

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY
SEPTEMBER 10, 2013

+ + + + +

The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Meeting held on September 10, 2013.

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

(9:44 a.m.)

BZA CHAIR JORDAN: Good morning.

Would this meeting and hearing please come to order. Good morning, ladies and gentlemen. We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, NW. Today's date is September 10th, 2013. We're here for the meeting and hearings of the Board of Zoning Adjustment of the District of Columbia.

My name is Lloyd Jordan, Chairperson. To my right is S. Kathryn Allen, Vice Chair. To her right, Jeffrey Hinkle, Member of the Board. Please be advised that this proceeding is being recorded by a court reporter and also being Webcast live, so therefore, I'm going to ask you to refrain from any disruptive noises here in the room and ask that you silence your cell phones and et cetera.

Today's agenda is for the Board to render decisions and to conduct hearings on

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1 applications pending with the Board. Those
2 who are going to testify in any case that's on
3 our docket for hearing today, I'm going to
4 need you to complete two witness cards each,
5 and prior to testifying, giving those to the
6 court reporter who's sitting to my right.

7 So again, you need to complete two
8 witness cards if you're going to testify or
9 provide statements to the Board, and give
10 those two cards to the court reporter sitting
11 to my right prior to you addressing the Board.

12 Now, the same group of people who
13 are going to present testimony or statements
14 to the Board, I'm going to ask you now to
15 stand and take the oath from the Board's
16 Secretary, Mr. Moy. So if you think you're
17 going to testify or provide statements to the
18 Board today, I'm going to ask you to stand and
19 take the oath or affirmation from the Board's
20 Secretary.

21 (Witnesses Sworn)

22 BZA CHAIR JORDAN: We'll now

1 handle some preliminary matters. I'm going to
2 call the representative on Case 18496 to come
3 forward, please. Could you state your names
4 for the record, please?

5 MS. OLSON: Good morning. I'm
6 Kate Olson from the law firm of Greenstein,
7 DeLorne & Luchs.

8 MR. BROWN: Patrick Brown from
9 Greenstein, DeLorne & Luchs.

10 BZA CHAIR JORDAN: Okay. The
11 Board's going to continue this matter to allow
12 time for you to provide proper notice on this
13 modification. Under 3129.8 it requires a
14 hearing on the matter, so we need to notice it
15 and set this for a hearing.

16 MR. BROWN: If I could, Mr.
17 Chairman, inquire. A minor modification
18 doesn't --

19 BZA CHAIR JORDAN: A minor
20 modification to plans. I'm real set on this
21 and I think you understand the rule and the
22 rule is very clear. It allows for minor

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1 modification to plans and not conditions or
2 other matters set forth in the order of the
3 Board.

4 MR. BROWN: There's a provision,
5 and we just did this in a similar case for 7-
6 Eleven within the last year, where the -- and
7 the number escapes me, Mr. Moy would remember,
8 it's over on New Hampshire Avenue, where the
9 Board modified a condition, hours of operation
10 of the facility from less than 24 hours to 24
11 hours, and did so in the same context we're
12 here today, without notice or a hearing.

13 So I think and --

14 BZA CHAIR JORDAN: You say there's
15 a rule that allows it?

16 MR. BROWN: Yes. And I don't have
17 the --

18 BZA CHAIR JORDAN: What's the
19 rule?

20 MR. BROWN: If you give me a
21 minute, I can pull the regs out. I don't have
22 them in front of me. But again, we did the

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1 exact same thing in the --

2 BZA CHAIR JORDAN: Okay. I'll
3 give you a minute.

4 MR. BROWN: Perhaps we'll let the
5 Board -- you've got a very busy schedule.

6 BZA CHAIR JORDAN: I'm going to
7 manage this docket and I'm going to give you a
8 minute, so you can step away from the table
9 and I'm going to call the next case.

10 MR. BROWN: Okay.

11 BZA CHAIR JORDAN: Okay. And then
12 I'll call you back up, so you got a couple
13 minutes.

14 MR. BROWN: Okay.

15 BZA CHAIR JORDAN: Okay, 18603, is
16 there a representative for 18603? Would you
17 please come forward, please? Thank you. No,
18 at the witness table, please. If I call you
19 forward, that means come to the witness table,
20 please. I'm probably a little bit ambiguous
21 there. You don't need to bring all that with
22 you. We're handling preliminary matters and

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1 issues. Would you please identify yourself?

2 MR. FOWLKES: V.W. Fowlkes.

3 BZA CHAIR JORDAN: In relation to
4 this application, you are?

5 MR. FOWLKES: I'm the agent for
6 the owner, Brandon Webster and Nancy Younan.

7 BZA CHAIR JORDAN: Okay. This is
8 another matter that the Board's going to
9 continue to another date. There was no
10 advertisement regarding the relief requested
11 for special exceptions, and so we're going to
12 require you to provide advertisement and
13 notice, and reset this on another date.

14 And so, Mr. Moy, is there a date
15 that you want to propose to --

16 MR. MOY: Just a second, Mr.
17 Chairman.

18 MR. FOWLKES: Advertisement in the
19 form of a sign or a letter?

20 BZA CHAIR JORDAN: It has to be
21 properly advertised to provide notice to the
22 community, the neighborhood, that you're

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1 seeking the particular relief that you're
2 seeking. This is a matter in which the relief
3 that you're seeking has not been advertised.

4 MR. MOY: That was your recent
5 amendment --

6 BZA CHAIR JORDAN: As a special
7 exception.

8 MR. FOWLKES: Right. So the
9 special exception was included in the sign and
10 also, a letter sent out to the neighborhoods
11 within the required radius. Was there
12 additional advertisement that needed to
13 happen?

14 BZA CHAIR JORDAN: The special
15 exception was included in what, because we
16 looked at --

17 MR. FOWLKES: There was a sign
18 posted in front of the property as well as a
19 letter that was circulated to the neighbors.

20 BZA CHAIR JORDAN: And the sign
21 said?

22 MR. FOWLKES: The sign included, I

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1 don't have the wording in front of me, but it
2 included both the variance and the requested
3 special exception.

4 BZA CHAIR JORDAN: Well, do you
5 have that sign that was posted, a copy of the
6 picture of the sign that was posted?

7 MR. FOWLKES: I think I do,
8 actually, but you won't be able to see the
9 wording on the sign in the picture. But I
10 have the sign itself, of course, not with me.

11 BZA CHAIR JORDAN: But you
12 subsequently amended this application,
13 correct, and added additional relief?

14 MR. FOWLKES: That's right, but
15 prior to picking up the sign.

16 BZA CHAIR JORDAN: But the public
17 register notice did not have any changes and I
18 can't see from the sign whether or not it had
19 been noticed.

20 MR. FOWLKES: Well, I don't have
21 the sign with me because it's in front of the
22 house, but the original sign had, you're

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1 right, only the variance we were requesting,
2 however, before we picked up the sign, we made
3 the amendment, and they actually --

4 BZA CHAIR JORDAN: Wrote on the
5 sign?

6 MR. FOWLKES: -- altered the sign.

7 BZA CHAIR JORDAN: Okay.

8 MR. FOWLKES: And we also sent out
9 letters to the neighbors.

10 BZA CHAIR JORDAN: Okay. Then
11 we'll call you back up and --

12 MR. FOWLKES: Thank you.

13 BZA CHAIR JORDAN: -- we'll accept
14 your sworn statement about what the notice
15 provided.

16 MR. FOWLKES: Thank you.

17 BZA CHAIR JORDAN: Next, I would
18 like to see as a preliminary matter, 18556.
19 Yes, would you please identify yourselves?

20 MR. MATTIOLI: My name is --

21 BZA CHAIR JORDAN: Let's make sure
22 that you're -- yes, you have to push and make

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1 sure the glowing green button.

2 MR. MATTIOLI: My name is Derek
3 Mattioli and I'm the owner/occupant of 1375
4 Massachusetts Avenue, SE.

5 MR. NELSON: My name is Carl
6 Nelson. I'm Derek's stepfather.

7 MR. MATTIOLI: He's my stepfather.
8 He's assisting me with this. He will not be
9 testifying.

10 BZA CHAIR JORDAN: Well, and you
11 are?

12 MR. O'DONNELL: Mark O'Donnell,
13 I'm --

14 BZA CHAIR JORDAN: Are you the
15 party in opposition?

16 MR. O'DONNELL: Yes.

17 BZA CHAIR JORDAN: For party
18 status?

19 MR. O'DONNELL: Yes.

20 BZA CHAIR JORDAN: And the Board's
21 inclined we'll be granting that party status.
22 What we've been requiring recently has been

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1 something that's worked out well, is having
2 those who are have been granted party status
3 to meet with the applicant prior to us calling
4 your case back, go out have the meeting,
5 discuss your issues, see if there can be some
6 agreement to where you might be able to come
7 together on this matter, so I'm going to ask
8 and request that you do so prior to us calling
9 your case back on the docket.

10 MR. MATTIOLI: We've already --

11 BZA CHAIR JORDAN: I'm asking you
12 to do so prior to calling your case on the
13 docket, okay?

14 MR. MATTIOLI: Certainly.

15 BZA CHAIR JORDAN: I don't care if
16 you've done it, you've don't it, you've done
17 it. I've heard it, what ten times in this
18 room, and then some kind of way, a group of 20
19 people even, are able to come back in this
20 room and have reached an agreement, so I'm
21 asking you to do it again. If you would do
22 that for me, I really would appreciate it.

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1 MR. MATTIOLI: Certainly.

2 BZA CHAIR JORDAN: Thank you. And
3 the applicant for 18600.

4 MR. BONILLA: Good morning. My
5 name is Wilfredo Bonilla. The matter that I'm
6 here today is regarding my case that --

7 BZA CHAIR JORDAN: Yes. I'm aware
8 of that. Here's the issue. Now, this is
9 simply up to you and the Board wants to grant
10 you the opportunity to continue this case so
11 that you can seek proper help and advice on
12 how to present a case to the Board of Zoning
13 Adjustment.

14 There are many things in your
15 application that does not meet the
16 requirements for filing with the Board of
17 Zoning Adjustment. So it is your option for
18 us to go forward as what you've already
19 submitted or we'll grant you time to seek
20 proper help to seek the relief that you're
21 requesting.

22 MR. BONILLA: I would like to

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1 request to please have an opportunity and what
2 you could please advise me on this case.

3 BZA CHAIR JORDAN: We will grant
4 you time to seek help or we will grant you
5 time for you to find someone other than us,
6 you can even come in and meet with the Office
7 of Zoning, which is right across the hall, to
8 seek their advice or help, or you can seek
9 professional help, or help of a neighbor who
10 may be aware of the proper rules and
11 procedures of this Board.

12 But the Board cannot provide you
13 the advice that's necessary for you to get the
14 relief that you're requesting.

15 MR. BONILLA: That would be fine
16 then. I will proceed receiving the help that
17 you're suggesting and I will look and search
18 for help.

19 BZA CHAIR JORDAN: Very good. And
20 with that, Mr. Moy, can we have a date that's
21 probably at least 45 days out or more?

22 MR. MOY: Forty-five days?

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1 BZA CHAIR JORDAN: I'm thinking --
2 well, what do you -- I said at least.

3 MR. MOY: At least, okay. Well,
4 the rest of September, as you know, Mr.
5 Chairman, the docket is very full. I would
6 suggest, possibly, the afternoon of October
7 1st or -- I think that would be good; the
8 afternoon of October 1st.

9 MR. BONILLA: Thank you.

10 BZA CHAIR JORDAN: Okay. Very
11 good. Thank you. So it's October 1st in the
12 afternoon, not the afternoon, we don't have
13 afternoons.

14 MR. MOY: Well, the Board has a
15 training session in the morning.

16 BZA CHAIR JORDAN: Oh, we have a
17 training. Oh, we do?

18 MR. MOY: So your session starts
19 at 1 o'clock.

20 BZA CHAIR JORDAN: So it will be
21 the afternoon on our 1 o'clock docket on
22 October 1st, you said, or 6th?

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1 MR. MOY: 1st.

2 BZA CHAIR JORDAN: October 1st.

3 Yes. So again, we have a training in the
4 morning on October 1st, again, anyway. These
5 are great trainings. We really learn an awful
6 lot. No, they are. They really are. Thank
7 you all.

8 MR. BONILLA: Thank you.

9 BZA CHAIR JORDAN: Okay. Mr. Moy,
10 let's take a look here. We're ready for our
11 expedited docket and I was just trying to see
12 if there was any issues.

13 MR. MOY: While you're perusing
14 here, your sheet, Mr. Chairman --

15 BZA CHAIR JORDAN: Well, I --

16 MR. MOY: Oh, go ahead.

17 BZA CHAIR JORDAN: Let me do one
18 other thing. Let me call the parties back for
19 Mr. Brown and Ms. Olson with regards to 18496.

20 Mr. Brown, Ms. Olson, 18496? Well, okay.
21 We're not going to hold up our docket for
22 them. So let's call the expedited case -- Mr.

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1 Moy, I'm sorry, you had something.

2 MR. MOY: Yes. Before we proceed
3 with the first decision case, Mr. Chairman,
4 there are two preliminary matters I just want
5 to put before the Board on two decision cases.

6 The first is Case Number 18626 on the
7 expedited calendar of Christa Bowen where the
8 ANC 7D filed their ANC letter yesterday. It
9 was logged into the record Monday, September
10 the 9th, so that would be late; not meeting
11 the seven days.

12 BZA CHAIR JORDAN: And did they
13 provide basis for that?

14 MR. MOY: I don't believe they
15 did, but I just want to double-check, Mr.
16 Chairman. No, they did not, but I can show
17 you a copy of the letter.

18 BZA CHAIR JORDAN: Yes, let me see
19 it, please. Don't go anywhere. Okay. So
20 they're not in opposition with it anyway, so
21 we don't need to accept it, it doesn't meet
22 the requirements for being filed late,

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1 however, I would have taken a different
2 posture if it had been in opposition or had an
3 issue with an expedited matter, which they
4 don't.

5 Mr. Brown, Ms. Olson, would one of
6 you want to -- yes. You want to provide us
7 the rule? What we're doing, recalling 18496.

8 Mr. Brown?

9 MR. BROWN: And I think we're in
10 agreement. When we submitted the minor
11 modification application, we submitted it
12 under 3129.7, which is other than the plans,
13 which does, in fact, require a "hearing".
14 Where I think the difficulty arose, and I've
15 consulted with staff, is, they chose -- and
16 notice was given to all the parties, the ANC
17 and the Office of Planning, both who are in
18 support, and the matter was, without any
19 involvement on our part, put on the agenda
20 today as a meeting. That's beyond my control.

21 What I would suggest, one, we've
22 got everybody in support, we're here, is, we

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1 have no problem --

2 BZA CHAIR JORDAN: We don't know
3 that.

4 MR. BROWN: What?

5 BZA CHAIR JORDAN: We're going to
6 set this down, continue it to another date for
7 advertisement. We don't know who we have and
8 who we don't have. And so when we set these
9 things up for hearing, somebody else might be
10 here who's not part of the group, not part of
11 everybody you talked about, and let's make
12 sure we do it right.

13 MR. BROWN: Mr. Chairman, there's
14 no notice requirement, from our perspective,
15 no posting requirement. We gave notice to all
16 the parties, the Office of Planning and the
17 ANC, both who have written -- the Office of
18 Planning is here, Mr. Jackson, and the ANC
19 have written in support. And I understand
20 where you are, but time is very critical here.
21 We're in the middle of lease negotiations for
22 which the new potential tenant -- this change

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1 in hours of operation is a dealmaker or
2 dealbreaker.

3 So that if we could even waive the
4 notice requirements and move us to the hearing
5 agenda later today that would, one, utilize
6 the Board's resources as best as possible, and
7 the Office of Planning, and everybody has been
8 able to participate.

9 BZA CHAIR JORDAN: Okay. My turn
10 now?

11 MR. BROWN: Yes.

12 BZA CHAIR JORDAN: Because I was
13 going to move to the solution for this a
14 little bit, like, 20 words back or 30 words
15 back. Is the Board willing to waive the
16 provisions of 3129.8, that we have to set this
17 down for a hearing? It's a minor
18 modification, just changing some timeframes.
19 I would move it. Is there a second?

20 VICE CHAIR ALLEN: I do have
21 concern, given the hours that they're
22 suggesting. I mean, it's very early in the

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1 morning.

2 BZA CHAIR JORDAN: Okay. So then
3 we will not do so. Thank you. That's fine.
4 It dies for a lack of second. Then we're
5 going to schedule this for a hearing. Mr.
6 Moy?

7 MR. MOY: Yes, sir.

8 MR. BROWN: Mr. Chairman, you're
9 not going to require any further notice from
10 us?

11 BZA CHAIR JORDAN: Do we need
12 additional notice or just -- no, we send it
13 out for hearing.

14 MR. MOY: As I mentioned, the
15 earliest possible date --

16 BZA CHAIR JORDAN: And let's see
17 if we can move it to --

18 MR. MOY: Well, after having said
19 that, the ***10:05:00 full and given the
20 circumstances of this case --

21 BZA CHAIR JORDAN: I can squeeze
22 it. If this is something that's going to be

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1 relatively simple, unless something comes up -
2 -

3 MR. MOY: Let's see, we have an
4 appeal on the 17th, well, we have two the
5 following week. Well, Mr. Chairman, it's cost
6 of the --

7 BZA CHAIR JORDAN: We can plop it
8 on the first part of one of the dockets coming
9 up in September. It's something that I don't
10 think is going to require a lot of debate.

11 MR. MOY: Well, in that case then,
12 let's place this on the morning of September
13 17th then.

14 BZA CHAIR JORDAN: Okay. Very
15 good.

16 MR. BROWN: Thank you, Mr.
17 Chairman.

18 BZA CHAIR JORDAN: You're welcome.
19 Thank you. Okay. Then let's call our
20 expedited cases. The first one, Mr. Moy?

21 MR. MOY: The first case on the
22 expedited review calendar is application

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1 number 18616. This is of MRC Investors, LLC.

2 This is for a special exception, again, under
3 Section 223, relief from special exception
4 under Section 223, not meeting the lot
5 occupancy, Section 403, and rear yard, Section
6 404 requirements, in a R4 District at premises
7 1177 3rd Street, NE.

8 BZA CHAIR JORDAN: Very good.
9 Thank you. This is a matter in front of the
10 Board for expedited review. Is there anyone
11 here who is in opposition to 18616? Anyone
12 here for 18616? I'm inclined to the Board to
13 approve this with the conditions provided by
14 the ANC, and that would be that, one, that the
15 front facade with mansard roof be maintained
16 so that the rear addition is not visible from
17 the front, and that the applicant file the
18 plaque as part of the package and materials
19 submitted to BZA.

20 VICE CHAIR ALLEN: Second.

21 BZA CHAIR JORDAN: Motion being
22 seconded and readiness. All those in favor,

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1 signify by saying aye.

2 (Chorus of Ayes)

3 BZA CHAIR JORDAN: Those opposed,
4 nay. The motion carries. Mr. Moy?

5 MR. MOY: Staff would record the
6 vote as 4 to 0 on the zoning motion of
7 Chairman Jordan to approve the application
8 number 18616 for the relief requested. Second
9 of the motion, Chairperson Allen, also in
10 support, Mr. May and Mr. Hinkle, where the
11 Board's seat vacant, so the motion carries.

12 BZA CHAIR JORDAN: Okay. We next
13 have on the docket, 18620, 18623, and 18626.
14 Is anyone here in opposition on these cases?
15 All three are for expedited matters with this
16 Board. And as you know, our expedited matters
17 -- there's a waiver of hearing, and et cetera,
18 and there's some criteria that the case has to
19 follow being for 223 relief.

20 Is there anyone here in opposition
21 to either 18620, 18623, or 18626? Seeing
22 none, I would move that the Board approve the

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1 requested relief in cases 18626, 18623, and
2 18626.

3 VICE CHAIR ALLEN: Second.

4 BZA CHAIR JORDAN: I think I said
5 the same thing. 18620, 18623, and 18626.

6 VICE CHAIR ALLEN: Second.

7 BZA CHAIR JORDAN: Thank you.
8 Thank you, Mr. May. Is there any unreadiness?

9 All those in favor, signify by saying aye.

10 (Chorus of Ayes)

11 BZA CHAIR JORDAN: Those opposed,
12 nay. The motion carries. Mr. Moy?

13 MR. MOY: Yes, sir. Staff would
14 record the vote as 4 to 0 on the motion of
15 Chairman Jordan to approve the three cases for
16 approval for the relief requested. Second to
17 the motion, Vice Chairperson Allen. Also in
18 support, Mr. Peter May and Mr. Jeffrey Hinkle,
19 and a Board seat vacant. The motion carries 4
20 to 0.

21 BZA CHAIR JORDAN: All right.
22 Thank you. Then we're before decision case

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1 18566. Is that right, Mr. Moy?

2 MR. MOY: Yes, sir. That would
3 be, again, application number 18566 of
4 Christopher D. French and Anya Landau French.

5 This, Mr. Chairman, was for relief for
6 variance from the floor area ratio,
7 requirements under Section 402, variance on
8 the lot occupancy requirements under Section
9 403, variance on the rear yard, under Section
10 404, variance on a non-conforming structure,
11 provisions under subsection 2001.3, to allow
12 for a third floor addition to an existing one-
13 family road dwelling in an R5B District at
14 premises 929 5th Street, SE, property located
15 at Square 824, Lot 31.

16 At its public hearing on June
17 11th, 2013, the Board completed public
18 testimony, closed the record, schedule a
19 decision on September 10th. The Board
20 requested additional information to supplement
21 the record. In your case folders, Mr.
22 Chairman, the applicant filed a post-hearing

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1 document under Exhibit 34, and that's the only
2 post-hearing document in your case folders.
3 The Board is to act on the merits of the
4 request for relief.

5 BZA CHAIR JORDAN: Okay. Thank
6 you, Mr. Moy. Is the Board ready to
7 deliberate on 18566? All right. This is one
8 which, certainly, I toyed with in the fact
9 that I understand their issue, I understand
10 what they need, however, there hasn't been any
11 facts or situation presented to this Board
12 that meets our standard for variance in this
13 case.

14 We had extensive discussion during
15 the time of the hearing that this is a matter
16 that really is for the Zoning Commission to
17 delve into, and to discuss, and to decide if
18 there's some additional relief is granted.
19 And I think, was Mr. Hood on this case? Yes,
20 Mr. Hood was on this case and he also
21 indicated the concern that this was not the
22 route and the avenue to get relief.

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1 The house is not exceptional. In
2 fact, it's similar to the other houses that
3 surround it in the immediate area, except for
4 those that were part of the PUD that had got
5 approved, and maybe those houses should have
6 joined the PUD in some kind of way, or added
7 to it and had some comment.

8 The house may not be large enough
9 for the applicant, but it does not present
10 uniqueness or exceptional condition. And we
11 also gave the applicant an opportunity to come
12 back to meet the standard, and basically, they
13 stayed on their own grounds where they were,
14 and again, pushing back about what's fair and
15 what's not fair.

16 Now, I understand where you are,
17 but it's what this Board can do within the
18 confines of the law, and so based upon the
19 application that's submitted, I would move to
20 deny the requested relief. Mr. Hinkle?

21 MEMBER HINKLE: Yes, thank you,
22 Mr. Chairman. This is one of those difficult

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1 cases that, you know, makes it difficult to
2 sit on the Board because the applicant really
3 has made a strong argument in terms of, you
4 know, this is -- what he's proposing is really
5 a very modest expansion of the house.

6 And, you know, if you look at in
7 detail it's, you know, a few square feet here
8 and there relief that he's seeking. But as
9 you mentioned, I'm not sure that there's an
10 exceptional condition to this property and
11 that's where I'm struggling with, which is,
12 you know, the first prong of the variance
13 test, so we don't even get to the second or
14 third prong.

15 You know, so I support your motion
16 to deny the request. But I do, as you
17 mentioned, believe that the larger problem
18 here is the existing zoning for this row of
19 properties. You know, I'm not sure that the
20 zone that they're in is adequately protecting
21 the larger and more dense properties that
22 surround it. And I think this is an issue.

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1 And, you know, I would like OP to
2 look at this further and see what they could
3 do because I think this is an issue for these
4 properties. You know, they're very small.
5 The lots are very small; the houses are very
6 small. And obviously, there's some difficulty
7 in expanding them in any way.

8 So again, I second your motion,
9 but this is a difficult case.

10 BZA CHAIR JORDAN: Yes, it's
11 certainly, and that's why -- Ms. Allen, any
12 comments? No? Okay. No, you can't. Sorry.

13 This is for the Board's decision with no
14 other hearing or input from anybody else. So
15 I thank you for coming down, but you cannot
16 provide any additional input. Motion made and
17 seconded to deny the requested relief we've
18 had on readiness. All those in favor of the
19 motion, signify by saying aye.

20 (Chorus of Ayes)

21 BZA CHAIR JORDAN: Those opposed,
22 nay. The motion carries. Mr. Moy?

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1 MR. MOY: Mr. Chairman, we also
2 have, before I give the final vote count, the
3 absentee ballot from Mr. Hood, who also
4 participated as a third member, and his
5 absentee ballot vote is to deny the
6 application, so that would give a final vote
7 of 3 to 0, this is on Chairman Jordan's motion
8 to deny the application. Second of the motion
9 in support of the motion would be Mr. --

10 (Off the Record Comments)

11 BZA CHAIR JORDAN: Okay. Thank
12 you, but it's denied. You can meet with the
13 Office of Zoning after this hearing, or now,
14 or whatever, and have discussion with them
15 about where we are; process, procedure. You
16 can meet with the Office of Planning and ask
17 them for help in regards to maybe getting this
18 area re-zoned. I'm not having this discussion
19 with you and I'm going to ask you to act
20 accordingly. Thank you.

21 Mr. Moy, I'm sorry. You were
22 cutoff.

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1 MR. MOY: Yes, I'm sorry. Let me
2 repeat myself again. The final vote with Mr.
3 Hood's absentee vote is -- the final count is
4 3 to 0 to deny the application. This is on
5 the Chairman's motion and supporting that
6 motion is Mr. Hinkle. So that, again, the
7 motion would carry to deny on the count of 3
8 to 0. No other members participated.

9 BZA CHAIR JORDAN: All right.
10 Thank you, Mr. Moy. Then let's call our next
11 case, please.

12 MR. MOY: Okay. That should be
13 application number --

14 BZA CHAIR JORDAN: I think it's
15 15598.

16 MR. MOY: That's correct.
17 Application number 15598 of 3612 Park Place,
18 LLC, pursuant to 11 DCMR 3103.2. This, Mr.
19 Chairman, was a request for a variance from
20 the minimum lot area requirements under
21 subsection 401.3 to convert two vacant road
22 dwellings into a six-unit apartment house in

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1 the R4 District at premises 3612-3614 Park
2 Place, NW. Property located in Square 3035,
3 Lots 837-838.

4 As the Board will recall, on July
5 30th, 2013, the Board completed public
6 testimony, closed the record, and scheduled
7 its decision. On September the 10th, the
8 Board requested additional information and
9 those post-hearing documents are in your case
10 folders, Mr. Chairman. The first is a filing
11 from the applicant under Exhibit 33. The
12 second is a supplemental report from the
13 Office of Planning on your Exhibit 34.

14 I also want to note, Mr. Chairman,
15 that we have a response letter from the
16 applicant which was not part of what the Board
17 requested as additional information. That was
18 delivered to the office on Friday, September
19 the 9th.

20 BZA CHAIR JORDAN: Say that again,
21 Mr. Moy.

22 MR. MOY: The office also received

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1 a filing from the applicant which is a
2 response letter to the Office of Planning
3 report.

4 BZA CHAIR JORDAN: A response
5 letter?

6 MR. MOY: It was received -- yes,
7 to the OP filing and that was --

8 BZA CHAIR JORDAN: Do we have the
9 record for that?

10 MR. MOY: No. The Board denied as
11 for that.

12 BZA CHAIR JORDAN: Okay. All
13 right. So we're not going to accept that in
14 the record. I guess that's why we don't have
15 that. Okay. We're not going to accept that
16 in the record.

17 MR. MOY: Okay. So noted, Mr.
18 Chairman.

19 BZA CHAIR JORDAN: Okay. So you
20 finished with the call of this case?

21 MR. MOY: Yes, sir.

22 BZA CHAIR JORDAN: All right. Is

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1 the Board ready to deliberate on 18598? Okay.

2 This is a case where I can't recommend
3 approval for several reasons. One, the
4 applicant hasn't shown that this property is
5 unique and the items cited by the applicant
6 are common to other vacant lots and vacant
7 buildings.

8 I know there was a discussion over
9 and over again that there may have been some -
10 - well, this Board has said over and over
11 again that each case has to stand on its own
12 bottom based upon the facts of the case. I
13 know that the applicant provided some
14 discussions, or maybe some actions, taken by
15 the Board in other matters that might have
16 been similar, but at one -- a couple of those
17 I've ast in myself, and I'm looking at the
18 record as submitted by the applicant, there
19 were other great conditions surrounding the
20 property and other reasons why this Board went
21 further.

22 And it wasn't just any singular

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1 issue that the place had been vacant and had
2 any cost or expensive repairs. There's no
3 practical difficulty shown that -- there has
4 not been data as to why the property cannot be
5 put to use that makes it exceptional.

6 The financials, I'm really
7 concerned about the financials. I'm not
8 giving a lot of credibility on the financials,
9 since I see costs that are not relatively
10 equivalent to comparisons in reduction and
11 sizes as offered by the applicant. The
12 repairs, and there's a whole list talking
13 about the gradient of the property, but that
14 same gradient affects other properties on that
15 block.

16 And I know the applicant's expert
17 said that's not typical. He hasn't seen this
18 type of grading in other projects that he's
19 been in, but that block still has the same
20 grading issue on other properties. So my
21 inclination is that -- oh, and more
22 importantly, this is an R-4 District where --

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1 well, the District, by policy, has discouraged
2 these Districts to be used as apartment house
3 Districts, and et cetera.

4 And some of the cases where we
5 have allowed it, there's been some exceptional
6 situations with the property. And more
7 importantly, we generally have done it when
8 there's other apartment units around, so they
9 would not necessarily affect that area that
10 greatly, and here is one that doesn't have
11 that same. So I would not be in support of
12 this application. Anyone else?

13 MEMBER HINKLE: Yes. Thank you,
14 Mr. Chair. I tend to agree with you. I think
15 the applicant did make a case through the
16 numerous photos, and the engineering report,
17 and other testimony that these structures are
18 in pretty terrible shape. They're pretty
19 deteriorated. But I think you're correct in
20 stating that, in some of these other similar
21 cases that dealt with the R-4 and the
22 restriction on the number of units based on

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1 the size of the lots.

2 I think we did have some other
3 factors involved and I'm not necessarily
4 convinced that, you know, the size of the
5 lots, or their configuration in this case,
6 actually add to an extraordinary condition.
7 So, you know, I'm almost halfway there in the
8 first prong, but I'm not quite there yet.

9 BZA CHAIR JORDAN: Any other
10 comment? Then I would move that we deny the
11 request for relief under 15 -- for case 15 --
12 or 18, yes, I can't see today, 18598. Thank
13 you.

14 MEMBER HINKLE: I'll second.

15 BZA CHAIR JORDAN: All those in
16 favor of the motion, signify by saying aye.

17 (Chorus of Ayes)

18 BZA CHAIR JORDAN: Those opposed,
19 nay. The motion carries. Mr. Moy, and I
20 think we have an absentee, do we?

21 MR. MOY: Yes, sir. We do. We
22 have an absentee ballot from Mr. Hood, who

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1 also participated on this application, and his
2 absentee ballot vote is to deny the
3 application. That would give a resulting vote
4 count of 4 to 0. This is on the motion of
5 Chairman Jordan to deny. In support of that
6 motion, Mr. Hinkle, and also in supporting the
7 motion, Chairperson Allen.

8 No other Board Members on this
9 application, so the final vote is 4 to 0. The
10 motion carries.

11 BZA CHAIR JORDAN: All right.
12 Thank you, Mr. Moy. Then let's move to our
13 next item on the agenda, please.

14 MR. MOY: The next and last case
15 on the -- for decision is application number
16 18584. This is Mr. Stjepan Sostaric, I
17 believe, on behalf of Greater Washington
18 Animal Services, Inc., dba City Dogs. This is
19 application for relief under 3104.1 and
20 3103.2, for special exception to allow an
21 animal boarding under Section 735 and variance
22 for accessory pet grooming for dogs under

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1 subsection 735.2 in the C-2A District.

2 That premise is 1310 Pennsylvania
3 Avenue, SE. Property located in Square 1043,
4 Lot 865. On July 9th, 2013, the Board
5 completed public testimony, closed the record,
6 and scheduled its decision on September the
7 10th. The Board requested additional
8 information. Those post-hearing documents are
9 your case folders, Mr. Chairman.

10 The first is the applicant's
11 filing under Exhibit 46, a response filing,
12 two response filings, one from party
13 opposition, Dr. Patricia Fisher, under Exhibit
14 47, and a response filing from the party
15 opposition, Kinley Bray, on behalf of the
16 consolidated party opposition under Exhibit
17 48.

18 The Board also allowed a
19 supplemental report from the Office of
20 Planning, and that is your Exhibit 49, so with
21 that, the Board is to act on the merits of the
22 request as outlined. Thank you, Mr. Chairman.

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1 BZA CHAIR JORDAN: All right.
2 Thank you, Mr. Moy. All right. Is the Board
3 ready to deliberate on this case?

4 VICE CHAIR ALLEN: Yes, Mr.
5 Chairman.

6 BZA CHAIR JORDAN: This is another
7 case which I can't support and I think it
8 really and truly fails on the detriment to the
9 community standard. Based upon the evidence,
10 it shows that there, even by the number
11 submitted by the applicant, that the noise
12 level, potential noise level, is going to
13 exceed that as allowed by D.C. Government.

14 More importantly, this property
15 abuts another residential kind of slash,
16 office building, which is right next door, and
17 there is nothing that's presented to us that
18 shows how the noise arising from this building
19 will not affect its surrounding neighbors.
20 And the noise level, by their own test, is
21 extremely high, and that's not adding in a
22 whole bunch of other stuff regarding the time

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1 of day and when this activity would take
2 place.

3 And so on that basis, I believe
4 that it should fail as being a detriment to
5 the surrounding community. That would be my
6 thought. Anyone else want to chime in?

7 VICE CHAIR ALLEN: Thank you, Mr.
8 Chairman. I would support your analysis of
9 this. Really, the reports and the responses
10 from the surrounding neighbors, the letters of
11 opposition, I found quite persuasive and felt
12 that I could not support this either.

13 BZA CHAIR JORDAN: Any other
14 comment? Mr. Hinkle?

15 MEMBER HINKLE: Yes, thank you,
16 Mr. Chair. I tend to agree with all the
17 statements that the two of you have made. For
18 me, and I think for both of you, it comes down
19 to Section 735.3 of the special exception, and
20 that the boarding needs to take place in a
21 soundproof building in its entirety. And
22 while I think that the rear structure could be

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1 made to be soundproof, my concern is really
2 with the front structure, which, even though
3 this is zoned commercial, that structure was
4 originally built as a single-family row house.

5 And I'm not sure that it's able to
6 be soundproof and haven't seen any evidence to
7 that effect that it could be adequately
8 soundproofed. And, you know, I'm a dog lover,
9 I think we all are, but I know that you can't
10 necessarily control dogs from barking all the
11 time. And I think this is a real concern. I
12 think the neighbors have, you know, shown some
13 real analysis that this could be a concern.
14 So I, again, can't support this application as
15 well.

16 And I just wanted to note, too,
17 that, you know, we did receive a list of
18 potential conditions from the Office of
19 Planning and I think those were negotiated
20 through, but really, what concerns me is
21 that's a pretty large list. And that, to me,
22 tells me that we're trying to, perhaps, fit

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1 something that shouldn't necessarily, or
2 couldn't necessarily, fit on this property.

3 And then there's a proposed
4 timeframe to that that says, well, even with
5 all these conditions, it may not be sufficient
6 enough to not negatively impact the
7 neighborhood. So with those statements,
8 again, I can't support this application
9 either.

10 BZA CHAIR JORDAN: With that, I
11 would move that we deny the request of 18584.

12 VICE CHAIR ALLEN: Second.

13 BZA CHAIR JORDAN: Motion made and
14 seconded. All those in favor of the motion,
15 signify by saying aye.

16 (Chorus of Ayes)

17 BZA CHAIR JORDAN: Those opposed,
18 nay. The motion carries. Mr. Moy?

19 MR. MOY: Mr. Chairman, before I
20 give a final vote, we do have an absentee
21 ballot from another participant on the
22 application from Ms. Marcie Cohen, and her

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1 absentee ballot vote is to grant the
2 application.

3 So that would give a final vote of
4 3 to 1. Now, this would be the motion to
5 deny. Motion from Chairman Jordan, second the
6 motion would be Vice Chairperson Allen. Also
7 in support of that motion, Mr. Hinkle. We
8 have one vote opposed to that, voting in favor
9 of the application, so that would give a final
10 vote of 3 to 1. Your motion, Mr. Chairman,
11 carries.

12 BZA CHAIR JORDAN: And I'm going
13 to ask that Ms. Bray, on behalf of
14 representing the parties in opposition,
15 prepare a proposed finding of facts and
16 conclusions of law and submit it to the Board
17 for review.

18 MR. MOY: Yes, sir.

19 BZA CHAIR JORDAN: And let's see,
20 can we have that, what, two weeks? Two weeks.

21 MR. MOY: Yes, sir.

22 BZA CHAIR JORDAN: Thank you. Is

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1 that all our decision cases today?

2 MR. MOY: Yes, sir.

3 BZA CHAIR JORDAN: Then let's take
4 a ten-minute break, although I didn't get the
5 high sign from what usually happens at this
6 time, but let's take a ten-minute break and
7 start back.

8 (Whereupon, the meeting in the
9 above-entitled matter was concluded at 10:30
10 a.m.)

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