gray with the burgundy
17 trims.

18 So briefly I'm just trying to give
19 you the description of the property. The
20 existing structure is dilapidated. There was
21 a garage in the back. It was falling apart.
22 When I purchased the property 31st of January

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1 this year I was worried about the kids playing
2 in the back yard alley. And we took the
3 garage down. We had to actually get a permit
4 to take the parking down.

5 When I went there to look at the
6 property in December, I went there with my
7 agent and the selling agent. This was a
8 rental house. And as we walked in there was
9 a bar there and on the first floor and there
10 was a smoke in the area. We couldn't exactly
11 understand. We went upstairs. There was a
12 lady and her daughter living in the property.

13 I wanted to see the basement and
14 the agent, the selling agent said the owner
15 has the key and since the basement is not used
16 by the tenants we don't have the key to show
17 you the basement. You see what you see and it
18 is what it is.

19 So we went upstairs and looked at
20 everything. They were nice people and they
21 were making this massive food and it was very
22 smelling good. And I didn't understand why

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1 they making so much food. I asked them and
2 they said they cater to some restaurants. And
3 they offer for me and my agents and the
4 selling agents, and we had some food there and
5 it was very nice of them.

6 But as we were going up I noticed
7 the stairs were wider than normal and on the
8 second floor the stairs going to the third
9 floor was not by the code. And so I noticed
10 there are a lot of things that it's just not
11 matching the codes or it's not the normal
12 condition. So as my attorney mentioned
13 there's a C of O of flat plus storage for this
14 property. And we just left.

15 So I want to tell you about the
16 proposed structure. As you see this structure
17 in front, we're not planning to change
18 anything with this structure. We're not
19 trying to add a floor. We're not trying to go
20 past the footprint. As a matter of fact,
21 we're trying to increase the lot occupancy
22 ratio from 56 percent to 51 percent by taking

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1 dirt out and adding parking space in the back
2 for the reason to have more parking space.

3 So as you can see the floor plans,
4 this is the basement, the proposed and
5 existing two bedrooms, two bath. And then the
6 first floor, that the existing was showing
7 that bar, that it was right there on the --
8 you see that big area in front of that bar.
9 It was a huge -- it's 20 feet wide, this
10 building, and this bar and all that open space
11 was there. And then there are two bedrooms
12 right there on that floor. So again the
13 proposed is to convert that to two bedrooms,
14 two bath.

15 And same thing for the third floor
16 and fourth floor. But the third floor right
17 now the third floor you can see there's a
18 piece that hasn't been built. There's only
19 one bedroom and one bath on top. And we are
20 proposing to extend that to the footprint to
21 extend it to be two units -- I mean two
22 bedrooms and two baths right there.

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1 This is a picture of the garage
2 that when we purchased the parking that it was
3 falling apart. Again for the safety of the
4 neighborhood I decided to take it down and now
5 it looks like this because there are no pieces
6 of rotten anything falling.

7 If you see in this picture, if you
8 know both properties on both side of me has
9 extended the second and third floor of my
10 property. So by us adding to the footprint,
11 the existing on the second and third by no
12 means we're not going to exceed the neighbors.

13 The property backs into an alley
14 and when -- again as you saw in the picture,
15 when I purchased the property it had only one
16 parking space. So I bought this property
17 January 31st and since then I've been going
18 around talking to the neighbor, asking about
19 their concern. I've attended a picnic that
20 they had about a month ago. I talked to a
21 gentleman who lives exact next door at 3543
22 and his concern was parking if we add another

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1 unit.

2 So I went back to my architect and
3 we decided to spend \$30,000 excavate, secure
4 the walls on both side of the properties for
5 the neighbors and add parking. So we came up
6 with three parking spaces. Went back to the
7 neighborhood, asked them about now I have
8 three parking spaces and they mention, well,
9 lot of people are riding bikes here. You
10 really don't need cars.

11 So I came back. I added bike
12 racks. So I have now four bike racks. So I
13 went back again, asked them everything is
14 okay? The concern was no, you have now all
15 concrete and the water is going to start
16 gushing down to the alley.

17 So I went back again and I came up
18 with a permeable paver, so we actually have to
19 dig out all the concrete that is there and put
20 down blocks of cement and put grass in
21 between.

22 So at this point we have three

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1 parking space, four bike racks. The complaint
2 was people don't take their bikes to the
3 upstairs, their units, because it's too far
4 out and that's why they don't use bikes. So
5 we put bike racks there with the locks, secure
6 locks so they can use bikes.

7 And so now it's green space, it's
8 three parking space, it's four bike racks.
9 Not changing the structure. Not going up.
10 Just asking for one extra space.

11 I went to the ANC. I didn't go.
12 My attorney went to ANC in April. We
13 presented our case and we had no opposition.
14 I fell down in between. I tore my rotator
15 cuff, my shoulder. We talked to ANC and there
16 was no opposition. There wasn't anything that
17 we felt uncomfortable for me not being there.
18 So I happened to have a surgery on my
19 shoulder. I had a hour-and-a-half under
20 anesthesia rotator cuff shoulder, and I was in
21 a sling for four weeks, on May 8th, which
22 happened to be the same day as ANC, so I

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1 couldn't be there. And Mr. Klugman went there
2 as an opposition, and the vote was 5-0. And
3 I felt that I wasn't there to represent my
4 case and I couldn't answer the neighbors.

5 And so I went back again and I
6 asked if I can be -- a chance given to see
7 what neighbor am I not pleasing and what am I
8 doing that is so bad. So they were nice
9 enough to give me a second chance. And we
10 went back there and we had four votes in our
11 favor. And we had actually neighbors coming
12 there supporting our case and our single
13 member district, our representative voted for
14 us in favor of this project.

15 Finally, the economic Feasibility.
16 Before I get into it, I just want to make a
17 correction on the profit and loss statement
18 that I presented for the Board, the three
19 units and the four units. The three units
20 calculations at the bottom are correct, that
21 it totals to \$1.5 million worth of sales, but
22 the dollar amount that I applied in that

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1 situation for the top unit, I wrote down 600.
2 It has to be \$650,000. But the rest of the
3 numbers are correct. So the calculation is
4 correct and the return will be 1.4 percent on
5 three units and 10 percent on 4 units, which
6 is \$1.5 million return, 10 percent return on
7 investment.

8 I think this is it and I just want
9 to pass on to my other colleagues and answer
10 any other questions.

11 MS. MOLDENHAUER: Next -- oh.

12 BZA CHAIR JORDAN: Any questions
13 for this witness?

14 (No audible response.)

15 BZA CHAIR JORDAN: Go ahead.
16 Proceed, please.

17 MS. MOLDENHAUER: Next we have
18 testimony from Mr. Dalton.

19 MR. DALTON: Good morning, Members
20 of the Board. My name is Alan Dalton. I'm
21 with RE/MAX on Capitol Hill. I've been doing
22 real estate for about nine years. I have a

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1 small team of three full-time agents and
2 primarily we work with developers throughout
3 the city, about four different developers.
4 Deal with in-sale/out-sale estimates, product
5 design, working with them on finishes, the
6 whole process from walk-through to sale. We
7 close approximately about 60 units a years, so
8 give you a sense of our volume. And we've
9 done about 20 transactions in this particular
10 neighborhood of Columbia Heights over the past
11 few years. We also have a team member who
12 lives in the neighborhood as well.

13 I've worked with Mr. Pishvaeian
14 for eight years doing projects like this,
15 redeveloping, working with neighbors. Mr.
16 Pishvaeian is an extremely conscientious
17 developer. He's always involved with the
18 neighbors. As an example, we developed a
19 property in LeDroit Park a couple years ago.
20 While we were developing, the neighbor -- we
21 were doing just a matter-of-right renovation.
22 The neighbor had a leak in her roof and he

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1 offered at no charge to repair or replace her
2 roof while we were up there at no charge, just
3 as a friendly neighbor. Just to give you a
4 sense of the kind of developer that he is and
5 why we enjoy working with him so much.

6 I have reviewed the P&L the
7 applicant submitted, as well as conducting my
8 own analysis of the comps. I believe these
9 values to be true and accurate, fair and
10 reasonable as well.

11 To summarize, we've submitted 19
12 comps in the area. To be as conservative as
13 possible we've taken the highest 6 comps of
14 that 19, the highest priced comps, to
15 determine an average price per square foot for
16 our estimates as an agent working with
17 developers for out-sale of 499 per square
18 foot. So that's how we got to that number for
19 you.

20 That being said, I was asked to
21 review the statement of opposition submitted
22 by Mr. Klugman and I found his comps and value

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1 justifications inaccurate and really
2 irrelevant. And I'm going to show you --

3 BZA CHAIR JORDAN: Say that again?

4 MR. DALTON: I found his --

5 BZA CHAIR JORDAN: Found who his?
6 Say it again?

7 MR. DALTON: The opposition. Did
8 I misspeak? I'm sorry. Yes, Mr. Klugman, his
9 statement of opposition.

10 BZA CHAIR JORDAN: Right.

11 MR. DALTON: There's many
12 inaccuracies in here that I just want to go
13 through with you from a real estate standpoint
14 so that you're aware of these numbers and
15 where the errors are. That's okay?

16 BZA CHAIR JORDAN: Yes, go ahead.

17 MR. DALTON: Okay. If I may just
18 bring to your attention on page 2, paragraph
19 B, the statement of opposition speaks to
20 detached properties, 16 detached --

21 BZA CHAIR JORDAN: We don't have a
22 person in opposition, party in opposition.

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1 MR. DALTON: Oh, I'm sorry.

2 MS. MOLDENHAUER: Sorry. The
3 filing that was submitted.

4 MR. DALTON: Filing.

5 BZA CHAIR JORDAN: Yes, you can
6 respond to the filing that was submitted.

7 MR. DALTON: Okay. Thank you,
8 sir. So the filing that was submitted on
9 Friday, I believe.

10 So page 2, paragraph B, the filing
11 speaks to detached properties, 16 detached
12 properties. I don't know where those are. It
13 also speaks to no zoned four-unit property
14 buildings amongst the cluster, nor are there
15 any on the west side of 13th --

16 BZA CHAIR JORDAN: Tell you how
17 I'd really rather handle this. Why don't we
18 use that in your rebuttal, if you need to make
19 that as a rebuttal statement.

20 MS. MOLDENHAUER: Well, let's just
21 focus then maybe on some of the real estate
22 comps and we'll go through --

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1 BZA CHAIR JORDAN: Right.

2 MS. MOLDENHAUER: -- more of that
3 focus. Okay.

4 MR. DALTON: Yes, sir. Yes,
5 because there are some significant
6 inaccuracies here I just to bring to your
7 attention, that we could go over it. But
8 anyway, there's one of them. That property is
9 there that they indicate is not there.

10 On page 6, the middle paragraph
11 there speaks to comps of our developer's
12 property on 13th. And not only are the sales
13 prices inaccurate, but the basic math, the
14 basic calculation that they've done in this
15 paragraph was completely wrong. But I'll just
16 speed through that. But I want to bring it to
17 your attention. You can certainly look at the
18 math. It's completely wrong. Bottom line,
19 these comps come out to \$489 a square foot, to
20 give you that information.

21 Finally, I want to bring to your
22 attention Exhibit A of the filing. Again,

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1 these comps are -- first of all four of the
2 six comps are in a different ZIP code of the
3 property. So the property is located in
4 20010. Four of the six comps, as you can see
5 indicated by the red dots on this map, are
6 what the filing speaks to in terms of what
7 they feel comps are and how we should be
8 pricing our property, which is much higher on
9 13th Street in the 20010 ZIP code.

10 I've got the most recent stats
11 right here. The difference in the two ZIP
12 codes, the 20010 ZIP code, which is where the
13 property is located, the average condo sale
14 price in last month's stats, 18 percent lower
15 than the 20009 comp. So there's many
16 inconsistencies, but I just wanted to point
17 that out, why that's important.

18 The properties, he just has the
19 six here. I'll go very quickly through them
20 for you. The first one on Gerard Street, Unit
21 8, that property is not a comp. It's actually
22 been withdrawn from the market, so it's

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1 irrelevant. However, in order to be fair, I
2 tried to pull another comp in that same
3 building that had sold so that we can get an
4 accurate number, and I have that information.
5 That unit sold for \$520/square feet, not the
6 553.

7 The next comp on Irving Place is
8 also not a comp because it's active. It has
9 not sold. No unit in that property in fact
10 has sold at all. So that entire property
11 is --

12 BZA CHAIR JORDAN: What we really
13 need to know is where your practical
14 difficulties are arising out of the cost of
15 this to do it, and we understand the numbers
16 that you submitted.

17 MS. MOLDENHAUER: Well, then --

18 BZA CHAIR JORDAN: But if you
19 think this is helpful, then you can continue.
20 But I'm just letting you know we have --

21 MS. MOLDENHAUER: I think that
22 he's kind of generally gotten the point across

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1 that they --

2 BZA CHAIR JORDAN: Because what
3 we're doing -- the challenge to what has been
4 previously submitted by someone else, whether
5 or not the Board is considering that in its
6 factoring, is -- I don't believe that's the
7 case.

8 MR. DALTON: I understand.

9 BZA CHAIR JORDAN: But it's for
10 you to prove the practical difficulty based
11 upon the financials, if that's your argument.
12 Because I understand your argument to a great
13 extent is the financial and the condition of
14 the building is the base of your practical
15 difficulty. That's what I need you to prove.

16 MS. MOLDENHAUER: And that's our
17 next witness. I just wanted to also provide
18 some -- in fact what I'll ask then --

19 BZA CHAIR JORDAN: Can he just
20 summarize it?

21 MS. MOLDENHAUER: -- Mr. Dalton,
22 if you could summarize? You can also focus on

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1 what you physically saw on the first floor in
2 regards especially to the non-residential use
3 and things of that effect, in other words, the
4 condition of the property. That would be
5 helpful as well.

6 MR. DALTON: Of course. And just
7 to summarize this portion I was going to tell
8 you, these same comps that they submitted,
9 while the numbers were not right, when you
10 take the accurate numbers, that actually comes
11 out to \$498 a square foot as well. So those
12 two match.

13 In summary in terms of my part, I
14 wanted to give you a very quick history of
15 this property as it relates to the MLS. In
16 1998 it was an estate sale requiring roof
17 repairs and plaster repairs for the MLS. IN
18 2003 it was back on the market as a HUD
19 foreclosure. Again home inspections
20 encouraged problems with the property. In
21 2005 they tried to sell it at 900,000.
22 Completely unsuccessful. The property

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1 expired. It never sold.

2 Finally in 2013 the property was
3 brought to our attention. When we went into
4 this property, as Mr. Pishvaeian spoke to,
5 there was basically an illegal bar being
6 operated on the first floor. The basement
7 level was halfway completed with completely
8 out-of-code structures and condition. It was
9 in a dilapidated condition for sure.

10 So in my opinion, you know, it's
11 reasonable and fair to look at this property.
12 If you look at the façade of the property as
13 we spoke to, there's actually no change to the
14 property. If anything, we're improving the
15 neighborhood. We're finally bring this
16 property out of a dilapidated condition that
17 it's been in since 1998 and we're reducing the
18 density of the neighborhood, because by going
19 back and getting the additional parking, we're
20 actually taking more cars off the street. So
21 I think it's a very fair application and it
22 makes good sense for both the neighborhood

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1 community and the developer. Thank you.

2 MS. MOLDENHAUER: Thank you.

3 We'll now to one of other witnesses which will
4 focus on the condition and the practical
5 difficulty. Mr. Killette, can you identify
6 yourself of your name and your occupation?

7 MR. KILLETTE: Hello, my name is
8 James Killette, architect.

9 MS. MOLDENHAUER: Can you provide
10 the Board a little bit of your experience?

11 MR. KILLETTE: I graduated form
12 the University of the District of Columbia.

13 MS. MOLDENHAUER: I believe he's
14 already been qualified as an expert in other
15 cases before the Board.

16 BZA CHAIR JORDAN: Are you --
17 because I didn't --

18 MS. MOLDENHAUER: I --

19 BZA CHAIR JORDAN: Maybe I slept
20 it, but I didn't see --

21 MS. MOLDENHAUER: I didn't. I'm
22 not specifically offering him as an expert,

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1 but I am offering him as an experienced
2 architect that's providing testimony here in
3 regards to --

4 BZA CHAIR JORDAN: Well, he's
5 testifying almost as a layperson, but he has
6 a special expertise as being a licensed
7 architect in the District of Columbia?

8 MR. KILLETTE: No.

9 MS. MOLDENHAUER: No.

10 BZA CHAIR JORDAN: Okay. Where?
11 Are you a licensed architect?

12 MR. KILLETTE: Master of
13 architecture.

14 BZA CHAIR JORDAN: Okay. Got you.
15 All right.

16 MS. MOLDENHAUER: Can you provide
17 your understanding and why -- how you're
18 familiar with property 3545 13th Street?

19 MR. KILLETTE: I was contacted by
20 the owner when he purchased the property. And
21 when I visited the property, my on-site
22 observation as the basement goes -- because

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1 the existing tenants did not occupy the
2 basement level and there's no stair connecting
3 from the upper level the basement -- has gone
4 unattended and no maintenance has been done
5 for some time, therefore the drains appeared
6 to be clogged, which has caused significant
7 water damage to the basement level, which has
8 compromised the concrete slab, which has
9 compromised some of the mortar in the walls,
10 the masonry brick wall. There's mold present.

11 MS. MOLDENHAUER: I'm going to --
12 the picture to your right, if you can see
13 that, I'm just going to have -- these are the
14 pictures. If you can point out what you're
15 talking about.

16 MR. KILLETTE: Okay. All this
17 wood here is -- has been compromised by
18 moisture. The concrete slab has been
19 compromised by moisture. There is mold
20 present in portions of the drywall portions.
21 Some of the joists have been compromised. The
22 mortar joints have been compromised based on

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1 water infiltration and some of the -- I
2 believe three masonry structural piers and
3 several have missing bricks, as you can see
4 here.

5 This is water infiltration that
6 has compromised mainly near the area closest
7 to the floor, the mortar joints. And because
8 of the time that the water has allowed to just
9 enter the property, the portions of the
10 concrete slab have certainly been compromised.

11 MS. MOLDENHAUER: Now, if you can
12 go and take a look -- I'm going to pull up the
13 plans for the -- can you take a look at the
14 plans leading from the first to second floor
15 and the second to the third floor and tell the
16 Board a little bit about, you know, what some
17 concerns are with the right-hand staircase
18 that leads from the first to second floor?

19 MR. KILLETTE: The right-hand
20 staircase leading from the first floor to the
21 second floor is wider than normal. The normal
22 code is 36 inches. This stair is about 44

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1 inches wide, which is certainly -- you don't
2 need a stair that wide.

3 And when you get to the second
4 level, the stair that takes you to the third
5 level is on the opposite side of the building,
6 which you go to the top of the step and then
7 you have to cross over the building and go to
8 the next stair that take you up, which is very
9 steep and is not code-compliant at all as it
10 relates to the tread and the risers. And
11 because it's not to code, it has to be removed
12 and a new code-required stair would have to be
13 put in.

14 MS. MOLDENHAUER: What would be
15 entailed in removing both staircases and
16 putting in a new staircase?

17 MR. KILLETTE: Well, we'd have to
18 move portions of some joists that's affected
19 by the stair area because the joists stop
20 short in running to a header that's supported
21 by the stair and supported on the other side
22 by the walls. All of that would have to be

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1 removed so that the joists can go from one
2 side to the other.

3 MS. MOLDENHAUER: And now if
4 someone were buying the property and
5 renovating the property for three units as
6 would be legally permitted and they were doing
7 basic upgrades to the property, would this
8 work still have to be done?

9 MR. KILLETTE: Oh, yes, whether
10 you do it for two units, three units or four
11 units you still have to do this work.

12 MS. MOLDENHAUER: And you
13 indicated that --

14 BZA CHAIR JORDAN: But there is
15 some change in cost from -- is it not from a
16 three-unit and four-unit doing the work?

17 MS. MOLDENHAUER: In regards to
18 doing the removal -- removing of the
19 staircases and the joists? No.

20 BZA CHAIR JORDAN: No, it's not?
21 That's still the same?

22 MS. MOLDENHAUER: Yes. Mr.

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1 Killette?

2 BZA CHAIR JORDAN: So your
3 increased costs and your numbers from three
4 units to four units is based upon adding
5 another unit?

6 MS. MOLDENHAUER: No, the
7 increased cost is --

8 BZA CHAIR JORDAN: The difference
9 between the three-unit and four-unit cost of
10 doing the construction is simply adding the
11 fourth unit?Exhibit

12 MS. MOLDENHAUER: It's enhancing
13 the one level, adding the brick to the
14 exterior.

15 BZA CHAIR JORDAN: No, I
16 understand that if you had a three-unit your
17 costs are going to -- there's a certain cost
18 that's going to happen no matter what you do
19 there, correct? With three units with your
20 costs and your four-unit cost is -- that needs
21 rehab work. Without adding the fourth unit
22 that cost is going to be the same?

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1 MS. MOLDENHAUER: I'll let Mr. --
2 since I'm not -- I'm an attorney, I'll let Mr.
3 Pishvaeian answer that.

4 MR. PISHVAEIAN: Mr. Jordan,
5 you're correct. If it's three units, as I
6 gave you the profit and loss statement, the
7 three units, the costs is different than the
8 four units, because four units, we're going to
9 expand -- extend the third floor to build over
10 the portion that hasn't been -- so there's
11 about 739 square feet that I have there that
12 is going to be built between the second and
13 third floor. So you're absolutely correct.

14 BZA CHAIR JORDAN: And that's only
15 because you're doing the fourth unit?

16 MR. PISHVAEIAN: Correct.

17 BZA CHAIR JORDAN: Yes. Okay.
18 What is that -- I could do the numbers. What
19 is that difference in cost for the 739 square
20 feet?

21 MR. PISHVAEIAN: Roughly as the --
22 so if you really want me to get to the

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1 breakdown for you, I would. The 700 -- I'm
2 sorry, 774 square feet --

3 BZA CHAIR JORDAN: Seventy-four?
4 Okay.

5 MR. PISHVAEIAN: -- when you don't
6 have anything and you have to start fresh, you
7 -- for framing it and basically putting the
8 cinder block and the new roof and the extra
9 addition hardcore we designate \$50 per square
10 foot to just go out there for the siding, for
11 the cinder block. But once you have establish
12 conquering that space -- so then you come
13 inside. And once you're inside, then it goes
14 back to the \$160 square foot for the rest of
15 it.

16 So by adding the fourth unit you
17 have to do the \$774. That's \$50 square foot,
18 which adds up to \$38,000. And then because
19 you're doing four units it's four units at
20 4,032 square feet of \$160 per square foot.

21 BZA CHAIR JORDAN: Okay. I don't
22 know if I missed what that separate difference

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1 was for that 774 square feet, if it was out by
2 itself. What is that?

3 MR. PISHVAEIAN: No, I'll explain
4 it again. So if you look at the -- right now
5 if you're looking at the -- where is the --

6 MS. MOLDENHAUER: Oh, it's up top.
7 Right there.

8 MR. PISHVAEIAN: So if you're
9 looking at this, right now this is the third
10 floor. So third floor right now from here to
11 the end of the property, which is the
12 footprint, and on the side, there's nothing
13 here.

14 BZA CHAIR JORDAN: Right.

15 MR. PISHVAEIAN: So when you are
16 standing on the third floor in this bedroom,
17 there's nothing there. So in order to build
18 this, which is roughly about 450 square feet
19 -- so you have put cinder blocks on the both
20 sides and at the end and bring the framing up
21 and put the sidings on the side and siding at
22 the end and put a roof over this, because

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1 there's no roof. So for that hardcore
2 structure, the foundation we have \$50 per
3 square foot. So once you establish this
4 boundary and you come up and you put your roof
5 line and sidings and everything, then you come
6 inside.

7 So once you're inside, for the
8 whole entire building --

9 BZA CHAIR JORDAN: So is that --
10 right now we're at \$38,000? Before we came
11 inside we had \$38,000?

12 MR. PISHVAEIAN: Yes, sir.

13 BZA CHAIR JORDAN: Okay. I'm with
14 you.

15 MR. PISHVAEIAN: So the third
16 floor and second floor.

17 BZA CHAIR JORDAN: I got you. I'm
18 with you. Go ahead.

19 MR. PISHVAEIAN: So then you come
20 inside. And then from the basement all the
21 way to the third floor we're at \$160 square
22 foot.

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1 BZA CHAIR JORDAN: Okay. I don't
2 know that that's really what I'm looking for,
3 but -- okay. Just continue. I think I --

4 MR. PISHVAEIAN: I can answer any
5 more questions if you have.

6 BZA CHAIR JORDAN: No, go ahead.
7 Proceed.

8 MS. MOLDENHAUER: And, Mr.
9 Kilette, the baseline renovation, whether
10 it's for three or four, would require this --

11 BZA CHAIR JORDAN: Hundred and --

12 MS. MOLDENHAUER: -- renovations
13 for -- at this price that we just discussed in
14 regards to repairing and doing the floor
15 joists and fixing the staircase so that
16 they're code-compliant?

17 MR. KILLETTE: That's correct.

18 BZA CHAIR JORDAN: And you're
19 going to spend that money to be code-
20 compliant, period?

21 MS. MOLDENHAUER: Period. Three
22 units matter of right or four units.

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1 BZA CHAIR JORDAN: Yes.

2 MS. MOLDENHAUER: And just in
3 regards to describing and kind of looking at
4 the layout of both the width of the right-hand
5 stair and the fact that there are two stairs
6 on either side of this property, is that
7 common for historic 1910 homes?

8 MR. KILLETTE: No.

9 MS. MOLDENHAUER: Can you
10 elaborate?

11 MR. KILLETTE: Well, typically a
12 stair is done in a location in -- when you
13 travel to the next level, typically the stair
14 is on top of it. So typically the stair, you
15 try to keep all vertical circulation in the
16 same area. To come up one stair and across a
17 building to go to another stair is not common.

18 MS. MOLDENHAUER: And if you were
19 to do a development as a matter of right for
20 three units, would this kind of cross-over
21 staircase -- you know, does that create a
22 problem in regards to circulation?

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1 MR. KILLETTE: It creates a
2 circulation problem and it does not -- it's
3 not conducive for good unit flow.

4 MS. MOLDENHAUER: Thank you. I
5 have no other questions of Mr. Killette at
6 this time unless potentially there's rebuttal
7 testimony. But then we have one other witness
8 unless the Board has questions for Mr.
9 Killette.

10 BZA CHAIR JORDAN: Any questions
11 from the Board?

12 (No audible response.)

13 MR. PISHVAEIAN: Mr. Jordan, I
14 would like to just -- I feel like I didn't
15 close the end of it. The question is always
16 why does it cost you \$160 square foot? I saw
17 so-and-so finishing a property at \$125 square
18 foot. If that's a question for you, I can
19 answer that.

20 As a condominium we sell it, we
21 put warranty, we have licensed plumbers and
22 electricians and everything. And it is what

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1 it is and we have a history of coming out to
2 this number.

3 MS. MOLDENHAUER: Then --

4 BZA CHAIR JORDAN: If you would,
5 just one second. Mr. Hood?

6 ZC CHAIR HOOD: Mr. Klett, right?

7 MR. KILLETTE: Kilette.

8 ZC CHAIR HOOD: Kilette?

9 MR. KILLETTE: Yes.

10 ZC CHAIR HOOD: This crossover
11 diagram, this crossover staircase method, is
12 that just in this house only, or is it in the
13 neighborhood, or other homes?

14 MR. KILLETTE: I actually was the
15 architect on the house next door and it was
16 not like this. And I've done some other
17 houses in the neighborhood and this is the
18 only house where I've seen this crossover. So
19 I don't know if --

20 ZC CHAIR HOOD: Why do you think
21 that is in your expert opinion?

22 MR. KILLETTE: Well --

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1 ZC CHAIR HOOD: Well not
2 necessarily expert, but in your opinion?

3 MR. KILLETTE: Because the
4 crossover stair on the left side, it appears
5 that someone -- it appears that there was --
6 the standard way was removed and this was --
7 someone added this. So it looks like somebody
8 did this because the stairs --

9 ZC CHAIR HOOD: So obviously
10 somebody -- that was their preference --

11 MR. KILLETTE: Right.

12 ZC CHAIR HOOD: -- at some point
13 in time? Okay. Good. All right. Thank you.

14 BZA CHAIR JORDAN: Thank you, Mr.
15 Hood.

16 MS. MOLDENHAUER: Then we'll ask
17 Ms. Allison Campbell to come forward.

18 MS. CAMPBELL: How you doing?

19 BZA CHAIR JORDAN: How are you?

20 MS. CAMPBELL: I'm good.

21 BZA CHAIR JORDAN: And your name
22 again?

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1 MS. CAMPBELL: My name is Allison
2 Campbell. I reside at 3572 13th Street for
3 the last 28 years.

4 MS. MOLDENHAUER: And is that a
5 condo, an apartment, or a house?

6 MS. CAMPBELL: It's a house.

7 MS. MOLDENHAUER: And who do you
8 live there with?

9 MS. CAMPBELL: I live with my mom.

10 MS. MOLDENHAUER: And are you
11 familiar with the property that we're talking
12 about today, 3545 13th Street?

13 MS. CAMPBELL: Yes.

14 MS. MOLDENHAUER: And where is it,
15 just to give the Board -- kind of in
16 relationship to where you live where is it
17 located?

18 MS. CAMPBELL: It's like adjacent
19 to, across the street.

20 MS. MOLDENHAUER: And during 2011-
21 2012 can you tell kind of what you saw from
22 your house in regards to what potential

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1 activities were going on in that property?

2 MS. CAMPBELL: Well actually I am
3 a D.C. government worker. I'm a school bus
4 driver, so my hours is -- 4:00 in the morning
5 I get up because I have to be at work at 6:00.
6 And when I'm leaving out of the house at 5:00
7 in the morning, it's heavy traffic from that
8 particular house from Thursday to Sunday
9 morning, which goes into Monday morning. And
10 it's always young girls, older men. And it's
11 always Ethiopians. And I've been living
12 there, like I said, for --

13 BZA CHAIR JORDAN: I'm trying to
14 understand where we're going with the
15 testimony regarding the zoning and the issue
16 now. Do you have knowledge of what the
17 structure was inside the house?

18 MS. CAMPBELL: I have never been
19 in that house, but I knew before it was a
20 single -- a family lived in that house.

21 MS. MOLDENHAUER: It just simply
22 goes to a question of density. I know that

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1 some of the opposition has been concerned
2 about -- and use. And it goes to the question
3 of, you know, the prior use may not have
4 been --

5 BZA CHAIR JORDAN: But if it's
6 illegal use, I mean how do we -- you know? How
7 are we supposed to consider that if it's an
8 illegal use?

9 MS. MOLDENHAUER: It's just one of
10 the --

11 BZA CHAIR JORDAN: Assuming that
12 that's an illegal use, whatever it was.

13 MS. MOLDENHAUER: Obviously a non-
14 residential use would be an illegal use in an
15 R-4 Zone.

16 BZA CHAIR JORDAN: Right. Right.

17 MS. MOLDENHAUER: But it was just
18 a question of, you know, decreasing the
19 density, bringing the property back to
20 compliant residential use and that fact and
21 just providing additional testimony in regards
22 to what was seen on the property.

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1 BZA CHAIR JORDAN: But isn't for
2 the sake of our consideration the uses, the
3 use that we have, whatever that legal use was
4 established?

5 MS. MOLDENHAUER: Yes, but in
6 regards to concerns of the community in
7 regards to potential --

8 BZA CHAIR JORDAN: Traffic flow
9 or --

10 MS. MOLDENHAUER: -- reduced
11 traffic, reduced potential cars on the street,
12 things of that effect, it's just providing
13 some understanding to the Board in regards of
14 potentially an attempt to bring a property
15 that may have increased traffic down to what
16 would be maybe a reduced level of traffic.
17 That's if the --

18 BZA CHAIR JORDAN: Yes, I think
19 you said what you said and --

20 MS. MOLDENHAUER: If I may, I'll
21 ask one question that's focusing on the
22 community and the neighborhood.

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1 ZC CHAIR HOOD: Mr. Chairman, I'm
2 still -- maybe I'm the only one. I'm still
3 trying to catch up with the testimony. I'm
4 still trying to connect the dots. I'm
5 still --

6 BZA CHAIR JORDAN: On what?

7 ZC CHAIR HOOD: What Ms. Campbell
8 was speaking of, what was going on at 5:00.
9 Maybe I'm a slow learner.

10 (Laughter.)

11 ZC CHAIR HOOD: And what's before
12 us. I mean lot of stuff going at 5:00.

13 MS. MOLDENHAUER: I'll focus on
14 just the question of -- Ms. Campbell, are you
15 aware of what the applicant --

16 BZA CHAIR JORDAN: Let's just go
17 back to when you were 16 years old and your
18 father came and had a conversation with you.
19 No, but anyway.

20 MS. MOLDENHAUER: I'll ask, Ms.
21 Campbell, are you aware of what the applicant
22 is proposing on the property?

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1 MS. CAMPBELL: Yes.

2 MS. MOLDENHAUER: Okay. And you
3 understand that he's asking to put in four
4 units?

5 MS. CAMPBELL: Yes.

6 MS. MOLDENHAUER: And can you tell
7 the Board whether you're supportive of that
8 and why?

9 MS. CAMPBELL: I am supportive of
10 that because a lot of the units on our street,
11 they're all four units. They took abandoned
12 property and made it into four units. So I
13 would like to see my property go up, just like
14 with anybody else property go up in the city.
15 It is our understanding -- it is what it is.
16 You want four units, it's going to condense
17 the parking. Because up there right now it's
18 terrible parking. If he's providing parking
19 for his residents, that's great. Me, I have
20 to park in the street. So I don't see no
21 problem with it.

22 MS. MOLDENHAUER: Thank you very

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1 much. And that concludes our --

2 BZA CHAIR JORDAN: Would you --

3 MS. MOLDENHAUER: Sure.

4 BZA CHAIR JORDAN: Any questions
5 of this witness?

6 (No audible response.)

7 BZA CHAIR JORDAN: Good. Okay.
8 I'm sorry. Yes. Thank you. Thank you for
9 coming, especially if you had to get up at
10 4:30 this morning.

11 (Laughter.)

12 MS. MOLDENHAUER: It's recess for
13 school, but --

14 BZA CHAIR JORDAN: Oh, okay.

15 MS. CAMPBELL: So I'm cool.

16 MS. MOLDENHAUER: We'd like to
17 potentially -- obviously we know the may have
18 questions, there may be some additional
19 testimony. We'd like to reserve our
20 conclusion to afterwards as rebuttal and
21 potentially any rebuttal testimony from
22 witnesses.

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1 BZA CHAIR JORDAN: Board, any
2 questions of the applicant?

3 (No audible response.)

4 BZA CHAIR JORDAN: Then let's turn
5 now to the Office of Planning and --

6 BZA CHAIR JORDAN: Mr. Chairman,
7 I'm Karen Thomas with the Office of Planning.

8 I'll essentially stand on the
9 record of our report, but I'd just like to say
10 that, to reiterate, yes, we don't believe any
11 practical difficulty has been established in
12 this case and --

13 BZA CHAIR JORDAN: You don't think
14 the financials add in to make a practical
15 difficulty? And can you explain to us why?

16 MS. THOMAS: Okay. I'll try my
17 best to focus on the financials. First to
18 begin, I -- generally speaking, when it --
19 it's a difference between a developer and a
20 homeowner in conversion. A developer would
21 come in and gut that house and create a shell
22 structure. So I don't buy the fact that there

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1 is a stair to move and a stair to move here
2 and a piece here and a piece there. That's
3 typically not how it's done.

4 A homeowner would buy a row house
5 and typically have to renovate. And there's
6 a substantial cost to that. The cost to the
7 developer is different than a cost to a
8 homeowner. When they're go in, they gut that
9 house.

10 BZA CHAIR JORDAN: You're saying
11 there's a different between someone whose
12 intent is to keep it as is and do
13 rehabilitation work versus someone who wants
14 to change the complete contents. So you're
15 say that cost -- the house can be renovated
16 with a more reasonable cost within this use
17 within the Zoning Regulations. Is that what
18 you're saying?

19 MS. THOMAS: No it's expensive.
20 It's expensive, you know, one way or the
21 other, but if you're bringing the argument you
22 have to move the stairs and move the stairs

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1 here and move it there, or the stairs is too
2 narrow or too small or -- that's going to be
3 gutted. That's not a factor. That's gutted
4 in one day and you're starting from scratch.
5 And you're building a contemporary home.
6 They're contemporary standards.

7 BZA CHAIR JORDAN: So your
8 challenge is -- your question to the
9 allegation of practical difficulty based upon
10 the economic factors is that the way it's
11 being done increases the cost and there's
12 other ways that can be done that's cheaper
13 that would be within the Zoning Regulations?
14 The house could be rehabbed and stay within
15 its -- the Zoning Regulations for use?

16 MS. THOMAS: The house could be
17 rehabbed as a flat, as a -- or a single-family
18 unit or what the lot permits. Stepping beyond
19 where the lot permits, whether it can support
20 three units, four units or five units based on
21 the lot size, then it also tips it out of what
22 that zone district permits, and we're

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1 discussing something else.

2 BZA CHAIR JORDAN: Well, what you
3 are leading to or discussing is the general
4 policy regarding what's in the R-4?

5 MS. THOMAS: Oh, exactly.

6 BZA CHAIR JORDAN: What you talk
7 about in your submission.

8 MS. THOMAS: Exactly.

9 BZA CHAIR JORDAN: Okay. Does the
10 Board have any other questions from --

11 ZC CHAIR HOOD: Ms. Thomas, this
12 probably goes in line with what you -- in your
13 report you also mention that it's detrimental
14 to the character. Can you just expound on
15 that a little more, other than what you just
16 said?

17 MS. THOMAS: Yes, let me look at
18 -- let me tell you how we look at it.

19 ZC CHAIR HOOD: Okay.

20 MS. THOMAS: If we take the
21 regulations, the general provisions of the R-
22 4, when this was done in '58 we see that what

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1 it says, "The R-4 District is designed to
2 include those areas not develop primarily with
3 row dwelling but within which there have been
4 a substantial number of conversions into --
5 for two or more families." That was in '58.
6 You already had the conversions being going in
7 into '58.

8 So then to recognize that, we also
9 put in, "It shall not be an apartment house as
10 contemplated under the general residence
11 districts since the conversion shall be
12 controlled by a minimum lot area for family
13 requirements." So that, recognizing that
14 there were conversions back in '58, then it
15 may continue, we're going to only allow
16 conversions or permit conversions where we
17 have those large structures within the R-4
18 District that could no -- as I said in the
19 report, that can no longer -- where you don't
20 have families being able to live in the
21 largest structures in the R-4, but not allow
22 for speculator conversions of typical-sized

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1 row houses. So you have that. So you
2 recognize that there are lots that are going
3 to be bigger on bigger -- with larger
4 structures. So we would allow for that.

5 What we have happening here now is
6 that we're taking the typical-sized row houses
7 and saying, well, we want a little more, we
8 want a little more. So it will become out of
9 character with what we tried to put in place
10 since 1958 with that minimum lot area
11 requirement. So it is tipping it out of the
12 R-4.

13 ZC CHAIR HOOD: Okay. All right.
14 Thank you.

15 BZA CHAIR JORDAN: Any other
16 questions by the Board of the Office of
17 Planning?

18 (No audible response.)

19 BZA CHAIR JORDAN: Does the
20 applicant have any questions of the Office of
21 Planning?

22 MS. MOLDENHAUER: Yes, I do. Ms.

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1 Thomas, your first comment was kind of I think
2 making a distinction between whether someone
3 was developing a property as an owner versus
4 maybe developing it as a builder. Is that
5 what you first said?

6 MS. THOMAS: Yes.

7 MS. MOLDENHAUER: Isn't it the
8 regulations that the Board has to look at go
9 to the land, not to the owner of the property
10 and you're actually -- your argument is saying
11 that, well, one application applies based on
12 who the property owner is and not the land
13 aspect or the unique aspects of the property?

14 MS. THOMAS: I did. I feel that I
15 said that, whereas a homeowner would -- I
16 don't buy the argument that there's a
17 practical difficulty based on moving a stair
18 here or there, or --

19 BZA CHAIR JORDAN: Counsel, I
20 understand where you're going, because that
21 was my first highlight, and that's why I was
22 drilling down in my questions, but I think

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1 what she was saying is that there are other
2 ways to rehab this property or renovate this
3 property that makes it Zoning or Building
4 Code-compliant that does not require certain
5 things that your client proposes to do in
6 costs such as move the stairwell when someone
7 else might come in and not move the stairwell
8 but keep the stairwell where it is and rehab
9 or reconfigure the place.

10 Is that what you were saying?

11 MS. THOMAS: That's correct. I
12 mean, you know, so it applies both to -- the
13 regulations both to who -- regardless of who
14 is doing it.

15 MS. MOLDENHAUER: So do you still
16 argue that even after hearing Mr. Killette
17 indicate that to do a rehab of the property in
18 the extent that the one stairwell on the left
19 is not code-compliant, that that would have to
20 be renovated no matter what?

21 MS. THOMAS: No matter what it has
22 to be renovated, yes. I agree.

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1 MS. MOLDENHAUER: And that cost
2 would be similar whether it would be required
3 -- no matter whether it was renovated or
4 whether it was done by a builder?

5 MS. THOMAS: That's correct. And
6 what I'm saying is in this case you're going
7 to be starting with an empty shell. You're
8 going to be starting -- what you're doing is
9 starting in an empty shell. So I don't see
10 any practical difficulty in moving the stair
11 here or there or widening it. You're going to
12 have a blank space.

13 MS. MOLDENHAUER: But I guess the
14 question I have then is the Office of Planning
15 is making those comments, but they're not
16 providing any I guess counter-financial
17 information to the Board saying that what
18 you're indicating would actually be
19 financially viable. I mean has Office of
20 Planning done their own math to say that --

21 MS. THOMAS: No, I think you
22 should do that. I think you should -- I think

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1 the applicant should provide that. It's not
2 on the Office of Planning. You should show me
3 how working with an empty space as opposed to
4 working with that is different. So I think it
5 falls on the applicant to do that, not the
6 Office of Planning.

7 MS. MOLDENHAUER: Do you agree
8 that the practical difficulty is based on the
9 proportionate degree of the relief that's
10 sought?

11 BZA CHAIR JORDAN: Say that again?

12 MS. THOMAS: Say that again?

13 MS. MOLDENHAUER: The amount of
14 practical difficulty that must be shown by the
15 applicant has an effect or is dependent upon
16 the proportion of degree of relief that's
17 sought.

18 MS. THOMAS: I don't think --

19 BZA CHAIR JORDAN: Wait, wait,
20 wait, wait, wait. That's kind of ambiguous to
21 me. Would you rephrase the question? If you
22 need to break it down into two different

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1 questions, please do it.

2 MS. MOLDENHAUER: Gilmartin, a
3 case in the court of appeals, indicates that
4 the degree of relief, if the degree of relief
5 is minor, then the degree that the applicant
6 has to prove in regards to the degree of
7 practical difficulty does not need to be as
8 substantial.

9 MS. THOMAS: We never approached,
10 the Office of Planning never approached the
11 degree of practical difficulty on a sliding
12 scale. To me that's a --

13 MS. MOLDENHAUER: And so then you
14 haven't evaluated the fact that the Board has
15 approved multiple 403 cases that have
16 requested a much higher degree of deviation?
17 This case is only asking for 18 percent
18 deviation.

19 MS. THOMAS: On a case-by-case
20 basis there are different situations for every
21 property where --

22 BZA CHAIR JORDAN: And I think

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1 that's consistent what Gilmartin says about
2 the overall -- each case standing on its own
3 and that all these factors are blended in for
4 the Board on a case-by-case basis to
5 determine. The use of the other cases; and we
6 hear this an awful lot, really doesn't stand
7 on the bottom. That creates precedents for
8 us, but each case stands on its own bottom.
9 Is that correct?

10 MS. MOLDENHAUER: Absolutely.
11 That is just -- you know, as you were
12 indicating before with maybe providing more
13 guidance to applicants from the Zoning
14 Commission. We do have to look at precedent
15 in regards to how that affects and provides an
16 understanding for any property owner or any
17 individual buying property in the District.

18 BZA CHAIR JORDAN: But, you know,
19 as I've been trying to set that type of track
20 in our history in our cases both from this
21 Board and from the court of appeals, and you
22 can go all -- well, more so from this Board.

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1 You can go all over the place. You can grab
2 a case to stand for everything you want. And
3 that's something again that I'm sure that the
4 Zoning Commission's going to look at and this
5 zoning rewrite as we get more permanency in
6 these rules.

7 ZC CHAIR HOOD: We have been
8 working on the Zoning Regs for over six to
9 seven years, and we're looking at everything.

10 MS. MOLDENHAUER: So I just want
11 to ask, you know, I understand that Office of
12 Planning expresses a policy reason in regards
13 to recommending -- having some concerns, but
14 recommending approval on 403 relief. But
15 considering that, this is just a little chart
16 here of other cases that have been approved
17 and the degrees of deviation that have been
18 approved, anywhere from 33 to 58 percent
19 deviation. Does the Office of Planning --
20 would that affect or have Office of Planning
21 reevaluate their overall policy concern about
22 403 relief?

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1 MS. THOMAS: Not at all.

2 MS. MOLDENHAUER: Okay. Thank
3 you. And just you had a comment about the
4 time frame of 1958 and how this language was
5 put into place for the degree of number of
6 units in 1958. In 1958 was, you know, DC USA
7 Mall located in areas that were so close to
8 the R-4 Zones and with the development that we
9 see now that was not in place back when these
10 regulations were put into place, in other
11 words, the 900 square feet per unit?

12 MS. THOMAS: That's correct.

13 MS. MOLDENHAUER: No other
14 questions at this time.

15 BZA CHAIR JORDAN: Board, any
16 other questions?

17 (No audible response.)

18 BZA CHAIR JORDAN: Department of
19 Transportation? Anyone here from Department
20 of Transportation?

21 (No audible response.)

22 BZA CHAIR JORDAN: And their

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1 recommendation --

2 MS. MOLDENHAUER: I believe in
3 Exhibit 25.

4 BZA CHAIR JORDAN: And their
5 recommendation was no objection. Do we have
6 anyone from ANC 1A? ANC 1A?

7 (No audible response.)

8 BZA CHAIR JORDAN: Then is there
9 anyone wishing to testify in support of this
10 application?

11 (No audible response.)

12 BZA CHAIR JORDAN: Anyone wishing
13 to testify in opposition? And I'm going start
14 initially with Mr. Klugman. You have five
15 minutes, please.

16 MR. KLUGMAN: Good morning,
17 everyone. My time is more limited now. I'm
18 a witness in this case and an opponent, so I
19 will hit the major points and hopefully we can
20 all follow along.

21 There have been some diversionary
22 tactics taken in this case, both written and

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1 orally, so I will try and stick to the topic
2 and use the facts to show that the three
3 prongs of the test have not been fully
4 satisfied.

5 Going to uniqueness of property,
6 the applicant claims a confluence of factors
7 to show that it is unique, but an inspection
8 of each actual factor shows that none of them
9 hold any actual weight.

10 To start with number one, the
11 claim of an inefficient layout is really
12 immaterial as we heard from the Office of
13 Planning. Everything is gutted nowadays.
14 Every contractor worth his weight removes all
15 interior walls. There is no need to keep
16 those old plaster walls. They have old wiring
17 and old plumbing. It's inefficient, it's
18 awkward and it costs more money to keep those
19 walls. Contractors are lucky if they get to
20 keep all the joists. So the layout of the
21 building, of the interior building is not a
22 factor.

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1 Secondly, we talk about the second
2 floor stairwell not being compliant with the
3 Zoning Code. Well, perhaps it was in 1910
4 built with the Zoning Code, but is no longer,
5 as we've also already heard. Whether it's
6 three units or four units, that stairwell is
7 gone and the cost of replacing it is a cost
8 that he must bear in any case. So whether it
9 is a three-unit and that stairwell area is
10 used to connect two floors and one apartment
11 or whether those two floors are split and the
12 stairwell is moved, this is a cost that the
13 applicant will be bearing.

14 The applicant claims that the
15 deteriorated condition of the property makes
16 it unique. This is an argument we have heard
17 more than once. But if you look at it, this
18 house is 103 years old and it is in the same
19 condition as every house that stands 103 years
20 old in Columbia Heights. All old homes need
21 renovation. They're all dilapidated or
22 deteriorated in some fashion. But are they

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1 all unique? I don't think so.

2 And if we look to BZA Case No. 13
3 -- 1-- 18312, that was a case on Irving
4 Street. There the Board held a higher
5 threshold for deterioration as an exception to
6 the rule. And there the applicant showed
7 definitively severe structural degradation
8 that was unknown before the purchase. There
9 the back of the house was actually collapsing,
10 a much more severe case than now. Here we
11 talk about mold or missing brick. Most
12 normally in cases like this with a shorter
13 basement, the basement is going to be broken
14 up and will be dug out anyway because for a
15 nice modern luxurious basement you need a
16 deeper and higher ceiling.

17 Now as we also have heard, the
18 applicant refers to the property's formal
19 illegal usage. We've already talked about
20 this. It is not an exceptional situation.
21 Whether alleged uses of the house were
22 illegal, at the time of sale they stopped.

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1 And this applicant does not receive any right
2 to continue these illegal activities. It was
3 obviously not zoned for that. This house can
4 only be a residential property. It's not
5 zoned for commercial or any other legal
6 activity.

7 The practical difficulty is with
8 following the zoning law. The applicant
9 argues that a single-family home in the memo
10 would be financially impossible. Perhaps this
11 is true. We are not asking for a single-
12 family home and we are not even expecting two
13 units. We realize that the legal limit is
14 three. And we realize that the applicant is
15 a developer and wants to maximize his profits.
16 And all we're asking for is three units.

17 Now as we said, the financial
18 hardship is the crux of the matter, so let's
19 examine the numbers before we actually assume
20 them all to be correct. The applicant
21 provides a profit and loss statement, but it's
22 created solely by him and there is no third-

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1 party corroboration. What you've heard from
2 is his employees. The figures were written by
3 him. His witnesses today, other than the
4 neighbor, are employees with a financial stake
5 in the case. So unsupported figures must be
6 examined thoroughly.

7 The applicant's counsel often
8 explains that in these types of variance cases
9 self-created hardship is not applicable, but
10 is it not a simple and basic belief in our
11 society, in our law that one is held
12 accountable for his actions?

13 BZA CHAIR JORDAN: I'm going to
14 need you to begin to wrap up.

15 MR. KLUGMAN: Very well.

16 BZA CHAIR JORDAN: But let me ask
17 you before the wrap-up time, because I have
18 not heard it and everything that you said so
19 far are those things which the Board considers
20 in its deliberation regarding whether or not
21 to grant this relief. I thought you were
22 going to use this time to talk about how you

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1 would -- your particular issue, how it may
2 affect your property. But I guess you're just
3 underlining what I said initially. Is there
4 anything else that you think this Board ought
5 to consider --

6 MR. KLUGMAN: There are several
7 things that I -- two salient points that I
8 will -- if I can?

9 BZA CHAIR JORDAN: Yes, go ahead.
10 We'll give you another --

11 MR. KLUGMAN: The one is the sales
12 prices. So and I won't go through all the
13 sales prices again, but I will only state
14 this: That the record states, his record
15 states that if he has the top two floors as
16 separate, it's 500,000 and 550,000.

17 BZA CHAIR JORDAN: Yes.

18 MR. KLUGMAN: Those are the
19 prices. And if it was combined to one unit,
20 now he says it would be \$650,000. However, if
21 -- and he has the right, if he would build the
22 third floor all the way out, it would be

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1 nearly 2,000 square feet. That is his right.
2 And a duplex, 2,000-square foot condominium
3 with parking on 13th Street is worth
4 considerably more than \$650,000.

5 Now the ANC we've all heard voted
6 against this not once, but twice. It was
7 heard twice and they voted twice against.
8 There are 78 neighbors who have voted against
9 this. Both neighbors to the left and to the
10 right have voted against this. And contrary
11 to what was put in the written memo, the
12 chairperson did not support this. Chairman
13 Boisvert was the first chairperson and he
14 abstained. In the second vote it was Chairman
15 Boese who was chairperson. You were there and
16 you saw that Chairperson Boisvert resigned and
17 Chairperson Boese voted against the project.

18 Parking is a wonderful thing and
19 we all agree that it's great, but let's
20 remember in one word that it is also a
21 financial benefit to him. Prior parking
22 spaces on 13th Street in Columbia Heights have

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1 a great financial value to them and they will
2 be sold for a profit.

3 The density issue, we've heard
4 about density in the memo, that it is
5 misguided to look to the BZA for protection of
6 density in our neighborhood. I think that is
7 incorrect. I think it is the BZA's
8 responsibility and authority to ensure that
9 only those exceptional cases get a variance
10 from the zoning and otherwise the zoning laws,
11 until they're changed, that the R-4 Zone
12 maintain its low-density character to promote
13 families.

14 BZA CHAIR JORDAN: And we need you
15 to wrap up because we're now going --

16 MR. KLUGMAN: Very well. This is
17 not a one-unit or a two-unit. It's a three-
18 unit. And that's what we're hoping for. And
19 the question is three or four. That's what
20 this whole issue is about, is three or four.
21 You know, I may say what is the big deal? Why
22 does it matter whether it's three or four?

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1 BZA CHAIR JORDAN: Got you. We
2 appreciate your comment.

3 And now I'm going to ask the
4 Board, do you have any questions of Mr.
5 Klugman? Anyone? Other than me jumping in
6 and cutting him off.

7 (No audible response.)

8 BZA CHAIR JORDAN: Applicant?

9 MS. MOLDENHAUER: Yes. You
10 indicate the question here is about three or
11 four, one additional unit. Is it not true
12 that you actually came before this Board in
13 2010 and asked for the exact same relief for
14 one additional unit along with relief for
15 parking and lot occupancy and court relief?

16 MR. KLUGMAN: In 2010 I came --

17 MS. MOLDENHAUER: Is it yes? Did
18 you come before the Board, yes or no?

19 MR. KLUGMAN: May I answer fully
20 or --

21 MS. MOLDENHAUER: I'm just trying
22 to make --

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1 MR. KLUGMAN: I did swear to tell
2 the whole truth and not just the partial
3 truth.

4 ZC CHAIR HOOD: I would like to
5 hear his whole answer.

6 BZA CHAIR JORDAN: Yes.

7 MR. KLUGMAN: I did come before
8 the Board in 2010, and in 2010 Columbia
9 Heights was quite different. For example, the
10 parking issue which has come up. In 2010
11 there was ample parking. In 2010 there wasn't
12 as much development. Things have changed in
13 Columbia Heights. My house sat on the market
14 for six months because there were no
15 developers. Now houses stay on the market for
16 48 hours. Things have changed in Columbia
17 Heights. And that's the point we're making
18 here, that we don't need developers in
19 Columbia Heights.

20 BZA CHAIR JORDAN: All right. I'm
21 missing in that --

22 MR. KLUGMAN: Developers need

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1 Columbia Heights.

2 BZA CHAIR JORDAN: The answer was
3 yes you did get relief or no?

4 MR. KLUGMAN: I did get relief
5 three years ago when times were different.

6 BZA CHAIR JORDAN: Okay.

7 ZC CHAIR HOOD: You got relief for
8 what again? What did you get relief for?

9 MR. KLUGMAN: I got relief for the
10 parking, and I got relief for an additional
11 unit, and I got relief for 2003, the height
12 variance.

13 BZA CHAIR JORDAN: All right. Any
14 other questions? Continue, please.

15 MS. MOLDENHAUER: Thank you. And
16 when you came before the Board your rationale
17 for that, was it an economic rationale that
18 you presented?

19 MR. KLUGMAN: Yes.

20 MS. MOLDENHAUER: And you believe
21 that it's the Board's authority to be able to
22 make cases and evaluate cases based on those

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1 types of information and documentation?

2 MR. KLUGMAN: That is their job.

3 MS. MOLDENHAUER: And in that case
4 you didn't provide any third-party financials.
5 You provided financials that were based on
6 what you had obtained yourself?

7 MR. KLUGMAN: That isn't correct.

8 MS. MOLDENHAUER: You did not hire
9 the person yourself?

10 MR. KLUGMAN: No, I did not. The
11 contractor who provided the information was
12 not hired by me.

13 BZA CHAIR JORDAN: Let me ask you,
14 do you think that's something -- a line you
15 need to go down, that it's really going to be
16 probative of your issue?

17 MS. MOLDENHAUER: I think the
18 point has already been made and obtained in
19 that regard.

20 You presented these general
21 concerns twice before the ANC and then Mr.
22 Thomas Boisvert, the single member district of

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1 this property, voted to support the
2 application, is that correct?

3 MR. KLUGMAN: Yes.

4 MS. MOLDENHAUER: You indicate
5 that you are just opposed in general to any
6 developer whether its JBG or, you know, Eden
7 coming and seeking relief because they should
8 be more aware and should, you know, have the
9 standard higher than potentially what the
10 standard was for you when you purchased your
11 property?

12 MR. KLUGMAN: Could you repeat?

13 MS. MOLDENHAUER: I'm just asking
14 if you if your concern in general is all --
15 that all developers in Columbia Heights --

16 MR. KLUGMAN: Yes, I am concerned
17 about the overdevelopment of Columbia Heights.

18 MS. MOLDENHAUER: And you claim
19 that the third floor could potentially be sold
20 if it was a three-unit project for \$900,000
21 for a condominium unit. Do you have any comps
22 to back up a \$900,000 price?

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1 MR. KLUGMAN: Yes, I believe I
2 provided that in the memo that's to be used.

3 MS. MOLDENHAUER: So we'll provide
4 cross for that. No other questions.

5 BZA CHAIR JORDAN: Any additional
6 questions from the Board of Mr. Klugman?

7 (No audible response.)

8 BZA CHAIR JORDAN: We appreciate
9 you coming down, Mr. Klugman, and certainly
10 your submission and the issues that you raise
11 for us.

12 Is there any -- yes, there's
13 another gentleman. Any other person? I know
14 I have one other person who wants to come
15 testify in opposition. Is there anyone else?

16 (No audible response.)

17 BZA CHAIR JORDAN: Good. Would
18 you come down, please? Did you get sworn in
19 and prepare witness cards?

20 MR. McNEILL: Yes.

21 BZA CHAIR JORDAN: Okay. And the
22 court reporter has your --

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1 MR. McNEILL: She has them.

2 BZA CHAIR JORDAN: Thank you.

3 Then I just need you to identify yourself for
4 the record.

5 MR. McNEILL: Good afternoon.

6 BZA CHAIR JORDAN: Make sure your
7 microphone is turned on, please.

8 MR. McNEILL: Good afternoon,
9 Commissioner and Members of the Board. My
10 name is Byron McNeill. I live at 3543 13th
11 Street, N.W.

12 As a owner I contest this
13 applicant's request to convert this single-
14 family residence at 3545 13th Street into a
15 four-unit condo. Therefore, I'm asking the
16 BZA to deny the applicant's variance.

17 It is often noted at the ANC
18 hearings that increased density in the
19 neighborhood has led to an increase in
20 vehicles and a lack of parking spaces for the
21 residents. The situation will only become
22 worse with the completion of a 25-unit condo

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1 at 3511 13th Street goes on the market later
2 this month.

3 The applicant seeks a variance
4 because of hardship. To me there is no
5 hardship. This is a long block. In fact,
6 it's like three streets, okay, goes into this
7 block. And every time a single family home
8 goes on sale, okay, a developer comes in and
9 wants to convert it to a condo. And I feel
10 that if this variance is approved, it just
11 sends the wrong precedence. So I'm asking for
12 you all to deny this variance.

13 BZA CHAIR JORDAN: Thank you.

14 Does the Board have any questions?

15 (No audible response.)

16 BZA CHAIR JORDAN: Then the
17 applicant, any questions?

18 MS. MOLDENHAUER: No.

19 MR. PISHVAEIAN: I do. I'm sorry.
20 I do have a question from the witness.

21 BZA CHAIR JORDAN: I'm going to
22 ask that you do that through your counsel, so

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1 why don't you have a second to talk to her.

2 MR. PISHVAEIAN: Okay. I'm sorry.

3 ZC CHAIR HOOD: While he's doing
4 that I do have a question for Mr. McNeill.

5 You heard Mr. Klugman in his
6 conversation with us. Would you be
7 objectionable to a three-unit as -- the whole
8 issue he said was three to four.

9 MR. McNEILL: I mean --

10 ZC CHAIR HOOD: Is that the same
11 issue that you have, three to four?

12 MR. McNEILL: Yes.

13 ZC CHAIR HOOD: Okay. So that
14 precedence that you're talking about that
15 started on 13th Street, obviously it started
16 awhile back because a lot of them now, you're
17 right, when people buy they turn into condos
18 or additional units. Is that what you're
19 seeing taking place on 13th Street?

20 MR. McNEILL: This is what I see
21 and I'm just afraid that it's going to be
22 overwhelming.

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1 ZC CHAIR HOOD: Okay. And you
2 stay in a single-family home on 13th Street,
3 I believe, right?

4 MR. McNEILL: Right, I live right
5 next door to this gentleman.

6 ZC CHAIR HOOD: Okay. All right.
7 Thank you, Mr. Chair.

8 BZA CHAIR JORDAN: Yes?

9 MS. MOLDENHAUER: I think we're in
10 good afternoon time frame, but did Mr.
11 Pishvaeian go and meet with you and speak with
12 you?

13 MR. McNEILL: I met him at a
14 neighborhood cookout, okay, and we talked
15 there.

16 MS. MOLDENHAUER: And at that time
17 did you express some concern about traffic and
18 parking?

19 MR. McNEILL: Yes, I did.

20 MS. MOLDENHAUER: And he explained
21 to you that he was going to be providing three
22 spaces when only was required?

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1 MR. McNEILL: There are already
2 basically two spaces there now. Okay? I'm
3 concerned about the influx of traffic, the
4 visitors that will be coming to this new unit,
5 okay, taking up parking spots, and etcetera.
6 Okay? And on Mondays we have street cleaning,
7 okay, so you can't park on one side on Mondays
8 and it's just overwhelming trying to find a
9 parking spot. And if you could -- I can go
10 back, you know, to the days of 13th Street,
11 there was no parking on 13th Street. Okay?
12 It was overwhelming then and we had to wait
13 until the subway come in, okay, you know, to
14 get relief. And now that the subway is there,
15 okay, we're being overwhelmed again. And I
16 like to pro-act versus react and put it -- you
17 know?

18 MS. MOLDENHAUER: I know the Board
19 may have a question for me here, but you
20 talked about the traffic and the visitors, and
21 that was one of your concerns. Did you not
22 have a concern potentially with the visitors

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1 and the amount of traffic that may have been
2 frequenting this property about a year ago?

3 MR. McNEILL: Okay.

4 MS. MOLDENHAUER: Did you call the
5 police potentially?

6 MR. McNEILL: Okay. I called my
7 council member --

8 BZA CHAIR JORDAN: I'm not going
9 through -- we've already had this whole
10 dialogue and I'm not accepting it as a
11 question, nor do I need you to respond.

12 MR. McNEILL: All right.

13 BZA CHAIR JORDAN: Do you have
14 another question?

15 MS. MOLDENHAUER: I withdraw. No
16 further questions.

17 BZA CHAIR JORDAN: Okay. Board,
18 any other questions of this witness?

19 (No audible response.)

20 BZA CHAIR JORDAN: We thank you
21 for --

22 MR. McNEILL: Thank you.

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1 BZA CHAIR JORDAN: -- for coming
2 out.

3 Any other person wishing to
4 testify in opposition? In opposition?

5 MS. PATTERSON: Good morning,
6 Board Members, Chairman. My name is Annette
7 Paterson and I live on 13th Street, 3572, just
8 across Mr. Mo building. And it was for the
9 past two years it was horrible with in and
10 out --

11 BZA CHAIR JORDAN: Are you
12 testifying in support or opposition?

13 MS. PATTERSON: As supporting.

14 BZA CHAIR JORDAN: I've already
15 called support. I've called people to testify
16 in support. I did that before I had Mr.
17 Klugman testify. But I'll let you go. Go
18 ahead. You've got a minute to talk to us.
19 We've already called for support.

20 MS. PATTERSON: Okay. Well, my
21 support is the three to the four-unit is not
22 a problem for me because if you really come in

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1 13th Street, it's a whole lot of condos and
2 everything coming up. So why the debate with
3 Mr. Mohammad? Is a problem with the four
4 building, how he's stating it or how he want
5 to build it? But I'm not against Mr. Mo or
6 nobody for what they're doing because whatever
7 they build or put on 13th Street, it will be
8 a little benefit for me. So I have no problem
9 with it. I have no problem.

10 And I went into the house one time
11 and you wouldn't like to see it. I never tell
12 Mr. Mohammad how it was, but you wouldn't like
13 to see it. And when I call the police, a lot
14 of neighbors start calling police and saying
15 what's going on in there in the night. That's
16 all I have to say.

17 BZA CHAIR JORDAN: All right.
18 Thank you. Any questions of this witness by
19 the Board?

20 ZC CHAIR HOOD: Ms. Patterson, are
21 you familiar with -- and I appreciate your
22 testimony, but are you familiar -- I know

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1 you're in support -- are you familiar with the
2 Zoning Plan? When we talk about regulations
3 and zoning, we talk about the plan --

4 MS. PATTERSON: Some of the --
5 Yes.

6 ZC CHAIR HOOD: -- and the
7 character.

8 MS. PATTERSON: Some of the --

9 ZC CHAIR HOOD: Okay. Even though
10 I know some things have changed up on 13th
11 Street, would you say that the Zoning Plan is
12 deteriorating or being deteriorated by some of
13 the actions?

14 MS. PATTERSON: I give it a 75
15 percent.

16 ZC CHAIR HOOD: so 75 percent
17 you're seeing that the Zoning Plan is being
18 deteriorated?

19 MS. PATTERSON: Yes.

20 ZC CHAIR HOOD: Okay. All right.
21 Thank you.

22 MS. PATTERSON: Yes.

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1 BZA CHAIR JORDAN: Okay. Any
2 other questions? The applicant, questions of
3 this witness?

4 MS. MOLDENHAUER: (No audible
5 response.)

6 BZA CHAIR JORDAN: Then let's turn
7 back to the applicant for some rebuttal.

8 MS. MOLDENHAUER: Thank you. I'd
9 like to just turn and ask Mr. Pishvaeian to
10 address some of the comments made by Office of
11 Planning about the cost associated with
12 working with a shell and gutting the property
13 or just the overall cost of having to renovate
14 this property. There was a matter of right to
15 four units.

16 MR. PISHVAEIAN: If I understood
17 it correctly, the Office of Planning was
18 objecting to a developer to purchase this
19 property and gut it out and do it --

20 BZA CHAIR JORDAN: Take the
21 developer versus resident out of the equation.
22 The question is basically is it since the

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1 property -- removing a stairwell is a matter
2 of choice and what you do internally is a
3 matter of choice and that there might be
4 another way of doing it within the Zoning
5 Regulations which would be cheaper.

6 I think that's the essence of what
7 your statement is, is that right?

8 MS. THOMAS: Yes, let's take the
9 developer out of it. I'm just saying that you
10 need to show -- I'm not buying the argument of
11 you moving the stairs because you're working
12 with an empty space and it's going to be
13 brought to contemporary standards. And that
14 can't happen with the structure as it is --
15 inside as it is. And just, you know, moving
16 the stairs and polishing it up, that's not
17 what you're doing.

18 MR. PISHVAEIAN: Okay. I
19 understand. I have my portfolio with me and
20 I can show you different properties that went
21 into the property and we did not gut it out.
22 We opened up the walls. We changed the

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1 electricity. We changed the plumbing. And we
2 kept the drywall and we didn't take the joists
3 off. And as long as you have new plumbings
4 and you have new electricity and joists are
5 secure, you can get FHA approval and you can
6 go to market in that case.

7 Because of the stairs not being by
8 code and you have to get C of O, you have to
9 get D.C. government permit, you have to get a
10 permit, you have to get inspectors. They come
11 and inspect it. So you have to get an
12 inspection. You have to bring it to code.

13 In order to bring it to code, then
14 you don't have supports for the joists that
15 they're already there on the second floor. So
16 you have to tear down the stairs, extend the
17 joists. You can't extend the joists to
18 support the stairs. So you have to replace
19 these joists.

20 Then the first portion of joists
21 that you replace does not match the second
22 portion of joists on the same floor because

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1 they're up and down. So your ceiling drywall
2 does not become level. It's not a clean job.
3 So you can change half of the house and not
4 have to change the other half of the house.
5 So the other half of the house would have 100-
6 year-old joists. This part of the house would
7 have a brand new joist.

8 And once you get a second floor,
9 because that stairs is not again by the code
10 and you have to move it to the right side, you
11 have to get away with all that kitchen and the
12 plumbing for the stack going to the basement.
13 All of that has to be changed. Your kitchen
14 can't be there, so your plumbing has to move
15 to the left side.

16 So you can do variation of
17 different things. This property was in the
18 market for \$900,000. Nobody touched it. It
19 was in the market for \$750,000 as is because
20 they knew the condition of the basement, the
21 plumbing, the electricity and everything that
22 it's not passing the inspection code. And

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1 when I purchased this property, it was in the
2 market for \$750,000 and I paid \$613,000,
3 assuming all of these things. Now --

4 BZA CHAIR JORDAN: What did it
5 appraise at when you bought it?

6 MR. PISHVAEIAN: I have to go back
7 to -- the bank sends an appraisal.

8 BZA CHAIR JORDAN: I understand
9 the process. What was --

10 MR. PISHVAEIAN: I have to go --
11 because I was just trying to get a loan on it.
12 I don't remember, but I can provide that to
13 you this afternoon.

14 BZA CHAIR JORDAN: Okay.

15 MR. MOY: I can go outside, make a
16 phone call to my bank and find out.

17 BZA CHAIR JORDAN: Okay. Go
18 ahead. Proceed.

19 MR. PISHVAEIAN: So the argument
20 is a individual could have bought this for
21 \$613,000 and change it to a house. So if they
22 wanted to do it illegal, not getting any

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1 inspections, not getting any permits, that
2 would have been one way of doing it. But if
3 they wanted to get permits for it and do the
4 -- they had to redo the electricity and the
5 plumbing and the stairs again as an individual
6 house because -- again just a normal house.

7 So you buy this house for 613,000
8 and you spend -- you don't spend \$160 square
9 foot to change it to a house. You change
10 probably \$100 square foot to change it to a
11 house. And then you have 3,000-some --
12 300,000-plus. That's the construction cost.
13 You change it to a house. So you have this
14 house for \$900,000 plus the soft costs. You
15 can't even sell it for that price.

16 So the argue to go with the house
17 would put you over \$900,000. The argue to go
18 with three units will put you at \$1.3-4
19 million. And the argue is why can't you do
20 three units? Well, because the unit that is
21 going to be in the basement, it's much harder
22 to sell because the units below the ground

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1 don't sell in general. Next block, next to
2 Mr. Klugman I develop. Thirty-six-oh-nine,
3 three doors down from Mr. Klugman, has a unit
4 in the basement.

5 BZA CHAIR JORDAN: So you've
6 already developed on this block?

7 MR. PISHVAEIAN: Next block.

8 BZA CHAIR JORDAN: Right, on the
9 next block, but in this area?

10 MR. PISHVAEIAN: Yes. Mr. Klugman
11 is a neighbor in the next block. Thirty-six-
12 oh-nine.

13 BZA CHAIR JORDAN: So when you
14 purchased this building were you aware that
15 you were going to need some type of zoning
16 relief, the type of zoning relief that you're
17 talking about?

18 MR. PISHVAEIAN: I knew that.
19 Yes, I did know that I can't make any money
20 with three units. But --

21 BZA CHAIR JORDAN: But you bought
22 it anyway?

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1 MR. PISHVAEIAN: My peace of mind
2 was that I have this huge yard. And because
3 I've talked to the neighbors when I was there
4 at 3609, my peace of mind was that I can
5 provide parking and I'm not adding another
6 floor like Mr. Klugman did and I'm not asking
7 for relief for parking. So I'm not changing
8 the look and the structure of the house. So
9 it would have the same harmony with the
10 neighbors, my neighbor right next to me.
11 We're not adding a floor going up or going
12 back. So it's just same look. And within the
13 structure we're just changing three to four.

14 BZA CHAIR JORDAN: Let me just
15 briefly do a little housekeeping. We are
16 going to break for lunch and we're going to
17 probably -- I just don't know what time this
18 is going to break. So I just wanted to --
19 well, you can wait and see when we break, but
20 I just want to let those who are on the other
21 case know that -- I guess I still don't know
22 how much longer we'll be here. I was going to

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1 say 1:30, to come back for 1:30, but just
2 might as well hold tight. We'll find out
3 where we are so you know what time that we'll
4 proceed to the next case.

5 Go ahead. I'm sorry.

6 MR. PISHVAEIAN: I feel like -- if
7 we skip the developer side of it, I feel like
8 the argument is not three or four units. The
9 argument is, you know, Richard Klugman next
10 block can add another floor and ask for an
11 extra unit, ask for parking relief and he can
12 do it next block. And here you have Mohammad
13 Pishvaeian asking for a three-unit -- or
14 asking for one more unit with no additional
15 floor, with offering three parking space and
16 offering green space for parking and I can't
17 do it and he can do it.

18 MS. MOLDENHAUER: Let me ask you
19 to focus you and ask you just to talk a little
20 bit about the basement conditions and how --
21 it was brought up in one of the questions of,
22 you know, the condition of the property has to

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1 be at a certain degree. And how does the
2 basement condition and the testimony that Mr.
3 Killette gave about the mold and the water
4 infiltration -- how does that affect the
5 overall cost and the challenges of also
6 developing anything as a matter of right? And
7 also your knowledge of that at the time that
8 you purchased property.

9 MR. PISHVAEIAN: Like I said, when
10 we went to see the property, they didn't have
11 the key to the basement, so we couldn't see
12 the basement. But now we saw the basement and
13 there are pieces of structure of the center
14 post that is holding the building, the bricks
15 that is missing, besides the water leak. And
16 they have actually sandbag there in front of
17 the door so the water doesn't come to the
18 basement.

19 I don't have allergy to anything
20 and nothing bothers me, but I stayed down
21 there for a minute, minute-and-a-half and
22 taking some pictures and when I came out, I

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1 was coughing. And my architect went there to
2 measure. Same thing when -- he was telling me
3 that he was coughing. And there are rats
4 there and --

5 MS. MOLDENHAUER: Let me just jump
6 in.

7 BZA CHAIR JORDAN: No, let me ask
8 a question along those lines. So if the
9 basement didn't need all these repairs and the
10 things you saw in the basement, then you would
11 operate this as three units?

12 MR. PISHVAEIAN: I'm sorry, I
13 missed --

14 BZA CHAIR JORDAN: If you didn't
15 need -- had you seen the basement and saw that
16 the basement had no need for repairs and it
17 didn't have all the problems that's been cited
18 here today, you would have operated this unit
19 as three units?

20 MR. PISHVAEIAN: Again, no,
21 because --

22 BZA CHAIR JORDAN: So it was

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1 insignificant whether or not you saw the
2 basement or not?

3 MR. PISHVAEIAN: No, I was trying
4 to make a conclusion on my last statement when
5 you asked me I've done property in this block
6 or next block. I was trying to make a
7 conclusion telling you that at 3609 we went in
8 the market last -- July of last year, 2012,
9 asking \$499,000 for the basement. And it took
10 seven months and we had to take \$75,000 off
11 the asking price to sell it for \$425,000
12 January, the end of January of this year. So
13 I had to carry the cost of that unit for
14 seven, eight months and learned by mistake, or
15 learned as an example that this is your errors
16 as you go forward. So you realize where are
17 the places that you lose money and you can
18 make it up. So that's why I realized that I
19 can't sell below ground and I can sell above
20 the ground.

21 MS. MOLDENHAUER: I'd just like to
22 ask Mr. Dalton to just kind of provide a very

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1 short snippet about the cost comparison for
2 English basement values in comparison to upper
3 units.

4 MR. DALTON: As it relates to
5 Columbia Heights area and the comps that I
6 did, basement units sell for roughly 21
7 percent less than above-ground units and they
8 take about 20 percent longer to sell in terms
9 of days on the market.

10 MS. MOLDENHAUER: And then how
11 would that affect whether or not if Mr.
12 Pishvaeian had to invest a significant amount
13 of money to renovate the basement that was
14 deteriorated and then were there only two
15 units other than a basement unit, which you
16 just said was 25 percent less? How would that
17 affect the overall project?

18 MR. DALTON: Right, I mean the
19 more you have to spend -- I mean you can't get
20 more for a basement. I mean no matter what
21 you do you're going to be limited by the fact
22 that it is a lower-level unit. The stats show

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1 that.

2 MS. MOLDENHAUER: We have nothing
3 further at this time except to provide a brief
4 conclusion for the Board.

5 Based on what we believe we've
6 presented in regards to the additional
7 testimony today about the basement conditions,
8 we also have copies of the PowerPoint slide
9 which includes some of the additional pictures
10 of the basement, if Board Members would like
11 a copy of that as well since that was
12 originally not in our original submission. So
13 we can provide that, that just shows the
14 exceptional condition of the property is based
15 on not one, not two, but complements of five
16 different factors here based on prior non-
17 residential use, increased traffic, wear and
18 tear in the neighborhood, poor maintenance,
19 existing non-compliant second and third floor
20 staircases, unexceptionally wide and unique
21 first to second floor staircases, the fact
22 that the staircase as testified by Mr.

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1 Killette is unique in the fact that you have
2 not a 1910 or a typical 1910 home where it's
3 a residential home where the staircase goes
4 straight up on one side of the property, but
5 rather you have a unique staircase where it
6 does traverse both sides of the property
7 creating a non-desirable circulation pattern
8 and an unknown, you know, basement condition
9 at the time of purchase.

10 As we showed you a copy of the C
11 of O, it was a C of O for a flat. Typically
12 I think when most people think of a flat, they
13 think of either maybe an English basement or
14 an in-law suite and then maybe a unit on the
15 top, which is multiple levels. Here the prior
16 owner had actually just had two units on the
17 top and then he just locked the basement. He
18 was not using it as -- you heard testimony.
19 The tenants had no access to it.

20 He had gotten permits in '08 when
21 he had tried to sell it, as Mr. Dalton
22 testified to, for higher value and had done

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1 nothing. Locked it, sealed up, tenants never
2 accessed it. And the conditions as Mr.
3 Kilette testified to just continued to get
4 worse and worse. And the prior owner put
5 sandbags outside to try to stop, you know, the
6 water infiltration, but really was not tending
7 to the property.

8 In addition to that, the last --
9 or one of the additional factors in regards to
10 exceptional condition and complements of
11 factors is the rear grade of the property.
12 You saw pictures. The grade is different and
13 the applicant is actually testified that he's
14 going to spend \$30,000 to excavate that to
15 provide a new flat pervious pavement. And the
16 labor involved there, as we said, is \$30,000
17 to excavate the rear, put in the pervious
18 pavers for the additional three spaces.

19 Based on all of those factors for
20 a complements of factors, that creates a
21 practical difficulty here for -- the applicant
22 has testified and has shown in our financial

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1 information showing that the challenges -- in
2 respectful disagreement with Office of
3 Planning, it would not be a question of just
4 gutting even -- and any other property owner
5 dealing with these complements of factors
6 would have the same practical difficulty if
7 they tried to, as Mr. Killette testified to,
8 come in and create a three-unit project.

9 They would not be able to have
10 this cross-flow, because you're going to be
11 breaking up -- or if you did any basic
12 renovation where you were to simply, as OP
13 countered, just do a, you know, non-gut job
14 just to take out the major -- you know,
15 upgrade the electrical and upgrade the
16 plumbing but leaving some of the joists and
17 leaving some of the major floor points, Mr.
18 Killette testified that you still would have
19 to remove the staircase in order to provide a
20 code-compliant staircase for a three-unit
21 project, which would be a majority of your
22 costs in regards to your overall renovation costs.

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1 In addition to that, you know, you
2 would have to change the staircase because you
3 wouldn't be able to provide this cross-
4 circulation which creates a unique situation
5 which is not typical in row homes of this
6 sort, as Mr. Killette testified to, and is
7 unique to this property, again whether you're
8 talking about a three-unit or a four-unit,
9 creating the practical difficulty of not being
10 able -- not just by my client, but anybody who
11 bought the property being able to convert this
12 property to a matter of right, the challenge
13 there showing that obviously the return is
14 just not there in regard to putting the work
15 into the property that's necessary to allow
16 it, as Mr. Pishvaeian stated about Fannie
17 Mae/Freddie Mac requirements, if you -- or
18 even if you were to talk about, you know,
19 other requirements -- or as in D.C., you know,
20 rental requirements to how the property be to
21 code.

22 And so, you know, in addition, all

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1 of this we believe satisfies the standard
2 above and beyond the requirement, but we also
3 reference, as we said, the Gilmartin case,
4 which talks about the severity of relief.
5 We're talking about one unit here. Eighteen
6 percent. And I know, you know, the Board has,
7 you know, indicated each case is unique, but
8 we do rely on potentially past precedent, and
9 there are cases where there's 33 percent
10 deviation in this specific area. Fifty-eight
11 percent deviation.

12 And we believe that, you know, the
13 practical difficulty here does satisfy the
14 degree of relief requested in regards to one
15 unit. We are reducing the lot occupancy here
16 from 56 to 51 percent, which we believe is,
17 you know, more in line with -- obviously it's
18 below the matter of right of a 60 percent lot
19 occupancy.

20 And previously, as the applicant
21 testified to, whether or not -- you know, we
22 heard testimony that you probably could have

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1 maybe squeezed two spaces in. I know
2 obviously legally there was only legal space
3 previously. The applicant was originally
4 going to provide two. After hearing a lot of
5 concern from the neighborhood, he enhanced the
6 rear plan at a cost to himself providing three
7 compact spaces on the property, which is
8 obviously above and beyond the one parking
9 requirement at the property and also providing
10 four bicycle spaces so that individuals who
11 are potentially living on the upper units
12 don't have to carry their bicycle, you know,
13 up a walking unit, but rather can securely
14 lock their bicycle in the rear of the property
15 and then get around the city in that way and
16 maybe not have to, you know, increase traffic
17 or have additional cars.

18 The applicant has gone -- you
19 know, while there obviously are some concerns
20 in the Columbia Heights area, he has gone out
21 there and tried to meet with a lot of people
22 in regards to community outreach. You've

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1 heard we have attended four -- is that right
2 -- one, two -- sorry, three ANC meetings. He
3 attended a local picnic. There are letters of
4 support. We have about 22 letters of support
5 in the record, along with an additional 4
6 letters from individuals that have supplied
7 the record -- supplied those, you know, in the
8 outreach campaign since the ANC submission was
9 provided.

10 The petition that was signed and
11 filed this past Friday, we don't know when it
12 was filed. It references some misstatements
13 in regards to a single-family home and this is
14 legally a two-unit property and could legally
15 be a three-unit property. It also I believe
16 was presented when I was present at the May
17 ANC meeting. And so it might have been signed
18 prior to the additional parking being
19 provided. And the petition does reference
20 concerns about traffic. And so we believe
21 that maybe some of those individuals on that
22 petition may have been addressed in regards to

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1 the additional parking that was provided on
2 the site. We don't know for sure, but I'm
3 just identifying that that was a mitigating
4 factor that the applicant tried to address.

5 As testified by Allison Campbell
6 here, you know, she's lived in the
7 neighborhood for 28 years. And, you know, she
8 is more than willing to, you know, sit here in
9 support of the application. She lives in a
10 single-family home. You know, she's not
11 someone that lives in a condo that wants
12 another condo. She's someone that lives in a
13 single-family home and has lived in the area
14 for 28 years.

15 We've heard testimony from Mr.
16 Klugman who lived in the area for maybe three
17 years and received similar relief. He
18 received one additional unit plus potentially
19 contributed by, you know, asking for no
20 parking at his property and received parking
21 relief.

22 We believe that we have satisfied

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1 the standard and have shown that there is an
2 exceptional condition based on the complements
3 of factors here, that there is practical
4 difficulty and that it does satisfy the
5 standard in regards to the Downtown Cluster
6 case in regards to what reasonable return
7 would be and what this Board has in regards to
8 some of its other cases found in regards to
9 what a reasonable return would be for
10 obviously one matter of right being around 1.4
11 percent return and that not being a viable or
12 reasonable project and a -- you know, the
13 project before us today being somewhere
14 between -- I think it depends on whether you
15 determine the return on an annual basis or on
16 the project basis. So it's either a 6 percent
17 return on an annual basis or a 10 percent
18 return on the project time frame.

19 So that being said, we believe
20 we've satisfied the standard and we'd ask the
21 Board to grant the relief.

22 BZA CHAIR JORDAN: Okay. Thank

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1 you. I lost a thought. There was something
2 I was going to ask you, but it just went out
3 the window. Yes?

4 ZC CHAIR HOOD: I'll just respond.
5 Ms. Moldenhauer mentioned the petition. Yes,
6 I was going to mention, you mentioned about --
7 may have been some misunderstanding about who
8 -- unless we're talking about a different
9 petition. Are you talking about another
10 petition, or are you talking about the one
11 that Mr. Klugman had behind his --

12 MS. MOLDENHAUER: Yes, I'm
13 speaking about the one that was attached to
14 Mr. Klugman's submission.

15 ZC CHAIR HOOD: Because it
16 basically very well says that we the
17 undersigned residents of the Columbia Heights
18 area, ANC 1A, do oppose the variance request.
19 It goes on and it talks about from the unit.

20 MS. MOLDENHAUER: It says from a
21 single-family dwelling into a four-unit condo.
22 It's not a single-family dwelling right now.

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1 It's a two-unit dwelling. And so I just -- I
2 think that, you know, it's --

3 ZC CHAIR HOOD: Oh, you mean the
4 misstatements of -- okay. All right.

5 MS. MOLDENHAUER: And I
6 understand. I don't --

7 ZC CHAIR HOOD: But you also
8 mentioned traffic and I'm trying to --

9 MS. MOLDENHAUER: And then it says
10 that reduce parking spaces. And so this was
11 -- if you look at the one, two, three, fourth
12 line --

13 ZC CHAIR HOOD: --

14 MS. MOLDENHAUER: And it says
15 reduce parking spaces. And as I said, this
16 was -- I never saw it, but this was referenced
17 in the May ANC meeting before the applicant
18 revised the parking that provided the three
19 parking spaces. So I don't know. I'm just
20 indicating that it leads to question whether
21 or not this was -- or that these individuals
22 were informed, or whether they had the

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1 opportunity maybe to --

2 ZC CHAIR HOOD: Right.

3 MS. MOLDENHAUER: -- change their
4 mind after the fact that we provided now three
5 spaces for four units and additional secured
6 bicycle parking.

7 ZC CHAIR HOOD: Well as you know,
8 and any petition -- like the person who signed
9 from Northeast, you know? And any petition,
10 you know, it's looked at by this Board, as you
11 well know. Okay. Thank you.

12 MS. MOLDENHAUER: I'm just
13 pointing things out obviously in regards to
14 making sure that --

15 ZC CHAIR HOOD: Okay. Thank you.
16 Thank you, Mr. Chair.

17 BZA CHAIR JORDAN: All righty.
18 Let me ask you -- and I don't think I did
19 this. I don't know if I put in the record the
20 ANC -- we did accept their report and the ANC
21 vote was 4 -- 4-4-6-2, so they still stood in
22 opposition to the project. That's correct.

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1 So I just wanted to make sure that was a
2 record.

3 We'll conclude this testimony
4 today. Does the Board need any additional
5 information or is the Board ready to
6 deliberate? What's the feel on the Board?

7 (No audible response.)

8 BZA CHAIR JORDAN: Anybody? I
9 guess we'll move to deliberation. Okay. Is
10 that what we're doing? Yes, if you want. Or
11 are you saying no? You want to take a lunch
12 break and then do it? Okay. I know, we've
13 been pushing. I've been pushing you guys
14 really, really hard. It is 1:00. We will
15 pick up in deliberation. You want to do
16 deliberation today? Or we can do that another
17 day. Whichever you want. Today? Yes,
18 because we got Mr. Hood.

19 Okay. Then we will take a lunch
20 break. How long do you guys need? Half an
21 hour? Okay. 1:30. You know, I'm like --
22 okay. 1:30. We'll break until 1:30 and then

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1 we will go into deliberations on this case and
2 then pick up our subsequent last case of the
3 day. So we'll be in recess until then. Thank
4 you.

5 (Whereupon, the hearing was
6 recessed at 12:58 p.m. to reconvene at 1:30
7 p.m. this same day.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:43 p.m.

3 BZA CHAIR JORDAN: Back into
4 session. Back on the record.

5 All right. At the recess we were
6 at a deliberation point on 18560.

7 Cliff, I don't think there's a
8 real need to call the case again because we're
9 just back on the record at that point.

10 So we've concluded testimony in
11 regards to this case. And is the Board ready
12 to deliberate?

13 VICE CHAIR ALLEN: Yes, Mr. Chair.

14 BZA CHAIR JORDAN: Don't all jump
15 at the same time.

16 Okay. Does anybody want to start
17 us off? Anybody have some initial concerns or
18 issues they want to talk about on this matter?

19 ZC CHAIR HOOD: Mr. Chairman, in
20 these types of cases always we're concerned of
21 the detriment to the Zone Plan, and that's why
22 I start here. While I understand that the

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1 applicant has made the argument, and like this
2 is a not significant change, and I know that
3 some others, Mr. Klugman and others have
4 gotten -- and I will be curious to see what he
5 got as approved from the BZA if I was on that
6 case, because I just don't see that I would
7 have been supportive of his -- okay. Okay.

8 Well, anyway, whatever the -- when
9 you're changing the character of the
10 neighborhood, I just have problems with it if
11 the changes from the Zone Plan. And I think
12 the -- not to discredit Mr. Klugman -- I don't
13 what he -- whatever he did, and I don't want
14 to really bring his case into this case,
15 because each case is looked at individually
16 and separately.

17 But I am not -- I kind of go along
18 what I see in the Office of Planning in this
19 particular case as far as changing the Zone
20 Plan. I don't believe that this applicant has
21 made the test in making this particular
22 change. I understand about the practical

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1 difficulty, but I don't think we get there
2 because I just don't see where the uniqueness
3 is coming into play. So I kind of looked at
4 what the Office of Planning says about the
5 physical configuration, that this building
6 does not preclude this use from a flat or
7 three units which would be permitted as a
8 matter of right.

9 And I just don't think they made
10 the case and I will -- if that starts the
11 discussion. That's just where I'm at. I just
12 have not got to that point and that's why I
13 was try to ask some of the questions to help
14 me get there. And I'm just not there.

15 BZA CHAIR JORDAN: Any other
16 thoughts on this case, anyone? I see Mr.
17 Hinkle reaching.

18 (Laughter.)

19 MEMBER HINKLE: I'm actually on
20 the fence on this case. I think, you know,
21 similar to other cases that we've had like
22 this, you know, we have looked at the

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1 deteriorated conditions of the property as,
2 you know, one factor, you know, and then --
3 but I certainly understand the Office of
4 Planning's argument in terms of how
5 essentially in terms of the layout of the
6 property that basically these properties do
7 get gutted and you're initially starting from
8 the beginning.

9 I do want to note though I think
10 the applicant has made an argument in that the
11 deviation that's requested is actually pretty
12 small. And I appreciate the slide that
13 they've shown that shows some other BZA cases
14 where we've deviated significantly from the
15 Zone Plan in granting some relief. So I just
16 did want to note that, that it's actually --
17 what's being requested is relatively small if
18 you consider the deviation. I think that's it
19 for the moment.

20 BZA CHAIR JORDAN: Yes, I would
21 agree with you. This is one that I'm on the
22 fence but for the grace and the dedication of

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1 this particular counsel making a deviation
2 argument and as usual being well prepared for
3 these cases. This case probably to me
4 initially would have been a no-brainer because
5 I would not necessarily have been supportive,
6 but as I say, counsel put forth some other
7 things regarding deviations and some other
8 that made me take another look at it.

9 However, the deviation argument in
10 and of itself is not something which we should
11 -- that we have to overly consider, Mr.
12 Hinkle, because we need to know all the other
13 bases of why we granted that relief in the
14 other cases. And then I'm sure the deviation
15 was not the sole consideration by this Board.

16 And as indicated by Mr. Klugman,
17 he did raise an issue with one of the other
18 cases, but in that particular case that
19 building was severely dilapidated. And that's
20 just the words we kind of used, and we've all
21 kind of used it.

22 So, you know, where I am all time

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1 is predictability in our system, and it's hard
2 to find some times predictability in our
3 system because if you look at some of our
4 decisions from -- historically from this Board
5 on some of these issues, it's just like
6 getting fish out of a barrel. You can reach
7 in -- if you want something to stand for a
8 proposition, just reach in and keep reaching.
9 You'll find something that we did. And that
10 just gives me concern. That's why I made
11 reference a couple of times here about some
12 stability in asking the Zoning Commission to
13 reach in, particularly while they're doing the
14 zoning rewrite to kind of take a look at some
15 of the issues that we've raised here today.

16 I think that OP has made some good
17 arguments in regards to this property to which
18 we give great weight. And I also think that
19 what Mr. Hood has talked about regarding what
20 the Zoning Regulations required in an R4, and
21 there's been evidence here that there is some
22 question toward the density in this property

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1 at -- in this area and what the R4 is required
2 to do, and that this is not an apartment house
3 district.

4 The other thing, I guess I would
5 question the issue of, one, this property was
6 bought knowing that there was an issue with it
7 and that it was going to need zoning relief.
8 Now that is not saying that my decision --
9 that this is like self-imposed, but it's
10 certainly taken with the knowledge of knowing
11 that there is an issue and a concern, and by
12 the applicant's own testimony had intent in
13 their mind that they wanted -- they were going
14 to have a four-unit, they wanted this to be
15 four units.

16 I think again looking at what OP
17 has said that -- and if you look at what the
18 cases talk about regarding practical
19 difficulty, especially using the economic
20 aspect thereof, taking those things as a
21 whole, that this property can be utilized
22 within the Zoning Regulations for three units

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1 and it's not going to be -- and to put it up
2 and running for three units is not at a loss,
3 but it is at some level a profit of \$28,000.

4 Now we have not determined as a
5 Board nor has a Commission set forth a
6 standard of what that return is, reasonable
7 return, an aspect of what is a reasonable
8 return. If you look at the amount of money
9 between \$28,000 and I guess \$100-something-
10 thousand, I think that \$179,000 is way above
11 what would normally be an industry standard
12 for real estate development and investment,
13 but that's just my general thought.

14 The \$28,000 over a year period is
15 probably closer to 2 percent or something like
16 that, 3 percent return. That in light of the
17 fact that when this property was purchased --
18 and we did not get what the fair market value
19 was -- because at least if you argue that the
20 initial amount was \$750,000 that I think it
21 was on the market for, buying about -- was
22 that \$90,000 -- oh, \$100,000 under what the

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1 initial value was, there's probably also some
2 other savings that were done that was probably
3 argued to go towards these renovations. But
4 that's not before us.

5 But I'm having difficulty in
6 regards to practical difficulty. I'm just not
7 there regarding that this property can be used
8 within the regulations, not at a loss but with
9 some aspect of a return, that some of the
10 choices from our -- the numbers for
11 construction are not necessarily that those
12 amounts of money for costs are costs that are
13 necessarily required to bring it to code, but
14 also probably some of that is being choice as
15 to what the costs are.

16 So that's kind of just my thought
17 in this matter. And again, I'm kind of on the
18 fence.

19 Anybody else have something else
20 that they want to -- yes?

21 VICE CHAIR ALLEN: Thank you, Mr.
22 Chairman. I was quite persuaded frankly by

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1 OP's write-up about this. I thought that it
2 was very difficult to find that this was an
3 exceptional situation, and I never really
4 heard arguments that got me beyond that
5 initial problem.

6 Secondly, you know, we do give
7 great weight to the ANC. They are opposed to
8 this. And in fact the applicant went back
9 before the ANC and they again voted in
10 opposition, which -- you know, not that we
11 would do twice the weight, but certainly that
12 gave me some pause.

13 And then finally, just the Zoning
14 Regs. I mean I think as Mr. Hood stated and
15 the Chairman, you know, we keep coming at it
16 and coming at it and coming at it and taking
17 a little piece. And, you know, you have many
18 folks in opposition who are very clear that,
19 you know, they live in this residential area
20 or this specific zone because they wanted that
21 type of life. And I can't overlook that. And
22 I just was not persuaded by the applicant to

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1 make that change, so I will not vote this
2 forward.

3 BZA CHAIR JORDAN: Does someone
4 want to make a motion one way or the other?

5 MEMBER HINKLE: Well, if I could,
6 I just want to echo my colleague's comments
7 about the ANC. Certainly we appreciate all
8 their input on all these cases, but in these
9 particular cases I think it becomes extra
10 important to hear what the ANC has to say in
11 terms of public good. And I think this ANC
12 did a fairly good job in terms of looking at
13 this project and studying it and coming up
14 with a conclusion. So I just wanted to add
15 that.

16 BZA CHAIR JORDAN: Okay.

17 ZC CHAIR HOOD: Mr. Chairman, I
18 would move that we deny BZA case No. 18560, a
19 request pursuant to DCMR 11 3103 for
20 variance relief under 401, lot area, to
21 convert an existing flat to a four-unit
22 apartment building at 3545 13th Street, N.W.

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1 and ask for a second.

2 VICE CHAIR ALLEN: Second.

3 BZA CHAIR JORDAN: Motion made and
4 seconded. Any further discussion?

5 (No audible response.)

6 BZA CHAIR JORDAN: All those in
7 favor of the motion to deny the application,
8 signify by saying aye?

9 (Chorus of ayes.)

10 BZA CHAIR JORDAN: Those opposed,
11 nay?

12 (No audible response.)

13 BZA CHAIR JORDAN: The motion
14 carries. Mr. Moy?

15 MR. MOY: Yes, sir. Staff would
16 record the vote as 4-0. This is on the motion
17 of Mr. Hood to deny the application for the
18 relief being requested. Seconding the motion,
19 Vice Chairperson Allen. Also in support of
20 this motion Chairman Jordan and Mr. Hinkle.
21 And we have a Board seat vacant. So the vote
22 again is 4-0. The motion carries.

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1 BZA CHAIR JORDAN: Okay. Thank
2 you. Let's call our next case, please.

3 MR. MOY: The next application
4 before the Board is -- and I'm going to read
5 this with the amended relief, unless
6 there's --

7 BZA CHAIR JORDAN: Amended relief?

8 MR. MOY: On this particular
9 application I believe the applicant will
10 clarify the relief being requested, but this
11 is application No. 18586. And this is the
12 application of Mary McGrath pursuant to 11
13 DCMR 3104.1, for a special exception to
14 allow a rear addition to a one-family detached
15 dwelling under section 223, not meeting the
16 side yard requirements under section 405.8,
17 and pursuant to 11 DCMR 3103.2, for an area
18 variance from the front yard setback
19 requirement under subsection 1543.4, to allow
20 a front porch addition in the WH/R-1-B
21 District at premises 4351 Klinge Street, N.W.
22 Property located in Square 1625, Lot 802.

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1 Before you in your case folders,
2 Mr. Chairman, there's also a filing from the
3 applicant which was filed, I believe revised
4 plans that were submitted last night.

5 BZA CHAIR JORDAN: Okay.

6 MR. MOY: And of course that's
7 before the Board how you want to handle that.

8 BZA CHAIR JORDAN: We will accept
9 it into the record because it wasn't that
10 great a deviation.

11 Where are we on the party status?
12 Are we still requesting party status in this
13 matter? We had two party status requests.

14 MR. HEIMERT: Yes, sir. Andrew
15 Heimert, still requesting party status.

16 MR. CLARENS: And I'm Angel
17 Clarens. I'm here requesting --

18 BZA CHAIR JORDAN: I'm sorry?

19 MR. CLARENS: I'm Angel Clarens
20 and I'm requesting party status.

21 BZA CHAIR JORDAN: All right. So
22 I'm not going -- I mean Mr. -- is it Haremet?

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1 Hynert?

2 MR. HEIMERT: Heimert.

3 BZA CHAIR JORDAN: Heimert. Oh,
4 got a typo here. Can you tell me how you're
5 uniquely affected by this development?

6 MR. HEIMERT: Sure. Yes, and I
7 can -- I have an exhibit of a picture from my
8 front yard. I live directly across the street
9 from the property and the house at issue in
10 Wesley Heights. And from my front yard and my
11 front living room windows it's directly
12 observable. And I have a picture which I'd be
13 happy to submit for the record.

14 BZA CHAIR JORDAN: Directly
15 observable. Okay.

16 Mr. Clarens, and the same thing
17 for you, what is your -- why you believe that
18 you're uniquely --

19 MR. CLARENS: Yes, I own and live
20 in a house immediately adjacent to Mr.
21 Heimert's and diagonal across the street from
22 the applicant's house. And I can see -- from

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1 my front yard and from my front porch I can
2 see the addition projecting in the street.

3 BZA CHAIR JORDAN: Okay.

4 MR. CLARENS: It's partly covered
5 now by -- we have a lot of leaves, but you
6 know --

7 BZA CHAIR JORDAN: I grant you two
8 party status, but you're going to be
9 consolidated to one. So you need to decide
10 how we're going to utilize the party status.
11 I'm sure you already had that conversation.
12 Who's speaking for party status?

13 MR. HEIMERT: Well, I'll speak
14 primarily, but Mr. Clarens, if it's okay, may
15 add a small addition if I miss something.

16 BZA CHAIR JORDAN: We're doing it
17 by group. We're doing it by representative
18 and you can submit questions and go back and
19 forth. Okay?

20 MR. HEIMERT: Excuse me?

21 BZA CHAIR JORDAN: You can submit
22 questions and talk about it that way, or use

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1 Mr. Clarens as a witness, whichever way --

2 MR. HEIMERT: Okay.

3 BZA CHAIR JORDAN: -- you want to
4 do it. All right. Okay.

5 ZC CHAIR HOOD: Mr. Chairman, let
6 me just say that I've had -- I served with Mr.
7 Clarens. Have not talked to Mr. Clarens since
8 my going away party. So I just want -- yes,
9 I'm still here, but I just wanted to put that
10 on the record. So I'm not biased as anything
11 in this case and I should be able to
12 participate.

13 BZA CHAIR JORDAN: All right.
14 Let's have a discussion here though. I'm
15 trying to understand what relief is necessary
16 and requested here.

17 Well, let's go identify ourselves
18 before we keep getting deeper. Let's start
19 again. Mr. Clarens, would you state your
20 name, please?

21 MR. CLARENS: Oh, Angel Clarens.
22 You want me to give you an address?

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1 BZA CHAIR JORDAN: No, that's
2 okay. We already have that, yes.

3 MR. HEIMERT: Andrew Heimert.

4 MR. BROWN: Patrick Brown on
5 behalf of Mary McGrath. I'm from Greenstein,
6 DeLorme & Luchs.

7 MS. McGRATH: I'm Mary McGrath.
8 I'm the property owner and the
9 suppliant/applicant. I live, or will live
10 shortly hopefully at 4351 Klinge.

11 MR. DWIGHT: And I'm Griz Dwight,
12 the architect.

13 BZA CHAIR JORDAN: Your last name?

14 MR. DWIGHT: Dwight.

15 BZA CHAIR JORDAN: Dwight? Yes.

16 Mr. Brown, what relief are you
17 requesting here?

18 MR. BROWN: If I could start with
19 the easy one and how we originally filed,
20 we're asking for relief under section 223 for
21 the side yard, the western side yard, which is
22 preexisting less than the minimum five feet.

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1 And the addition on that side of the house
2 follows the building line, but again, it's
3 less than the minimum five feet for pre-1958
4 structures. Clearly a section 223 case and I
5 think without objection from anybody involved.
6 So that's the first half of the case and how
7 we started.

8 As I put in the papers, Ms.
9 McGrath was issued a building permit for the
10 entire project; the side yard, the rear
11 addition, the front yard, the front porch.
12 And only when the side yard issue, which was
13 quite frankly self-identified by Ms. McGrath
14 and her architect, did we consult with the
15 Zoning Administrator. And at that point the
16 Zoning Administrator said I think we have a
17 front yard issue, notwithstanding the fact
18 that: (1) the permit had been issued for the
19 front porch; (2) during the process of that
20 permitting there were specific discussions
21 with zoning staff about the front yard and
22 being extended within the line of the pre-

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1 existing projection into the front yard.

2 As a result of that we amended the
3 application. I filed the amendment based on
4 -- what I consider the existing Board
5 precedent established in 17686 where a Wesley
6 Heights Overlay District front yard setback
7 case was treated. And I included the Board
8 deliberations.

9 BZA CHAIR JORDAN: You call that
10 precedence?

11 MR. BROWN: In my business if I'm
12 looking at how the Board has acted in a prior
13 case where there's been no guidance from the
14 court of appeals and you haven't been
15 reversed, I consider that good evidence in --

16 BZA CHAIR JORDAN: But the Board
17 didn't make a determination particularly of
18 that kind of -- that they looked at it and
19 examined it, that that was the relief, that
20 that relief can be granted under 223. They
21 didn't address it directly.

22 MR. BROWN: I've included the

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1 transcript language.

2 BZA CHAIR JORDAN: I've read it,
3 too.

4 MR. BROWN: We can agree or
5 disagree, but I think the language and the
6 care that the then-chair took and how the case
7 was styled, it was clearly a special exception
8 under 223. Now, and I think that's the latest
9 guidance I as a practitioner have from the
10 Board. But we're perfectly happy and able to
11 satisfy the variance tests, but I think you
12 correctly noted that we need to decide that
13 issue.

14 And then I think the most
15 important part of this case, notwithstanding
16 favorable OP and ANC reports, is I have great
17 confidence that the plan we've submitted today
18 in conjunction and working with Mr. Clarens
19 and Mr. Heimert is satisfactory to them under
20 these very unique circumstances where quite
21 frankly the building permit misled my client
22 to allow her to move forward on something that

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1 was later changed.

2 And if the Board wants to rule
3 that the precedent or your past practice in
4 17686 is not something you want to follow,
5 that's certainly within your purview, but
6 that's certainly the latest guidance I have on
7 the matter.

8 BZA CHAIR JORDAN: Let me consult
9 with counsel for a second, please.

10 What is the -- let me ask you a
11 question. Just one second.

12 Are we changing -- do we have a
13 conforming lot occupancy, Mr. Brown?

14 MR. BROWN: Yes, we do.

15 BZA CHAIR JORDAN: And do we
16 remain conforming lot occupancy?

17 MR. BROWN: Yes.

18 BZA CHAIR JORDAN: Now I forget my
19 thought. Oh, okay. I'm back on it.

20 MR. BROWN: Mr. Chairman, could I
21 interject?

22 BZA CHAIR JORDAN: No, no.

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1 MR. BROWN: All right.

2 BZA CHAIR JORDAN: The reason why
3 I took a pause and took a question, I'm
4 looking at this as a nonconforming use under
5 2001.3 for both side yard and front yard, an
6 enlargement and an addition, which we could
7 look at under 223 and under 2001.3, meaning
8 special exception relief for an enlargement.
9 Your thoughts on that?

10 MR. BROWN: Well, and if I could,
11 you said a nonconforming use. It's a
12 nonconforming structure. If we had a
13 nonconforming use, we'd have a whole different
14 set of --

15 BZA CHAIR JORDAN: All right.
16 Nonconforming structure. I'm sorry. That's
17 right.

18 MR. BROWN: And I think I
19 understand. And as it was done in the prior
20 case and in other cases under 223, you have a
21 nonconforming structure, a preexisting --

22 BZA CHAIR JORDAN: That's being

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1 enlarged or addition to.

2 MR. BROWN: That is allowed, and
3 that is part and parcel of what is permitted
4 under the 223 special exception approach,
5 provided you don't have a lot occupancy.

6 BZA CHAIR JORDAN: And that's why
7 I asked that question before I consulted with
8 counsel, trying to understand that.

9 MR. BROWN: Okay. So and that was
10 the entire intent of establishing 223. And I
11 think Chairman Miller, who's about the only
12 BZA chairman who isn't here today, past and
13 present --

14 (Laughter.)

15 MR. BROWN: -- her logic and the
16 Board's logic was that 223 talks about various
17 area requirements. Most of them are yard;
18 side, rear. And that -- more than an
19 oversight again because the overlay came in as
20 a -- the only -- it's the only front yard
21 requirement in the Zoning Regulations in a
22 residential, or in any zone, quite frankly,

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1 that the rationale for 223 to allow these
2 events to occur involving yards was extended
3 to the later implemented front yard
4 requirement under the --

5 BZA CHAIR JORDAN: So your
6 response to my question directly is?

7 MR. BROWN: Yes, it's a special
8 exception under 223 which includes 2001.

9 BZA CHAIR JORDAN: Because the
10 nonconforming structure is an extension or in
11 addition to, because we're not really
12 encroaching wider than the space, we're just
13 lengthening it both sides.

14 Let me ask the party in party
15 status.

16 I have this, Ms. Grant. I
17 understand what I'm supposed to be doing here
18 today. Thank you very much. I would turn and
19 ask -- I know you've had this chair before,
20 but you don't have it today. And so we're
21 going to do it this way. Thank you very much.

22 Mr. Heimert?

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1 MR. HEIMERT: Sure. Well, first
2 I'd understood the Board already to have ruled
3 on this issue at the original hearing on June
4 28th, and we proceeded to prepare our
5 opposition based on the ruling that it would
6 be treated as a variance on the front yard.
7 The side yard, as I've indicated, I have no
8 opposition to.

9 I think it's also -- Mr. Brown
10 cites the Finkelstein case. The Sisson case
11 also involved the Wesley Heights Overlay, also
12 involved a front porch that was being built
13 into the front yard and was treated as a
14 variance. So, you know, for whatever
15 precedential value previous cases have,
16 there's a full -- and that was -- that case --

17 BZA CHAIR JORDAN: There's cases
18 both ways. I mean --

19 MR. HEIMERT: Exactly.

20 BZA CHAIR JORDAN: -- there 17750,
21 which was opposite. So there's cases --

22 MR. HEIMERT: Right. So I just

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1 wanted to call that -- finally, you know,
2 there is a list of special exceptions on
3 specific types of relief. There are at least
4 three or four overlays; Langdon Overlay, Naval
5 Observatory Overlay, Tree and Slope Protection
6 Overlay, all of which are allowed for special
7 exceptions. There's no equivalent for the
8 Wesley Heights Overlay District specifying a
9 special exception. So, you know, to my mind
10 the absence of it being there suggests that
11 it's not --

12 BZA CHAIR JORDAN: Well, my
13 question to you is tell me why we couldn't,
14 since you're a party status in opposition.
15 From what we're seeing now is that this could
16 be addressed as a nonconforming structure and
17 be addressed under 2001.3 as an extension
18 thereof and under 223 be able to give the
19 relief as a special exception. That's where
20 I'm asking you.

21 MR. HEIMERT: Well, you're not
22 getting into your expertise and out of my

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1 expertise --

2 BZA CHAIR JORDAN: Okay.

3 MR. HEIMERT: -- on zoning law.

4 BZA CHAIR JORDAN: Got you.

5 MR. HEIMERT: So my understanding
6 was that section 223 allowed special
7 exceptions for lot dimensions, lot occupancy,
8 rear yards, side yards and courts. And then
9 2001.3 does not allow by itself extensions of
10 nonconforming structures. Again, this is not
11 my area of work.

12 BZA CHAIR JORDAN: One second.

13 MR. HEIMERT: I mean, let me go
14 back to the first point I made, which is
15 having prepared the case as a variance and
16 it's get -- you know, I treat it as sort of
17 law of the case, but the Board already ruled
18 on this point.

19 BZA CHAIR JORDAN: Well I've heard
20 nothing to the contrary.

21 Board, want to weigh in on how
22 this thing should be treated? Because it's my

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1 intent that we would treat it either a 223 as
2 nonconforming structure, under 2001.3, which
3 is allowable to be addressed under 223.

4 Anybody have a feel?

5 (No audible response.)

6 BZA CHAIR JORDAN: No? Then
7 that's the way -- and so I'm assuming, Mr.
8 Brown, that -- I was trying to procedurally --
9 that you are asking the Board to amend your
10 application in light of what -- the discussion
11 we just had? Would that be correct?

12 MR. BROWN: Well, my application
13 as it was originally --

14 BZA CHAIR JORDAN: Well, you don't
15 -- Mr. Brown, I'm trying to -- okay. you want
16 to -- we'll just go the way you went then.

17 MR. BROWN: Two-twenty-three for
18 both issues.

19 BZA CHAIR JORDAN: But you made a
20 request under 15 -- what is it, 1543.4, and
21 we're not doing that. We're not going to
22 accept that in regards to a 223 argument.

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1 I'm saying to you under 223 we can address
2 both relief under 2001.3. If you don't want
3 to amend it, then we can --

4 MR. BROWN: Well, that's fine.
5 And 1543 is the Wesley Heights Overlay
6 setback, which would be treated similar as the
7 side yard issue, so I have no problem with
8 that.

9 BZA CHAIR JORDAN: All right.
10 Then it would be the consensus of the Board
11 that we'll proceed under 223 in regards to
12 this application with the intent that we're
13 looking at both the relief given to the side
14 yard and front yard under 2001.3 as an
15 extension or addition to a nonconforming
16 structure.

17 MR. HEIMERT: Could I ask for just
18 some clarification of this? Does this mean
19 that the Board is not considering the Wesley
20 Heights -- the Wesley Heights Overlay is
21 essentially irrelevant to this other than
22 for --

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1 BZA CHAIR JORDAN: No, we're not
2 saying that at all.

3 MR. HEIMERT: I just --

4 BZA CHAIR JORDAN: I'm saying --

5 MR. HEIMERT: -- trying to
6 understand the --

7 BZA CHAIR JORDAN: -- that's the
8 zoning of it. That is the zone. But that
9 doesn't have any additional effect. Okay?

10 MR. HEIMERT: Okay.

11 BZA CHAIR JORDAN: All right. let
12 me see where we have our issues. I think
13 we're clear the relief that you're looking for
14 and especially in light of now we're into
15 2001.3. Is there anything additional you want
16 to point to the Board? We have read your
17 particular submission, but you might want to
18 talk about some of the things that you believe
19 that the party in opposition is going to talk
20 about in regards to your design since you've
21 had other discussions.

22 MR. BROWN: Well, first I'd like

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1 very briefly -- Ms. McGrath who's brought us
2 all here today, it's important I think that
3 she has a few words with the Board, because
4 this has been a very frustrating and difficult
5 process for her. And then we'll move very
6 quickly --

7 BZA CHAIR JORDAN: If it's
8 relevant to the points that we're talking
9 about for the necessary relief, fine. I just
10 don't need straight editorial. We're just too
11 late in the hour to do that. But on the
12 points, then fine.

13 MS. McGRATH: I agree with you,
14 Chairman Jordan. I don't want to get
15 elaborate with this. I just do want to
16 quickly mention that I bought this house in
17 August of 2012. It was a house that I had --
18 I knew when I bought it that I would work on
19 thoroughly. And I bought it in August and I
20 late November submitted the drawings to the
21 Permit Board and worked with them on it until
22 March 14th when I received a building permit,

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1 at which time I started in, having torn out
2 the garage because I didn't want to challenge
3 any coverage, and started to work. And then
4 what Pat said is true.

5 The whole thing has been extremely
6 expensive in many different ways and very
7 frustrating and I am extremely glad to at last
8 be in your presence and resolve the issue.
9 Thank you for your time.

10 MR. BROWN: Mr. Chairman, I don't
11 want to belabor this. I think the most
12 important thing as an initial part of our
13 presentation is to draw your attention to the
14 revised plan that was submitted yesterday, and
15 also the draft conditions. Those are a
16 product not of unilateral, but of multi-
17 lateral discussions with Mr. Clarens and Mr.
18 Heimert. I'll let them speak to them.

19 But focusing in on the revised
20 plan, which incorporates skylights,
21 substantial skylights, removing the screens
22 that were originally of concern, uniform

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1 railing and some rather broad limitations on
2 any modifications or additional uses of the
3 porch, I think that certainly is in line with
4 223.

5 And in particular; and I put in my
6 brief, which I went into a great deal more
7 detail, but if you look at the criteria that
8 are of importance, obviously lot occupancy is
9 met. I don't think you can in any way
10 conclude that there's any light and air
11 diminution to either the more closely
12 associated side yard property owners, both who
13 are in support of the application given the
14 distances involved. And you can see on the
15 drawing the side yard properties on the
16 western side, they're 45-plus feet away from
17 the side of the house.

18 With respect to Mr. Heimert and
19 Mr. Clarens, we have the benefit of Klinge
20 Street, which public right of way is 90 feet
21 between the properties on either side of the
22 street. The setback on my client's property

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1 which is 13 feet now and on the opposite side
2 of Klingle the restriction is 44 feet.
3 Forgive me, one of the properties is further
4 back than that and one of them is slightly
5 further back. But we're talking about a
6 substantial distance between the properties on
7 the opposite side of the street measured in
8 well over 150 feet.

9 So light and air, privacy, use and
10 enjoyment, and in keeping with the overall
11 character of the neighborhood I think we've
12 laid out. This house -- and one of the things
13 that occurred when the porch was designed into
14 is the -- by virtue of using the porch you
15 used up limited lot occupancy -- again, the
16 Wesley Heights Overlay imposes a much stricter
17 lot occupancy requirement from 40 percent to
18 30 percent -- used up a lot of lot occupancy
19 on a one-story structure as opposed to a
20 three-story structure that could have been
21 built. As a result, you have a house where
22 you're at lot occupancy 30 percent, but you've

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1 left an awful lot of GFA FAR on the table
2 unused as a result of the choice to have only
3 a one-story front porch. So I think if you
4 look at the tests under 223, they're met
5 completely.

6 And I would leave it at that
7 subject to -- Ms. McGrath would like to add
8 something.

9 BZA CHAIR JORDAN: Okay.

10 MS. McGRATH: I was so concerned
11 with being brief. I do want to add one angle,
12 one point.

13 When the ANC heard about this
14 case, Mr. Heimert was there. Oh, he was not
15 there. He sent an elaborate letter and Mr.
16 Clarens spoke on the issue. And they
17 considered this. And at that point they
18 approved what I had originally wanted, which
19 was a screen porch. They approved it all 8-1.
20 And the Office of Planning -- well, they
21 actually hadn't.

22 So in truly good faith for months

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1 now I've been redesigning with the input of
2 initially Mr. Clarens who's an architect, and
3 a good one, and then Mr. Heimert. And I have
4 bent over backwards to comply with every one
5 of their requests even though it diminished my
6 design and added greatly to my cost. And
7 that's what I did want to add.

8 BZA CHAIR JORDAN: All right.
9 Thank you. Does the Board have any questions
10 of the applicant?

11 (No audible response.)

12 BZA CHAIR JORDAN: Let me ask you
13 a question: Clearly we have an issue raised
14 by some regarding their enjoyment of their
15 property from being across the street. I
16 think your argument to us is that it's a
17 distance of 90 feet. Is that what you're
18 trying to say? Is it 90 feet?

19 MR. BROWN: Several factors. One,
20 the revised plan, which my client is fully
21 committed to, which has added transparency and
22 kind of attempted to open up the front porch

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1 so that it's not a closed structure either
2 through screens -- and committed not to
3 enclose it in any other way; glass, solid
4 materials, anything opaque, not to use the
5 roof for other purposes. So I think we've put
6 together something that there have been some
7 concerns expressed, and we've tried to respond
8 to those in a way that responds to the issues
9 that have been raised; light, air, privacy.

10 And again you have to take into
11 account the distance that's involved and the
12 fact that there's interceding -- I think as
13 the Office of Planning mentioned, interceding
14 landscaping that exists. And my client's
15 property, quite frankly, hasn't been
16 landscaped because it's under construction.
17 So I think in our view the impact is minimal
18 and we've intended to make it more minimal by
19 virtue of the revised plan.

20 BZA CHAIR JORDAN: Board, any
21 additional questions?

22 (No audible response.)

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1 BZA CHAIR JORDAN: Now the revised
2 plan came about based upon your meetings with
3 the people in the neighborhood?

4 MS. McGRATH: Not people. Two
5 people. Only two people. And Mr. Clarens, as
6 I said, who's architecturally totally
7 competent, met with my architect Griz Dwight
8 and came up with a plan. And then with Mr.
9 Heimert's input we added yet more skylights to
10 make the porch lighter. And they as recently
11 as day before yesterday were in perfect accord
12 with this plan. We have pictures of it for
13 you, for them. They've seen the pictures.
14 They said that was fine.

15 BZA CHAIR JORDAN: Now what is
16 there? What was there -- what's there now?

17 MS. McGRATH: What was -- and why
18 don't you --

19 BZA CHAIR JORDAN: Well, what was
20 It?

21 MR. DWIGHT: I think you can --

22 MS. McGRATH: -- explain it a

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1 little bit, what we needed to cut back and all
2 that?

3 MR. DWIGHT: I think this plan
4 clearly shows what was there, was this bump-
5 out. What we're doing is we're adding the
6 porch here. And then you see the lots.

7 MS. McGRATH: And we took off a
8 portion of the bump-out, cut it back so that
9 we could open the doors there.

10 MR. DWIGHT: This is a picture
11 pre-construction.

12 BZA CHAIR JORDAN: Okay.

13 ZC CHAIR HOOD: So this plan we
14 have before us is a plan evolved by everyone
15 sitting here in front of us with the exception
16 of maybe Mr. Brown?

17 MS. McGRATH: The revised plan.

18 ZC CHAIR HOOD: Right, the revised
19 plan.

20 MS. McGRATH: Right.

21 ZC CHAIR HOOD: Okay. And I --
22 well, I'll ask the opposition when we get to

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1 that.

2 MS. McGRATH: Yes, sir.

3 ZC CHAIR HOOD: Okay. Thank you.

4 BZA CHAIR JORDAN: All right.

5 Does the Board have any other questions of the
6 applicant?

7 (No audible response.)

8 BZA CHAIR JORDAN: Applicant,
9 anything else they need to present to us prior
10 to us moving on?

11 MS. McGRATH: You don't? Okay.

12 Not really, no.

13 BZA CHAIR JORDAN: Then I'm going
14 to turn to Mr. Heimert to see if there's any
15 questions that you would like to ask the
16 applicant.

17 MR. HEIMERT: No, I don't have any
18 questions.

19 BZA CHAIR JORDAN: Okay. Then
20 let's turn to the Office of Planning for any
21 additional input.

22 MR. CLARENS: A point of

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1 clarification, Mr. Chairman.

2 BZA CHAIR JORDAN: Yes.

3 MR. CLARENS: I was not sworn in.

4 I don't know if you need me to --

5 BZA CHAIR JORDAN: Yes, I would

6 need you both to be. Are you sworn in?

7 MR. HEIMERT: I was sworn in this
8 morning.

9 BZA CHAIR JORDAN: Okay. Yes.

10 Yes. We can wait until you -- time for you to
11 testify or something.

12 MR. CLARENS: Okay.

13 BZA CHAIR JORDAN: Yes.

14 MS. THOMAS: Mr. Chairman, Karen
15 Thomas with the Office of Planning sitting in
16 for Brandice Elliott. We have nothing further
17 to add. You have the record and I would rest
18 on the record. Thank you.

19 BZA CHAIR JORDAN: And it's my
20 understanding that the Office of Planning does
21 not believe that this addition will be
22 intrusive or visibly bad for the neighborhood.

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1 MS. THOMAS: That's correct. We
2 believe that there's a substantial amount of
3 landscaping on the property. And of course,
4 yes, as we see right now it might be in a
5 little degraded condition due to the
6 construction, but we're hopeful that the
7 landscaping would return to its original
8 state.

9 MS. McGRATH: And more.

10 MS. THOMAS: Thank you.

11 BZA CHAIR JORDAN: Okay. Does the
12 applicant have any questions for the Office of
13 Planning?

14 MR. BROWN: No, thank you.

15 BZA CHAIR JORDAN: Okay. Does the
16 party in opposition have any questions for the
17 Office of Planning?

18 MR. CLARENS: Yes, I do. Well,
19 the major issue and the reason why I'm here --

20 BZA CHAIR JORDAN: No, no. I want
21 you to -- if you have questions.

22 MR. CLARENS: I have a question.

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1 BZA CHAIR JORDAN: Okay. Thank
2 you.

3 MR. CLARENS: I'm leading to it.
4 Is that it seems to me that there is a -- by
5 the Office of Planning in particular; and I
6 would like the Office of Planning to address
7 this issue -- there seems to be an
8 interpretation of the regulations that changes
9 the intention of the overlay, because the
10 overlay -- and there's a question here. The
11 overlay established setbacks, but your
12 recommendation for approval of this as a
13 special exception changes that setback to the
14 most forward element of the existing house.
15 That's different than the setback set by the
16 -- if the Commission, the Zoning Commission
17 would have intended that to be the case, it
18 would have so stated. It would have said you
19 can extend your house as far as your house
20 comes forward.
21 BZA CHAIR JORDAN: And your
22 question is, please?

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1 MR. CLARENS: And my question is
2 how do they reconcile their position with the
3 intent of the overlay?

4 BZA CHAIR JORDAN: Excellent.
5 Thank you.

6 MS. THOMAS: As recommended, the
7 porch is not exceeding the front yard setback
8 that currently exists. And this setback
9 existed prior to the overlay and it's not
10 being exceeded. And that's the way we
11 understand that.

12 MR. CLARENS: Come again?

13 MS. THOMAS: The existing front
14 yard setback is not being diminished in that
15 regard.

16 MR. CLARENS: But it is because
17 it's being extended laterally, right? So it
18 doesn't come forward, but it covers more of
19 the face of the building. So you are in fact
20 changing and you're saying no, no, no, no, no,
21 it says 20 feet, but no, that's not what we
22 mean. What we mean is that we're going to

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1 allow you with a probable special exception,
2 which has a fairly low threshold for
3 acceptance -- you can extend your house as far
4 as your house went forward, even if it was
5 with a little covered porch or something like
6 that, whatever it was. Now we have created a
7 new -- because we can have the entire Wesley
8 Heights coming in here and asking for a
9 special exception based on your thing. And
10 then instead of having --

11 BZA CHAIR JORDAN: Wait, wait,
12 wait. Are we asking a question, please?
13 Because as you know better --

14 MR. CLARENS: I'm sorry. I'm
15 sorry. I apologize.

16 BZA CHAIR JORDAN: Please ask the
17 question of Office of Planning. If not, we
18 will get to your testimony, if that's so what
19 the party in opposition is going to place,
20 but --

21 MR. CLARENS: Okay. No, I --

22 BZA CHAIR JORDAN: Or you have any

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1 additional questions?

2 MR. CLARENS: No, sir.

3 MR. HEIMERT: I do not.

4 BZA CHAIR JORDAN: Okay. Thank
5 you. Do we have Department of Transportation
6 with us?

7 (No audible response.)

8 BZA CHAIR JORDAN: Do we have a
9 letter from --

10 MR. BROWN: There is a letter in
11 the file.

12 BZA CHAIR JORDAN: Because I'm
13 looking at my notes here, because I've got it
14 here somewhere. I consolidate all these
15 things.

16 MR. BROWN: It is Exhibit 25, Mr.
17 Chairman.

18 BZA CHAIR JORDAN: And no
19 objection.

20 MR. BROWN: That's correct.

21 BZA CHAIR JORDAN: All right.

22 MR. BROWN: There are two, 23 and

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1 25.

2 BZA CHAIR JORDAN: Is there a
3 representative from the ANC present? Yes?
4 Are you -- do we have a -- you were designated
5 by the ANC?

6 PARTICIPANT: (Off microphone.).

7 BZA CHAIR JORDAN: All right. We
8 have an ANC vote of 8-1 in support of the
9 amended application, which we will give great
10 weight to.

11 Any persons in the audience
12 wishing to speak in support of the
13 application? Anyone wishing to speak in
14 support of the application?

15 (No audible response.)

16 BZA CHAIR JORDAN: Then we will
17 turn now to the party in opposition.

18 Mr. Moy, how much time? Is it 13
19 minutes. Is what I have on my clock.

20 MR. MOY: Thirteen minutes?

21 BZA CHAIR JORDAN: Yes, that's
22 what I have. But you might have kept better

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1 time.

2 MR. MOY: No, that sounds very
3 good.

4 BZA CHAIR JORDAN: Okay. Then we
5 have 13 minutes for you to -- you don't have
6 to use all the 13 minutes, but 13 minutes to
7 present your case.

8 MR. HEIMERT: Does that include
9 any witnesses that would testify?

10 BZA CHAIR JORDAN: Yes.

11 MR. HEIMERT: Okay. Well look,
12 I'll try to be brief. And I'm speaking I
13 think on behalf of Mr. Clarens, although he
14 may ask me to add a point or two at the end.

15 My name is Andrew Heimert. As I
16 explained, I live across the street. Based on
17 the direction of the Board I did prepare
18 arguments based on this being treated as a
19 variance, not as a special exception. So I
20 will try to direct my prepared remarks towards
21 the special exception relief that this is now
22 being treated as, but I apologize if it comes

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1 out some way as if it were a variance.

2 As I presented in the picture that
3 I submitted as an exhibit, this porch would be
4 quite visually obvious from my house. Now I
5 certainly acknowledge and agree with Ms.
6 McGrath. She's, when the issue arose, very
7 eagerly sought to work with me and Mr. Clarens
8 to reach an accommodation that would allow her
9 to retain the porch substantially as she's
10 already begun construction on it with some
11 modifications to satisfy me, and I'll come
12 back to that in a few moments. And I do
13 appreciate that and want to reduce -- suggest
14 that there's not a huge point of contention
15 between us on those issues.

16 The bigger issue is the Wesley
17 Heights Overlay District. And the front yard
18 setback that's required for all houses in the
19 Wesley Heights Overlay was created to maintain
20 sort of the park-like setting of the
21 neighborhood. The Wesley Heights Overlay was
22 created in the late 1980s out of concerns both

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1 of large scale new construction after
2 demolition of houses, as well as substantially
3 larger renovations. Those renovations reduced
4 the generous setbacks in the neighborhood and
5 significantly increased the building density
6 on various lots within the neighborhood.

7 There were a series of open
8 meetings organized by the Wesley Heights
9 Historical Society. The neighborhood came up
10 with the proposed overlay district.

11 As the Zoning Commission explained
12 in approving that district, the purpose of the
13 overlay would be to preserve and enhance the
14 low-density character of Wesley Heights and
15 the park-like setting of the neighborhood,
16 order No. 703. Ultimately the Wesley Heights
17 Overlay received the unanimous support of the
18 ANC, which testified in support of it at the
19 Zoning Commission hearing, and the Zoning
20 Commission approved the overlay, explaining
21 that it would preserve in general the current
22 density of the neighborhood, allow reasonable

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1 opportunity for owners to expand their
2 dwelling and preserve existing trees and
3 access to air and light, as well as the
4 harmonious design of the neighborhood in order
5 718.

6 Mr. George Watson is here as a
7 witness representing the Wesley Heights
8 Historical Society. He's prepared more
9 detailed testimony that if the Board wishes he
10 can present orally, but he can also submit it
11 in writing to the record. I think he's
12 willing to do that. And he was a principal
13 designer of the Wesley Heights Overlay.

14 The overlay contains three
15 provisions. I think they've been touched on.
16 A limit on lot occupancy, a limit on floor
17 area ratio and the front setback behind the
18 public space. And the first two limits, as
19 you know, are not at issue in this case. It's
20 the front setback requirement that is.

21 The front setback for each block
22 was taken by the average setback at each house

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1 on that block as determined by a surveyor. So
2 as a result of this approach some houses
3 ultimately were behind the setback and some
4 houses were closer to the street than the
5 required setback. And because the setback was
6 based on an average, a significant number of
7 the houses in Wesley Heights became
8 nonconforming as a result of the overlay and
9 therefore under the overlay would have
10 required relief for additional construction in
11 the front yard. Despite this result that
12 would have been known to the people in the
13 neighborhood at the time, the overlay received
14 neighborhood support and Zoning Commission
15 approval.

16 Now when we're talking about a
17 variance, I think that the Wesley Heights
18 Overlay should not be deemed to create an
19 exceptional circumstance as Gilmartin would
20 hold for variance purposes. There's nothing
21 unique about the application of the Wesley
22 Heights Overlay. In fact, it applies to

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1 pretty much everybody's house. It applies to
2 mine. Mr. Brown mentioned one house. Mine is
3 the one that is 39 feet from the front yard
4 and has a 44-foot setback. So there's no
5 practical difficulty in this case.

6 So, you know, if it were to create
7 an exceptional condition for this applicant,
8 it could create exceptional conditions for
9 other applicants, including the person who's
10 two doors down from me who's planning to raze
11 their house and build one. I would have
12 concerns that they might seek to encroach on
13 the overlay.

14 Now, Ms. McGrath has also advanced
15 a second basis for her relief; at least in her
16 variance application, which was the permitting
17 error. And this is a highly lamentable error
18 that DCR made and has put her in a very
19 difficult position, that by granting the
20 permit initially making a mistake and then
21 rescinding the permit -- or I guess they may
22 not technically have rescinded the permit yet,

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1 but have told her that she cannot proceed
2 without additional relief. So she had to stop
3 her construction. I think this is really
4 unfortunate and I'm hoping that DCRA will put
5 in place safeguards that will prevent such
6 things from happening in the future and either
7 deny the permit in the first instance and
8 allow applicants to take an appeal or direct
9 them to go through a special exception process
10 immediately.

11 As she has said, it would have
12 given her an alternative. Had she known at
13 the outset, she could have considered an
14 alternative way to use the lot occupancy, the
15 floor area ratio, and I understand all of that
16 with her application.

17 So as she has indicated in her
18 most recent filing, she's worked with us to
19 reduce the visual impact of the porch by
20 adding skylights, eliminating the screening
21 that she had originally had planned and also
22 committing to keep the porch that way,

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1 essentially that way by not closing it
2 subsequently or having subsequent owners do
3 that, or erecting screens.

4 With all of those, with the
5 revised plans as she's submitted them today or
6 last night and with the conditions that she
7 has I think agreed to in terms of for purposes
8 of obtaining a special exception or a
9 variance, I don't oppose it being granted.

10 BZA CHAIR JORDAN: Thank you.
11 Appreciate it.

12 The Board, any questions for Mr.
13 Heimert?

14 ZC CHAIR HOOD: So, Mr. Heimert,
15 now are you speaking on behalf of you and Mr.
16 Clarens?

17 MR. HEIMERT: Well Mr. Clarens can
18 confirm that, but I think I was, yes.

19 ZC CHAIR HOOD: Okay. I'm just
20 making sure. Okay. Thank you.

21 BZA CHAIR JORDAN: Does the Board
22 have any questions?

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1 (No audible response.)

2 MR. HEIMERT: And I -- oh, I'm
3 sorry, I would ask if you're not going to hear
4 the direct testimony from Mr. Watson that he
5 be permitted to submit it for the record.

6 BZA CHAIR JORDAN: Well, Mr.
7 Watson can speak --

8 MR. HEIMERT: Oh, I'm sorry.

9 BZA CHAIR JORDAN: -- in
10 opposition at -- in, you know, three-minute
11 intervals.

12 MR. HEIMERT: Sure. Okay.

13 BZA CHAIR JORDAN: We can do that.
14 Does the applicant have any questions of --

15 MR. BROWN: No.

16 BZA CHAIR JORDAN: Then any other
17 persons wishing to speak in opposition?
18 Please come forward.

19 ZC CHAIR HOOD: Mr. Chairman, let
20 me make sure I understand. So what I'm
21 hearing, we have an agreement, right? You all
22 have -- you're not opposing it. So you all

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1 have an agreement?

2 MR. HEIMERT: I'm not opposing it
3 on the plan submitted and --

4 ZC CHAIR HOOD: Right. But your
5 big issue is the overlay?

6 BZA CHAIR JORDAN: The protection
7 of the overlay.

8 MR. HEIMERT: With the here the
9 modification my remaining issue is the
10 overlay, yes.

11 MR. CLARENS: And I agree. The
12 same position.

13 BZA CHAIR JORDAN: Yes, thank you.
14 Would you please state your name?

15 MR. WATSON: My name is George
16 Watson.

17 BZA CHAIR JORDAN: Mr. Watson, did
18 you get sworn in and take the --

19 MR. WATSON: I have not yet been
20 sworn in.

21 BZA CHAIR JORDAN: Could you do
22 that for us, please? Would you stand and --

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1 MR. WATSON: Sure.

2 BZA CHAIR JORDAN: Oh, and --
3 well, if you're going to testify, please, Mr.
4 Clarens. Well, let me also ask -- I think --
5 I'm sorry. Are you going to give a statement?
6 Yes? Then have you been sworn? Okay.

7 MR. MOY: I guess we'll all
8 inclusive in that.

9 (Whereupon, the witnesses were
10 sworn.)

11 BZA CHAIR JORDAN: And have you
12 gentlemen prepared two witness cards each and
13 given it to the court reporter?

14 Okay. Gentlemen, you each have
15 three minutes, please. And would you be sure
16 your mic is on and identify who you are?

17 MR. WATSON: I'm George Watson and
18 I'm representing the Wesley Heights Historical
19 Society, and I was in on the formation of the
20 society back in the late 1980s and early '90s.

21 I have lived for 44 years at 4323
22 Cathedral Avenue, one block south of Mrs.

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1 McGrath's property.

2 BZA CHAIR JORDAN: Excuse me one
3 second. How do we do five minutes?

4 MR. MOY: He's representing an
5 organization.

6 BZA CHAIR JORDAN: What's the
7 organization you're representing?

8 MR. WATSON: The Wesley Heights
9 Historical Society

10 BZA CHAIR JORDAN: Okay. All
11 right.

12 MR. WATSON: So do I have a --

13 BZA CHAIR JORDAN: No, go ahead.
14 continue.

15 MR. WATSON: -- full five minutes?

16 BZA CHAIR JORDAN: Yes.

17 MR. WATSON: I've got about two
18 pages here which I --

19 BZA CHAIR JORDAN: Go ahead.

20 MR. WATSON: -- can read to you
21 and I can give you a copy of.

22 Essentially, what I wanted to do

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1 is present some history of the founding of the
2 Wesley Heights Historical Society and of the
3 overlay district.

4 It was adopted by the Zoning
5 Commission July 13th, 1993 to preserve and
6 enhance the low-density quality and character
7 of Wesley Heights. Wesley Heights was
8 developed by the W.C. and A.N. Miller Company
9 starting in the mid-1920s as an upscale low-
10 density residential community for families
11 that commuted to work in the District or
12 nearby suburbs by then the new vehicles, the
13 private cars. So virtually every single house
14 that went up had a garage.

15 In the late 1980s a group of
16 neighbors became concerned with the over-
17 building in Wesley Heights when some
18 developers began -- and this Andrew has
19 mentioned -- had been acquiring and adding to
20 smaller homes or razing and replacing them
21 with much larger structures. The neighbors
22 held a number of open meetings which led to

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1 the founding of this society in 1989.

2 And of particular concern was the
3 acquisition by the Kettler Company of two
4 adjacent 7,500 square foot lots with very
5 small houses. These were among the first
6 houses that were built in Wesley Heights by
7 W.C. and A.N. Miller. One of them was a one-
8 story bungalow. They replaced -- these were
9 on the 4400 block of Klingle Street.

10 They razed the small structures
11 and built very large mirror-image -- boxcar I
12 call them -- boxcar homes that towered over
13 their neighbors. One family, who happened to
14 be very good friends of my wife and myself,
15 was so overpowered by the house next door that
16 they sold their home and moved to Bethesda.
17 The new owner doubled the size of the house in
18 back; now we're talking about the house that
19 the Deedles had sold, and added a library in
20 front with a two-story palladium window
21 echoing the design features of the twin
22 boxcars.

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1 A neighbor across the street,
2 across Klingle Street, from the boxcars was
3 the late Arnold Kronstadt, an architect and
4 professor at the School of Architecture of
5 Catholic University. A working group under
6 his leadership formulated the overlay, and
7 you've heard the provisions of the overlay.
8 And I want to point out that the front yard
9 setback was a first for the District and that
10 it was based on the average setback of homes
11 on each side of every block existing on July
12 13th, 1992. That provision had the "full-
13 fledged support," quotes, in a poll conducted
14 by the local citizens association and the
15 DCRA. That was adopted by the Zoning
16 Commission and are now part of the Zoning Code
17 and D.C. Municipal Regulations No. 11.

18 If I have time I have two examples
19 of where the zoning -- the front yard setback
20 had a profound effect on particular
21 properties. Do I have -- this is one short
22 paragraph.

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1 BZA CHAIR JORDAN: Okay.

2 MR. WATSON: The two examples are
3 in early 1991 the Slowinski family; happens to
4 be the ANC commissioner's family, sold its
5 half-acre property on 44th Street consisting
6 of a large home on the corner of Edmund Street
7 with a side yard swimming pool. The new owner
8 subdivided the lot and sold the pool lot to a
9 developer, Mr. Lipnick, whom you probably know
10 of in the District.

11 Mr. Lipnick in turned poured
12 concrete foundations for a basement and garage
13 for a new four-story town house almost
14 fronting directly onto 44th Street. I voiced
15 my concerns at a public ANC 3D meeting about
16 the intrusion onto the 36-foot Wesley Heights
17 Overlay District front yard set back. Joe
18 Murphy, then chair of ANC, wrote a letter over
19 the weekend to Mr. Lipnick giving him until
20 Friday, five days hence, to take down the
21 walls. Bulldozers were out the next day
22 demolishing the front wall.

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1 When the last -- now this is the
2 second example. When the last surviving
3 member --

4 BZA CHAIR JORDAN: We need you can
5 get to the wrap-up, please. I thought you had
6 one paragraph.

7 MR. WATSON: Well, the wrap-up is
8 I hope you will not consider the setback
9 provision of the Wesley Heights Overlay
10 District as trivial and meaningful --
11 meaningless --

12 BZA CHAIR JORDAN: Meaningless,
13 yes.

14 MR. WATSON: -- as apparently the
15 Office of Planning did, because the Office of
16 Planning cited town houses with a seven-foot
17 setback along New Mexico Avenue as one of the
18 major reasons why they agreed to this front
19 yard setback. Please preserve our open
20 streetscapes. Thank you.

21 BZA CHAIR JORDAN: Thank you. Mr.
22 Clarens, I think you're next. Do you want to

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1 do a three-minute testimony? Or we already
2 had what you wanted to say? Thank you.

3 Then next we have -- I'm sorry,
4 your name again?

5 MR. SLOWINSKI: My name is Kent
6 Slowinski.

7 BZA CHAIR JORDAN: Slowinski? Mr.
8 Slowinski, you have three minutes, please.

9 MR. SLOWINSKI: I'm the Advisory
10 Neighborhood Commissioner for ANC 3D-01, which
11 includes Wesley Heights.

12 At the June 5th ANC 3D meeting the
13 commission voted 8-1-0 to support application
14 18586. I voted to oppose the application, as
15 Mr. LeGrant has stated, the proposed plans for
16 the front yard of the house are not in
17 compliance with the Wesley Heights Zoning
18 Overlay.

19 I am concerned about the precedent
20 that approving this application will
21 establish. As was mentioned, we have a
22 property across the street which will probably

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1 come before you shortly. We have a property
2 on 44th Street around the corner that will
3 probably also come before you shortly.

4 I understand that the parties have
5 been negotiating. If they aren't close to an
6 agreement, they are very close. I ask the
7 commissioners to consider their resolution.
8 Thank you very much.

9 BZA CHAIR JORDAN: All right.

10 Thank you.

11 Board, any questions? Yes, Ms.

12 Allen?

13 VICE CHAIR ALLEN: Thank you, Mr.
14 Chairman. I just want to make sure I
15 understand what -- your reference to they'll
16 be before you. Are you saying to bring this
17 same request?

18 MR. SLOWINSKI: No, there are
19 other property owners that will probably be
20 asking for exceptions or variances to the
21 Wesley Heights Zoning Overlay.

22 VICE CHAIR ALLEN: That's what I

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1 -- yes. Okay. Thank you.

2 MR. SLOWINSKI: One of them
3 includes two parking pads in the front yard.

4 VICE CHAIR ALLEN: Okay. Thank
5 you.

6 BZA CHAIR JORDAN: Yes, but each
7 one of these is -- you know, each one of these
8 cases is standing on their own bottom and they
9 have to make their cases. And whether or not
10 we -- this case doesn't set any particular
11 precedents. Each case will stand on its each
12 bottom and they'll be examined for its case on
13 a case-by-case basis as required under the
14 law.

15 Does the Board have any additional
16 questions of any of the witnesses?

17 (No audible response.)

18 BZA CHAIR JORDAN: And I was
19 remiss, does the applicant have any questions
20 of any of the persons in opposition that
21 testified?

22 MR. BROWN: No.

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1 BZA CHAIR JORDAN: Okay. All
2 right. Then let's turn back the applicant if
3 he believes there's any rebuttal that's
4 necessary.

5 MR. BROWN: No, I don't think so.
6 And I know everybody at this table except for
7 Mr. Heimert, who's a newcomer to the
8 neighborhood. But I've worked with Mr.
9 Watson, Mr. Clarens and Kent Slowinski and I
10 appreciate their participation, and I think
11 their cooperation in this revised plan is a
12 good sign and well received. And we'd like to
13 proceed to adopt the revised plan as the
14 approved plan in the record subject to
15 conditions and we'd ask the Board to
16 deliberate and reach a decision today.

17 BZA CHAIR JORDAN: Thank you.
18 Then we'll close the record on this hearing
19 and close this particular hearing. Is the
20 Board ready to deliberate on this case?

21 (No audible response.)

22 BZA CHAIR JORDAN: Based upon the

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1 record in this matter and certainly with the
2 parties in opposition confirming their
3 consent, then we will -- and the Board
4 recognizing their issue and concern about the
5 overlay, but however them giving their consent
6 to the relief requested, I would move that the
7 Board grant the relief requested by the
8 applicant as relief under 223 and relief under
9 2001.3 for the enlargement or addition to
10 nonconforming structure from the side yard and
11 front yard.

12 MEMBER HINKLE: Does that include
13 the conditions?

14 BZA CHAIR JORDAN: And the
15 conditions, yes.

16 MEMBER HINKLE: Recommended --

17 BZA CHAIR JORDAN: And the revised
18 plan as the plan of -- was that a second?

19 MEMBER HINKLE: Yes.

20 VICE CHAIR ALLEN: Second.

21 BZA CHAIR JORDAN: Motion made and
22 seconded. The Vice Chair is the second

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1 person. Motion made and seconded. Any
2 unreadiness? Further discussions?

3 ZC CHAIR HOOD: As further
4 discussion, I think the through this whole ZRR
5 the Zoning Commission is also looking at re-
6 looking at overlays also. So you want may to
7 stay tuned. I understand the significance.
8 As Mr. Clarens and others know, that when the
9 Zoning Commission does overlays, we don't sit
10 down here all night for nothing. So we like
11 to see those things and make sure they stay
12 maintained and in force. So this is my two
13 cents worth on this motion.

14 BZA CHAIR JORDAN: And I
15 appreciate that and I'm always glad you're
16 here and give us the additional insight and
17 oversight.

18 All those in favor of the motion,
19 signify by saying aye?

20 (Chorus of ayes.)

21 BZA CHAIR JORDAN: Those opposed,
22 nay?

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1 (No audible response.)

2 BZA CHAIR JORDAN: The motion
3 would carry. Mr. Moy?

4 MR. MOY: Yes, sir. Staff would
5 record the vote as 4-0. This is on the motion
6 of Chairman Jordan to approve the application
7 for the special exception relief as cited.
8 Seconding the motion, Vice Chairperson Allen.
9 Also in support Mr. Hood and Mr. Hinkle. And
10 we have a Board seat vacant. The motion
11 carries on a vote of 4-0.

12 BZA CHAIR JORDAN: Thank you, Mr.
13 Moy. All right. And thank you so much for --
14 thank you all, really thank you all for your
15 input, coming down and talking to us. Thank
16 you very much. Thank you.

17 Is there any other building coming
18 before the Board today, Mr. Moy?

19 MR. MOY: No, but I would like to
20 note for the record for the transcript, Mr.
21 Chairman, that appeal No. 18539 and 18540 of
22 2101 Connecticut Avenue Cooperative was

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1 previously postponed to October 22nd, 2013.

2 And that's it.

3 BZA CHAIR JORDAN: Thank you very
4 much. Well then we are adjourned for the day,
5 and thank you.

6 (Whereupon, the hearing was
7 concluded at 2:54 p.m.)

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