

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JULY 30, 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 9:48 a.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.
TAMAR GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEVEN COCHRAN
ARTHUR JACKSON
BRANDICE ELLIOTT

The transcript constitutes the minutes from the Public Hearing held on July 30, 2013.

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

2 9:48 a.m.

3 CHAIRPERSON JORDAN: Let's call
4 18590, please.

5 MR. MOY: As to the first case for
6 the morning -- good morning, Mr. Chairman,
7 members of the Board. That will be
8 Application 18590.

9 This is the application of the
10 District of Columbia Public Library pursuant
11 to 11 DCMR 3104.2 for a variance from the off-
12 street parking requirements to permit the
13 reconstruction of a library under Section
14 2101.1, in the C-2-A District at premises 1801
15 Hamlin Street, N.E., Square 4210, Lot 825.

16 Will the persons at the table
17 identify themselves, please.

18 MS. BRAY: Good morning, Mr.
19 Chairman. Kinley Bray with the law firm of
20 Arent Fox on behalf of the Applicant, District
21 of Columbia Public Library.

22 MR. BONVECHIO: Jeff Bonvechio

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1 with D.C. Public Libraries. I'm the Director
2 of Capital Projects and Facilities Management.

3 MS. MILANOVICH: Good morning.
4 Jami Milanovich with Wells and Associates, the
5 transportation and parking consultant for the
6 project.

7 MR. ZASLOW: Good morning. My
8 name is Hal Zaslow. I'm with Wiencek and
9 Associates, Architects and Planners.

10 CHAIRPERSON JORDAN: Good morning.
11 This is a matter which the Board has also
12 examined. It appears there are no real issues
13 with this case. I know we've drilled down on
14 and looked at it. I think the relief is
15 relatively simple. The reason for the request
16 is simple.

17 If we can, the Board has more
18 concern than question in regards to the DDOT
19 conditions. So, one, if you can give us your
20 spiel and position on it, then we also would
21 like to hear from DDOT.

22 Otherwise, you can do a

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1 presentation if you want but I think you are
2 fine where you are. I think this is kind of
3 a no-brainer reason why this is necessary.
4 These DDOT conditions, what is your feel on
5 that?

6 MS. BRAY: Sure. Thank you very
7 much, Mr. Chairman. We would dispense with a
8 full presentation of the case. I did have a
9 comment about one of the DDOT conditions.
10 Jami Milanovich is certainly available with
11 her expertise to address that.

12 One of the recommendations of DDOT
13 was to install a terminal display in the
14 library which would display real-time transit
15 information. The library is in support of
16 that concept but it's our understanding, and
17 perhaps Jami can elaborate, that the
18 development of a standard device by DDOT is
19 still underway.

20 At this point the library would
21 agree to provide real-time transit information
22 on its own display screens which it has

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1 already budgeted for and intends to install in
2 the library that scroll through the daily
3 events in the library and other neighborhood
4 branch specific information about the
5 Woodridge Library on those screens.

6 One of those slides could be real-
7 time transit information. The NextBus
8 application, for example, or something
9 similar. It would be on the library's own
10 equipment.

11 CHAIRPERSON JORDAN: We've seen
12 this a couple of times from DDOT. Do they
13 have a recommended version or something?

14 MS. MILANOVICH: There are vendors
15 out there that are doing real-time transit
16 displays at various locations. My
17 understanding from some conversations I had
18 with DDOT on another project is they are
19 working on a standard spec that could be given
20 to developers so that they could use that to
21 install, but there are prototypes available.

22 I think in this particular case

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1 the library had already intended to install a
2 display monitor like Kinley said that would
3 display events of the day at the library that
4 also could display the same type of
5 information that DDOT is looking for. I don't
6 want to speak for DDOT but I think we meet
7 their intent with that.

8 CHAIRPERSON JORDAN: Board, any
9 questions of the Applicant before we turn to
10 DDOT?

11 Yes.

12 VICE CHAIR ALLEN: I just had one
13 question. How many employees are at the
14 library? Do you know?

15 CHAIRPERSON JORDAN: At that
16 particular library?

17 MS. BRAY: I think we're between
18 five and eight right now and we'll be going to
19 nine full-time employees.

20 VICE CHAIR ALLEN: Thanks.

21 ZC CHAIR HOOD: I'll just sort of
22 do this. I'm the President of the Woodridge

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1 Civic Association and members have been
2 heavily involved with this. I have
3 particularly stayed away from it. I don't
4 even think I really need to mention that but
5 I wanted to put that on the record.

6 CHAIRPERSON JORDAN: Thank you,
7 Anthony.

8 Any other questions of the
9 Applicant regarding this?

10 Is there anyone here from DDOT
11 regarding this application? I don't see
12 anyone.

13 Does planning have any additional
14 information on this? I'm not trying to put
15 you on the spot because this is not your
16 request but if you know anything more.

17 MS. ELLIOTT: Unfortunately I'm
18 not in a position to comment on the
19 conditions.

20 CHAIRPERSON JORDAN: Okay. With
21 that, does the Board have any other questions
22 they need to have drilled down with the

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1 Applicant? As I said, I think the record is
2 real clear and the need for the relief for
3 this particular project.

4 You already waived any further bit
5 for this part of the hearing. Certainly keep
6 anything for rebuttal.

7 Let's turn to the Office of
8 Planning and see if there's anything in
9 addition that the Office of Planning believes
10 s request. Office of Planning is recommending
11 approval of the requested variance.

12 CHAIRPERSON JORDAN: Any questions
13 from the Board of the Office of Planning?

14 Does the Applicant have any
15 questions of the Office of Planning?

16 MS. BRAY: No, we don't. Thank
17 you.

18 CHAIRPERSON JORDAN: We already
19 asked for the Department of Transportation.

20 Is there a representative here
21 from ANC-5C? We do have a letter in our file
22 from ANC-5C who recommends approval to which

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1 we give great weight for this.

2 Is there anyone else in the
3 audience wishing to testify in support of this
4 application? Anyone wishing to testify in
5 support? Anyone wishing to testify in
6 opposition? Anyone in opposition?

7 Then we'll return back to the
8 Applicant and we would ask you for some
9 rebuttal but rebuttaling nothing leads to
10 nothing, right? Do you want to do any
11 closing?

12 MS. BRAY: I would just like to
13 thank DDOT and the Office of Planning for
14 their time, as well as the ANC. There has
15 been a lot of thought that has gone into this
16 process. I think the results are the full
17 record and I appreciate the Board's time this
18 morning.

19 CHAIRPERSON JORDAN: So, if I
20 understand, the second condition, information
21 about commuter alternatives available, that's
22 not an issue?

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1 MS. BRAY: Not an issue because
2 that's something that the library already does
3 for the staff through its HR department.

4 CHAIRPERSON JORDAN: The first one
5 you're agreeing to it but more on a voluntary
6 basis kind of?

7 MS. BRAY: I think if you wanted
8 to include a condition of approval that said
9 the library would include real-time transit
10 information on the premises, that would be
11 acceptable to us.

12 Otherwise, we would prefer we note
13 for the record that we're voluntarily going to
14 provide that information on the library's own
15 equipment and there wouldn't need to be a
16 condition of approval. We have no objection
17 in concept to providing that.

18 CHAIRPERSON JORDAN: I understand.
19 Then let's close the hearing based
20 upon the record already received and turn to
21 the Board for deliberation.

22 Is the Board feeling some thoughts

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1 about these conditions? Anyone?

2 In light of what the Applicant has
3 indicated that they would do, then I would
4 just change condition 1, provide real-time
5 arrival availability information on buses,
6 carshare, and bike support and just leave it
7 at that. Then No. 2, keep that as it states.

8 Is that okay?

9 ZC CHAIR HOOD: I'm just curious.
10 I probably should have spoke earlier. In the
11 first condition, I'm just wondering, I guess
12 the trains and everything have been looked at,
13 what the usage patterns are of the library?

14 With this being a new library,
15 maybe the usage patterns may change. I just
16 don't know if we put that in there is it
17 effective immediately or are we giving them
18 some time to get it done? How is it going to
19 work? I'm just curious. What is our
20 thinking?

21 CHAIRPERSON JORDAN: Well, it's
22 not really our thinking at this point. It's

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1 a request by DDOT. I think it would just be
2 in the normal course when the building is up
3 and running that they have it. It will be in
4 the new -- well, I don't know.

5 ZC CHAIR HOOD: I'm just looking
6 out for potential problems. Not that there's
7 going to be one but potential problems.
8 That's what I'm saying. What they're going to
9 do is they are going to look at the
10 transcript. What actually did the Chairman
11 say. Was it a time frame or how long did we
12 give them.

13 CHAIRPERSON JORDAN: I would think
14 it would be within the context of the new
15 construction that's going on. At some point
16 you would get there to do it.

17 ZC CHAIR HOOD: It's not of the
18 urgency, I guess. It doesn't have to happen
19 as soon as the building is open.

20 CHAIRPERSON JORDAN: Not from our
21 standpoint.

22 MS. BRAY: I think the library's

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1 position, if I may, is that it could be there
2 as soon as the building opens. This is
3 something the library is already planning to
4 include in its program. Our interpretation of
5 any condition like that would be that it would
6 run from the building permit issuance.

7 ZC CHAIR HOOD: All right. I just
8 wanted to make it clear for the courts just in
9 case. Thank you, Mr. Chairman.

10 CHAIRPERSON JORDAN: If DDOT files
11 an appeal against the library, we've got some
12 issues.

13 ZC CHAIR HOOD: It's not
14 necessarily DDOT. It's not DDOT. Trust me.
15 I've been around. You know how it works. I
16 just wanted to make sure it was clear.

17 CHAIRPERSON JORDAN: Good thing
18 there are no other parties in this case and
19 the ANC is in support. I'm with you.

20 Now, what was it? Don't expect --

21 ZC CHAIR HOOD: I forgot. That
22 was last night. I can't remember from last

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1 night to today.

2 CHAIRPERSON JORDAN: I call it
3 Chairman Hood's Wisdoms.

4 I would move that we grant the
5 relief requested in this application adding
6 the condition 1, provide real-time
7 availability for nearby buses and carshare and
8 bikeshare information. Two, make information
9 about commute alternatives including commuter
10 connection brochures, bus schedules, Capital
11 Bikeshare brochures, etc. available to library
12 employees. That would be my motion.

13 ZC CHAIR HOOD: Second.

14 CHAIRPERSON JORDAN: Motion made
15 and seconded. Any unreadiness? All those in
16 favor signify by saying aye.

17 BOARD MEMBERS: Aye.

18 CHAIRPERSON JORDAN: Those opposed
19 nay. The motion carries.

20 Mr. Moy.

21 MR. MOY: Staff would record the
22 vote as 4-0. This is on the motion of

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1 Chairman Jordan to approve the application for
2 the relief requested with the two DDOT
3 conditions as amended.

4 Seconding the motion Mr. Hood.
5 Also in support Vice Chairperson Allen and Mr.
6 Hinkle. We have a Board seat vacant. The
7 motion carries on a vote of 4-0, Mr. Chairman.

8 CHAIRPERSON JORDAN: Thank you. A
9 summary order will be fine.

10 MR. MOY: Yes, sir. Thank you.

11 MS. BRAY: Thank you.

12 CHAIRPERSON JORDAN: Thank you.

13 MR. MOY: The next application is
14 Application No. 18598 of 3612 Park Place, LLC,
15 pursuant to 11 DCMR 3103.2, for a variance
16 from the minimum lot area requirements under
17 Subsection 401.3, to convert two vacant row
18 dwellings into a six-unit apartment house in
19 the R-4 District at premises 3612 Park Place,
20 N.W., Square 3035, Lots 837 and 838.

21 CHAIRPERSON JORDAN: Okay. Could
22 you introduce yourselves first, please?

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1 MR. SULLIVAN: Yes. Good morning,
2 Mr. Chairman, and members of the Board. My
3 name is Marty Sullivan with the law firm of
4 Sullivan & Barros.

5 MR. SIMAN: Good morning. My name
6 is Neil Siman. I'm the co-partner of
7 BlueWater Funding and Development.

8 MR. RIGGINS: Roger Riggins. I'm
9 a project manager with the Applicant.

10 CHAIRPERSON JORDAN: Okay. Did
11 you do gentlemen complete witness cards?
12 Thank you.

13 All right, Mr. Sullivan. We're on
14 you.

15 MR. SULLIVAN: Thank you, Mr.
16 Chairman. Good morning, Mr. Chairman, and
17 members of the Board. I'm here today on
18 behalf of the Applicant 3612 Park Place, LLC.
19 It's a request for variance relief to provide
20 an additional six-unit to what would be a
21 matter-of-right five-unit apartment house.

22 The property's land area is a

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1 little over 4,500 square feet which would
2 allow five units. It would allow the units
3 either as a three-unit building or a two-unit
4 building next to each other, or together as a
5 five-unit building. The Applicant is asking
6 for variance relief from the minimum lot area
7 requirements under Section 401.3 to add a
8 sixth unit.

9 This Board, as you know, has
10 entertained many of these variance requests in
11 recent years and has approved them when
12 appropriate. As you know, among the factors
13 that the Board has considered in approving or
14 denying this type of application is the
15 physical condition of the improvements on the
16 property along with any history of neglect and
17 abandonment that have led to that poor
18 condition.

19 I think even among the best of
20 those cases -- by best I mean the worse
21 conditions -- this property stands out as
22 being in exceptionally poor shape. Both of

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1 these buildings have been completely abandoned
2 and neglected for what we think is about 10
3 years at least. We know for sure it's at
4 least seven years.

5 CHAIRPERSON JORDAN: I thought in
6 your documents you had five.

7 MR. SULLIVAN: We keep learning
8 more as we go on.

9 CHAIRPERSON JORDAN: For the sake
10 of the hearing we would like to know how long
11 it's been vacant.

12 MR. SULLIVAN: Then we'll go with
13 seven plus because the ANC Commissioner said
14 when he moved into the area they were vacant
15 at that time and that was 2007. Six plus.
16 He also opined that his review of his
17 information he thought it was 2004 was his
18 best estimate.

19 The important thing is the
20 condition of these properties is in stark
21 contrast to the surrounding neighborhood.
22 This is not an area where there are many homes

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1 that are in this condition. The Applicant has
2 based the budgets that we've included in the
3 prehearing statement on a report of their
4 structural engineer, Mr. Om Sharma. We can
5 submit that report if the Board would like to
6 see that. He is also available here to answer
7 some questions following the testimony of the
8 Applicant.

9 It's clear from the photos, and
10 we'll have additional photos to hand out when
11 we do our testimony, that any reconstruction
12 of this is obviously unnecessarily burdensome.
13 It's evidenced by the increased construction
14 budget. And also by the fact that nobody
15 dared touch this property over the last seven-
16 plus years. If they had, they obviously
17 didn't survive the ordeal.

18 Those years of neglect have, as
19 you would expect, caused extraordinary
20 structural damage which is undeniably unique
21 in this neighborhood despite what the Office
22 of Planning has concluded without any actual

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1 inspection of the structures themselves. The
2 fact that the structures have been vacant for
3 so long is not only the cause of the problem
4 but it's evidence that a restoration is
5 extremely difficult.

6 Granting relief to go from five
7 units to six will not be a substantial
8 detriment to the public good. The Applicant
9 will be providing five parking spaces which
10 far exceeds the parking requirement and will
11 be restoring long-blighted properties back to
12 productive use.

13 We do have the support of both
14 immediate neighbors. Also, and this is very
15 significant, we have the support of ANC-1A
16 which, as you know, probably entertains the
17 majority of these types of requests and are
18 very diligent and mindful in their approvals.
19 They voted 9-1 to recommend approval.

20 That's our introduction. I would
21 like to introduce Neil Siman, partner in the
22 applicant entity, to give testimony. Thank

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1 you.

2 MR. SIMAN: Once again, good
3 morning. BlueWater is a lending and developer
4 in the District of Columbia. During our time
5 -- sorry. Let me bring this a little closer.
6 During our time in business we've developed
7 several other properties in an R-4 zoned
8 district.

9 Until now we have never found the
10 need to request any variance relief to do more
11 units than what was permitted as a matter of
12 right on any of our other projects. This case
13 was very extraordinary for us. When we closed
14 on the property we could restore this property
15 economically with four or five units.

16 What we found after closing on the
17 property and to have our engineer demo the
18 property and clean it out and to do a full
19 evaluation, the restoration was going to be
20 much more difficult than we had anticipated.

21 Our pro formas of five units,
22 which is the best-case scenario, provided a

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1 gross profit before paying our project manager
2 and other staff only 2 percent. In addition
3 to that scenario, we have a lot more risk and
4 exposure because of the severe structural
5 deficiencies and more of an unknown factor
6 correcting those conditions.

7 Based on this and after consulting
8 with zoning counsel, we believe that we have
9 a very unique situation that would be
10 justified in requesting zoning relief for just
11 one additional unit.

12 I would like to have my project
13 manager and my structural engineer speak about
14 the specific structural issues along with the
15 pictures that we have to support it and what
16 had caused them and what we need to do to
17 resolve these structural issues.

18 Before that, I would like to also
19 note, as Marty Sullivan had suggested, that we
20 receive the support of both the immediate
21 neighbors of the property. They have both
22 expressed a very strong interest to see the

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1 light at the end of the tunnel since these
2 properties have been vacant for such a long
3 time.

4 Right now I would like to
5 introduce Roger Riggins, our project manager,
6 who can talk more about the actual structural
7 issues on the property.

8 MR. SULLIVAN: I would like to
9 pass out some additional photos that Roger
10 will be referencing in his testimony.

11 CHAIRPERSON JORDAN: Sure.

12 MR. RIGGINS: It was a vacant
13 property. These two townhouses have been
14 exposed to the weather both inside and out.
15 There's a lot of water damage to the property.
16 The water has caused damage to the property
17 really in two different ways. The roof has
18 been open to the weather. There are several
19 holes in the roof of these properties.

20 As well there is negative grade
21 towards the back of these townhouses so the
22 water has been sitting in that soil right up

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1 against the house over a period of time which
2 has caused a lot of problems.

3 Really one of the most devastating
4 things that's happening to this is the wet
5 soil up against the foundation walls and
6 footings. What we're seeing there's calcium
7 and other agents in the soil that caused the
8 mortar to deteriorate.

9 The mortar is flaking out of the
10 joints on the inside and the outside of the
11 wall. These walls are in some cases just a
12 stack of bricks sitting on sand so it's really
13 gotten to a critical condition as a result of
14 the decay of the mortar.

15 The other thing that is happening
16 with these water-saturated soils is that they
17 are pressing up against the foundation wall.
18 The first picture that we have here in our
19 handout shows a masonry wall that is actually
20 bowed. This is the common wall with the
21 property next door at 3616 Park Place.

22 Because there are no drains in the

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1 back of this yard or in the back of the area
2 way, we couldn't find any drains. If there
3 were drains, they have long since been clogged
4 up. This wet soil just sits up against these
5 decaying mortar joints and is pushing the
6 walls in.

7 If something is not done
8 relatively soon to this property, the results
9 could be catastrophic. You can see from these
10 photos there is a number of things that are
11 happening. There is settlement of the actual
12 footings and slab in some areas which is
13 causing cracks in the masonry walls in
14 addition to the pressure on the soil that's
15 pushing them in.

16 Another thing that's happening
17 because the property is not occupied in the
18 wintertime there's no heat on in the property
19 and frost gets into the shallow footings in
20 the back of the building and it's actually
21 moving the building around.

22 We see cracks throughout the

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1 plaster. We see vertical cracks on the
2 masonry. There's area of the slab of this
3 building that have actually dropped because
4 the footings below have actually settled.
5 There is quite a bit of work that we are going
6 to have to do.

7 That kind of covers the ground
8 water. Then what is also happening with the
9 water coming through the roof is that we have
10 rotted floor joists. Pretty much mold-covered
11 joists and framing throughout the house. I
12 don't see any practical way that we can
13 encapsulate the mold. We are pretty much
14 going to have to remove all the wood framing.

15 There was a prior fire in the
16 house. We discovered a number of burned
17 joists from the fire. We have some
18 photographs of that in here as well. Of
19 course, with the water comes termites and we
20 found quite a number of termite-eaten joists
21 throughout the house.

22 There's really not much here in

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1 terms of an existing building that we can
2 simply remodel. We are basically left with
3 replacing all the wood framing in the
4 building. There is a steel beam and column
5 supporting the basement. Those have become
6 corroded with rust. We won't be able to get
7 a structural engineer to pass that so all that
8 will need to be replaced as well.

9 What we are going to have to do to
10 this property in areas where these walls have
11 become weakened and the slab and footings are
12 sinking is we are going to have to do
13 underpinning in those areas and replacement of
14 substantial amounts of masonry. We are
15 actually going to have to dig around the open
16 walls, the three walls that we can access. We
17 are going to have to dig around those walls.
18 We are going to have to replace mortar that's
19 decayed out of the joints, waterproof the
20 walls, add a waterproofing system and drain
21 tile so we can stop the destruction of this
22 building.

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1 The front porches on the property
2 I also wanted to mention. You can see
3 pictures in here of the front porch, I think,
4 towards the end of this handout. The piers
5 have settled in the front so these porches are
6 sloping towards the street.

7 The roof of these porches was left
8 in a condition that is allowing water to get
9 into all the framing so that's rotted and is
10 eaten by termites. As well there are shallow
11 footings underneath these piers which have
12 been sinking.

13 The homeowners have overtime been
14 trying to jack up the porch and keep it from
15 leaning toward the street but now it's a
16 disaster. It's pretty much needs a complete
17 replacement on both of those front porches.

18 CHAIRPERSON JORDAN: Now, if this
19 building was going to be five units, these two
20 buildings, three and three or two and two or
21 together as five, would you still have to do
22 the same work?

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1 MR. RIGGINS: Yes. I mean, it's
2 really an unsafe condition right now and this
3 is just to restore the building to a
4 structurally sound structure.

5 CHAIRPERSON JORDAN: And other
6 buildings in that condition do this kind of
7 same work also. Is that right?

8 MR. RIGGINS: Yes. I mean, in
9 other cases where we found structural work
10 that needed to be done, this is really the
11 first thing we have to do to begin our
12 renovation. This is certainly much worse than
13 other buildings we've encountered in the
14 District.

15 CHAIRPERSON JORDAN: Board, any
16 questions of this witness?

17 Yes.

18 VICE CHAIR ALLEN: Thank you, Mr.
19 Chairman.

20 I wanted to know if you had, which
21 I assume you must have had, some kind of an
22 inspection before you purchased the property.

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1 Sort of part two of that is what you have
2 expected after six or seven years and a fire
3 and whatever it would have been in this kind
4 of condition.

5 MR. SIMAN: I can just add a
6 little bit to that doing a lot of the
7 acquisitions of these properties within the
8 District.

9 We were able to physically inspect
10 the property at one time during our study
11 period. Because of all of the -- sorry.
12 Because of all of the furnishings and trash
13 that were piled up in the property and not
14 being able to open up the walls, it was almost
15 impossible to make the determination of the
16 structural deficiencies primarily in the
17 footings of the building.

18 We only noticed the ground water
19 after we dug -- after we closed on the
20 property and dug into the basement slab and
21 took a look at the footings through several
22 pits. Hopefully that answers your question.

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1 We had limited access to the property.

2 This property has been boarded up
3 for a long time because of, I believe, a lot
4 of the issues that they've had with people
5 living in the property, the rat problem over
6 there. We only had access for about half an
7 hour to take a look at the property at one
8 time.

9 CHAIRPERSON JORDAN: Any questions
10 from the Board?

11 ZC CHAIR HOOD: Mr. Chairman,
12 maybe I missed it but I'm hearing a lot about
13 the structure. Explain to me how you meet the
14 unique characteristics of the property.
15 Explain that to me.

16 I understand about the structure.
17 I understand how long it's been there. I live
18 next to it. I would love to have it from a
19 zoning standpoint. Explain to me how do you
20 meet that first test.

21 MR. SIMAN: I have a board that I
22 would like to grab if that's okay.

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1 ZC CHAIR HOOD: Mr. Chairman?

2 CHAIRPERSON JORDAN: Oh,
3 certainly.

4 MR. SIMAN: Sorry. Please ignore
5 this. This was a rendering that we are not
6 going to put this up yet.

7 Basically you can see by the look
8 of the properties our proposed renderings.
9 They will still maintain the look and feel of
10 the existing homes on the street. We are not
11 putting up a modern building like others that
12 you would see in the neighborhood. Everything
13 is really going to maintain the look and feel
14 of the surrounding houses on the property.

15 ZC CHAIR HOOD: Again, that's at
16 the same place. I mean, what about the lot
17 area, the land? Is there a slope? Is it
18 irregularly shaped? What is it that makes it
19 unique?

20 MR. SULLIVAN: Mr. Riggins, maybe
21 you can talk about the negative grading and
22 the shape of the property where the alley

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1 comes in.

2 MR. RIGGINS: From the alley back
3 to the back of the back door of the property,
4 the ground is sloped towards the building.
5 This has been left unaddressed for a long
6 time. This has created a lot of the
7 catastrophic structural damages to the masonry
8 in the back.

9 Also, the alley was paved at some
10 point and it was paved in a way that left the
11 alley higher than the actual land behind the
12 house. That's really one of the things that's
13 contributed greatly to the destruction of this
14 house.

15 As well the way the alley was
16 constructed it takes kind of a jog out of the
17 back corner of the property here. That
18 missing acreage contributes to the kind of
19 unique character if we had that tooth back in
20 the proper --

21 CHAIRPERSON JORDAN: Show that
22 part again?

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1 MR. RIGGINS: Right here the alley
2 cuts into the back of this 3614.

3 CHAIRPERSON JORDAN: The alley
4 cuts into the back of it.

5 MR. RIGGINS: Yes.

6 CHAIRPERSON JORDAN: How is that?

7 MR. RIGGINS: This lot is
8 rectangular on 3612. There's a big tooth
9 missing from 3614 as the result of how the
10 alley cuts into the back of it.

11 CHAIRPERSON JORDAN: Right. Show
12 me the lots again, your lots.

13 MR. RIGGINS: These two are ours.
14 This is 3614 with the irregular backyard.
15 Then 3612 is the rectangular one.

16 CHAIRPERSON JORDAN: So what's
17 back here, the back portion?

18 MR. RIGGINS: Yes. We have five
19 proposed parking spaces.

20 CHAIRPERSON JORDAN: That's the
21 parking spaces. Correct. Okay. So your lot
22 is 838 and 837?

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1 MR. RIGGINS: Yes. Several
2 things. If we had had that missing tooth in
3 our property that the alley took, we would
4 have been able to get six parking spaces. It
5 would have also given us additional land area
6 to contribute towards our unit count.

7 ZC CHAIR HOOD: So this grade
8 change is only behind those two properties?

9 MR. RIGGINS: There's other
10 properties. I'm sure --

11 ZC CHAIR HOOD: But you say the
12 grade is going inward?

13 MR. RIGGINS: It's going downward
14 towards the back of our house. I haven't
15 looked carefully at the neighbors to see if
16 some of them have negative grade as well but
17 it is certainly unique to this property that
18 it's been left unattended.

19 CHAIRPERSON JORDAN: But you're
20 not required to have any additional parking?

21 MR. RIGGINS: We're not required,
22 no.

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1 CHAIRPERSON JORDAN: Okay. I'm
2 trying to understand what you're saying about
3 the effect upon this corner here.

4 MR. SULLIVAN: I think if the
5 space was rectangular we wouldn't have all the
6 way to six units. We would just have more
7 land area. I don't know if that directly
8 affects it. I think the grade --

9 CHAIRPERSON JORDAN: Can you say
10 that again for me?

11 MR. SULLIVAN: We would have more
12 than 4,500 square feet if the lot was
13 rectangular and regular shaped.

14 CHAIRPERSON JORDAN: Show me that
15 again. How are you saying that? The building
16 has its already-laid-out foundation where you
17 go in.

18 MR. SULLIVAN: No, I mean the land
19 area. That wouldn't be the 5,400 anyway.
20 That just contributes to the land area. I
21 think it's not just the grading but the
22 grading combined with the condition of the

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1 building in a way it hasn't been able to
2 gather the drainage because the areaways have
3 been blocked, the gutters and downspouts are
4 gone. There's no stormwater management
5 system.

6 CHAIRPERSON JORDAN: Isn't that
7 something that's common in any building that's
8 been sitting for a while, that it would be in
9 a dilapidated state?

10 MR. SULLIVAN: But no other
11 building around here is like that, though.
12 That's what is unique about this building.

13 CHAIRPERSON JORDAN: No other
14 building around this? So all the other
15 buildings there's no other vacant buildings on
16 that street? Is that what I'm understanding?

17 MR. SULLIVAN: No. It's a
18 beautiful street. It's a beautiful
19 neighborhood. They are all well maintained.
20 That's what I look to first and foremost as
21 the unique condition is the condition of these
22 buildings. It's really unusual. I have some

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1 pictures in the application of the other
2 houses on the street. This is why --

3 CHAIRPERSON JORDAN: Are you not
4 saying a vacant building in and of itself
5 makes it unique?

6 MR. SULLIVAN: No. It's one of
7 the factors. I'm saying the vacancy of the
8 building has, in fact, caused several other
9 conditions, the biggest of which is the slab
10 displacement and the additional work needed
11 that was not obvious to a purchaser before
12 they bought it from the water damage. The
13 building was open to the elements for 10
14 years. In other cases --

15 CHAIRPERSON JORDAN: That doesn't
16 stop you from -- I mean, you could go in based
17 upon your plans already to do this building as
18 five units or three and two or whatever with
19 the same conditions that are there. Correct?
20 And be within the requirements of the Zoning
21 Regulations. Is that right?

22 MR. SULLIVAN: That's right but it

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1 would be unnecessarily burdensome to do that
2 with that budget and that's why we're asking
3 for the additional six units. The Board has
4 approved this kind of application --

5 CHAIRPERSON JORDAN: We're talking
6 about this case, Mr. Sullivan. Each case is
7 going to have to stand on its own bottom.

8 MR. SULLIVAN: I understand.

9 CHAIRPERSON JORDAN: You use that
10 argument a lot. You know better than I that
11 each case stands on its own bottom so let's
12 talk about this one.

13 MR. SULLIVAN: Absolutely, but you
14 asked is the vacant -- is the fact that it's
15 been vacant for many years the unique
16 condition and the Board has found in many
17 other cases --

18 CHAIRPERSON JORDAN: I asked you
19 what you were saying.

20 MR. SULLIVAN: It's very unique.

21 CHAIRPERSON JORDAN: For the time
22 that I've been on this Board that we've taken

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1 a whole bunch of other reasons just for the
2 fact that the building is vacant. We might as
3 well just do a drive-by and say the building
4 is vacant so automatically it's a unique
5 situation. We don't do that. You know we
6 don't do that.

7 MR. SULLIVAN: Absolutely. I
8 understand.

9 CHAIRPERSON JORDAN: Maybe I
10 misheard you because I thought that's what you
11 were advocating just now.

12 MR. SULLIVAN: It's one of the
13 conditions that has caused several other
14 conditions. Also it is extremely unique in
15 this neighborhood. The property has defied
16 restoration. Nobody will touch it. The
17 greatest renaissance in D.C. real estate and
18 nobody has touched this building. It requires
19 extra relief to get it done.

20 CHAIRPERSON JORDAN: How long was
21 this building on the market?

22 MR. SIMAN: I believe it's been on

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1 and off the market several times. In 2011 it
2 was on the market and then withdrawn after 60
3 days. Most recently when we purchased the
4 building I'm not sure of the exact days on the
5 market.

6 MR. SULLIVAN: There is some
7 evidence that there was a raze permit applied
8 for and maybe received as well in 2008 or
9 2009. It was obviously not carried out.

10 CHAIRPERSON JORDAN: The question
11 was when was it on the market. I'm hearing
12 definitely it's 2011 and you're saying 2009 it
13 was on the market or was it there?

14 MR. SULLIVAN: No, in 2009,
15 according to the DCRA's records, somebody
16 applied for a raze permit for the building.

17 CHAIRPERSON JORDAN: When was it
18 on the market? Had it been on the market?

19 MR. SULLIVAN: I don't know.

20 CHAIRPERSON JORDAN: Okay.
21 Someone could have had it and held it and
22 decided in 2011 to sell it. I was just trying

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1 to find out how long it's been on the market
2 to determine whether or not -- how much of a
3 challenge it's been to be able to market and
4 sell this property.

5 Does the Board have any other
6 questions?

7 Mr. Sullivan, you can continue
8 with the case.

9 MR. SULLIVAN: That's all we have
10 for our testimony at this time.

11 CHAIRPERSON JORDAN: So what's a
12 reasonable profit?

13 MR. SIMAN: Typically we are
14 looking for anywhere between 12 to 15 percent
15 on our properties.

16 CHAIRPERSON JORDAN: You're
17 looking for 12 to 15 percent on your
18 properties?

19 MR. SIMAN: On properties of this
20 scope. That is correct.

21 CHAIRPERSON JORDAN: And the
22 average profit for real estate investment is

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1 what?

2 MR. SIMAN: For developers they
3 are doing anywhere between 12 to 20 percent.

4 CHAIRPERSON JORDAN: That's
5 interesting. And your contingency. You
6 appear to have -- your contingency fee, what
7 percent is that? Because you're holding back
8 \$146,000. Is that the number? I could be
9 off. What's the number?

10 MR. SIMAN: Sorry. I don't
11 have --

12 CHAIRPERSON JORDAN: Sorry. I'm
13 wrong. It's \$161,000 in contingency.

14 MR. SIMAN: That's correct.

15 CHAIRPERSON JORDAN: And that's a
16 percentage of what?

17 MR. SIMAN: That's a percentage of
18 the --

19 CHAIRPERSON JORDAN: How much
20 percent is that?

21 MR. SIMAN: Normally we're running
22 anywhere between 5 percent, 10 percent because

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1 of the structural condition.

2 CHAIRPERSON JORDAN: Right.
3 That's my point. That's my question. Why is
4 this contingency so high? I see 15 percent
5 and you guys are holding \$161,000 in
6 contingency in your cost numbers indicating
7 that this is not a profitable project. Going
8 by your numbers alone, you would have a 2
9 percent return on five units. Correct?

10 MR. SIMAN: That is correct. Just
11 to speak on the contingency for a second,
12 there are a lot of unknowns regarding the
13 structural deficiencies over here and that's
14 why we had increased this contingency. One
15 thing I would like to mention is you talk
16 about the vacant properties in the District.
17 We are --

18 CHAIRPERSON JORDAN: I'm not
19 talking about the vacant properties in the
20 District.

21 MR. SIMAN: Sorry. Okay.

22 CHAIRPERSON JORDAN: A statement

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1 was made about something we've done in the
2 past about vacancies so that was just a
3 dialogue.

4 So your numbers on five units
5 would be the same. If you're doing five units
6 and the difference here you're saying is a
7 difference in profit between 2 percent and
8 you're looking for 12 to 15 percent. Is that
9 what I understand?

10 MR. SIMAN: Correct. I mean,
11 that's our target.

12 CHAIRPERSON JORDAN: But you could
13 do this building and still have some type of
14 profit at five units. Right?

15 MR. SIMAN: No. We would actually
16 be losing money at five units.

17 CHAIRPERSON JORDAN: How's that?

18 MR. SIMAN: The reason we would be
19 losing money is we're showing a 2 percent
20 profit. That is the actual cost and not
21 including any of our overhead such as the
22 project manager.

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1 CHAIRPERSON JORDAN: Okay. So
2 your budget -- okay. What you submitted to us
3 is not fully everything that should be in your
4 financials? Is that what I'm understanding?

5 MR. SIMAN: We took out internal
6 overhead for the project manager. Correct.
7 Sorry, this is our normal budgeting sheet that
8 we run through.

9 CHAIRPERSON JORDAN: Board, any
10 other questions of the Applicant?

11 Now, how significant the change of
12 grade is there? I understand you say there is
13 a change of grade on the property?

14 MR. RIGGINS: It's fairly settled
15 but from the alley back to the back of the
16 house it might drop half a foot or a foot but
17 it's enough that the water pools up there in
18 the back. The expensive regrading of the
19 property is not any big deal. The big deal is
20 it's been sitting like that for a long time
21 and it's caused a lot of damage.

22 CHAIRPERSON JORDAN: Is there any

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1 difference in your numbers in keeping the two
2 buildings separate and putting them to use?

3 MR. SIMAN: Yes. We've run both a
4 single-family scenario, to do two single
5 families, and we've also run the five-unit
6 scenario and the six-unit scenario.

7 CHAIRPERSON JORDAN: I don't think
8 I have the single unit financials. Did I miss
9 that?

10 MR. SIMAN: We decided against
11 that in the beginning after we had acquired
12 the property and gone in and noticed the
13 structural deficiencies because we were losing
14 quite a bit of money on those scenarios.

15 CHAIRPERSON JORDAN: But we don't
16 have it?

17 MR. SULLIVAN: No, we didn't
18 submit those.

19 CHAIRPERSON JORDAN: So for us it
20 still could be a viable option because we
21 don't have any data to the contrary. What
22 about the five-unit scenario?

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1 MR. SIMAN: The five-unit scenario
2 is the scenario that we present that is part
3 of this package.

4 CHAIRPERSON JORDAN: With the
5 combined units? If you combined them at five
6 units. Is there a difference in cost if you
7 kept them separate units three and two, or
8 whatever that makeup is?

9 MR. SIMAN: No.

10 CHAIRPERSON JORDAN: There's no
11 difference in cost?

12 MR. SIMAN: As far as the
13 construction cost? No.

14 CHAIRPERSON JORDAN: Okay. Anyone
15 else?

16 Is there anything before we go to
17 the Office of Planning?

18 MR. SULLIVAN: No, Mr. Chairman.
19 Thanks.

20 CHAIRPERSON JORDAN: Thank you,
21 gentlemen.

22 Office of Planning.

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1 MR. COCHRAN: Thank you, Mr.
2 Chair. For the record, Steve Cochran, Office
3 of Planning. I'm going to be asking you to
4 look at a couple of exhibits. Unfortunately,
5 I don't have the numbers on the exhibits. I
6 picked this case up from another colleague.
7 There is a picture --

8 CHAIRPERSON JORDAN: In the
9 Applicant's --

10 MR. COCHRAN: In the Applicant's
11 package.

12 CHAIRPERSON JORDAN: Okay.

13 MR. COCHRAN: The Applicant
14 submitted rear views of property after partial
15 demolition. These two photos that you can see
16 here --

17 CHAIRPERSON JORDAN: Are you
18 speaking in regards to this that was just
19 handed out to us?

20 MR. COCHRAN: I believe that is
21 something called additional photos. These
22 look like they came in with the original

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1 application. It starts with buildings to the
2 south of the property.

3 CHAIRPERSON JORDAN: Let us catch
4 with you one second, please. Exhibit 7?

5 MR. MOY: It's either Exhibit 7 or
6 Exhibit 26, Mr. Chairman.

7 CHAIRPERSON JORDAN: Okay. Which
8 picture? Show us again.

9 MR. COCHRAN: It shows the rear of
10 the property with a chain link fence and a
11 white car and then the closeup.

12 CHAIRPERSON JORDAN: Got it.

13 MR. COCHRAN: Then I would ask
14 you, of course, to look at the Applicant's
15 plans.

16 CHAIRPERSON JORDAN: You're asking
17 us to look at which one?

18 MR. COCHRAN: At the Applicant's
19 plan sheets.

20 CHAIRPERSON JORDAN: What exhibit
21 number is that?

22 MR. COCHRAN: They are folded over

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1 in what the Applicant submitted on July 16th.

2 CHAIRPERSON JORDAN: So Exhibit
3 26? Is that what you're speaking of?

4 MR. MOY: That's what I think it
5 is, Mr. Chairman. Exhibit 26.

6 MR. COCHRAN: I'm sorry I can't
7 give you the exhibit numbers but we don't get
8 those anymore.

9 CHAIRPERSON JORDAN: What page of
10 26?

11 MR. COCHRAN: The plans.

12 CHAIRPERSON JORDAN: The plans?

13 MR. COCHRAN: They are 11 by 17.

14 CHAIRPERSON JORDAN: All right.

15 Proceed.

16 MR. COCHRAN: The Applicant said
17 that the project would be unnecessarily
18 burdensome at that budget, the budget that was
19 submitted, and that no one would do this
20 building. There are a couple of things I
21 would like to point out in terms of the
22 exceptional situation and the practical

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1 difficulty.

2 If you look at the photographs of
3 the back of the building, you'll see that
4 there's already been a significant amount of
5 partial demolition. Sorry but I have no idea
6 whether that was done by the Applicant or by
7 a previous owner and the Applicant bought it
8 this way.

9 Even with the partial demolition,
10 it appears that the Applicant is doing well
11 more than rebuilding the existing structure --
12 excuse me, the previously existing portions of
13 the structure.

14 If you'll look at sheets A1
15 through A4 of the Applicant's plans, you'll be
16 able to see that there is a fairly thickly
17 poched line that indicates the walls that
18 exist now in the periphery of the building.
19 Then everything to the left of those, which
20 isn't thickly poched, is new construction.
21 This new construction includes an entire new
22 third floor.

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1 It also, to my eye at least, goes
2 farther back towards the rear of the lot than
3 any of the existing -- than any of the
4 construction that would have existed before
5 the demolition. The Applicant is considerably
6 enlarging the structure both with a rear
7 addition and with a third floor.

8 That makes it difficult to
9 evaluate the project because it's
10 unnecessarily burdensome at that budget Mr.
11 Sullivan said. Well, it's hard to tell what
12 the burden would have been had the Applicant
13 chosen a more modest project that wouldn't
14 have added an additional floor or put on the
15 back.

16 OP is going to stay with its
17 recommendation that the Applicant has not
18 demonstrated the practical difficulty. In
19 light of that, the conversion to an apartment
20 building is inappropriate and is harmful to
21 the zone plan. That concludes OP's report.

22 CHAIRPERSON JORDAN: Questions for

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1 the Office of Planning?

2 Yes, please.

3 VICE CHAIR ALLEN: Thank you, Mr.
4 Chairman.

5 Thank you, Mr. Cochran. The
6 Applicant made a comment regarding the grading
7 and that it contributed to the water damage.
8 Did you have any --

9 MR. COCHRAN: I apologize. I
10 picked up this case because someone else had
11 to go out of town. I don't see a topo. I do
12 see those photos and I can't tell whether the
13 -- it's clearly sloping up from the alley to
14 the telephone pole in these photos.

15 It may or may not be sloping
16 downwards towards the building from the
17 telephone pole that's in the pictures to the
18 back. I just don't know how much it would
19 pool. I have to rely on the Applicant's
20 engineers for that.

21 ZC CHAIR HOOD: Then I would have
22 to -- I'm glad we looked at this photo again.

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1 I'm looking at the grade and everything and I
2 just don't see the difference. Maybe the
3 picture is not showing me anything. I just
4 don't see anything unique about what is being
5 done on these properties.

6 CHAIRPERSON JORDAN: On your
7 Exhibit 7 -- and I guess it's the first
8 picture, the one that Mr. Cochran showed us a
9 minute ago -- if you look at the buildings
10 where they all appear to be lined up with the
11 present block and if you look -- you can't
12 tell necessarily from these pictures if you
13 look at those, especially the first one you
14 had us look at, the question becomes is there
15 -- what is the grade drop between these
16 buildings and the other buildings on the
17 street? Is there a grade drop different than
18 those?

19 MR. RIGGINS: Where you have the
20 grade going in several directions at Park
21 Place is sloping down if you're facing the
22 front of the property.

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1 CHAIRPERSON JORDAN: The whole
2 block is --

3 MR. RIGGINS: Sloping to the
4 right.

5 CHAIRPERSON JORDAN: Okay. The
6 whole block slopes.

7 MR. RIGGINS: The whole block is
8 sloping to the right.

9 CHAIRPERSON JORDAN: Okay.

10 MR. RIGGINS: The alley is sloping
11 at a different rate.

12 CHAIRPERSON JORDAN: Okay. We can
13 see that. Okay.

14 MR. RIGGINS: Each property has a
15 different grading condition because you've got
16 multiple --

17 CHAIRPERSON JORDAN: Where you are
18 on the slope.

19 MR. RIGGINS: Yes.

20 CHAIRPERSON JORDAN: I guess it's
21 hard to tell just looking because by the
22 pictures that's been submitted by the

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1 Applicant it doesn't appear to be a great
2 significant change.

3 Okay. Any other questions that
4 the Board has of Office of Planning?

5 Did you have a chance to go
6 through the neighborhood, the conditions of
7 this neighborhood, other vacant properties?

8 MR. COCHRAN: I'm familiar only
9 with it as someone who lives in the city.
10 I've driven down the block several times. My
11 impression is that it would be unusual for
12 there to be vacant properties on this block.
13 But, again, I haven't looked at it
14 specifically for this case.

15 CHAIRPERSON JORDAN: Any other
16 questions for OP?

17 Turning to the Applicant,
18 questions of the Office of Planning?

19 MR. SULLIVAN: Yes, thank you.

20 Mr. Cochran, the OP report
21 concluded that there was no unique condition
22 but it sounds like you may have altered that

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1 testimony a little bit. Do you believe there
2 is a unique condition of the property with the
3 structures?

4 CHAIRPERSON JORDAN: I'm sorry,
5 Mr. Sullivan. Could you ask that one more
6 time, please?

7 MR. SULLIVAN: Yes. Is OP -- you
8 focused on practical difficulty in your
9 presentation. Has OP changed its position
10 about the uniqueness of the property?

11 MR. COCHRAN: I have not had an
12 opportunity to change that position, no.

13 MR. SULLIVAN: Okay.

14 MR. COCHRAN: I would have to look
15 at the evidence that I saw just today to
16 consider that.

17 MR. SULLIVAN: But you know
18 there's not a lot of other properties in the
19 neighborhood that have been vacant for seven
20 plus years. Correct?

21 CHAIRPERSON JORDAN: What was the
22 question again?

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1 MR. SULLIVAN: Are there a lot of
2 other properties in the neighborhood that have
3 been vacant for seven years?

4 MR. COCHRAN: I don't know the
5 answer to that. I do know that the Applicant
6 seems to have paid about \$300,000 more than
7 the assessed value for each of the properties.
8 The Applicant bought the properties in
9 February of 2013 for --

10 MR. SULLIVAN: I'm not sure what
11 that has to do --

12 MR. COCHRAN: The public record
13 price was --

14 MR. SULLIVAN: My question was --

15 MR. COCHRAN: I'm getting at the
16 uniqueness. If the Applicant thought these
17 were so unique --

18 MR. SULLIVAN: I just asked if
19 there were other vacant properties in the
20 neighborhood.

21 MR. COCHRAN: -- then they would
22 have paid less.

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1 MR. SULLIVAN: Are there other
2 vacant properties in the neighborhood?

3 MR. COCHRAN: I'm not aware.

4 MR. SULLIVAN: Are there a lot of
5 other properties that have sat open to the
6 elements completely unprotected for seven plus
7 years?

8 MR. COCHRAN: I'm not aware.

9 MR. SULLIVAN: So are there a lot
10 of other properties in the neighborhood that
11 have underlying --

12 CHAIRPERSON JORDAN: Mr. Sullivan,
13 I would like to have heard him. It might help
14 me get there with you if he was able to
15 complete his answers.

16 Mr. Cochran, could you talk about
17 the uniqueness?

18 MR. COCHRAN: Well, it's
19 unfortunately a lack of uniqueness with
20 respect to the prices. The assessed value and
21 what the Applicant is showing as paying in the
22 public records are approximately the same.

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1 The Applicant shows that he paid \$600,000 --
2 excuse me, \$300,000 for each property.

3 As the report indicates, the
4 assessed value for 2013 is \$254,600 for one
5 property and basically \$276,000 for the other
6 property. The Applicant's cost sheet today
7 shows a total of about \$600,000 that the
8 Applicant paid for the properties.

9 For these allegedly very
10 deteriorated properties, the experienced
11 Applicant paid more than their assessed value.
12 You would think if they were uniquely
13 deteriorated that they would have paid or been
14 assessed at less than the assessed value.

15 CHAIRPERSON JORDAN: Mr. Sullivan,
16 you asked a question of Office of Planning
17 which I've just got to be clear. You asked a
18 question, imposed a statement in that, and I
19 don't see it that way. I just want to
20 understand if I'm clear. I thought you asked
21 Mr. Cochran whether or not the Office of
22 Planning changed its position that these

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1 properties were unique.

2 I haven't seen that in the Office
3 of Planning's report because what I read is,
4 "However, the current state of the property
5 does not constitute the unique physical
6 characteristics of the property and the
7 condition of the properties when recently
8 purchased by the owner. The purchase
9 price..." It goes on and on. There is no
10 apparent unique characteristics or
11 circumstances. Where did you see that in the
12 Office of Planning?

13 MR. SULLIVAN: The Office of
14 Planning report includes that the property is
15 not unique. I was asking if he had changed
16 his mind.

17 CHAIRPERSON JORDAN: To say that
18 it was?

19 MR. SULLIVAN: Yes.

20 CHAIRPERSON JORDAN: Okay. I took
21 your question completely different. Maybe I
22 took it wrong because I thought you were

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1 saying has the Office of Planning changed
2 their position that this property was unique.
3 Okay. We're on the same page now.

4 MR. SULLIVAN: Thank you.

5 CHAIRPERSON JORDAN: Any other
6 questions of the Office of Planning?

7 MR. SULLIVAN: I do. Did you or
8 anybody at the Office of Planning undertake
9 any onsite investigation of these structures?

10 MR. COCHRAN: I don't know if Ms.
11 Thomas did. I did not.

12 CHAIRPERSON JORDAN: Was there a
13 normal practice that the Office of Planning
14 operates upon --

15 MR. COCHRAN: On a property like
16 this that is fenced and pre-owned we would not
17 do -- excuse, already owned, we would not do
18 an internal inspection without the permission
19 of the owner. The Applicant would know
20 whether anybody had asked. I'm sorry, I don't
21 know whether Ms. Thomas asked.

22 MR. SULLIVAN: Okay. So you

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1 weren't aware that we invited Ms. Thomas to
2 view the property with us and she rejected
3 that offer.

4 MR. COCHRAN: No, sir. I was not.

5 MR. SULLIVAN: Do you think that
6 based on the pictures that you've seen and if
7 the Office of Planning had actually done an
8 inspection of the property, do you think in
9 your opinion that it might be somewhat more
10 difficult to restore this property than other
11 similarly-situated properties?

12 MR. COCHRAN: First off, you're
13 asking a hypothetical. Secondly, if you're
14 talking about a similar property, I don't see
15 why it would be any different to renovate a
16 property in the same condition as the one you
17 have.

18 MR. SULLIVAN: The properties in
19 this neighborhood that are for sale and
20 renovations.

21 MR. COCHRAN: I'm sorry. I don't
22 know.

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1 MR. SULLIVAN: Would it take
2 extraordinary effort to underpin the slab, to
3 replace mortar, to replace walls, and the
4 other types of things that you've heard
5 testimony about today?

6 MR. COCHRAN: You testified that
7 it would. It makes sense to me that it would
8 cost more to renovate this property than one
9 that has been continuously occupied and
10 structurally sound.

11 MR. SULLIVAN: You stated in your
12 testimony that you believe a conversion was
13 inappropriate and harmful to the zone plan.
14 But, yet, is it permitted under the current
15 Zoning Regulations?

16 MR. COCHRAN: It's permitted if
17 the Board approves it, yes. But it also --

18 MR. SULLIVAN: I'm sorry. Is it
19 permitted as a matter of right?

20 MR. COCHRAN: To five units? Yes.

21 MR. SULLIVAN: Well, period. But,
22 yes, to five units.

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1 MR. COCHRAN: Yes, if you combine
2 the two properties it would be permitted.

3 MR. SULLIVAN: So the matter of
4 right option is inappropriate and harmful to
5 the zone plan?

6 MR. COCHRAN: Good point. The
7 conversion to six is inappropriate, we think,
8 because you haven't demonstrated the unique
9 conditions, the practical difficulty, etc. It
10 also is possible -- well, I'm going too far
11 afield in an answering the question. Sorry.

12 MR. SULLIVAN: As it applies to
13 prong 3 and substantial detriment to the
14 public good, your report stated, "The
15 development of an apartment building where it
16 is not contemplated under current regs is
17 detrimental to the neighborhood's character
18 and, therefore, the public's good." In this
19 case, the development of an apartment building
20 is contemplated under the current regs. Isn't
21 it?

22 MR. COCHRAN: If you combine two

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1 lots or, if you combined the entire block for
2 that matter, yes. You could do it as a --

3 MR. SULLIVAN: Or on one lot. You
4 could do it on one lot, could we not?

5 MR. COCHRAN: Yes, you could.

6 MR. SULLIVAN: So that's a false
7 premise then.

8 MR. COCHRAN: No. I'm not going
9 to say that. The R-4 zone is clearly
10 indicated as one where an apartment building
11 is suppose to be unusual.

12 Conversion to an apartment
13 building is actually discouraged. The R-4
14 zone is articulated in the Zoning Regulations
15 as being a low-house zone. Absent the
16 demonstration of why it shouldn't be, then --

17 MR. SULLIVAN: But what you're
18 reviewing -- the test under the variance test
19 is that whether or not granting relief is
20 likely to cause a substantial detriment to the
21 public good. Did you consider that the
22 difference between five units and six units is

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1 what causes such a substantial detriment?

2 It's not the five units.

3 MR. COCHRAN: First off, I didn't
4 testify that --

5 MR. SULLIVAN: It's the additional
6 unit.

7 MR. COCHRAN: -- this caused
8 substantial detriment to the public good.
9 That may have been in the report. I didn't
10 testify to that today. It's the confluence of
11 factors in this situation where OP feels that
12 there hasn't been a demonstration of the
13 uniqueness.

14 There hasn't been a demonstration
15 of the practical difficulty. Yet, the
16 Applicant is going for the relief that allows
17 the apartment building in an exceptional
18 situation that you haven't demonstrated that
19 harms the Zoning Regulations.

20 MR. SULLIVAN: So I'm talking
21 about prong 3. My question is about prong 3.
22 The OP report --

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1 MR. COCHRAN: The prong 3 has two
2 halves.

3 MR. SULLIVAN: It's copied right
4 off the last report they did --

5 CHAIRPERSON JORDAN: Let's break
6 this line of questioning. I think you've
7 asked it three times. The advisement is
8 simply the same. He's not answering maybe the
9 way you want him to but he's answered it so
10 let's move on.

11 MR. SULLIVAN: Is apartment house
12 use prohibited in the R-4 zone?

13 MR. COCHRAN: No.

14 MR. SULLIVAN: And this is an area
15 variance. Is it not? It's not a use
16 variance. Correct?

17 MR. COCHRAN: That's my
18 understanding that it is an area variance.

19 MR. SULLIVAN: I have no further
20 questions. Thank you.

21 CHAIRPERSON JORDAN: Any questions
22 -- oh, anyone from the Department of

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1 Transportation, DDOT, here to testify in this
2 case?

3 We do have a letter, I believe,
4 from DDOT that recommends -- that has no
5 objection to the requested relief.

6 Is there anyone here from ANC-1A?
7 ANC-1A?

8 We do have a letter from ANC-1A in
9 support of the project to which we would give
10 great weight.

11 Is there anyone here wishing to
12 testify in support of this application?
13 Anyone wishing to testify in support? Anyone
14 wishing to testify in opposition to this
15 application?

16 Then, Mr. Sullivan, we turn back
17 to you for rebuttal and/or closing.

18 MR. SULLIVAN: Thank you. I would
19 like to point out that there is strong
20 precedent in BZA cases, although every case is
21 viewed on its own merits that this type of
22 situation has been considered in the past to

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1 be an exceptional practical difficulty.

2 Some of the highlights of this
3 case that I think make it much stronger are
4 the damage to the slab and the footings which
5 is considerable to repair and not evident from
6 initial inspection.

7 Also, I would point out that ANC-
8 1A two hours after they voted no on a 900-foot
9 rule application voted overwhelmingly in
10 support of this one. They saw a vast
11 difference between that case and this case.

12 I think the reason was because the
13 property was neglected for so long and the
14 tremendous consequences of that neglect and
15 vacancy. And also because of where it sits on
16 this plot and it's an eyesore that it sticks
17 out on this block as a missing piece.

18 So based on that, and the other
19 evidence we've submitted today, and we'll be
20 happy to submit additional figures if the
21 Board so requires. That's all I have unless
22 you have other questions.

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1 CHAIRPERSON JORDAN: Does the
2 Board have any questions?

3 ZC CHAIR HOOD: You cited a number
4 of times the Board of Zoning Adjustment when
5 they've dealt with R-4 cases. Weren't there
6 probably other factors and probably -- I have
7 none in the case history obviously but weren't
8 there other factors that probably got the
9 Board to that decision in those previous cases
10 other than vacancy.

11 MR. SULLIVAN: The cases that I've
12 handled I would stack this one up against
13 those. I would be happy to submit some sort
14 of short brief about that. I'm thinking of
15 1211 10th Street which was simply vacant for
16 10 years and it didn't have any grading
17 issues. It wasn't open to the elements. It
18 was old.

19 ZC CHAIR HOOD: Basically what
20 you're saying is the Board approved it because
21 it was vacant.

22 MR. SULLIVAN: No. We had to

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1 prove a certain amount of structural issues
2 but the structural issues in 1211 10th Street
3 weren't as severe as this one. Are they all
4 encompassing like this is? No.

5 ZC CHAIR HOOD: I'm just trying to
6 compare what you've experienced in the past.
7 Basically there's a structural issue related
8 to a vacancy which lead you to an approval.
9 Is that what you're saying? Or was something
10 else there?

11 MR. SULLIVAN: No. That was it.

12 ZC CHAIR HOOD: Not an irregular
13 lot or the shape of the lot? None of those
14 things?

15 MR. SULLIVAN: Actually, in the
16 two cases that I'm thinking about and I would
17 submit were the same lot size as these are.

18 ZC CHAIR HOOD: The few times that
19 I know that this Commission has done that
20 there were other factors. I actually have an
21 issue with that as someone you regulates and
22 writes those regulations and has been a part

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1 of that and seeing that they are not being
2 followed. I'll leave that alone at this
3 point. Enough said on that.

4 CHAIRPERSON JORDAN: I can say, as
5 I said during the time of the presentation,
6 that this Board simply does not grant relief
7 based upon the fact the property is vacant.
8 We consider each case on a case-by-case
9 circumstances and determine the total of all
10 the effects upon that property whether or not
11 to grant relief, but that's neither here nor
12 there for sake of argument.

13 So then we will close the record
14 based upon the evidence already submitted --
15 close the hearing at this point. Is the Board
16 ready to deliberate? Does the Board want to
17 do anything else with this matter?

18 ZC CHAIR HOOD: I would suggest --
19 I know Ms. Thomas is not here and there are
20 some other things that Mr. Cochran has brought
21 to light. I would suggest to the Office of
22 Planning and the Applicant shore it up. I'm

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1 not sure where everybody else but I don't see
2 myself today voting in favor of this
3 application.

4 I would like for them to kind of
5 shore up some things, especially with regard
6 to Exhibit 7, expansion issues. I think even
7 the fact that maybe the Office of Planning
8 relook at that and make them argue their case
9 besides vacancy, some of the issues I heard
10 today about the grading. I think the Office
11 of Planning usually does go out to sites. Am
12 I right, Mr. Cochran? Don't you all usually
13 go out to sites?

14 MR. COCHRAN: Frequently but not
15 all the time.

16 ZC CHAIR HOOD: This may be one.
17 Anyway --

18 MR. COCHRAN: Excuse me, sir, but
19 I do know that Karen lives in the
20 neighborhood.

21 ZC CHAIR HOOD: Oh, she don't need
22 to go out to the site.

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1 MR. COCHRAN: She goes by it
2 frequently.

3 ZC CHAIR HOOD: Okay. I just
4 think that might be beneficial but I'll just
5 leave it at that. At least that's my stance.

6 CHAIRPERSON JORDAN: Does the
7 Board need something? Are you ready to make
8 a decision?

9 You're not saying that's what you
10 want or are you trying to just --

11 ZC CHAIR HOOD: No. I'm just
12 saying I know what I would do today.

13 CHAIRPERSON JORDAN: I'll tell you, I think
14 based upon what's been submitted to the Board
15 today I would certainly not support this
16 application. I don't believe this project has
17 been shown that this project is unique.

18 I don't think the vacancy and the
19 vacancy alone makes this project unique
20 without the other support. The effect of the
21 alley that's been offered that it has some
22 type of impact upon making this property

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1 unique I don't think this alley has a
2 substantial affect on this property.

3 The argument that this property is
4 sloping but the whole block is sloping like
5 the other properties are, the need to do
6 construction usually happens with vacant
7 properties. I will come back to that in
8 regards to difficulties.

9 There is uncertainty how long this
10 property has been on the market. We do know
11 that it was on the market in 2011. Whether or
12 not it was vacant by desire of any previous
13 owner, I don't know that so that could have
14 been by choice and not necessarily out of the
15 inability to market it.

16 In regards to the practical
17 difficulties based upon an argument of
18 finances, I don't think there has been
19 anything presented to this Board what the cost
20 of this project would be within redeveloping
21 or reconstructing this property or renovating
22 this property within the scope of the Zoning

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1 Regulations.

2 There's been nothing to me that
3 I've seen that shows the cost of doing it as
4 a single family. There has been nothing to
5 show how doing these properties as a separate
6 unit with three and two. There has been no
7 cost or data submitted on that.

8 No practical difficulty has been
9 shown how this property could be done without
10 widening the property and/or putting in a
11 third floor. Those would be the aspect that
12 I would see as where we are just to give you
13 some heads up on what I'm thinking. I don't
14 know what the other Board members may want to
15 do on this. Anyone else?

16 MEMBER HINKLE: Thank you, Mr.
17 Chair. I think the Applicant has heard some
18 of the concerns from the Board. My
19 recommendation would be to let them go back
20 and have some additional conversations with
21 the Office of Planning and others simply
22 because I am recognizing the support of the

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1 ANC on this project and I think that's
2 important.

3 I would be in favor of
4 rescheduling it or scheduling a decision at a
5 later date and giving the Applicant an
6 opportunity to supplement the record to
7 address some of the comments of the Board.

8 CHAIRPERSON JORDAN: The ANC we
9 certainly want to give great weight and
10 deference. Their particular aspect was the
11 advanced condition of the property as one of
12 the real reasons why they wanted to put this
13 property to use. That was their issue of
14 granting support.

15 As I said, there has not been any
16 other evidence presented on these other ways
17 that this property can be used within the
18 Zoning Regulations. I understand where the
19 ANC is but the other aspect of that are the
20 other issues associated with putting this
21 property back to use.

22 I don't blame the ANC wanting to

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1 be in support. Then the fact of putting it
2 back making it a single family or separate
3 units or not adding the third floor, etc., all
4 these things can be done. Keeping within an
5 historic complex and the way the block looks
6 is also where ANC has concern.

7 We'll do this. Let's go ahead and
8 carry this over to a decision date. By that
9 decision date we would like to see any
10 additional financials that you would like to
11 include. We would like to know from the
12 Office of Planning from a visual standpoint
13 actually going out and taking a look at the
14 property.

15 Is there anything else that we
16 need? Oh, how long has this property has been
17 on the market or it's been sitting here
18 vacant. And a drop in grade, too. Is there
19 anything else that anyone needs?

20 Mr. Moy, can we have a date,
21 please?

22 MR. MOY: Yes, sir. I would

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1 suggest a decision which the Board has
2 scheduled already for September 10th and the
3 17th but certainly we can accommodate a
4 decision on September 10th.

5 CHAIRPERSON JORDAN: Okay,
6 September 10th. Is September 10th good for
7 the Office of Planning also? September 10th?

8 MR. COCHRAN: Yes, sir.

9 CHAIRPERSON JORDAN: Okay. Then
10 we're -- well, no. I want the Office of
11 Planning to weigh in. That means we would
12 have to have something from the Applicant by
13 September 3rd and then give OP the opportunity
14 to have something in -- that's not going to
15 work.

16 MR. MOY: I understand but I was
17 thinking more in terms of the Applicant filing
18 sometime in August. Maybe the last week in
19 August.

20 CHAIRPERSON JORDAN: That's right.
21 We've got the whole month. There you go.
22 Thank you. Why am I looking at this month

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1 like it's August? I guess we're going to take
2 this recess. I'm already there.

3 MR. MOY: So working backwards if
4 the Board is looking for something from Office
5 of Planning, perhaps a week before September
6 10th which would be September 3rd.

7 CHAIRPERSON JORDAN: Then a week
8 before that we should have what the Applicant
9 is going to submit. That would be August --

10 MR. MOY: 27th.

11 CHAIRPERSON JORDAN: -- 27th.

12 MR. SULLIVAN: That's fine. Thank
13 you.

14 CHAIRPERSON JORDAN: Good. All
15 right. With that then we will conclude this
16 hearing and we will take a recess for 10
17 minutes. It's 11:04 now so let's go to 11:15
18 and be back in the room. 11:15 we're starting
19 up. Thank you.

20 (Whereupon, at 11:04 a.m. off the
21 record until 11:16 a.m.)

22 CHAIRPERSON JORDAN: Let's call

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1 the next case.

2 MR. MOY: Thank you, Mr. Chairman.
3 Before I do that, I just want to note for the
4 record for the transcript that Application No.
5 18599 of Trinity AME Zion Church was
6 rescheduled to October 8, 2013. That was at
7 the request of the Applicant.

8 The application before the Board
9 for hearing is Application No. 18596 of
10 Community Three Development, LLC, pursuant to
11 11 DCMR 3103.2. This is a request for
12 multiple variances from lot occupancy under
13 Section 772, rare yard requirements under
14 Section 774, off-street parking requirements
15 under 2101.1, variance from the parking space
16 under Subsection 2115.2 and 2115.4.

17 This is captioned, "As advertised
18 in the public notice." This is to allow
19 construction of a new mixed-use development in
20 the Arts/C-3-A District at premises 2200-2202,
21 14th Street, N.W., Square 202, Lots 33, 827,
22 and 828.

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1 CHAIRPERSON JORDAN: Would you
2 please identify yourselves.

3 MR. DONOHUE: Good morning, Mr.
4 Chairman. For the record, Ed Donohue on
5 behalf of the Applicant Community Three
6 Development.

7 MR. EPSTEIN: I am Grant Epstein
8 of Community Three Development, owner,
9 architect, and developer of the parcel.

10 CHAIRPERSON JORDAN: A couple of
11 preliminary things. Who is the owner of the
12 property?

13 MR. EPSTEIN: I am.

14 CHAIRPERSON JORDAN: Who are you?
15 I mean, I have here the property is zoned by
16 14w Partners, LLC.

17 MR. EPSTEIN: 14w Partners and I
18 own 14w Partners, LLC.

19 CHAIRPERSON JORDAN: But all of
20 the material has been submitted by Community
21 Three Properties, LLC.

22 MR. EPSTEIN: I own both

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1 companies. Community Three Development is the
2 developer of the property hired by 14w
3 Partner.

4 CHAIRPERSON JORDAN: The recorded
5 owner of the property is?

6 MR. EPSTEIN: 14w Partners, LLC.

7 CHAIRPERSON JORDAN: And Community
8 Three is the?

9 MR. EPSTEIN: The developer.

10 CHAIRPERSON JORDAN: Developer.
11 Okay. I wonder if -- well, this is a single-
12 member LLC?

13 MR. EPSTEIN: No. It's a
14 multiple-member LLC. I'm the owner and the
15 managing member of the LLC.

16 CHAIRPERSON JORDAN: Just a
17 second. You are the managing partner of both
18 Community Three and 14w?

19 MR. EPSTEIN: Actually, I'm
20 managing member of Community Three. Community
21 Three is managing member of 14w.

22 CHAIRPERSON JORDAN: Okay. So we

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1 get a little worse here. We have an
2 application 14w and then we have documents
3 submitted by Community Three so 14w provided
4 authorization to Community Three? No, because
5 Donohue got authorization from who?

6 MR. DONOHUE: Community Three.

7 CHAIRPERSON JORDAN: Community
8 Three. Do we have something in the file that
9 Community Three had authorization from 14w?

10 MR. DONOHUE: If not, we can
11 provide them Mr. Chairman.

12 CHAIRPERSON JORDAN: Let's get
13 that in and let's make sure in the future we
14 have this kind of cleaned up. My initial
15 inkling was just to move it and set it for
16 some other time so we can get the verification
17 of all this.

18 The issue about what relief is
19 necessary here, I think you made a request for
20 relief from 2115.2. Why is that and how is
21 that applicable to what we understand you're
22 trying to do? I understand that 2115.3 and .4

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1 will take care of the relief --

2 MR. DONOHUE: Are you speaking
3 about the parking spaces?

4 CHAIRPERSON JORDAN: Yes.

5 MR. DONOHUE: We had conversations
6 with the Office of Planning in that regard,
7 Mr. Chairman. We really focused attention on
8 the lot occupancy issue. Taking the lead from
9 the Office of Planning we thought the way we
10 played it was the correct way to go. Again,
11 if that's something I can clarify so that we
12 can get the numbers straight, we can --

13 CHAIRPERSON JORDAN: We don't
14 clarify here. We deal with what you submitted
15 because you can't turn and say, "Ah-ha, you
16 didn't tell us we needed that." When it goes
17 over to the Zoning Administrator he might
18 decide what you need and didn't ask for and
19 that's not our ballgame but you might end up
20 back here and pay more money.

21 Anyway, I was just trying to
22 clarify and I think the Office of Planning --

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1 don't you agree that relief wasn't necessary
2 for 2115.2? Is this one of your cases, Mr.
3 Cochran?

4 MR. COCHRAN: Yes. This is
5 actually one of my cases. The Applicant
6 explained -- excuse me. Again, for the
7 record, Steve Cochran, Office of Planning. I
8 was curious about it also and the Applicant
9 explained that because of some Americans with
10 Disabilities requirements they may or may not
11 be able to provide four spaces.

12 They may have to provide a van
13 space in which case they could get only three
14 so I suggested that they ask for a surfeit of
15 relief that there would be no harm in getting
16 more relief than then needed to take into
17 account the contingency of the ADA
18 requirement. That way they wouldn't have to
19 come back to you for additional relief should
20 they be able to provide only three spaces
21 instead of four.

22 CHAIRPERSON JORDAN: Okay. But

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1 under 2115.2 isn't it applicable if they are
2 going to have 25 spaces or more? That's kind
3 of what my question was. That's why I said it
4 wasn't applicable. We can deal with the
5 others under 3 and 4. All right. I see where
6 you are but I don't think that is the route
7 that we need to go. Okay.

8 I really don't have any issues
9 with this application. Our issue is trying to
10 clarify the relief and the ownership issue was
11 mine. Does the Board have any particular
12 issues or concerns that they would like to
13 have this Applicant address? The uniqueness
14 is shown based upon the historic nature of the
15 building, etc., and the size of the property.
16 No, harm, no foul.

17 Does the Board need anything from
18 this Applicant?

19 I would then turn to the Applicant
20 to say we believe that you have provided by
21 documentation substantially that you meet the
22 standard for relief to be granted in this

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1 matter subject to someone who may be in
2 opposition but I have not received any of that
3 yet. We have support from OP, DDOT, and ANC.
4 You have the opportunity to do a presentation
5 if you want or to waive doing a presentation.

6 MR. DONOHUE: I think we'll waive
7 the opportunity to present, Mr. Chairman.

8 CHAIRPERSON JORDAN: Real smart.
9 We'll turn to the Office of Planning and see
10 if there is anything else you need to add.

11 MR. COCHRAN: We stand on the
12 record.

13 CHAIRPERSON JORDAN: Okay.
14 Department of Transportation. Anyone here
15 from ANC-1B? ANC-1B?

16 We do have a letter of approval
17 and support from ANC-1B.

18 Is there anyone in the audience
19 wishing to testify in opposition -- excuse me,
20 in support of this application? Anyone
21 wishing to testify in support of this
22 application? Anyone wish to testify in

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1 opposition?

2 Please come forward. Let me ask
3 you if you completed the witness cards and
4 gave them to the court reporter?

5 MR. WEST: Yes.

6 CHAIRPERSON JORDAN: Please give
7 us your name.

8 MR. WEST: Darrell West. I live
9 at 1407 W Street which is right across the
10 alley from the proposed development.

11 CHAIRPERSON JORDAN: Okay. You
12 have three minutes. Please tell us what's on
13 your mind.

14 MR. WEST: I would like to oppose
15 two of the variance requests. In particular
16 the lot occupancy requirement relief under
17 Section 772, and also the rear yard
18 requirement under Section 774. There are
19 three reasons for my position. One is
20 problems of congestion and noise in the
21 neighborhood. As you know, there was a
22 Washington Post article about this last week.

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1 1,200 new condos have been built
2 recently along 14th Street between Mass Avenue
3 and Florida Avenue. This has dramatically
4 increased the vehicular and pedestrian
5 congestion in the area, as well as the noise
6 levels. Residential density levels have
7 really gone up and this is negatively
8 affecting the quality of our neighborhood.

9 I think that is a reason to reject
10 the variance request concerning the 75 percent
11 lot occupancy requirement for District
12 development, and also the 12-foot depth
13 requirement for rear yards. Those are the two
14 particular things that I'm worried about.

15 The second reason is traffic flow.
16 There are two adjacent alleys. There's an
17 alley running from W Street to Florida Avenue
18 between the proposed property and where I live
19 and it connects to a second alley which runs
20 behind my building.

21 Basically there's a T intersection
22 with two alleys there. There are a number of

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1 different residences that are affected by
2 this. There's a parking lot behind my
3 building with six spaces.

4 Down the alley there's another
5 more than dozen residences with people who
6 park down there. Garbage trucks and emergency
7 vehicles need to be able to move through that
8 alley in order to serve those residences.

9 There also are several businesses
10 that are adjacent to the alley. We need room
11 to remove snow that accumulates in the alley
12 during the winter. Building too close to the
13 alley is going to impede the vehicular
14 traffic.

15 Garbage collection. The garbage
16 trucks now are having to back into that alley
17 because on the other side of the alley they
18 can't even drive through because the building
19 is too close so we're worried that's going to
20 happen here as well. We need room for garbage
21 collection, the snow removal, and the
22 emergency services.

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1 Then the last reason is just the
2 potential loss of privacy and environmental
3 quality. Section 774.3 requires that
4 apartments should be separated at a distance
5 sufficient to provide light and air and to
6 protect the privacy of building occupants. I
7 would urge you to reject the variance request
8 for the 75 percent lot occupancy rule. And
9 also the 12-foot depth requirement for rear
10 yards.

11 CHAIRPERSON JORDAN: Thank you.
12 Thank you for taking the time and coming down
13 and letting us know what's on your mind.

14 Does the Board have any questions
15 for this witness?

16 ZC CHAIR HOOD: Mr. West, did you
17 make your concerns known to the Applicant?

18 MR. WEST: We've never really had
19 an opportunity to talk with them. We've
20 requested information from them. As you saw
21 in your questions about just trying to clarify
22 the ownership stakes, it's been very difficult

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1 to get information from them.

2 The only thing that they had sent
3 us was one week ago on July 23rd after our
4 condo association requested information, they
5 sent us one image that basically has no design
6 information, or very little design information
7 on it. It doesn't discuss the layout.

8 It doesn't show exactly where like
9 are they going to build right on the alley or
10 are they going to build some distance from it.
11 It's been almost impossible to get information
12 out of them.

13 ZC CHAIR HOOD: Thank you.

14 Thank you, Mr. Chair.

15 CHAIRPERSON JORDAN: Does the
16 Board have any additional questions?

17 Let me ask you. It seemed like in
18 your statement that you were talking about the
19 area in general, about it being overcrowded,
20 the issue with the alley, the issue with the
21 garbage truck. Is that correct?

22 MR. WEST: Well, there is

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1 certainly a problem on 14th Street in general
2 but it's in particular on this corner because
3 their proposed development is at the corner of
4 14th and W. Just on that alley there has been
5 a new condo development a few years ago, Union
6 Row.

7 On the north side of that
8 intersection there's a new Y and a mega-condo
9 development that's about to open. I don't
10 know how many condos are in that unit but it's
11 probably like a 100. It's a very large
12 development. Then there have been several new
13 businesses that have opened up there as well.

14 The noise level and the congestion
15 is very problematic. But the alley is more
16 than a typical D.C. alley just because of the
17 T intersection. There really are two alleys
18 that come together.

19 On the northern part of that alley
20 the developers long ago built housing that
21 goes right up to the edge of the alley. The
22 trucks have great difficulty getting through

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1 there. The garbage trucks cannot get through
2 the northern side and so they have to back up
3 through the southern part of the alley.

4 If you build all the way up to the
5 alley line, it's going to be very problematic
6 for garbage collection, snow removal, and
7 emergency vehicles to get through there.

8 CHAIRPERSON JORDAN: So your
9 concerns are kind of, like I said, general to
10 the area because there are problems with a lot
11 of congestion in that particular area.

12 MR. WEST: Absolutely.

13 CHAIRPERSON JORDAN: You feel this
14 adds more to it.

15 MR. WEST: Absolutely.

16 CHAIRPERSON JORDAN: Board, any
17 additional questions?

18 Does the Applicant have any
19 questions of Mr. West?

20 MR. DONOHUE: Couple of questions,
21 Mr. Chairman, if I will.

22 Mr. West, have you reviewed the

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1 file here at the BZA? Have you reviewed the
2 application and the other material that was
3 submitted back in May 2013?

4 MR. WEST: No. We requested
5 information and the only thing we got was this
6 one page image and artist rendering of the
7 site.

8 MR. DONOHUE: So when you got
9 notice of the hearing today, you didn't review
10 the application or the material submitted by
11 the ANC or Office of Planning?

12 MR. WEST: Our condo association
13 from 1407 W Street met last week. We
14 requested information. The only thing that we
15 got from you was this one page artist
16 rendering.

17 MR. DONOHUE: I'm asking a more
18 specific question. The application was filed
19 May of 2013 with my name and number and Mr.
20 Epstein's name and number and information
21 about how to contact the Applicant. Did you
22 review any of that material? Did you attempt

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1 to contact us?

2 MR. WEST: Our building manager
3 did try and contact you via email and, as a
4 result of that, you sent us the one-page
5 artist rendering on July 23rd but there was no
6 additional information that you provided.

7 MR. DONOHUE: Prior to July 23rd
8 had you attempted to contact either myself or
9 the Applicant?

10 MR. WEST: No.

11 MR. DONOHUE: Okay. You explained
12 that the -- let's talk about the rear yard
13 variance. You explained that the building
14 that abuts on the other side of the alley is
15 flush on the property line. Is that correct?

16 MR. WEST: Are you talking about
17 the building where I live?

18 MR. DONOHUE: I think what you
19 explained was the trash and business traffic
20 in the alley was impeded by the fact that the
21 building abuts the alley, the property line.
22 Is that correct?

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1 MR. WEST: Are you talking about
2 your proposed developed?

3 MR. DONOHUE: No. I'm talking
4 about the existing building.

5 MR. WEST: Which existing
6 building?

7 MR. DONOHUE: The building that
8 abuts the alley. I think you suggested to the
9 Board that the buildings abutting the alley
10 are flush on the property line and this
11 exacerbates the traffic situation in the
12 alley. Is that correct?

13 MR. WEST: I said in the northern
14 part of the alley that is the case.

15 MR. DONOHUE: All right. So is it
16 your understanding that the traffic if it's
17 impeded on the alley should be onto private
18 property in order to alleviate the traffic
19 condition?

20 MR. WEST: I'm saying the garbage
21 trucks serve a number of businesses and
22 residences for the two alleys and they

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1 currently have to back through the southern
2 part of the alley. There is a concern among
3 people in our building that your building is
4 going to interfere with that.

5 MR. DONOHUE: Is your building
6 built up to the property line?

7 MR. WEST: I don't know exactly
8 where the property line is.

9 MR. DONOHUE: You don't know?

10 MR. WEST: No.

11 MR. DONOHUE: Okay. Do you know
12 what matter-of-right development on the parcel
13 is?

14 MR. WEST: No.

15 MR. DONOHUE: Okay. You realize
16 it's a commercial zone. Correct?

17 MR. WEST: Yes.

18 MR. DONOHUE: Okay. You
19 understand that it's a proposed mixed-use
20 development with retail on the ground floor
21 and then residential up above?

22 MR. WEST: Yes.

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1 MR. DONOHUE: Okay. Do you
2 understand what the development envelope is
3 that is allowed under the C-3 zoning?

4 MR. WEST: I reviewed the rules in
5 this area and my understanding is you're
6 requesting four different variances.

7 MR. DONOHUE: I'm asking --

8 MR. WEST: I'm opposed to two of
9 them. I'm opposed to the two that I
10 highlighted.

11 MR. DONOHUE: I'm asking you if
12 you are aware of what the allowable building
13 envelope is under matter-of-right?

14 MR. WEST: Are you asking this as
15 a legal question because I'm not a lawyer so
16 I can't answer that.

17 MR. DONOHUE: Well, I think you
18 said you familiarized yourself with the --

19 CHAIRPERSON JORDAN: He's answered
20 that he doesn't know. Next question.

21 MR. DONOHUE: That's all, Mr.
22 Chairman.

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1 CHAIRPERSON JORDAN: Board, any
2 additional questions?

3 Appreciate it. Thank you, Mr.
4 West.

5 Then anyone else wishing to speak
6 in opposition to this application? Anyone
7 wishing to speak in opposition? Then we will
8 turn back to the Applicant to see if there is
9 a necessity that they believe for rebuttal.

10 I do have a question for the
11 Applicant. What outreach did you do to the
12 neighborhood in regards to this development?

13 MR. DONOHUE: I'm going to ask Mr.
14 Epstein to respond.

15 MR. EPSTEIN: Early on before we
16 purchased the property we went with a group of
17 neighbors across the street. Two of them live
18 in a building across the street and I believe
19 two of them live down the street, down W
20 Street. Met with them and showed them our
21 plans. This was prior to an HPRB hearing that
22 we had which was the same concept.

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1 Concurrently with that we met with
2 the president of the association and I don't
3 know if he's still the president of the
4 association but of the building directly
5 adjacent to us. We met him at work. Walked
6 through him with the plan. He was very
7 supportive of it.

8 We then met with the Meridian Hill
9 Neighborhood Association and presented at
10 their meeting. Received support as well. I
11 believe a letter is in the file. We then met
12 with the design committee of the ANC,
13 presented to them these plans and received
14 support there.

15 Then presented to the full ANC,
16 were supported there, and received their
17 support as well and the letter is in the file.
18 There was actually an extensive outreach
19 program which is what we do with all of our
20 projects.

21 CHAIRPERSON JORDAN: Did you meet
22 with Mr. West's building condo association?

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1 MR. EPSTEIN: We did meet with the
2 president. His name was Fry. I can't
3 remember his last name -- Wernick. We meet
4 with the president of the association.

5 CHAIRPERSON JORDAN: Does the
6 Board have any other questions?

7 Is there anything that the
8 Applicant feels they need to present to the
9 Board?

10 MR. DONOHUE: No, sir.

11 CHAIRPERSON JORDAN: Then we'll
12 close the hearing based upon the record
13 already produced here.

14 Is the Board ready to deliberate?
15 Based upon the evidence that's been submitted
16 and in the file, I would move that we grant
17 the relief requested by the Applicant.

18 ZC CHAIR HOOD: I'll second it.

19 CHAIRPERSON JORDAN: Motion made
20 and seconded. Any additional discussion and
21 unreadiness?

22 MEMBER HINKLE: Yes, Mr. Chair. I

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1 just wanted to state that this is a difficult
2 site. I think the Applicant has a case for
3 the variance on parking, but I do appreciate
4 them at least attempting to add a few spaces
5 here of the required parking. This is a tough
6 neighborhood to park in.

7 I'm not sure who is parking on the
8 site now but it's being used as a parking lot
9 so obviously those spaces are going to be gone
10 so I just wanted to state my appreciation for
11 at least including some parking within this
12 development.

13 CHAIRPERSON JORDAN: All those in
14 favor of the motion signify by saying aye.

15 BOARD MEMBERS: Aye.

16 CHAIRPERSON JORDAN: Those opposed
17 nay.

18 Mr. Moy.

19 MR. MOY: Staff would record the
20 vote as 4-0. This is on the motion of
21 Chairman Jordan to approve the application for
22 the variance relief requested by the

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1 Applicant. Seconding the motion Mr. Hood.
2 Also in support Vice Chairperson Allen and Mr.
3 Hinkle. We have a Board seat vacant. The
4 motion carries with a vote of 4-0.

5 CHAIRPERSON JORDAN: Thank you.
6 We would have a summary order. I'm going to
7 ask that the Applicant be sure to meet with
8 Mr. West or the association again. Make sure
9 they have your plans. One thing we try not to
10 do is hide the ball. Discussion. People will
11 be neighbors so please take the opportunity to
12 make sure they have a full set.

13 Everybody has the opportunity and
14 the way we do it over here is that everybody
15 does have the opportunity to come to the
16 Office of Planning and pull out the reports
17 and take a look at them but everybody doesn't
18 have the same sophistication to do so.

19 Our applicants, especially those
20 represented by counsel, would generally send
21 those over to the most immediate neighbors and
22 that's kind of the way we really wished things

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1 happened. Appreciate it. Thank you.

2 MR. EPSTEIN: Thank you very much.

3 MR. MOY: The next application for
4 public hearing is Application No. 18551 of
5 Broad Branch Children's House, pursuant to 11
6 DCMR 3104.1. This is for a special exception
7 to continue a child development center.

8 This is as was publicly advertised
9 for 80 children, 12 staff under Section 205 in
10 the R-1-B District at premises 5608 Broad
11 Branch Road, N.W., Square 1997, Lot 78.

12 I believe also, and hopefully the
13 Applicant will clarify, that there was also an
14 amendment to include variance relief from
15 parking requirements under Section 2101.1.

16 CHAIRPERSON JORDAN: I'm trying to
17 make sure we're on first base here.

18 First, identify yourselves. Make
19 sure your microphone is on. Did you guys give
20 witness cards? Very good.

21 MR. OBELER: Josh Obeler, Broad
22 Branch Children's House.

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1 CHAIRPERSON JORDAN: What's your
2 name again?

3 MR. OBELER: Josh Obeler.

4 MS. FOSTER: Laura Foster, Broad
5 Branch Children's House, head of school.

6 MR. SPECK: Randy Speck, ANC-3B.

7 CHAIRPERSON JORDAN: This
8 application was a moving target. I want to
9 make sure we're on the same page regarding the
10 relief. You have changed the requested
11 relief.

12 Presently you're looking for a
13 continuation of the child development center
14 of 60 children and eight staff. Right? You
15 are asking for a 10-year term and a parking
16 variance. Would that be correct?

17 MR. OBELER: That's correct.

18 CHAIRPERSON JORDAN: Because
19 you've done some back and forth with this.
20 You have a right to go ahead and do your
21 presentation in regards to why you think you
22 should be granted the continuance of this

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1 development center, but you've also had the
2 opportunity to read some of the letters and
3 things in opposition and the issues that
4 you've had.

5 In fact, I think that might have
6 been one of the reasons why you've changed the
7 requested relief. For us if you could let us
8 know about how you are handling the traffic
9 congestion and the parking issues, that would
10 be good, and anything else you may want to say
11 to us.

12 MR. OBELER: Our original request
13 was to expand the school. We had a lot of
14 community interest. When we came into the
15 last BZA hearing there was some opposition
16 from neighbors who felt that there would be
17 too much traffic if we were to expand. We
18 talked it over and we met with the neighbors.

19 The opposition seemed to be with
20 the idea of expansion, not with just the
21 continuation of what we were doing. We
22 decided rather than fight that fight we would

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1 just ask for the continuation of what we're
2 already doing. We thought that would be good
3 community relations and we don't necessarily
4 need to expand at this time.

5 CHAIRPERSON JORDAN: Okay. Is
6 there anything else you want to present to the
7 Board in support of your application? We have
8 read your file but certainly you have a right
9 to.

10 Does the Board have any particular
11 questions they would like to ask?

12 VICE CHAIRMAN SORG: Thank you,
13 Mr. Chairman.

14 Could you really address the
15 parking? Parking is always an issue for
16 everybody who lives in the District. Even
17 where we chose to worship. I'm sorry. From
18 the last case.

19 CHAIRPERSON JORDAN: Wake up.
20 Hello.

21 VICE CHAIRMAN SORG: I know. I'm
22 sorry. It's still bothering me.

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1 I understand in this situation
2 that there appears to be, at least from what
3 I could glean from your file, that there is
4 enough space to have parking so I was confused
5 as to why you're asking for the parking
6 variance.

7 MR. OBELER: I've been a little
8 confused as well. This is not my area of
9 expertise. It's a building that had been
10 there for a long time and when they
11 redeveloped the site, there is a driveway
12 along one side and the driveway is 16 feet
13 wide.

14 It's not wide enough for two
15 spaces side-by-side, full size spaces. It has
16 to be 18-feet wide. The driveway is -- even
17 if we were to put spaces in there, the
18 handicap ramp comes down directly onto that
19 pad and that's where the children enter the
20 school and where they play.

21 The neighbors expressed while they
22 are very comfortable with us continuing what

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1 we're doing, they would rather we didn't
2 actually put any cars there. We felt that it
3 would be dangerous to have cars there and the
4 children snaking their way between the cars
5 getting in and out of the school.

6 We've gone back and forth, I
7 think, a little bit with Mr. Jackson on what
8 is the appropriate thing to ask for. Should
9 we be asking for a variance? There could, in
10 theory, be two spaces there if they were
11 smaller spaces and what is the appropriate
12 thing.

13 We felt that asking for the
14 variance would give the chance for anyone who
15 had opposition to this to come in and say it
16 and then we could work out with you what the
17 appropriate response is.

18 CHAIRPERSON JORDAN: Um. So have
19 you had someone else do some measurements out
20 there and try to fit those parking spaces
21 there, or are you just telling us what you
22 think?

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1 MR. OBELER: We measured it and
2 the distance from the edge of the building to
3 the property line the pad was 16 feet, 11
4 inches.

5 MS. FOSTER: Sixteen feet, 11
6 inches.

7 CHAIRPERSON JORDAN: Board,
8 additional questions of the Applicant?

9 Are you telling us that the
10 opposition that we had from the community,
11 because we had several of them, have withdrawn
12 that or are you just talking through?

13 MR. OBELER: I don't know if
14 they've officially written a letter to
15 withdraw it but we met with them and they gave
16 us the okay and said that if we were not to
17 expand they were comfortable with what we were
18 doing.

19 Then we went to another ANC
20 meeting where they came to that meeting and
21 expressed that as well. So through private
22 conversations between us and at the ANC

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1 meeting.

2 ZC CHAIR HOOD: So they would be
3 fine with the drop-off, pick-up and the way
4 you exist now as long as you don't expand?

5 MR. OBELER: That is correct.

6 CHAIRPERSON JORDAN: Okay. Then
7 let's turn to the Office of Planning.

8 MR. JACKSON: Good morning, Mr.
9 Chair, and members of the Board. My name is
10 Arthur Jackson, DC Office of Planning. I'll
11 give you a brief background on this
12 application.

13 The original application for this
14 site covered a use with 17142.47. The
15 application was to allow relief to expand the
16 existing store. The store was an existing
17 nonconforming use. That predates the Zoning
18 Regulations so there is no parking requirement
19 associated with that use. It was approved for
20 expansion but there was a parking requirement
21 associated with the expansion and the
22 introduction of a new use. The new use that

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1 was added was the special exception for the
2 childcare center that current exist.

3 We just referred to the plan that
4 was in the submission. The application said
5 that under Section 205.4, that addresses
6 parking for all the staff, the Applicant
7 submitted that the Applicant will provide four
8 staff parking spaces on the property for use
9 by childcare center staff and employees.

10 In fact, the submitted plans for
11 the site do show four parking spaces on the
12 property. That was in the plan that was
13 submitted in the application. Now, I will
14 admit those are sketched-in parking spaces and
15 the cars look as big as buses but I think the
16 intent all along was to provide parking in the
17 subject property.

18 Subsequent to the approval of that
19 special exception, the property was expanded
20 and the parking pad and driveway was installed
21 on the property as shown on the Office of
22 Planning submission.

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1 If you look on the second page,
2 you will see the existing site that was the
3 parking pad itself encircled. The Office of
4 Planning went and got a wall check report that
5 indicated distances between the building and
6 the parking line. The wall check shows about
7 23 feet but the area also shows us some other
8 structures. Office of Planning asked the
9 Applicant to --

10 CHAIRPERSON JORDAN: Excuse me.
11 You mean the area in yellow?

12 MR. JACKSON: Yes.

13 CHAIRPERSON JORDAN: Okay.

14 MR. JACKSON: That is the general
15 area of the parking pad. The Office of
16 Planning went out and called the Applicant and
17 asked him to actually measure it because, of
18 course, our GIS showed it at being around 17
19 feet but the GIS is what it is. The Applicant
20 did confirm that the distance there was 11
21 feet -- I'm sorry, 16 feet, 11 inches.

22 That is not adequate for a full-

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1 size space. Office of Planning would support
2 the relief necessary for them to have two
3 compact spaces. Given the normal procedures
4 with a childcare center, the Applicant has
5 mentioned the concern about children walking
6 in and out of the cars.

7 I guess the thought would be that
8 the staff would arrive before the childcare
9 center is open and the staff would leave
10 generally after the childcare center is
11 closed. I guess the Applicant has indicated
12 that the children most of the time spend their
13 recreation time across the street behind the
14 school.

15 We are a little unclear about
16 where those conflicts are coming from. We do
17 know that the street around the property is
18 heavily parked. On our site we are waiting
19 for somebody else to pull out so we can pull
20 in. The parking is pretty limited in that
21 area. Also the Applicant's report initially
22 indicated a very small percentage of the

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1 current employees are doing anything other
2 than working to work or taking transit.

3 Most of them drive. We think it
4 behooves the Applicant and it would support
5 the community if they park at least two cars
6 of the cars they drive to the site everyday
7 onsite and do such in a manner that we are
8 sure they are there.

9 The other thing that we would --
10 beyond that we are supportive of the
11 continuing existing use. Our report does
12 reflect some conditions of approval that we
13 want to incorporate to encompass all the
14 issues related to this property.

15 The time of the changes that we
16 suggest are eliminating the times of the
17 school across the street because the time
18 frame that the school across the street
19 operates could change.

20 We also want to include
21 information about parking onsite because that
22 was not included in the previous approval by

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1 the Board of Zoning Adjustment even though the
2 Applicant promised this in the plan.

3 We would note that no additional
4 approval is needed for the two parking spaces
5 except the relief from 2005.2 because they
6 would not be full-size spaces. They would be
7 contact spaces.

8 The only other issue would be that
9 we would like to see these spaces as parking
10 because that way they could be identified as
11 parking spaces onsite. Right now it's just
12 pavement.

13 CHAIRPERSON JORDAN: How can they
14 fit two compact spaces in that? It's 16 feet
15 there?

16 MR. JACKSON: Sixteen feet, 11
17 inches. A compact space is nine by 16 as
18 opposed to 8.5 by 11. You put those two
19 together and that's 16 feet and you have some
20 change.

21 CHAIRPERSON JORDAN: With no
22 clearance.

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1 MR. JACKSON: Well, it would have
2 to be a compact vehicle.

3 CHAIRPERSON JORDAN: Any questions
4 of the Office of Planning?

5 Anyone here from the Department of
6 Transportation?

7 MR. JACKSON: Mr. Chairman, I did
8 have occasion to speak to the Department of
9 Transportation's representative at this
10 meeting this morning. They did not express
11 any concerns about the relief requested, a
12 continuation the special exception use, or the
13 relief requested by the Applicant.

14 CHAIRPERSON JORDAN: Thank you.
15 We do have a representative here
16 from the ANC, please.

17 MR. SPECK: The ANC strongly
18 supports the application. We did have two
19 separate meetings on this application. The
20 first one was for the expansion. At that time
21 there were no objections from anyone in the
22 community. We heard no one opposing it. The

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1 ANC believed it was a good application and we
2 supported it.

3 When they came back with the
4 revised application, they had, at that point,
5 determined that because of the opposition from
6 the neighbors it was reasonable at that point
7 to cut back on their application and to just
8 seek a continuation of the current practices.
9 We thought that was also extremely reasonable.

10 We agreed with the application
11 including the two parking spaces as they have
12 outlined. The ANC voted in favor of the
13 application 4-2. The only dissenting votes on
14 the ANC at that point were over the term of
15 the variance, whether it would be five years
16 or 10 years. The board on the Commission
17 voted for a 10-year extension for many of the
18 same reasons that Mr. Jackson described.

19 CHAIRPERSON JORDAN: Commissioner,
20 the single member district commissioner, which
21 way did they vote?

22 MR. SPECK: He voted in favor of

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1 it. It was David Engel and he voted for it.

2 CHAIRPERSON JORDAN: Okay. Great.

3 MR. SPECK: He was strongly
4 supportive of it. He's not here today only
5 because he recently had hip surgery.

6 CHAIRPERSON JORDAN: All right.
7 Who is the chair again of the ANC?

8 MR. SPECK: Jim McCarthy.

9 CHAIRPERSON JORDAN: Okay. Thank
10 you.

11 MEMBER HINKLE: If I could ask,
12 how is the parking situation in the
13 neighborhood? Is there a parking issue, in
14 particular on the street?

15 MR. SPECK: I live about five
16 blocks down from the market and I go to the
17 market frequently. I have never had a problem
18 parking at the market. I don't go there when
19 Lafayette School was letting out because it's
20 obviously very congested at that point. Other
21 times of the day I have never had any problem
22 parking there.

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1 MEMBER HINKLE: Okay. Thank you.

2 CHAIRPERSON JORDAN: Any other
3 questions from the Commissioner? Thank you,
4 Commissioner, for coming down and spending
5 time with us and providing that report.

6 Is there anyone in the audience
7 here wishing to speak in support of this
8 application? Anyone wishing to speak in
9 support?

10 Anyone wishing to speak in
11 opposition? Anyone in opposition?

12 You must have done a good job in
13 making these changes because we thought we
14 were going to have a whole bunch from the
15 letters we received.

16 Let's turn back to the Applicant
17 in rebuttal. Let me ask you what are you
18 views on the Office of Planning's
19 recommendation that you have two compact
20 spaces.

21 MR. OBELER: If that is what is
22 appropriate, then that is what we want to do.

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1 We are just trying to make this all work. We
2 run preschools, we don't do parking.

3 CHAIRPERSON JORDAN: Okay.

4 Any other questions for the
5 Applicant, Board?

6 Is there anything else you wish to
7 say to the Board?

8 MR. OBELER: No, thank you.

9 CHAIRPERSON JORDAN: Okay. Then
10 we will close the record on this matter and
11 move into deliberation. I would offer that --
12 I would move that the application be -- the
13 relief be granted with the following
14 conditions.

15 The approval of the child
16 development center shall be for a period of
17 five years. The center hours of operations
18 shall be from Monday to Friday from 10:00 a.m.
19 to 6:00 p.m. The maximum center capacity
20 shall be six children and eight teachers and
21 staff.

22 Two compact parking spaces shall

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1 be provided and appropriately striped and
2 lined for the employees. The center drop-off
3 and pick-up period shall not coincide with the
4 drop-off and pick-up times of Lafayette
5 Elementary School.

6 The center staff shall assist the
7 children to and from cars during peak hours,
8 peak drop-off and pick-up periods. The rear
9 of the entire property shall be fenced and
10 boarded by a six-foot tall fence made of wood.
11 Center hours of operation shall be from Monday
12 to Friday 8:00 a.m. to 6:00 a.m.

13 MR. JACKSON: Mr. Chairman,
14 clarification. I think you said six children.

15 CHAIRPERSON JORDAN: No, 60. Wait
16 a minute. What am I saying? Sixty children
17 8:00 a.m. That would be my motion.

18 VICE CHAIR ALLEN: Second.

19 CHAIRPERSON JORDAN: Motion made
20 and seconded. Any unreadiness?

21 ZC CHAIR HOOD: Mr. Chairman,
22 would you be willing to give seven years?

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1 CHAIRPERSON JORDAN: The reason I
2 put five is because it's been kind of
3 indicated that I don't think 10 is going to
4 pass this Board.

5 Does the Board feel like seven?

6 VICE CHAIR ALLEN: Mr. Chairman,
7 I'm, again, always concerned about traffic and
8 parking. I think that given some of the
9 comments that we've heard both from Office of
10 Planning as well as the Applicant themselves,
11 I think it would be more appropriate to look
12 at this again in five years. Five years is
13 plenty of time to work it out to see how
14 things are going. Also given what is
15 happening in the District I think it makes
16 more sense to look at it again. I would
17 support five.

18 CHAIRPERSON JORDAN: Mr. Hinkle.

19 MEMBER HINKLE: Thank you, Mr.
20 Chairman. I think a longer term, more than
21 five years, would be appropriate. They are
22 not asking for additional children in this

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1 case or additional employees as they did
2 originally. I certainly could support
3 something greater than five years such as
4 seven years as Mr. Hood suggested.

5 CHAIRPERSON JORDAN: Okay. Seven.

6 ZC CHAIR HOOD: Let me ask this.
7 I don't want to get the answer in numbers but
8 I think Board Member Allen brings up a good
9 point. Can we go six? We'll split the
10 difference.

11 CHAIRPERSON JORDAN: I thought we
12 split it at seven.

13 ZC CHAIR HOOD: I shouldn't have
14 brought that up.

15 MEMBER HINKLE: Well, I mean,
16 could we at least ask the Applicant if six
17 would work for them and doesn't jeopardize
18 some of their funding or other issues?

19 CHAIRPERSON JORDAN: Is this based
20 upon your time? Do you have any financing
21 plans or issues?

22 MR. OBELER: Yes. We are about to

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1 sign a lease and the lease that we want to
2 sign runs out now and is a 10-year lease.
3 When we go to do our financing for any sort of
4 new equipment, they are only going to do it
5 for the length that you give us so it becomes
6 very expensive.

7 We can only do things in five-year
8 increments. If we want to expand the
9 playground or anything like that, it would be
10 five-year financing instead of 10-year
11 financing which is more difficult for us.

12 CHAIRPERSON JORDAN: Okay. So
13 we're doing 10? We're doing 10. Don't let us
14 regret this. We know where you work.

15 All those in favor of the motion
16 signify by saying aye.

17 BOARD MEMBERS: Aye.

18 CHAIRPERSON JORDAN: Those opposed
19 nay. The motion carries.

20 MR. MOY: Staff would record the
21 vote as 4-0 on the motion of Chairman Jordan
22 to approve the application for the special

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1 exception relief under Section 205, variance
2 parking, relief under 2101.1. Seconding the
3 motion Chairperson Allen. This is approval
4 with conditions as cited by the Board. Also
5 in support Mr. Hood and Mr. Hinkle. Board
6 seat vacant. Motion carries, Mr. Chairman.

7 CHAIRPERSON JORDAN: Let me make
8 sure the record is clear because we went back
9 and forth. It is 10 years.

10 MR. MOY: Thank you.

11 CHAIRPERSON JORDAN: We can have a
12 summary order, please.

13 Thank you all for coming down.
14 Thank you.

15 MR. MOY: The next case before the
16 Board for hearing is Appeal No. 18577 of
17 Lawrence M and Kathleen B. Ausubel pursuant to
18 11 DCMR 3100 and 3101 from a February 13, 2013
19 decision by the Department of Consumer and
20 Regulatory Affairs to allow an electrical
21 cabinet in the yard of a one-family dwelling
22 in the TSP/R-1-A District at premises 1750

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1 32nd Street, N.W., Square 2119, Lots 12 and
2 25.

3 CHAIRPERSON JORDAN: Please
4 identify yourselves, please. Make sure your
5 mic is on. Thank you.

6 MS. HANEY: Good morning, Mr.
7 Chairman. My name is Dorene Haney. I
8 represent the Appellants Lawrence and Kathleen
9 Ausubel both of whom are here with me.

10 MS. AUSUBEL: I'm Kathleen
11 Ausubel.

12 MR. AUSUBEL: I'm Lawrence
13 Ausubel.

14 CHAIRPERSON JORDAN: Thank you.

15 MR. LeGRANT: Matthew LeGrant.
16 I'm the Zoning Administrator, DCRA.

17 MR. SARABIAN: Good afternoon.
18 This is Attorney General Jay Sarabian here on
19 behalf of DCRA.

20 CHAIRPERSON JORDAN: I know you
21 intervened but if you want. You don't have
22 to. We're okay. We know who you are. If you

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1 need to come up, come up just in case. There
2 might be something you want to say instead of
3 sitting in the back. Didn't you all
4 intervene?

5 MR. COLLINS: Christopher Collins,
6 Holland & Knight representing the property
7 owner, automatic parties.

8 CHAIRPERSON JORDAN: Everybody
9 doesn't know who you are.

10 MR. SHER: Mr. Chairman, Steven E.
11 Sher, Director of Zoning and Land Use Services
12 with the Law Firm of Holland from of Holland
13 & Knight.

14 CHAIRPERSON JORDAN: Do you see
15 how you just kind of sat back. "I'm like
16 Prince. I don't have to say who I am." Thank
17 you.

18 The Board has read the briefs in
19 the matter of this case. We probably have
20 some questions to ask you. We can give you
21 some oral time but it's not going to be a lot
22 of time because I think we are well versed on

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1 what the issues are.

2 Let me turn to the Applicant. We
3 understand your argument so, therefore, I want
4 to give you -- you can take as much as -- I
5 need to check my notes here -- 10 minutes to
6 tell us where you are if necessary, but we
7 understand your arguments. That's 10 minutes.

8 MS. HANEY: Thank you. I think at
9 the outset I would just like to make sure that
10 there's no issue of timeliness. No one has
11 raised an issue of timeliness. There are a
12 lot of facts and arguments --

13 CHAIRPERSON JORDAN: That's not
14 before us. Nobody has raised that at this
15 point.

16 MS. HANEY: Very well then.

17 CHAIRPERSON JORDAN: You can talk
18 about it if you want but --

19 MS. HANEY: If no one has raised
20 it, I'm not going to use up the Board's time
21 with that. I would like to then just briefly
22 address some of the arguments that were made

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1 by both the owners of the property, to my
2 right, and DCRA in both of their briefs.

3 Primarily, as I mentioned in my
4 brief, and I'm not going to belabor this, in
5 order to agree with both of them, or either
6 one of them, the Board needs to read out of
7 the regulation a word that's in there and the
8 law doesn't require that be done. It doesn't
9 permit that.

10 In the definition of side yard it
11 refers to both building and structure. In
12 order to interpret the regulation in the way
13 that both DCRA and the owners have suggested,
14 you would simply have to remove that word.

15 CHAIRPERSON JORDAN: In regards to
16 side yard, is the retaining wall as a
17 structure being required to have the required
18 distance for a side yard?

19 MS. HANEY: No, because the
20 regulations specifically provide that a
21 retaining wall may be located in the side
22 yard, which it is in this case. The retaining

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1 wall runs from the property line itself back
2 to a point which is less than eight feet from
3 the property. That is not a violation because
4 the retaining wall can be located in the side
5 yard.

6 The point is if one -- normally
7 fences and retaining walls, as DCRA points
8 out, are located on the property line but
9 where they are not, it's not acceptable to
10 simply then put a seven-foot structure behind
11 the retaining wall so that you don't have to
12 look at it but your neighbors do.

13 That is really what the problem is
14 in this case. A lot of the argument that both
15 DCRA and the owners make is based on Appeal
16 17414 which involves rear yard. The
17 definition of rear yard is different.

18 There is a provision that
19 specifically states that the depth of a rear
20 yard is measured from a building to the rear
21 lot line. There is no such definition with
22 respect to side yards. Just as a practical

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1 matter, the side yard should run the entire
2 depth of the building or other structures.

3 If you look at all of the site
4 plans that have been submitted, you can see
5 that the structures continue to the forward
6 lot line. There is something built from the
7 street all the way back to the rear of the
8 house.

9 Of course, we have two reasons why
10 this cabinet is located within a required side
11 yard. But all of that area to the front line
12 is built. I don't think any -- I think that
13 DCRA noted some inconsistencies reading other
14 regulations that would be unnecessary if our
15 interpretation of the regulations were correct
16 and I don't think that's accurate.

17 I think that, for example, in 11
18 DCMR 2500.6 which specifically provides and
19 side yard setback requirement for a garage,
20 that regulation specifically refers to 11 DCMR
21 2500.5 which permit a garage to be located in
22 a rear yard.

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1 As you know, within the rear yard
2 there is no side yard setback. There is a
3 rear yard setback but within a required rear
4 yard there is no additional side yard setback.
5 That regulation would be necessary to alert
6 everyone that if you want to put a garage in
7 a rear yard, you also have to locate it eight
8 feet from the side lot line which makes sense.

9 Finally, I don't think that any of
10 the absurdities that both the owners and DCRA
11 point to would come to pass in the event that
12 the regulations are interpreted the way we
13 suggest they should be. DCRA raises an issue
14 of everything having to have a rear yard but
15 depth of a rear yard is measured from a
16 building, not from a building or structure.

17 Reading those regulations to say
18 that something like this retaining wall would
19 not have a rear yard is logical, but there is
20 no accompanying regulation for a side yard.
21 Visually I'm sure that you've seen all the
22 photographs. If you look at this situation,

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1 the cabinet appears to be viewed straight on
2 perpendicular to the retaining wall.

3 If you look at Exhibit 6 to the
4 Appellant's statement in support of appeal,
5 which is Exhibit 9 in the record, you can see
6 that the house appears to be -- you're looking
7 straight at the retaining wall and you're
8 looking straight at the house beyond it. The
9 house sits at angle so the house goes farther
10 forward than the corner from which DCRA
11 measured the property.

12 I would also point out that DCRA
13 measured a set of stairs which are also
14 allowed to be in a required side yard and two
15 separate buildings because under 11 DCMR 199.1
16 the definition of a building.

17 The building which forms the
18 corner of the overall compound is a separate
19 building than the primary residence and that's
20 what was measured to which is actually located
21 farther away from the lot line than the
22 principal building.

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1 Beyond that, I would be happy to
2 answer any questions.

3 CHAIRPERSON JORDAN: Board,
4 questions of the Appellant?

5 Regarding Exhibit 8 what is your
6 view for the drawing that is submitted in
7 Exhibit 8? I'm just trying to get your feel
8 of the way it's laid out.

9 MS. HANEY: Exhibit 8? I'm sorry.
10 I think this exhibit shows both of the -- it
11 shows the separate structure. I don't think
12 that was your question, though.

13 CHAIRPERSON JORDAN: Does it in
14 your estimation fairly depict the layout?

15 MS. HANEY: It does not include
16 the grading. It does not show the other side
17 lot line.

18 CHAIRPERSON JORDAN: The other
19 side lot line.

20 MS. HANEY: Yes. It only shows
21 the -- these diagrams are all partial. DCRA's
22 Exhibit D to their brief shows both side lot

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1 lines.

2 CHAIRPERSON JORDAN: Board, any
3 additional questions?

4 All right. Then let's turn to
5 DCRA for their response. You have 10 minutes.

6 MR. SARABIAN: Thank you. I'll
7 try not to repeat. I filed a pretty extensive
8 brief so I'll try not to repeat myself. I'll
9 just simplify things for the Board. I think
10 there are really two very specific issues here
11 and one relates to how is a side yard
12 measured. There isn't any specific guidance
13 in the regulations on exactly how to do that.

14 What we have is the Zoning
15 Administrator's interpretation which is
16 drawing a perpendicular line from the side lot
17 line to the corner of the building in the
18 direction of the corner of the building. I
19 think that is a reasonable interpretation and
20 it's entitled to the Board's deference.

21 When this approach is taken, as
22 you can see in the owner's prehearing

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1 statement Exhibit F -- I'm referring to that
2 one because it's the biggest copy -- it's
3 clear to see that the electrical cabinet is
4 not located within a side yard of the house.

5 It's forward to the house. There
6 isn't any portion of the house that is
7 parallel to the cabinet. In the Zoning
8 Administrator's view the cabinet is in the
9 front yard of the property.

10 With respect to the retaining
11 wall, plainly retaining walls are not required
12 to have their own side yards. I cite several
13 provisions of the Zoning Regulations that I
14 think support that view.

15 I think clearly the Zoning
16 Regulations when read as a whole do not
17 contemplate that accessory structures like
18 retaining walls are required to have their own
19 yards. If you look at 2503, that regulation
20 states that retaining walls are allowed in
21 required yards. I think it would be
22 completely illogical to allow a retaining wall

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1 in a required yard, but then require the
2 retaining wall to have its own required yard.
3 If it's not a required yard, then a structure
4 can be put in that space. The restriction on
5 structures in a yard only apply to required
6 yards.

7 I'll let the Zoning Administrator
8 walk through his approach in how he measured
9 the side yard and how he came to that
10 conclusion.

11 CHAIRPERSON JORDAN: Certainly.

12 MR. LeGRANT: Good afternoon,
13 members of the Board. As my counsel noted, we
14 rely on the definition of side yard, that a
15 side yard exist only along a structure, in
16 this case a principal structure. The question
17 is how does one measure the side yard. As
18 noted, the code doesn't give any real guidance
19 on this.

20 The most logical way I approached
21 this case, as well as other cases involving a
22 side yard determination, is to measure from

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1 the property line. In the case of a side
2 yard, side property line in toward the
3 structure looking to the specification that's
4 set forth in the code.

5 In this case, in this subject
6 district, it's an eight-foot side yard
7 setback. Determining where "the structure is
8 along such structure" I would say in over 90
9 percent of cases it's really clear when you
10 have a rectangular lot with a rectangular
11 footprint of a building. It's almost obvious
12 what that will be.

13 In this case, it is a little more
14 challenging because the building is
15 irregularly shaped and the side property line
16 is skewed at an angle compared to the position
17 of the street, the property line along the
18 street.

19 Using this method that I'm very
20 comfortable with is finding the corner of the
21 building and then drawing a line perpendicular
22 from the side property inward. That seems to

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1 be the most logical way to determine the
2 presence of the side yard. That's where the
3 side yard begins. It exists the full depth of
4 the structure toward the corresponding back
5 corner of the house where the side yard ends.

6 As this Board knows, a side yard
7 and a rear yard are mutually exclusive and
8 never overlap. Then the code tells us how we
9 measure a rear yard and that is the full width
10 of a lot along the rear wall of the building.

11 This Board has determined that
12 unlike a side yard in the Schoenberger case,
13 you measure that yard from the rear wall of
14 the house back. That determines what the
15 required rear yard is. In sum those all work
16 together.

17 How a side yard is determined is
18 consistent, I believe, with both of the
19 definitions and the past practices of this
20 Board's decisions which leads to my office's
21 ability to determine what are the yards and
22 then appropriately regulate any structures

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1 that were proposed to exist in such setbacks.

2 MR. SARABIAN: I will also add the
3 Appellant seemed to object to the measuring,
4 the Zoning Administrator's line being drawn to
5 the corner of the elevator addition. DCRA's
6 view is that this is clearly a part of the
7 principal building. It was permitted that way
8 as an addition to the principal house.

9 It contains an elevator and a
10 machine room. It's under roof. There
11 shouldn't be any dispute that is actually a
12 part of the principal house. That is the
13 closest part of the building to the side lot
14 line so it's appropriate to draw the side lot
15 line to that corner.

16 I think the diagram filed by the
17 owner's counsel highlights the absurdity of
18 trying to draw the line to another point of
19 the building other than that corner.

20 With that, I'll take any questions
21 from the Board.

22 CHAIRPERSON JORDAN: Board, any

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1 questions?

2 Ms. Allen.

3 VICE CHAIR ALLEN: I actually -- I
4 was really having difficulty understanding how
5 that box was not in the side yard until your
6 explanation, frankly. I guess I'm -- yeah.
7 I mean, I understand it now. Yeah, I do.

8 CHAIRPERSON JORDAN: Look at
9 Exhibit 8.

10 MR. SARABIAN: Can you help me? I
11 don't have my exhibits keyed to yours.

12 MR. COLLINS: Mr. Chair, may I
13 just interject something at this point?
14 Exhibit 8 is a drawing from the previous BZA
15 appeal that was withdrawn. With all due
16 respect, I suggest instead of Exhibit 8 that
17 the Board should look at Exhibits 34 and 35
18 which are also -- they are also attached as
19 Exhibits F and G to the owner's prehearing
20 statement.

21 CHAIRPERSON JORDAN: They aren't
22 as clear to me. That's why I was using the

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1 other. Okay, 34 and 35.

2

3 MR. COLLINS: They show the way
4 that the Zoning Administrator is applying the
5 side yard measurements in this case.

6 CHAIRPERSON JORDAN: So, Mr.
7 Sarabian, everything that -- pull up 34. Look
8 at 34.

9 MR. SARABIAN: That would be Tab
10 F, I think?

11 CHAIRPERSON JORDAN: Tab F.
12 That's what it is. What are you designating
13 as the side yard?

14 MR. SARABIAN: It's a rectangular
15 area. I could have the Zoning Administrator
16 hold that up and show you exactly what it
17 looks like.

18 CHAIRPERSON JORDAN: I want to
19 make sure we're on the same page.

20 MR. LeGRANT: It's this area that
21 Jay started to describe as a rectangle --

22 CHAIRPERSON JORDAN: Is that Drive

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1 Court? Go ahead. I'm sorry.

2 MR. LeGRANT: -- that is shaded.
3 There's lines, parallel lines drawn on it as
4 shading to distinguish that area. That is, in
5 my view, an illustration of the required side
6 yard.

7 CHAIRPERSON JORDAN: Point to it,
8 please.

9 MR. LeGRANT: Beginning at the
10 corner of this house that I described earlier.
11 You notice that there is a portion of this
12 structure farther back that is shaved off to
13 respect that side yard. That was one of the
14 previous additions. It continues downward
15 along both sides of the lot. That illustrates
16 that as the required side yard in this case.

17 MR. SARABIAN: Anything forward of
18 this line here, this is the beginning of the
19 side yard running the full depth of the house
20 down to here. Anything forward of that line
21 is in the front yard and not in the side yard.
22 In this zone there is no required front yard.

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1 As such, a structure can be placed there.

2 CHAIRPERSON JORDAN: Thank you.

3 Any other questions of DCRA?

4 Mr. Collins, do you believe there
5 is anything you need to say?

6 MR. COLLINS: We would just like
7 to make a few points. We have filed an
8 owner's prehearing statement which you have,
9 Exhibit F, which was gone through. Exhibit F
10 shows the Zoning Administrator's
11 interpretation of the side yard, the required
12 side yard in this case.

13 Then Exhibit G, which is also on
14 the BZA record as Exhibit 35, shows an
15 application of the clear words on page 10 of
16 the Appellant's prehearing brief as that would
17 be applied.

18 We think that it's clear in our
19 statement that we filed that the emergency
20 generator transfer switch and cabinet
21 enclosure is not located in required side
22 yard, the retaining wall because there is no

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1 side yard requirement for retaining wall, and
2 it's also not located in the required side
3 yard of the Vorobek's house.

4 I would like to ask Mr. Steven
5 Sher to provide some additional comments.
6 Before I do that I would like to offer Mr.
7 Sher as an expert witness. He's been an
8 expert witness for this Board many times.

9 CHAIRPERSON JORDAN: He's already
10 in our book. He's been accepted numerous
11 times.

12 MR. COLLINS: Mr. Sher.

13 MR. SHER: Was I sworn in?
14 Probably not.

15 CHAIRPERSON JORDAN: Were you here
16 this morning?

17 MR. SHER: I was here this morning
18 but not when you swore people in.

19 CHAIRPERSON JORDAN: Oh, then we
20 need to swear you in.

21 MR. MOY: Do you solemnly swear or
22 affirm the testimony you are about to present

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1 in this proceeding is the truth, the whole
2 truth, and nothing but the truth?

3 MR. SHER: I do.

4 MR. MOY: Thank you.

5 MR. SHER: Again, Mr. Chairman,
6 for the record, my name is Steven E. Sher,
7 Director of Zoning and Land Use Services with
8 the law firm of Holland & Knight. I think Mr.
9 LeGrant has made a fairly concise and
10 appropriate discussion of side yards and how
11 to compute their depth and width.

12 As he noted, when you've got a lot
13 that's rectangular and a building that's
14 rectangular on a lot, it's pretty easy. You
15 can look at the lot and look at that building
16 and know what is the front, what is the side,
17 what is the rear.

18 In this case we've got a lot that
19 is not rectangular and the building is not
20 orthogonal with respect to the lot so the
21 Zoning Administrator has applied what is
22 generally been deemed to be a consistent

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1 interpretation of how to measure that.

2 I don't need to repeat what Mr.
3 LeGrant has said but I think the Board just
4 looked at that drawing and understood that if
5 you took the front corner of the house and
6 measured perpendicular to the side yard, you
7 would get to the point that this generator
8 switch and the appropriate housing for it is
9 in front of that line and, therefore, in front
10 of the house.

11 I would like to just note that the
12 purpose of providing yards on a property is to
13 provide light, air, and what I'll loosely call
14 breathing space around the building on the lot
15 on which the yard is located. It's not there
16 for the benefit of the adjoining property
17 owner.

18 They have their own lots. They
19 have their own requirements to provide yard
20 setbacks and whatever. They are not entitled
21 to a view across their neighbor's property and
22 they are not entitled to derive any light and

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1 air that they need for their home from their
2 neighbor's property. In this case, the
3 setbacks around the house have been observed.
4 The breathing space that is required, I
5 believe, has been provided.

6 I think Mr. LeGrant indicated in
7 this zone, but in general in the Zoning
8 Regulations there is not a requirement for
9 front yards. We require side yards and rear
10 yards but not front yards. Since there is no
11 requirement for that, it can be occupied in
12 any way that the property owner sees fit.

13 With respect to the -- I think
14 I've covered most of that. The idea that a
15 retaining wall is a structure that requires
16 its own yard I think is contradicted or
17 defeated by the language of 2503.4, that a
18 fence or retaining wall constructed in
19 accordance with the construction code may
20 occupy any yard required under the provisions
21 of this title.

22 Well, if a retaining wall could be

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1 located in a required side yard of the
2 principal dwelling, it logically follows that
3 the wall need not have a side yard of its own.
4 Then there's a whole bunch of other things
5 that relate to that but I don't think adds any
6 more to the point.

7 I would come to the conclusion
8 that I believe the Zoning Administrator
9 properly applied the regulations in
10 determining that the structure at issue here
11 can be located where it is and that is
12 consistent with the requirements of the Zoning
13 Regulations in my opinion.

14 MR. COLLINS: Thank you. I just
15 have a few more points to raise to bolster
16 what Mr. Sher just mentioned about the purpose
17 of side yards. There is a case that's been
18 cited by this Board on a number of occasions.
19 It's called Hefazi vs. Stiglitz, H-E-F-A-Z-I
20 vs. S-T-I-G-L-I-T-Z. It's cited 862 Atlantic
21 2nd 901, decision of the D.C. Court of Appeals
22 from 2004.

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1 In that case the issue -- I'll
2 read just several sentences from the decision.
3 "The appellants in that case asserted that
4 they have acquired a negative easement, the
5 right to prevent appellee from using his
6 property in such a manner as to affect their,
7 the appellants, use and enjoyment of their own
8 property. However, it is well settled that a
9 negative easement cannot be created by
10 prescription."

11 Further it goes on and the Court
12 says, "The actual enjoyment of the air and
13 light by the owner of the house is upon his
14 land only and that the owner of the adjoining
15 lands have submitted to nothing which actually
16 encroached upon his right. One may obstruct
17 his neighbor's windows at any time and no
18 action may be maintained for obstructing a
19 view."

20 That is consistent with the
21 purpose of a side yard. The side yard
22 requirement on the Vorobek property is for the

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1 benefit of the Vorobeks. It's not for the
2 benefit of the neighbors.

3 The Vorobeks have offered in their
4 brief to allow the neighbors to build a fence
5 on their property up to a 10-foot height if
6 they would like. We assume they have their
7 own adequate side yard and they can take their
8 light and ventilation from that.

9 Also, we would like to point out
10 in order to accept the Appellant's view that
11 the side yard is measured either in the
12 direction of the corner of the original house
13 without the addition, or toward the front
14 entrance, or toward the corner of the house on
15 the opposite side of the lot, you, the Board,
16 would have to accept the proposition that a
17 side yard exist in front of the dwelling which
18 is contrary to what the regulations intend and
19 what they say.

20 CHAIRPERSON JORDAN: I think you
21 are over your time.

22 MR. COLLINS: One last point. In

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1 this case you have two expert witnesses beside
2 of the Appellee. You have the Zoning
3 Administrator himself and you have Mr. Sher.
4 You have no expert witnesses on the side of
5 the Appellant. Thank you for your time.

6 CHAIRPERSON JORDAN: Okay. If you
7 add them up like that.

8 Anyway, rebuttal, please. Let's
9 just use three minutes on rebuttal.

10 MS. HANEY: Yes. Might I ask some
11 questions of the Zoning Administrator?

12 CHAIRPERSON JORDAN: Yes.

13 MS. HANEY: Very well. I would
14 ask the Zoning Administrator to refer to
15 Exhibit 4 which is three pages to the
16 Appellants' prehearing statement which would
17 be Exhibit 27-4. I'm going to show him my
18 copy.

19 I simply ask -- I represent that
20 these three pages show three different levels
21 of the same building. I would ask the Zoning
22 Administrator where the side yard would begin

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1 on these diagrams.

2 MR. LeGRANT: Let me be clear
3 about these drawings. You're saying these are
4 the different floor levels of the property at
5 2750 32nd?

6 MS. HANEY: These are three levels
7 of drawings that were submitted in support of
8 the original building permit for the addition.
9 As you'll notice, they don't show the elevator
10 structure. My question is in the absence of
11 the elevator structure on these drawings
12 choosing whichever level you would like, where
13 does the side yard end and the front yard
14 begin?

15 MR. LeGRANT: I do sort of recall
16 this drawing from I believe about two or three
17 years ago. For me to opine right now just to
18 tell you the side yard is this, this, and
19 this, it would be difficult for me to do so at
20 this point in time because these are partial.
21 This is a partial portion of the property. It
22 doesn't show all the property lines.

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1 I would be hesitant to go on
2 record and say, "Oh, it's measured this way,"
3 given this particular state of the structure
4 before its current state. Its current state
5 has the elevator addition that was permitted
6 that added the elevator assembly and housing
7 at the front of the building. I would be a
8 little hesitant to try to opine on the side
9 yard for this particular drawing.

10 CHAIRPERSON JORDAN: Any
11 additional questions you would like to ask?

12 MS. HANEY: No.

13 CHAIRPERSON JORDAN: Either party.

14 MS. HANEY: I do have one more
15 question.

16 Assume for a moment that the
17 building in this case -- that you have a
18 rectangular building on a rectangular lot but
19 that it has a circular front. Where would the
20 side yard begin in such a case?

21 CHAIRPERSON JORDAN: What do you
22 mean by circular front?

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1 MS. HANEY: A semi-circular front.

2 CHAIRPERSON JORDAN: You mean a
3 drive kind of circular?

4 MS. HANEY: No. Assume --

5 CHAIRPERSON JORDAN: That we have
6 a square building and a square lot.

7 MS. HANEY: A square building on a
8 square lot but the front is convex rather than
9 a straight line. How deep would that lot be?
10 Would it be from the corner or would it be
11 from the apex of the convex curve?

12 MR. LeGRANT: I think you meant to
13 say what is the depth of the side yard and not
14 the lot.

15 MS. HANEY: What is the depth of
16 the structure.

17 MR. LeGRANT: Oh, the depth of the
18 structure.

19 MS. HANEY: Where would the side
20 lot line begin and the front yard line end?

21 MR. LeGRANT: It's a bit of a
22 hypothetical but if it was a rectangular

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1 square footprint of a building with a
2 rectangular square footprint on the lot
3 surrounding it except that the front had a
4 curve in it, then you could probably draw a
5 line --

6 The perpendicular drawing of the
7 side yard going into the corner of the
8 building would extend across the front of said
9 building because at that point the front of
10 the building is perfectly perpendicular to
11 said both side property line as well as the
12 side of that building. I think that would be
13 the answer for that hypothetical.

14 MS. HANEY: Thank you.

15 MR. COLLINS: I have one question
16 of the Zoning Administrator.

17 CHAIRPERSON JORDAN: Let me make
18 sure that the Applicant -- the Appellant. Do
19 we have any other questions of the Appellant?

20 MS. HANEY: No, not of the Zoning
21 Administrator.

22 CHAIRPERSON JORDAN: Who do you

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1 have questions of?

2 MS. HANEY: I don't have any more
3 questions.

4 CHAIRPERSON JORDAN: Then I'm
5 going to now give Mr. Collins the opportunity
6 to ask cross. I should have done it then.

7 MR. COLLINS: Mr. LeGrant, the
8 hypothetical that was mentioned a few minutes
9 ago, that's not the case here, is it?

10 MR. LeGRANT: That's not before us
11 at this hearing.

12 MR. COLLINS: That's correct.

13 MR. LeGRANT: That's correct.

14 MR. COLLINS: Okay. Thank you.

15 CHAIRPERSON JORDAN: Now, let's
16 get the clock started. The Appellant will
17 have three minutes to do any closing.

18 MS. HANEY: Yes. Thank you. The
19 question here is -- I think the question that
20 determines the issue here is how one measures
21 the depth of the building because that is what
22 determines the size of the side lot. There is

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1 no difference between the hypothetical I asked
2 the Zoning Administrator with a curved front
3 and a building that has a skewed front.

4 It is measured -- the depth is
5 measured from the point closest to the front
6 lot line which here is curved, by the way, and
7 goes all the way to the back. The side lot
8 line should extend farther forward than the
9 Zoning Administrator has placed it.

10 In addition, just as a practical
11 matter, again, if you look at Exhibit 6 to the
12 statement we submitted in support of our
13 appeal, which is Exhibit 9 in the record,
14 which is a photograph with a view looking at
15 the retaining wall, across the retaining wall
16 to the house.

17 It shows the house is forward of
18 the electrical box. I think that is true on
19 the diagrams as well. The Zoning
20 Administrator chose the nearest corner.
21 That's not how it should be measured. I think
22 as well you can see --

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1 CHAIRPERSON JORDAN: Is there
2 something clear in the Zoning Regulations
3 saying that is not where it should be
4 measured?

5 MS. HANEY: No. What the
6 regulations say is that the side lot extends
7 to the depth of the building.

8 CHAIRPERSON JORDAN: Yes, but from
9 where the measurements. Where does it say
10 that?

11 MS. HANEY: Well, it doesn't say
12 that. 11 DCMR 199(g) states that if there is
13 no definition in the regulations, then you
14 default to Webster's Unabridged Dictionary and
15 Webster's Unabridged Dictionary defines depth
16 as running from the forward most part to the
17 rear which is where I got it.

18 CHAIRPERSON JORDAN: Isn't this a
19 whole question of where we start the
20 measurements?

21 MS. HANEY: It depends on what
22 measurements you're referring to. I'm

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1 speaking right now of the measurement of the
2 depth of the building.

3 We've been talking up until now of
4 the measurement from the side inward. The
5 question of where the front yard, if such a
6 concept would be created, begins and the side
7 lot ends is determined by the depth of the
8 building.

9 What I'm saying is if you draw a
10 perpendicular line from the side lot line,
11 that line needs to be placed at the forward
12 most part of the building which in a semi-
13 circular building would not be the near corner
14 and it isn't here either.

15 CHAIRPERSON JORDAN: Okay. Back
16 on the clock.

17 MS. HANEY: I'm sorry. I would
18 also say that all the talk of easements is new
19 to me. My client's primary concern with
20 respect to the placement of this cabinet was
21 a safety concern.

22 It certainly is ugly but it also

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1 is an electrical transformer -- it contains an
2 electrical transformer that is located less
3 than 10 feet away from the eaves of their
4 house. The property is on a slope so it
5 actually sits up higher than seven feet in
6 relation to the house.

7 As far as it being located in the
8 property's front yard, I would defy anybody
9 who goes to the property to try to get to that
10 location from the actual front parking pad of
11 that property. It's not something anybody
12 would want to do in dress clothes.

13 If you look at the final exhibit
14 that we submitted in support of our prehearing
15 brief, which is a photograph, you can't see
16 it. It's right here. It's right here but you
17 can't see it because it's down some seven to
18 10 feet. I don't even know if it's possible
19 to get from there.

20 I finally would like to address
21 the issue of the fence. I don't know whether
22 this whole matter could have been resolved if

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1 they had made that offer before any of this
2 started but it doesn't address two problems.

3 One of which is in order to put a
4 fence in that area, you would have to put in
5 concrete footers and there still are tree
6 issues. That's a big problem that hasn't been
7 addressed by anybody since we just found out
8 that they were willing to agree to that.

9 The second problem, or perhaps
10 it's the first problem, I don't know, is Pepco
11 requires a three-foot clearance in front of
12 that cabinet in order that Pepco people can
13 work on it if they need to.

14 Right now they don't have but
15 three feet. If you put a fence there, I don't
16 know if a worker could even get into that area
17 if you look at the photos to work on that
18 cabinet or to do any work because he would be
19 trapped between the retaining wall and a fence
20 of equal height.

21 I just don't even know if that
22 would be practical. I don't think that

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1 putting that forward as a solution to this
2 problem is sensible unless or until Pepco has
3 had an opportunity to weigh in on it.

4 CHAIRPERSON JORDAN: Thank you.
5 Time is up on this matter.

6 VICE CHAIR ALLEN: I would like to
7 ask, Mr. LeGrant, you heard Ms. Haney's
8 discussion about the depth and that the side
9 yard is suppose to run the depth of the
10 property?

11 MR. LeGRANT: Yes.

12 VICE CHAIR ALLEN: So if you look
13 at the picture, Exhibit No. 7, and I'm not
14 sure how accurate this is. I'm just asking
15 for clarification.

16 MR. LeGRANT: One moment.

17 VICE CHAIR ALLEN: Okay.

18 CHAIRPERSON JORDAN: Which
19 exhibit?

20 VICE CHAIR ALLEN: Seven.

21 MR. SARABIAN: Exhibit 7 is what
22 document?

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1 CHAIRPERSON JORDAN: Previous
2 record.

3 MR. SARABIAN: Which exhibit is 7?

4 CHAIRPERSON JORDAN: That's 40
5 something.

6 VICE CHAIR ALLEN: No, it's 7.

7 CHAIRPERSON JORDAN: It's 7 from
8 the earlier record.

9 VICE CHAIR ALLEN: Oh, I'm sorry.
10 I don't know where it is otherwise.

11 MR. LeGRANT: Could someone hold
12 up Exhibit 7?

13 CHAIRPERSON JORDAN: Same as 35?

14 VICE CHAIR ALLEN: 35.

15 CHAIRPERSON JORDAN: Yeah, I was
16 thinking it was 35.

17 MR. LeGRANT: One moment.

18 CHAIRPERSON JORDAN: It's the same
19 as 35. When you come here, you know you got
20 to have the exhibits. We go through the
21 exhibits in the file. That's just a standard.
22 We're on Exhibit 35. Let's move from there.

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1 MR. LeGRANT: Yes, I'm looking at
2 this now.

3 VICE CHAIR ALLEN: So if I'm
4 understanding Ms. Haney's point, which I would
5 just like your thoughts on, that the
6 definition of a side yard is that it runs the
7 depth of the property if that's correct.

8 MR. LeGRANT: Yes.

9 VICE CHAIR ALLEN: Then if you go
10 to what I guess is the overhang in the front
11 yard --

12 MR. LeGRANT: Well --

13 VICE CHAIR ALLEN: -- and do sort
14 of a straight line from that, then the
15 electrical box would be within that.

16 MR. LeGRANT: So --

17 VICE CHAIR ALLEN: I just want how
18 you -- I mean, I get how you measure from the
19 corner, but if you add the depth argument,
20 does that not have some merit?

21 MR. LeGRANT: If you accept the
22 Appellants' argument that any portion, you

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1 could draw it, I guess, to -- there is a
2 covered entryway. If you drew a line
3 perpendicular off of that to the site property
4 line, then indeed this transfer switch box
5 would be in a side yard.

6 As I stated, it would be contrary
7 to my interpretation that the most logical
8 point to choose is the corner that
9 differentiates the side of the house from the
10 front of the house. Even in this case of a
11 skewed property line and a very irregularly
12 shaped building footprint, I think that is
13 pretty clear from this drawing as to what that
14 corner is.

15 VICE CHAIR ALLEN: I get your
16 point. Thank you.

17 MR. SARABIAN: I will also point
18 out that the cabinet is still forward of that
19 overhang. It appears to be. There's no --
20 they don't overlap. It's still in front of
21 it.

22 CHAIRPERSON JORDAN: Okay. We

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1 thank you all for your participation and well-
2 thought-out arguments in this matter. We will
3 conclude this hearing and appeal based upon
4 what has been submitted, what has been deduced
5 here at this hearing.

6 Does the Board have a feeling
7 whether they want to deliberate? Do they have
8 a feeling they want to rest and wait? This is
9 just one of these unfortunate things. The
10 District just doesn't lay all the same
11 throughout the District that everything is not
12 squared up.

13 Our Zoning Commission hasn't been
14 able to think of everything they should think
15 about that could be a possibility of any lot
16 shape and size for us all to have one fit all.
17 I don't know about the Zoning Commissioner,
18 Mr. Chair, but anyway --

19 ZC CHAIR HOOD: Sometimes I just
20 ignore comments.

21 CHAIRPERSON JORDAN: I do
22 understand the issue, especially looking at

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1 the picture that the Appellant has with this
2 cabinet. I just wish we could be like Rodney
3 King and say I wish we could just all get
4 along, but certainly if neighbors begin to
5 work with neighbors and take this all into
6 consideration.

7 My thoughts about this matter is
8 simply this. The Appellants failed to meet
9 their burden to prove that the Zoning
10 Administrator violated the Zoning Regulations
11 and, therefore, the decision of the Zoning
12 Administrative should be sustained.

13 The retaining wall is a structure.
14 However, it is exempt from side yard
15 requirements of 2503. The Zoning
16 Administrator's interpretation is rational.
17 It's not inconsistent with the Zoning
18 Regulations.

19 The method used by the Zoning
20 Administrator to arrive at the front line of
21 the building to determine which is the front
22 and side yard begins is not necessarily clear

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1 in our Zoning Regulations and not fully
2 specified in the Zoning Regulations as to how
3 to determine this unusual property.

4 I can't say that the method used
5 by the Zoning Administrator was not
6 reasonable. In fact, it was reasonable and it
7 cannot be said that it violates the Zoning
8 Regulations. Although this is not
9 controlling, another consideration is the fact
10 that this is a mechanical equipment box.

11 Arguably it would have an
12 exemption, too. That's where my thoughts on
13 this matter would be and for those reasons why
14 I would move to sustain the decision of the
15 Zoning Administrator.

16 VICE CHAIR ALLEN: I would second.

17 CHAIRPERSON JORDAN: Motion made
18 and seconded. Any unreadiness?

19 MEMBER HINKLE: If I could just
20 state something. I, too, agree that the
21 Zoning Administrator made a rational
22 interpretation of this. Having not seen this

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1 before, I'm a little surprised that they were
2 actually allowed to put a box such as this in
3 the front yard.

4 Perhaps the Zoning Commission can
5 look at least at some sort of screening
6 requirement or something for these pieces, or
7 look at other regulations that look at where
8 these are placed.

9 I know certainly other
10 jurisdictions across the country do have
11 screening requirements for some of these
12 pieces. It's just a suggestion.

13 CHAIRPERSON JORDAN: We are in the
14 middle of a Zoning -- not in the middle.
15 We're at the tail end of a Zoning rewrite and
16 those hearings will start soon.

17 ZC CHAIR HOOD: You say we're at
18 the tail end. I think we're at the very
19 beginning actually, even though we've only
20 been working on it since 2007. Retaining
21 walls is an issue that will come to light. I
22 wouldn't necessarily say we're at the

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1 beginning.

2 CHAIRPERSON JORDAN: Okay. For
3 the Zoning Commission itself, but that's
4 another side point.

5 With that, you heard my motion.

6 ZC CHAIR HOOD: Mr. Chairman, I
7 would also agree with the rationale. I think
8 the way the Zoning Administrator looked at
9 this case, I would also echo what my colleague
10 said.

11 CHAIRPERSON JORDAN: All those in
12 favor of the motion, signify by saying aye.

13 BOARD MEMBERS: Aye.

14 CHAIRPERSON JORDAN: Those opposed
15 nay. The motion carries.

16 Mr. Moy.

17 MR. MOY: Yes, sir. Staff would
18 record the vote as 4-0. This is on the motion
19 of Chairman Jordan to uphold the decision of
20 the Zoning Administrator which would make the
21 appeal -- which would be denying the appeal.
22 Seconding the motion Chairperson Allen. Also

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1 in support Mr. Hood and Mr. Hinkle. We have a
2 Board seat vacant. The motion carries 4-0,
3 Mr. Chairman.

4 CHAIRPERSON JORDAN: Thank you,
5 Mr. Moy.

6 Thank you, each one of you, for
7 coming down and trying to work. This has been
8 educating for myself and I think others on the
9 Board. We really appreciate it. It's a tough
10 curve. With that, the next item of business is
11 -- this hearing is over. Thank you.

12 The next item of business. As
13 Chairperson of the Board of Zoning Adjustment
14 for the District of Columbia and in accordance
15 with Section 405(b)(4) and (b)(13) of the
16 District of Columbia's Administrative
17 Procedures Act, I move that the Board hold a
18 closed meeting scheduled for September 9,
19 September 16, September 23 at 4:00 p.m. via
20 telephone conference for the purpose of
21 seeking legal advice from our counsel and
22 deliberate on without deciding the cases

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1 scheduled as advertised for those particular
2 periods. Is there a second?

3 VICE CHAIR ALLEN: Second.

4 CHAIRPERSON JORDAN: There is a
5 second. All those in favor signify by saying
6 aye.

7 BOARD MEMBERS: Aye.

8 CHAIRPERSON JORDAN: Those opposed
9 nay. The motion carries.

10 Mr. Moy, do you need to do
11 something else?

12 MR. MOY: Yes, sir. When I call
13 the member's name, if you can respond with yes
14 or no, aye or nay.

15 Mr. Hood.

16 ZC CHAIR HOOD: Aye.

17 MR. MOY: Chairman Jordan.

18 CHAIRPERSON JORDAN: Aye.

19 MR. MOY: Chairperson Allen.

20 VICE CHAIR ALLEN: Aye.

21 MR. MOY: Mr. Hinkle.

22 MEMBER HINKLE: Aye.

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1 MR. MOY: We have a Board seat
2 vacant. The motion carries, Mr. Chairman.

3 CHAIRPERSON JORDAN: It appears
4 that the motion has passed so pursuant to 406
5 of the District of Columbia Administrative
6 Procedures Act, notice should be posted in the
7 Office of Zoning electronic reading room,
8 placed in the Office of Zoning's electronic
9 calendar, and on its website, and published in
10 the District of Columbia Register.

11 Is there any other business coming
12 before the Board at this time?

13 MR. MOY: Not today, Mr. Chairman.

14 CHAIRPERSON JORDAN: Anyone? Then
15 we are in recess until September?

16 MR. MOY: Yes, sir.

17 CHAIRPERSON JORDAN: What am I
18 going to do? I have no place to go. No. All
19 right. Then we stand adjourned.

20 (Whereupon, at 12:58 p.m. the
21 hearing was adjourned.)

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