

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA

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5 BOARD OF ZONING ADJUSTMENT

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8

9 PUBLIC HEARING

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12

13 WEDNESDAY,

14

15 MAY 19, 1999

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20 The public hearing took place in Room 222, 441 - 4th
21 Street N.W., Washington, D.C., at 9:00 a.m.

22

23

24 PRESENT:

25

26 SHEILA CROSS REID	Chairperson
27 BETTY KING	Vice Chairperson
28 JERRY GILREATH	Board Member
29 ANGEL F. CLARENS	Commissioner
30 HERBERT M. FRANKLIN	Commissioner
31 ANTHONY HOOD	Commissioner

32

33

34 STAFF PRESENT:

35

36 PAUL HART
37 BEVERLY BAILEY
38 JOHN NYARKU
39 ALAN BERGSTEIN, ESQ.
40 MARY NAGELHOUR

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AGENDA

1		
2		
3		<u>Page</u>
4		
16405 5	Appeal of Mildred Rogers Crary,	5
ANC-30	pursuant to 11 DCMR 3105, from	
7	the administrative decision of	
8	the Zoning Administrator to issue	
9	issue the following building	
10	permits allowing various alterations	
11	and additions to the subject	
12	property: Permit No. B413166, dated	
13	January 29th, 1998 for a "2-story	
14	Addition To the Rear"; Permit No.	
15	413424, dated January 23rd, 1998	
16	for an "Addition to a garage,	
17	Length 20 feet, Height 14 feet";	
18	and Permit No. B417814, dated	
19	August 17th, 1998 for "Repair of an	
20	Existing Roof, Roof in Place, No	
21	Structural Change"; Permit No.	
22	B415675, dated May 27th, 1998 for	
23	a "New Garage to be located on the	
24	same spot as previous garage";	
25	and Permit No. B419108, dated	
26	October 5th, 1998 to "Build a new	
27	porch roof as per plans." The	
28	appellant also challenges the	
29	R-1-B zoning classification	
30	attributed to the property by	
31	the Zoning Administrator. These	
32	permits were issued for property	
33	located in premises 3020 - 43rd	
34	Street, N.W. (Square 1621, Lot 810)	
35		
1643536	Application No. 16435 of William	15
ANC-27	Martin, pursuant to 11 DCMR 3107.2,	
38	for a variance from Subsection	
39	771.2, the allowable floor area	
40	ratio requirements; a variance from	
41	Subsection 774.1, the rear yard	
42	setback requirements; and a	
43	variance from (Subsection 2001.3(b))	
44	and (c) to allow an enlargement to	

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1	an existing non-conforming structure	
2	devoted to a conforming use located	
3	in a C-2-A District at premises 1264	
4	Wisconsin Avenue, N.W. (Square 1218,	
5	Lot 836)	
6		
16409	Application of The George	36
ANC-2A	Washington University, pursuant to	
9	11 DCMR 3108.1, for a special	
10	exception under Section 210 for	
11	further processing of an approved	
12	campus plan, and Subsection 3107.2	
13	for a variance from Subsection	
14	403.2, to exceed the maximum	
15	allowable lot occupancy to allow the	
16	construction of a parking for a	
17	College/University use located in	
18	an R-5-D/R-5-E District located	
19	at premises 817 - 23rd Street, N.W.	
20	(Square 55, Lots 27, 851, and 853)	
21		
16462	Application of Darryl Olusola A.	58
ANC-2B	Sulekoiki, pursuant to 11	
ANC-5C	DCMR 3107.2, for a variance from	
25	Subsection 401.3 from the minimum	
26	lot coverage for the construction	
27	for two single family dwellings in	
28	an R-4 District at premises 439	
29	Rhode Island Avenue, N.W.	
30	(Square N-508, Lot 4)	
31		
16463	Application of Osunde F. and	73
ANC-2B	Felicia Basseyy-Akamune, pursuant	
ANC-5C	11 DCMR 3107.2, for a variance	
35	from Subsection 401.3 from the	
36	minimum lot coverage requirement	
37	for the construction of a two unit	
38	dwelling in an R-4 District at	
39	premises 1723 - 5th Street, N.W.	
40	(Square N-508, Lot 7)	
41		
16464	Application of Earl and Helen	84
ANC-7B	Williams, pursuant to 11 DCMR	
44	3107.2, for a variance from	

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1 Subsection 403.2 from the allowable
2 percentage of lot occupancy
3 requirement for proposed addition
4 to a semi-detached dwelling in an
5 R-2 District at premises 1125 Branch
6 Avenue, S.E. (Square 5500, Lot 17)

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

2 9:13 a.m.

3 CHAIRPERSON REID: Good morning. Now, before
this public meeting this morning, we will have -- we will meet in
executive session. And we will come out and we will then take the
vote. So, we're doing it a little bit different than we normally do it. But,
we will be coming before you in short order. I don't know exactly how
much time.

9 MR. BERGSTEIN: About 15 minutes.

10 (Whereupon, the foregoing matter went off the record
at 9:14 a.m. and back on the record at 10:01 a.m.)

12 MR. HART: Good morning, Madam Chairperson and
members of the board. This morning we are here for a special public
meeting. The first case to be considered by the board is 16405 which
is an appeal of Mildred Rogers Crary, pursuant to 11 DCMR 3105,
from the administrative decision of the Zoning Administrator to issue
the following building permits allowing variance alterations and
additions to the subject property: Permit No. B413166, dated January
29th, 1998 for a "2-story Addition to the Rear"; Permit No. 413424,
dated January 23rd, 1998 for an "Addition to a garage, Length 20 feet,
Height 14 feet"; and Permit No. B417814, dated August 17th, 1998 for
"Repair of an Existing Roof, Roof in Place, No Structural Change".
Permit No. B415675, dated May 27th, 1998 for a "New Garage to be
located on the same spot as previous garage"; and Permit No.

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B419108, dated October 5th, 1998 to "Build a new porch roof as per plans".2

3 The Appellant also challenges the R-1-B zoning classification attributed to the property by the Zoning Administrator. These permits were issued for a property located in premises 3020 - 43rd Street, N.W., Square 1621, Lot 810.

7 CHAIRPERSON REID: Thank you.

8 VICE CHAIRPERSON KING: Madam Chair --

9 CHAIRPERSON REID: Before we get into that, I want to explain about the previous --

11 Yes, Ms. King, go ahead.

12 VICE CHAIRPERSON KING: I believe that the two parties were going to be given a short -- a brief time --

14 CHAIRPERSON REID: To attorneys, counsel for the applicant, for the Appellant and for the Intervenor?

16 VICE CHAIRPERSON KING: Is there anybody here who wishes -- Mr. Brown, do you wish to make any statements at this time? 18

19 MR. BROWN: Yes.

20 VICE CHAIRPERSON KING: On the material that was supplied by Ms. Dwyer.

22 CHAIRPERSON REID: I do recall, we had agreed to give each of you time to respond to the materials that were submitted this morning. Are you prepared to do that? Did you desire to do that?

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If not, we can just proceed with where we were.

2 MR. BROWN: That was not my understanding that we had the right to file written materials based on the schedule provided by the Board. I'm prepared to answer questions. There were two matters, I think, before the board. The first, a preliminary matter, the pending motion to stay the proceedings on the question of the ex parte matters. And then, also, the question of the Intervenor's motion to dismiss and my opposition to that. So, I'm prepared to answer questions but I don't -- again, that's the preliminary matter of the ex parte communications and then the issue of the motion to dismiss, and my request that the matter go to a full evidentiary hearing in order to allow the development of the facts that are critical to the issue. 13

14 CHAIRPERSON REID: Thank you.

15 We had in our recollection, we had determined that there was a request from, and also an agreement to, allow both counsel to have time to say a few words this morning. But, that's, okay, that's fine.

19 Ms. Dwyer, did you have any comments?

20 MS. DWYER: If Mr. Brown has nothing that he wants to say, then I have nothing that I need to say in response. I believe that our case stands on the basis of the written materials that we supplied the board.

24 Thank you.

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1 CHAIRPERSON REID: Thank you.

2 VICE CHAIRPERSON KING: Madam Chair, I move
that we dismiss the motion to stay on the basis of the ex parte
communications because in fact the ex parte communications would
only be communications directed towards members of the BZA and
not towards BZA staff, the Office of Planning, the Office of the
Corporation Counsel. It seems to me that the Corporation Counsel's
office has handled this quite properly and --

9 But in any case, ex parte applies only to
communications with the members of this board. And therefore, I
move to deny the motion to dismiss.

12 CHAIRPERSON REID: To stay.

13 VICE CHAIRPERSON KING: I mean, motion to stay,
dismiss the motion to stay.

15 BOARD MEMBER GILREATH: I second the motion.

16 CHAIRPERSON REID: I would agree with you, Ms.
King. I feel that the request for this motion was proffered to us saying
that it should be considered an ex parte communication. And once we
went back to review the record -- regulations and determined that, as
you said, that ex parte pertains only to the board members and this in
fact is not the case.

22 All in favor?

23 (Whereupon, a chorus of ayes.)

24 CHAIRPERSON REID: Opposed?

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1 (No response.)

2 VICE CHAIRPERSON KING: I would further move,
Madam Chair, that we have a full hearing on this case. That we hold
in abeyance the motion to dismiss and that we hear all the evidence
with regard to this case from the Appellant and from the Intervenor on
all issues still pending in this case, including the motion to dismiss.
That to hold it in abeyance until we've heard the full evidence of the
appeal.

9 I would also note that on advice of counsel, estoppel
is not germane in this case since that would be against government
and not against neighbors. And therefore, I move that we have our
scheduled hearing on the 26th as we discussed at our last meeting on
this case and hear the full appeal.

14 CHAIRPERSON REID: I would second it. I think that
this particular case is so convoluted and it has so many twists and
turns in it that it merits hearing the case so that we can get to the
bottom of the actual -- bottom of the issues and to be able to ask
questions that would clarify for us what we need to know in order to be
able to make an adequate determination.

20 BOARD MEMBER GILREATH: Madam Chair, as I
understand, and we will, in the hearing, evidentiary hearing, we will be
focusing on timeliness and laches. Are those the two basic issues we
have to come to grips with in this? Is that the focus? Or, it's just--

24 MR. BERGSTEIN: Well, if I may, my name is Alan

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Bergstein. I'm the Chief of the Land Use section.

2 You have before you an appeal challenging the
issuance of certain permits and an administrative determination of the
zoning category. And you have a motion to dismiss based upon the
timeliness of the appeal and laches. What I believe the motion is, is to
combine those two issues into a single hearing to hear the merits of
the appeal, but to allow the intervenor to make their case on the parts
of the motion to dismiss that are left. That is, the laches and the
timeliness issues.

10 VICE CHAIRPERSON KING: Alan, do you feel that --
can we proceed with this case without the presence of a
knowledgeable representative of the Department of Consumer and
Regulatory Affairs?

14 CHAIRPERSON REID: Zoning Administrator's office.

15 VICE CHAIRPERSON KING: The Zoning
Administrator's office?

17 MR. BERGSTEIN: Well, they're a party and they've
had notice. And if they're not here, that's--

19 VICE CHAIRPERSON KING: What can we do to
compel them because twice we have asked them to come and twice
they have failed to show up?

22 MR. BERGSTEIN: I think I'd prefer to take that under
advisement.

24 VICE CHAIRPERSON KING: Would you do that,

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please.1

2 The 26th at 9:30 are we meeting?

3 CHAIRPERSON REID: Right. Because we're at a
handicap. When we look at the submissions that we have, and there
are questions as to why permits were issued at the time and under
what circumstances, and it needs to be clarified. And if we don't have
information, then we just have to wing it which is not the best thing to
do under these circumstances. None the less, we have no other
choice if we don't have the information from the Zoning Administrator's
office in regards to this appeal.

11 VICE CHAIRPERSON KING: But I think we've got to
-- I hope that Corporation Counsel's office can help us to assure that
knowledgeable representatives of the Zoning Administrator's are
present for the hearing and prepared to testify.

15 CHAIRPERSON REID: I'm glad that you are putting
emphasis on the word knowledgeable.

17 VICE CHAIRPERSON KING: Oh, yes.

18 CHAIRPERSON REID: Because before they sent
someone who didn't know anything about the case or the people
involved, and the merits. So, it was very frustrating for us.

21 I second your motion.

22 All in favor?

23 (Whereupon, a chorus of ayes.)

24 CHAIRPERSON REID: Opposed?

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1 (No response.)

2 BOARD MEMBER GILREATH: We need to establish
a date certain in the future so that Corporation Counsel will have
ample time --

5 VICE CHAIRPERSON KING: The 26th is the
meeting.

7 BOARD MEMBER GILREATH: Oh, the 26th, then.

8 We encourage the Corporation Counsel to get in
touch with him as early on as possible to assure they have been duly
advised, they have ample time to make someone available. If they
don't respond then, you've done everything --

12 CHAIRPERSON REID: Or a subpoena, let's -- a
subpoena, if we have to do that to get them here.

14 BOARD MEMBER GILREATH: Anyway, giving them
-- try to contact them ahead of time so they don't have excuses saying
they were notified at the last minute.

17 CHAIRPERSON REID: May -- no, June 26th?

18 MR. BERGSTEIN: May 26th.

19 VICE CHAIRPERSON KING: May 26th.

20 CHAIRPERSON REID: It's a special meeting?

21 VICE CHAIRPERSON KING: Yes, we've got it on our
calendars.

23 CHAIRPERSON REID: That's next week.

24 VICE CHAIRPERSON KING: That's right.

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1 CHAIRPERSON REID: That concludes that particular
case. 2

3 MR. HART: That concludes this case.

4 The next case is No. 16389.

5 CHAIRPERSON REID: In regard to just basically
read the numbers, would you, Paul, Mr. Hart, of the two cases that
we're to decide this morning.

8 MR. HART: The next two cases which are actually
being called today together are cases 16389 and 16409 of the George
Washington University.

11 CHAIRPERSON REID: First, let me just apologize for
the delay this morning. Mr. Franklin, our commission member, Zoning
Commission member, had an emergency and he's now on his way.
So, we're kind of trying to wait for him. And because of the fact that
he is involved with this case, we cannot make a decision on a case
without him being present. So, we have to wait for him to come before
we can get into the meeting for the Georgetown -- George Washington
University cases, the two cases. And so, what we'll do is we'll go into
our hearing this morning and then when Mr. Franklin comes in, we will
adjourn the hearing and then take up the meeting immediately.

21 And I ask your indulgence because there's nothing
else we can do. We really would like to have this resolved today and
not have to continue it. I'm sure that no one wants to have to come
back, so that's the only thing we can do, is just to wait for him to come.

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And then we will proceed with the decision on this particular case.

2 So, we'll just go to the hearing for this morning.

3 (Whereupon, the foregoing matter went off the record
at 10:16 a.m. and back on the record at 10:30 a.m.)

5 CHAIRPERSON REID: Good morning, ladies and
gentlemen. This is the May 19th meeting of the -- One
moment. I'm sorry.

8 Good morning, ladies and gentlemen, this is the May
19th meeting of the Board of Zoning Adjustments. My name is Sheila
Cross Reid, chairperson. Joining me today is Betty King, Jerry
Gilreath -- he was here -- and from the National Capitol Planning
Commission, and Angel Clarens representing the Zoning Commission.

13 Witness cards are available to my left. Please fill
them out and give them to the reporter. The order in which the cases
will be heard today will be the applicant, and then the government
reports, ANC, the Office of Planning or the DPW, or any other
government reports. Then we'll have persons and parties in support,
persons and parties in opposition, and then closing remarks.

19 So as not to give the appearance of any ex parte
communication, we ask that you not engage the board members in
conversation.

22 We will start with preliminary matters. Are there any
preliminary matters?

24 Does staff have any preliminary matters?

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1 MR. HART: No, Madam Chair.

2 CHAIRPERSON REID: All right. Then, would you
please call the first case.

4 MR. HART: The first case is Application No. 16435 of
Williams Martin, pursuant to 11 DCMR 3107.2, for a variance from
Subsection 771.2, the allowable floor area ratio requirements; a
variance from Subsection 774.1, the rear yard setback requirements;
and a variance from (Subsection 2001.3(b)) and (c) to allow an
enlargement to an existing non-conforming structure devoted to a
conforming use located in a C-2-A District at premises 1264
Wisconsin Avenue, N.W. (Square 1218, Lot 836).

12 Will those persons planning to testify in this case
come forward and raise your right hand for the -- to take the oath.

14 Do you swear or affirm that the testimony you're about
to give is the truth?

16 MR. HETOM: I do.

17 MR. HART: Thank you.

18 MR. HETOM: My name is Rob Hetom, from RH
Design Group.

20 CHAIRPERSON REID: Mr. Hetom, you're going to
have to amplify your voice because we don't have any speakers on
now. So, we're going to ask everyone to kind of speak loudly.

23 MR. HETOM: I'll try.

24 My name is Rob Hetom from RH Design Group. I

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was here once before and I have returned only because we did not have the property posted and I apologize for that inconvenience.

3 The proposed work that we're planning at the intersection of Wisconsin Avenue and N Street is at the rear of the property, about 30 feet off the alley. We have a triangular space that is currently used for mechanical systems. We are considering enlarging -- there are three different categories that we are focusing on. One is expansion of what they call the dug out on the first level which is a small section of the restaurant, approximately 10 feet long, 8 feet wide. We're hoping to gain another 10 feet by 8 feet by this new work.

12 There's also a -- off of the alley, there is an area where the trash is stored behind a chain link fence. And it's quite unsightly which I'll show you photographs of later.

15 The third issue is on the second level. This is a 2-story addition. The third level is focusing on strictly storage. There is a storage problem. They, actually at this point in time, store their pickles in the attic. So, it's a little bit of a concern, to say the least.

19 The -- I'll turn to the photographs to show the current elevations. The north side of the restaurant, the east side of the restaurant, and then the alley photographs are on the bottom. This is the current storage/trash area. We're planning on putting new gates that have a wood finish. After meeting with the ANC, they suggested instead of a chain link fence that is currently there, we're proposing a

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wooden fence that you cannot see through. And that will eliminate the rodent problem as well.

3 BOARD MEMBER GILREATH: That gate, can you locate that gate on the --

5 MR. HETOM: Oh, sure. I'm sorry. The gate is right here in this location. Originally, our first idea was to have one gate. We are now proposing a two gate arrangement just to make it a little bit more user friendly and it might not disturb the alley access. So, that is an alteration that we're improving on as we go along.

10 COMMISSIONER CLARENS: And that's for the trash?
11

12 MR. HETOM: Exactly. There's the trash niche and there will be a container, a metal container, that the trash will be set into as well as behind this gate. So, we are trying to focus on the rodent problem as well as the visual along that alley side.

16 COMMISSIONER CLARENS: And it will be a painted
-- 17

18 MR. HETOM: It will be a painted, probably most likely to match the green elevation. Martin's has this color that they are known for and it would probably blend in with this green painted brick wall elevation.

22 COMMISSIONER CLARENS: Or with the shutters.

23 MR. HETOM: Or with the shutters. Yes.

24 We spoke to neighbors on either side, on one side of

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the alley as well as to the south side of the property. Both property owners have developed letters saying that they're familiar with the project, familiar with the plans, and they have no objection whatsoever.

5 VICE CHAIRPERSON KING: Do we have copies of those?
6

7 MR. HETOM: I'm sorry?

8 VICE CHAIRPERSON KING: Do we have copies of those?
9

10 MR. HETOM: No, I just recently acquired these. I'll be happy to make --

12 COMMISSIONER CLARENS: Can you submit it to the staff.

14 MR. HETOM: Sure.

15 We met with the ANC. The ANC had no objection whatsoever. Ms. McFarland thought, after visiting the site, she thought it would be an improvement to the current situation visually as well as with the rodents.

19 The space is currently being used by a mechanical system and that will be relocated up to the roof.

21 COMMISSIONER CLARENS: Where is the exit? Is there a door that opens onto Prospect Street?

23 MR. HETOM: No.

24 COMMISSIONER CLARENS: Or, is it in? I guess it

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is in. 1

2 MR. HETOM: Oh, from the restaurant. Yes, there is.
That door is approximately in this location, behind this white truck. I
know it's probably difficult to see.

5 COMMISSIONER CLARENS: And that's the door
that will be used to access the garbage?

7 MR. HETOM: Yes. Yes.

8 COMMISSIONER CLARENS: Things will be taken
out on the side walk and then put in the garbage?

10 MR. HETOM: Yes.

11 Thank you very much.

12 COMMISSIONER CLARENS: Oh, you're not going to
show us the second floor and the --

14 MR. HETOM: I'm sorry. I did pan through the second
floor. 15

16 The second floor is strictly storage. There's a new
door breaking through the existing exterior load bearing wall. And it is
approximately 220 square feet of much needed storage.

19 COMMISSIONER CLARENS: What is used on the
second floor? What is it used for the building on the second floor?

21 MR. HETOM: There is a combination of office,
kitchen extension, et cetera.

23 VICE CHAIRPERSON KING: It's all part of Martin's
Tavern? 24

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1 MR. HETOM: Oh, yes. Yes. Strictly, 100 percent.

2 VICE CHAIRPERSON KING: The whole building?

3 MR. HETOM: Yes.

4 COMMISSIONER CLARENS: But there's no eating
facilities --

6 MR. HETOM: No.

7 COMMISSIONER CLARENS: It's a private -- And the
third floor? You mentioned the third floor.

9 MR. HETOM: No, there's no third floor. Well, there's
just the attic. It's a crawl space, three feet of crawl space that they
use for storage as well.

12 CHAIRPERSON REID: Mr. Hetom, you're the
architect?

14 MR. HETOM: I am the owner's representative. There
is a separate architect that they have used to put together the
drawing.

17 CHAIRPERSON REID: When you say that you're the
owner's representative, in what capacity?

19 MR. HETOM: Their representatives. I actually have
some knowledge of the zoning regulations and --

21 VICE CHAIRPERSON KING: Do we have a letter of
authorization from the owner for you to represent him? If not -- I don't
have one in my file. If we don't have one, you need to file one.

24 MR. HETOM: I don't know exactly what's in your file.

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Remember signing something that focused on that but I'll be happy to satisfy that need.

3 CHAIRPERSON REID: Are you familiar with the burden of proof that you have? And, you're getting a variance. You have three variances that you're requesting. The relief that you're asking for, are you aware with the procedure here in order to have your relief that you're asking for granted? The three-prong test that you have to prove?

9 VICE CHAIRPERSON KING: Since it's both kinds of uses, a use and the area actually it's a four prong test in this case.

11 CHAIRPERSON REID: Are you familiar with that?

12 MR. HETOM: No, I'm not familiar with what you're describing. Sorry.

14 CHAIRPERSON REID: Well, in order for you to be able to get a variance, you have to come before us and to demonstrate that you are -- to prove that you are in compliance with the three prong test. And one is that the area, the site, in which you're asking the relief for has to be unusual or unique, or something that is inherent in the land that makes it difficult or causes a practical difficulty. In this instance, you have a practical difficulty and an undue hardship because you have an area variance and a use variance, for you'd be able to comply with the existing zoning regulations. That's the first prong.

24 Can you demonstrate that to us?

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1 COMMISSIONER CLARENS: There's no use
variance involved here, is that correct, Madam Chairperson?

3 CHAIRPERSON REID: Oh, I'm sorry. I thought Ms.
King said that there was.

5 VICE CHAIRPERSON KING: My understanding is
there not a use and an area variance?

7 COMMISSIONER CLARENS: This is a lot
occupancy. It is a --

9 CHAIRPERSON REID: It is area, this area.

10 COMMISSIONER CLARENS: It's three levels. It's a
non-conformity but it's not a conformity not because of use, but
because of occupancy. It's non-conforming structure.

13 CHAIRPERSON REID: So just area variance.

14 COMMISSIONER CLARENS: It's a practical
difficulty.

16 CHAIRPERSON REID: So, practical difficulty.

17 You have to demonstrate that there's some type of
practical difficulty to prevent you from being able to comply with the
existing zoning regulations. And it starts with something that's
inherent in the land that makes that particular site unique, or different,
or unusual. Does that help you?

22 MR. HETOM: It does.

23 I will add that with the local competition of the different
restaurants, and I think we've stated in one of the letters that we

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passed on, the first floor expansion of the dug out can be a very valuable element for the restaurant to stay in competition with the other restaurants. It's not a lot of space which makes me feel comfortable asking for it. But in order to stay competitive, they feel as though this new space is quite valuable to them. And I know that that is one of the major issues that sparked this idea and expansion.

7 CHAIRPERSON REID: It cannot have anything to do with economic competition. It has to be something inherent in the land that would cause you practical difficulty, or cause them practical difficulty, to be able to comply with existing zoning regulations.

11 COMMISSIONER CLARENS: The argument could go something like this, Mr. Hetom. The argument could be that given the fact that the land is geometrically exceptional in its form, that the location at a corner makes it also unique and exceptional. And that this little area that was left over at the time the building originally was constructed is now used for mostly the trash containers. And that that creates a practical difficulty for the restaurant to operate from a health point of view, and that the purpose of this is to correct that situation. That in view in that, the uniqueness of the land and of the property, and the fact that this is preventing the restaurant from operating in a more healthy and more friendly to the neighborhood environment, that that's why you are requesting, and that there's no adverse impact, and this is not contrary to the intention of the zoning regulation that that's why you are asking for the variances involved.

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1 The argument could go --

2 MR. HETOM: That comment is well said.

3 MR. HETOM: But my comment earlier about the --

4 CHAIRPERSON REID: Mr. Clarens really jumped in there and saved you, didn't he?

6 MR. HETOM: And I appreciate that. But, yes, my idea of -- my comment about this screening blending with, and satisfying the visuals of the neighborhood concerns as well as the rodent concern also blends in, I think, with Mr. Clarens' comments.

10 CHAIRPERSON REID: Yes, absolutely.

11 Well, we understand that sometimes when people come before us, they don't really understand the procedure. And then we try to kind of give you assistance in getting through the steps. And also, isn't it shaped like a trapezoid, kind of?

15 MR. HETOM: It's a triangular shape, yes.

16 CHAIRPERSON REID: Oh, just that.

17 COMMISSIONER CLARENS: The property is --

18 MR. HETOM: Oh, yes. Yes. The overall property.

19 CHAIRPERSON REID: Yes. I was referring to the entire site is trapezoid. Irregular shaped, you could also say that.

21 MR. HETOM: Precisely.

22 CHAIRPERSON REID: And the next prong was, as Mr. Clarens just mentioned to you, the adverse impact. And to your knowledge, do you know of any problems that you've had, the

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neighbors or abutting property owners complaining about your application coming forward today?

3 MR. HETOM: No.

4 CHAIRPERSON REID: We haven't received anything?

6 COMMISSIONER CLARENS: Well, we have. We've just received letters from the neighbors.

8 CHAIRPERSON REID: Oh, we did?

9 COMMISSIONER CLARENS: And we also have the ANC. 10

11 BOARD MEMBER GILREATH: And they support it.

12 CHAIRPERSON REID: I was referring to adverse impacts, complaints.

14 COMMISSIONER CLARENS: And there's been none. 15

16 CHAIRPERSON REID: None. No. Okay. So, that's good. 17 And as far as you know, there's no adverse impact in regard to traffic, noise, parking, light?

19 MR. HETOM: None whatsoever.

20 CHAIRPERSON REID: And it does not impair the general integrity of the zoning map or zoning regulations. That the third zoning.

23 MR. HETOM: It does not.

24 CHAIRPERSON REID: All right.

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1 Members have any questions?

2 BOARD MEMBER GILREATH: In terms of
complaints, the ANC, in my mind, is complaining that without some
kind of relief like this, it does have an adverse impact. So, there's --
right now it's a nuance with all this storage and conditions. SO, in that
sense, there's a complaint as it were.

7 CHAIRPERSON REID: Oh, I see. In other words,
just the inverse. They are --

9 BOARD MEMBER GILREATH: Supporting it
because as it is, there is --

11 CHAIRPERSON REID: Complaining so as to support
the application.

13 BOARD MEMBER GILREATH: Right.

14 CHAIRPERSON REID: All right. Then, this is a
pretty straight forward case. We don't have --

16 Is there anyone here who's in support or in opposition
to this case who came to testify today?

18 VICE CHAIRPERSON KING: Is the ANC --

19 CHAIRPERSON REID: I'm going to. I'm going to.

20 Then we can just kind of go through it very quickly.
The ANC has submitted a letter.

22 VICE CHAIRPERSON KING: Duly noticed meeting
with a quorum present, the vote was 5 to 2 in favor of the ANC
approves the three variances. It says rather cryptically at the end, the

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ANC asks BZA that the BZA incorporate the conditions in this resolution in its zoning order, but they've stated no conditions.

3 CHAIRPERSON REID: An oversight, huh.

4 VICE CHAIRPERSON KING: But I don't think there are any conditions are necessary. I think what they want in essence, what the ANC wants to do is to hide the mechanical equipment and the trash to mitigate the visual impact and so forth.

8 MR. HETOM: Just from memory, during that meeting, we did promise to make-- develop a wood panel on this gate and that was probably what they're referring to.

11 COMMISSIONER CLARENS: And is that now reflected in the plans that are being submitted and which would be approved? If they are not, then I would suggest that those, the final plans, be revised to indicate that.

15 MR. HETOM: Oh, they will.

16 COMMISSIONER CLARENS: And that we take the decision at the time the plans have been revised together with the letter authorizing him to represent the owner.

19 MR. HETOM: From the ANC?

20 COMMISSIONER CLARENS: No.

21 VICE CHAIRPERSON KING: No, a letter of authorization from --

23 MR. HETOM: Oh, from Martin's.

24 VICE CHAIRPERSON KING: -- saying that you were

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their official representative but then final plans showing the wooden fence. 2

3 MR. HETOM: I'll be happy to file approved set.

4 VICE CHAIRPERSON KING: And then we could decide this on our June 2nd meeting.

6 CHAIRPERSON REID: Well, let's get to that point.

7 There's no one in opposition. There's no one in support here today. And now we have closing remarks by the applicant. And in the closing remarks, because we don't have any opposition, could we not vote on it today with the conditions that he submit plans and the --

12 COMMISSIONER CLARENS: I would have the plans reflect what is in fact going to happen.

14 CHAIRPERSON REID: And that letter of authorization before the order is issued to him.

16 MS. BAILEY: Madam Chair, I'm sorry. I didn't hear on this for what?

18 CHAIRPERSON REID: There was -- We were requesting that he submit the final plan to us as well as the letter of authorization from the owner prior to the final order being issued.

21 MS. BAILEY: And the plans were -- the final plans of what?22

23 COMMISSIONER CLARENS: Of the project.

24 CHAIRPERSON REID: Yes.

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1 MS. BAILEY: The plan's in the file.

2 CHAIRPERSON REID: No, he made an amendment,
a change.

4 MS. BAILEY: I'm sorry. I just can't hear on this end.

5 CHAIRPERSON REID: We have to kind of speak up.

6 Now, closing remarks by the applicant.

7 MR. HETOM: I just want to thank you very much for
you time and I think the neighborhood would be better setting having
this work done.

10 Thank you very much.

11 CHAIRPERSON REID: All right.

12 BOARD MEMBER GILREATH: I'm ready to make a
motion.

14 I move that we approve the application and I feel that
it's a practical difficulty in terms of the adjoining neighborhood to have
unsanitary conditions on the site, and serves the intent of regulation to
grant the variance.

18 CHAIRPERSON REID: And he has met his burden of
proof and he has satisfied the three prong test. And that there is no
adverse impact to the technical zoning regulations for that.

21 COMMISSIONER CLARENS: Madam Chairperson, I
thought we had decided --

23 CHAIRPERSON REID: I haven't finished. I haven't
finished.

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1 COMMISSIONER CLARENS: Well, no, but the point
is that if we approve this, these are the plans that we are approving.
It's not on the plans that the applicant is telling us that are happening.
There are minor alterations.

5 CHAIRPERSON REID: We haven't approved it yet.

6 COMMISSIONER CLARENS: But there's a motion.

7 CHAIRPERSON REID: Yes. So, --

8 MR. HETOM: I could change this word metal to wood
which might help matters.

10 CHAIRPERSON REID: So, what do you want from
him now?

12 COMMISSIONER CLARENS: I thought we had
decided we were going to take this up. He was going to provide us a
letter from the applicant authorizing him and he's going to correct the
plans, and submit them. And we're going to make this decision in
June. 16

17 CHAIRPERSON REID: Oh, no, that's not what I -- I
didn't say that but we could. The point I was making was we vote on it
and then have him submit the things, those items, before the order
was issued. 20

21 COMMISSIONER CLARENS: We approve, we
approve. What we have in front of us is what we're approving. We're
not approving something and then have it modified. 23

24 VICE CHAIRPERSON KING: If this gentleman can

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change the word metal to wood on the plan, would that be sufficient?

2 COMMISSIONER CLARENS: Well, if you wish to do
that. Are you pulling the plan?

4 BOARD MEMBER GILREATH: Change it to wood.

5 CHAIRPERSON REID: Just a little slight of hand
there. 6

7 Then that takes care of that.

8 VICE CHAIRPERSON KING: And then you submit --

9 CHAIRPERSON REID: A letter of authorization, I
have no problem with that being submitted before --

11 I second the application.

12 All in favor?

13 (Whereupon, a chorus of ayes.)

14 CHAIRPERSON REID: Is there any discussion?
Dissention?

16 MR. HART: One question. Letter of authorization
seems to be the one slightly outstanding thing. Do we give him some
-- what time are you putting on this?

19 CHAIRPERSON REID: Tomorrow. Can you do that
tomorrow? Can you fax it?

21 MR. HETOM: I can.

22 MR. HART: Staff would record the vote as 4 --

23 CHAIRPERSON REID: I didn't say all opposed.

24 MR. HART: Staff would record the vote as 4 to 0, Mr.

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Gilreath, Ms. Reid, Ms. King, and Mr. Clarens, to grant.

2 CHAIRPERSON REID: So, you should have your
order in about two weeks. Get the letter of authorization into this
office pronto and --

5 VICE CHAIRPERSON KING: Give these plans to the
-- 6

7 CHAIRPERSON REID: Yes, the revised plans.

8 COMMISSIONER CLARENS: And the condition to
the order that no pickle should be stored in the attic.

10 MR. HETOM: I'll pass that on.

11 CHAIRPERSON REID: Mr. Franklin has now joined
us. So we're going to recess to go into special session, and then we'll
return with the decisions.

14 (Whereupon, the foregoing matter went off the record
at 10:46 a.m. and back on the record at 11:26 a.m.)

16 CHAIRPERSON REID: All right, Mr. Hart.

17 MR. HART: This is, Madam Chair, members of the
board, this is a resumption of the special public meeting from this
morning.

20 The first case is Application 16409 of The George
Washington University, pursuant to 11 DCMR 3108.1, for a special
exception under Section 210 for further
processing of an approved campus plan, and Subsection 3107.2 for a
variance from Subsection 403.2, to exceed the maximum allowable lot

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occupancy to allow the construction of a parking for a College/University use located in an R-5-D/R-5-E District located at premises 817 - 23rd Street, N.W. (Square 55, Lots 27, 851, and 853). 4

5 VICE CHAIRPERSON KING: Madam Chair, I move that we deny this application. I think it is laughable to suggest that there's no adverse impact on the neighboring properties. I have a long argument in favor but I will simply make my motion and see if it's seconded.

10 CHAIRPERSON REID: Is there a second?

11 Mr. Hart, motion fails for lack of a second.

12 May I have another motion?

13 BOARD MEMBER GILREATH: Madam Chair, I move that we approve the application. That we know that this whole area has been difficult so far but in my judgment --

16 CHAIRPERSON REID: We can't hear you.

17 BOARD MEMBER GILREATH: I know that this has been a difficult site but a lot of discussion and certainly the citizens have made a very valuable input. But in my judgment, appropriate mitigation measures have been proposed and so forth. And in their limitation, I feel it will be a -- the safety factors and so forth will be adequately addressed.

23 COMMISSIONER FRANKLIN: I second the motion.

24 CHAIRPERSON REID: Did you want to say

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anything?

2 COMMISSIONER FRANKLIN: Well, we're talking at
this point about the addition to the parking garage, is that correct?

4 CHAIRPERSON REID: We can't hear.

5 VICE CHAIRPERSON KING: Now, we're -- the cases
have been merged.

7 COMMISSIONER FRANKLIN: Have they been
merged?

9 VICE CHAIRPERSON KING: Uh huh.

10 COMMISSIONER FRANKLIN: Oh, I'm sorry. I wasn't
aware of that. I thought that the matter presented by staff was the
addition to the parking garage case.

13 Mr. Bergstein, is that your understanding?

14 CHAIRPERSON REID: Just the one?

15 MR. HART: Yes, I read just the one for parking
garage.

17 VICE CHAIRPERSON KING: Oh, I have no
opposition to the parking garage expansion.

19 COMMISSIONER FRANKLIN: Excuse me?

20 VICE CHAIRPERSON KING: I have no opposition to
the parking garage expansion. I was speaking to the issue of the
hospital.

23 COMMISSIONER FRANKLIN: I do not regard the
parking garage as something that has an adverse impact at all on the

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neighborhood, the addition to the parking garage. In fact, I think it's an essential element in the fabric.

3 CHAIRPERSON REID: Ms. King, did you want to change your motion, then?

5 VICE CHAIRPERSON KING: No, my motion relates to the -6

7 CHAIRPERSON REID: I understand but did you want to -- 8

9 VICE CHAIRPERSON KING: No, I'd like for us just to put a pin in and hold it over. And I will say those words when the other case comes up.

12 CHAIRPERSON REID: Not being a motion.

13 VICE CHAIRPERSON KING: I thought they had been merged as one case.

15 CHAIRPERSON REID: They were but we're going to vote on them separately. And so, I need a motion for the first leg of this and that's the parking garage.

18 BOARD MEMBER GILREATH: I should revise my motion, then?

20 CHAIRPERSON REID: Yes.

21 You need a second. But now you can just make a motion 22

23 BOARD MEMBER GILREATH: Madam Chair, I move that we adopt the application for the parking garage.

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1 CHAIRPERSON REID: I second it.

2 All hear?

3 Say it again.

4 BOARD MEMBER GILREATH: Madam Chair, I move
that we approve the application for the parking garage.

6 CHAIRPERSON REID: I second it.

7 All in favor?

8 (Whereupon, a chorus of ayes.)

9 CHAIRPERSON REID: Any discussion?

10 All opposed?

11 VICE CHAIRPERSON KING: You don't take
discussion after the vote.

13 CHAIRPERSON REID: Oh.

14 All opposed?

15 (No response.)

16 MR. HART: Staff would record the vote on
application 16409, Mr. Gilreath, Ms. Reid, Mr. Franklin, and Ms. King,
to grant 4 to 0.

19 CHAIRPERSON REID: Now.

20 MR. HART: The next case is application 16389 of
The George Washington University, pursuant to 11 DCMR 3108.1, for
a special exception under Section 210 for further processing of an
approved campus plan to allow the construction of a new hospital and
allow an interim parking lot for College/University use located in an R-

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5-D/R-5-E District, at premises 900 23rd Street --

2 VICE CHAIRPERSON KING: Where we've got the parkinglot again.

4 MR. HART: -- Northwest.

5 VICE CHAIRPERSON KING: Is this a hospital or a parkinglot?

7 CHAIRPERSON REID: Mr. Hart, which one are you reading?

9 VICE CHAIRPERSON KING: I don't know. Is this a parkinglot or a hospital? I thought we just voted on the parking lot.

11 BOARD MEMBER GILREATH: We did.

12 VICE CHAIRPERSON KING: This is parking -- there's no parking on the side of the hospital.

14 (Whereupon, the foregoing matter went off the record at 11:34 a.m. and back on the record at 11:37 a.m.)

16 MR. WATSON: For the record, we object to the ex parte discussion which is now being repeated.

18 CHAIRPERSON REID: Okay. At any rate, there was some confusion. Let me explain. There was some confusion. What happened was, we combined the two cases for purposes of the hearing together, but as far as the vote is concerned, they are separated and voted on separately because they have two different case numbers. And we wanted to make sure that everyone was clear on that but there was some confusion. And we've already taken the

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vote on the addition to the parking garage. That's been done. That's been approved. And now we'll go to the second part which is the hospital.

4 VICE CHAIRPERSON KING: Now we're on application 16389, is that correct?

6 MR. HART: That's correct.

7 VICE CHAIRPERSON KING: For the hospital. My motion is to deny on the basis that the applicants have totally failed to show that there's no adverse impact on the neighboring property. In fact, it's ludicrous to say other than there will be a severe adverse impact on the neighboring property.

12 My motion fails for lack of the second.

13 MR. BERGSTEIN: Maybe tech was speaking. You should call the motion to see if there's a second.

15 CHAIRPERSON REID: Is there a second?

16 (No response.)

17 CHAIRPERSON REID: Motion fails for lack of a second.

19 Is there another motion?

20 BOARD MEMBER GILREATH: Madam Chair, I move that we approve the application for the construction of the hospital on the indicated site. I certainly commend the community for their diligent defense of their neighborhood. And they've identified many areas which have required very significant and substantial mitigation.

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However, I feel that the mitigation, even -- First of all, the site is difficult. But I feel that mitigations are sufficient to protect public safety and also the fact that there is a Metro station there is going to reduce some of the parking impact.

5 And as I understand it, I believe Madam Chair will provide some of the areas which we will want to cover in our summary order. She will discuss those. But I --

8 VICE CHAIRPERSON KING: Not a summary order. Can't have a summary order in a case like this.

10 BOARD MEMBER GILREATH: Or whatever. The legal writ.

12 CHAIRPERSON REID: yes.

13 BOARD MEMBER GILREATH: So, I move that we adopt the application.

15 COMMISSIONER FRANKLIN: I second the motion.

16 CHAIRPERSON REID: Would to --

17 COMMISSIONER FRANKLIN: I concur with what Mr. Gilreath has said. The impacts here are not unlike what can be expected in many urban settings. That doesn't mean that they're ideal. 20

21 AUDIENCE PARTICIPANT: Could you speak up, please? 22 We can't hear you.

23 BOARD MEMBER GILREATH: That we're dealing with a site that sits on top of a Metro station and I believe that the

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applicant has made a good faith effort to mitigate the otherwise difficult impacts on the community. There will be some conditions that I will insist on in the order having to do with certain matters that have been brought to light by the community and by the Department of Public Works.

6 CHAIRPERSON REID: I would concur with both Mr. Franklin and Mr. Gilreath. I feel that the-- this was a very difficult case on having to really grapple with the merits of the case. And after having analyzed and dissected, and sought the exhaustive of submissions, I came to the conclusion that while whatever has changed, there are some offsetting problems. And that has been brought to the adverse possession -- I mean, adverse impact in this particular case which were fairly serious. And they were not taken lightly.¹⁴

15 However, I felt that I would go with the application because I felt that it did comply with the zoning regulations, the 210. And that the adverse impact could be mitigated and diffused with -- in consideration of the community and their objections to the issues regarding the loading dock and traffic, and parking, and noise, that in order for the two entities to be able to co-exist there in that community, that we would use whatever powers we had to try to impose conditions on the order such that it would diffuse significantly the -- any adverse impact that might result, or the preconceived adverse impact that may be forthcoming from this particular application being

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approved.

2 Therefore, the case that we're approving with what
 conditions that we will work out in more detail, but the conditions
 would be in regard to the compliance with the DPW recommendations.
 We felt that there was an attempt, a great attempt, made by George
 Washington University to meet with DPW to try to diffuse the areas
 that they had proffered to us as being problematic. And we greatly
 appreciated that in regards to the traffic mitigation, in regards to the
 emergency entrance, the loading dock management, the main
 entrance, the impact of the 24th Street and New Hampshire
 intersections, and the parking, and that the addition of the parking
 garage must be completed before construction begins on replacement
 hospital as well as a construction management plan, so that the
 overall aggregate impact on the community would be minimized as
 much as possible.

16 All in favor?

17 (Whereupon, a chorus of ayes.)

18 CHAIRPERSON REID: Opposed?

19 VICE CHAIRPERSON KING: I am opposed.

20 MR. HART: Staff would record the vote as 3 to 1 to
 grant. Mr. Gilreath, Mr. Franklin, Ms. Reid to grant. Ms. King to deny.

22 VICE CHAIRPERSON KING: And Madam Chair, I
 reserve the right to file a minority opinion in this case.

24 CHAIRPERSON REID: Certainly.

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1 So, that concludes our meeting for this morning.

2 MR. WATSON: May I ask a question? Are you not
going to discuss the conditions in public session?

4 MR. BERGSTEIN: They'll be set forth in the order.

5 CHAIRPERSON REID: Mr. Bergstein, --

6 MR. WATSON: Are we off the record now or are we
on the record?

8 MR. BERGSTEIN: I think we're on the record.

9 CHAIRPERSON REID: Well, do you want to be on or
off? 10

11 MR. BERGSTEIN: I think you took a vote and the
meeting is closed. Unless you want to have Mr. Watson ask you
questions.

14 CHAIRPERSON REID: The findings of fact and
conclusions of law will be put forth in the order which we will
demonstrate the position that the board has taken and the rationale
behind our actions.

18 (Whereupon, the foregoing matter went off the record
at 11:45 a.m. and back on the record at 11:46 a.m.)

20 CHAIRPERSON REID: We're back on the record on -
- Now we're done with the meeting. This is in regards to the hearing
this morning. So, if you have no involvement in the hearing, then you
don't have to be here. I'm going to reopen the hearing so that we can
make an announcement regarding the hearing.

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1 We're still in session. Please be considerate.

2 Now, is there anyone here that's here for the hearings
this morning?

4 VICE CHAIRPERSON KING: For cases 16456 or
16461.5

6 CHAIRPERSON REID: All right. Then, we'll just
make an announcement that the 164 --

8 MR. HART: 6456.

9 CHAIRPERSON REID: 56, that's the Angola?

10 MR. HART: Yes.

11 CHAIRPERSON REID: Regarding the --

12 MR. HART: You have a letter from attorney asking
for it to be postponed.

14 CHAIRPERSON REID: The case for Angola, we got
a letter from the attorney. He has asked that it be postponed until?

16 MR. HART: They ask for June 16th and it's up to the
board. 17 They gave a date which is --

18 CHAIRPERSON REID: June 16th. That's a hearing
date? 19

20 MR. HART: It's a hearing date, yes.

21 CHAIRPERSON REID: Do we have room on that
calendar?

23 MR. HART: It does fit into the calendar.

24 CHAIRPERSON REID: Is that all right with you?

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1 VICE CHAIRPERSON KING: Can Mr. Griffith be here
then? 2

3 MR. HART: Yes, Mr. Griffith and Mr. Parsons.

4 CHAIRPERSON REID: That's fine.

5 MR. HART: The next case is 16461, the applicant
apprised of the fact that this -- a variance is not required and that they
meet the requirements. The structure they're putting on the lot is
within the requirements. So, they're withdrawing their case.

9 CHAIRPERSON REID: Wasn't that self-certification?

10 MR. NYARKU: Madam Chairperson, the applicant
was prepared as to the Wesley Heights district which says that only
about 80 percent of the lot can be covered by any structure. And any
structure between 5,000 and 6,000 square feet, up to 2,000 feet.

14 CHAIRPERSON REID: So, my question was, is it
self-certified?

16 VICE CHAIRPERSON KING: There's nothing in the
file that indicates who certified it. In the stuff that we received there's
nothing. Nada.

19 CHAIRPERSON REID: There's nothing from Nunley
or self-certified?

21 VICE CHAIRPERSON KING: Nothing. Nothing in my
file. I don't know what other people have.

23 MR. HART: This came in this morning.

24 VICE CHAIRPERSON KING: It's to James, 16461.

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1 CHAIRPERSON REID: Yes, self-certified.

2 VICE CHAIRPERSON KING: I don't have anything in
here that shows self-certification.

4 CHAIRPERSON REID: Here.

5 VICE CHAIRPERSON KING: Oh, I guess I didn't get
that. 6

7 CHAIRPERSON REID: They self-certified and
apparently they didn't realize that they really didn't have to.

9 MR. HART: They didn't have to, yes. So that issue --

10 VICE CHAIRPERSON KING: We keep the money,
right? 11

12 CHAIRPERSON REID: They determined themselves
that they're not -- they've notified you that they later looked at the
record and --

15 MR. HART: That's exactly --

16 CHAIRPERSON REID: -- at the regulations and
determined they didn't have to?

18 MR. HART: Yes, he came in this morning.

19 BOARD MEMBER GILREATH: And we concur with
that here and we say that their interpretation is correct, is that right?

21 CHAIRPERSON REID: That's right.

22 MR. HART: Yes. They're withdrawn.

23 VICE CHAIRPERSON KING: If somebody withdraws
their case, they're not going to -- If they go to the BZ -- to DCRA,

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they're not going to get their building permit if they were wrong.

2 CHAIRPERSON REID: Then that concludes this
morning's hearing.

4 (Whereupon, the hearing was recessed at 11:50 a.m.
to reconvene at 1:00 p.m. this same day.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:03 p.m.

3 CHAIRPERSON REID: Good afternoon, ladies and gentlemen. I am Sheila Cross Reid, chairman of the Board of Zoning Adjustments of the District of Columbia. Joining me today are Betty King, Mr. Jerry Gilreath representing the National Capitol Planning Commission, and Mr. Anthony Hood representing the Zoning Commission. This is the May 19th afternoon hearing.

9 Copies of today's agenda are available to you on the table at the rear of the hearing room. There is to be no smoking, eating, or drinking in the hearing room. All persons planning to testify either in support or in opposition are to fill out two witness cards. These cards are located on each end of the witness table. When coming forward to speak to the board, please give both cards to the reporter who is sitting to my right.

16 Notice of today's hearing was given by, (1) posting the subject property, (2) publication in the D.C. Register, and (3) various other means.

19 The order of procedure for a special exception variance case will proceed as follows: (1) preliminary matters; (2) statements or witness of the applicant; (3) government reports including Office of Planning, Department of Public Works, and others; (4) Advisory Neighborhood Commissions; (5) parties or persons in support; (6) parties or persons in opposition; (7) closing remarks by

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the applicant. Cross examination of witness is only permitted for parties in the case. The board will adhere to schedule as strictly as possible.

4 Those presenting testimony should be brief and non-repetitive. If you have a prepared statement, you should give copiers to staff and only summarize the highlights. Please give your statement before summarizing.

8 The record will be closed at the conclusion of each case except for any materials specifically requested by the board. The staff will specify at the end of the hearing exactly what is to be expected. Addressing the board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the board requests that persons present not engage the members of the board in conversation.

15 At this time, the board will consider any preliminary matters. Preliminary matters are those that relate to whether a case will or should be heard today such as requests for postponements, continuance, or withdrawal, whether proper notice of the hearing has been given. If you're not prepared to proceed, now is the time to raise such a matter.

21 Does staff have any preliminary matters?

22 Does anyone here have any preliminary matters?

23 Please come forward.

24 MR. FUKUDA: My name is Tom Fukuda. I'm here

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representing Marquette University, Application No. 16459. We'd like to request postponement.

3 CHAIRPERSON REID: Let me just say that we're -- we don't have -- our recording system is not operating properly so you're going to have to like really amplify your voice so you can get picked up.

7 Your name, again?

8 MR. FUKUDA: Tom Fukuda representing Marquette University, Application 16459. I'd like to request postponement of consideration of our application. We have not had a chance to go before the ANCs. We are dual jurisdictions 6A and 6B and we haven't had a chance due to scheduling conflicts to go before the ANC boards.

14 We have sent two letters in, April 13th and then a revised letter on May 14th requesting this.

16 CHAIRPERSON REID: All right.

17 BOARD MEMBER GILREATH: I don't recall, is it appropriate to advise him when he comes back, having read the material, that they need to provide additional information on the parking facts.

21 CHAIRPERSON REID: You're appearing for a special exception on a variance?

23 MR. FUKUDA: Special exception.

24 CHAIRPERSON REID: Within your submission, you

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have not provided us with the basis for obtaining the relief that you're asking for. So, we would need you to do that. Do you understand what I mean?

4 All right. You were applying under 206 for a private school?

6 MR. FUKUDA: Honestly, I'm not very versed in all of this. But the person who needs to be attending this hearing is the representative of the Marquette University Center.

9 VICE CHAIRPERSON KING: Tell them that they haven't made their case.

11 CHAIRPERSON REID: Is the request for a private school?

13 MR. FUKUDA: I believe so.

14 VICE CHAIRPERSON KING: Yes, it's for an intern -- it's for a Washington semester intern program or something like that.

16 CHAIRPERSON REID: Well, whoever it is, they would have to talk to staff, meet with staff, and ask them to assist them in preparing their case to be presented today which would include the -- demonstrate how you comply with the regulation 206, the relief which is being requested of this board.

21 And without that, we don't have any basis to make a deliberation.

23 MR. FUKUDA: What would that entail?

24 CHAIRPERSON REID: Well, meet with staff. The

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zoning office is right next door here. And just ask them to show you or to explain to you what needs to be done so you can have your case be properly heard before this board.

4 Now, did you have a particular date that you wanted to post someone to?

6 MR. FUKUDA: We're not able to go before ANC-6A until at least their July 7th meeting. And we've spoken with both of the ANC-6A and 6B, and the earliest we'd be able to go before that ANC-6A would be July 7th. So, the -- I believe this board meetings on the first and third Wednesdays? I think the earliest we'd be able to go would be the second -- or, the third Wednesday, second meeting, in July. 12

13 BOARD MEMBER GILREATH: You have two separate meetings, ANC, you say A and B?

15 MR. FUKUDA: 6A and 6B.

16 BOARD MEMBER GILREATH: Will they occur simultaneously or will you meet with the first one and then subsequently the second one?

19 MR. FUKUDA: Exactly.

20 BOARD MEMBER GILREATH: That would push it a bit further ahead unless it's the same week.

22 MR. FUKUDA: I think we can meet the same week.

23 BOARD MEMBER GILREATH: Fine.

24 MR. FUKUDA: We've actually -- we've already gone

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before 6A but they didn't make a final determination because it was so far in advance before we attended the hearing here. And then the 6B was where we had a conflict and haven't been able to go before them yet. 4

5 CHAIRPERSON REID: Do we have -- my calendar is there? 6

7 MR. HART: Yes, the meeting is on the 7th. And we could accommodate you on the 21st of July at the public hearing.

9 CHAIRPERSON REID: That's fine? Is that okay with everyone? 10

11 BOARD MEMBER GILREATH: Yes.

12 MR. HART: And let me just reiterate, please check with staff before you proceed because there's some other things that are -- you haven't done. Maybe you haven't done because of the time but you can discuss it with -- 15

16 CHAIRPERSON REID: Postponed until July -- what was that date, please, Mr. Hart?

18 MR. HART: July the 21st.

19 CHAIRPERSON REID: Next case, please.

20 MR. HART: Next case, Application 16462 of Darryl Olusola A. Sulekoiki, pursuant to 11 DCMR 3107.2, for a variance from subsection 401.3 from the minimum lot coverage for the construction for two single family dwellings in an R-4 District at premises 439 Rhode Island Avenue, N.W. (Square N-508, Lot 4). 22

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1 MR. HOOD: Madam Chair, I think that is incorrectly
stated. I think it's a two family dwelling. It's one structure and on the
first floor there will be one family and on the second floor -- but it's not
two separate buildings. It's one building which will be two -- within the
building.

6 VICE CHAIRPERSON KING: That's right. It's a two -
-

7
8 MR. HOOD: So, this is not correct.

9 CHAIRPERSON REID: It's like a duplex?

10 MR. SULEKOIKI: You can call it that but you have
one unit on the lower level and you have another unit on the upper two
levels.

13 CHAIRPERSON REID: Right. A two dwelling -- a
two dwelling --

15 VICE CHAIRPERSON KING: A two unit dwelling.

16 MR. SULEKOIKI: A two unit dwelling.

17 CHAIRPERSON REID: A two unit dwelling.

18 MR. SULEKOIKI: Right. That's correct.

19 CHAIRPERSON REID: Proceed.

20 MR. HART: Please --

21 Do you swear or affirm the testimony you're about to
give is the truth?

23 MR. SULEKOIKI: Yes, I do.

24 Thank you.

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1 MR. HOOD: Madam Chair, I just have one question.
How was it advertised? Was it advertised as a two single family
dwelling?

4 CHAIRPERSON REID: I think it was, Mr. Hood, but
it's -- if it were, then the interpretation of that is still the same. Still it
says two single family dwellings but it's what we call a two unit
dwelling. And they instead said single family. It's a matter of
semantics here.

9 VICE CHAIRPERSON KING: I think that we can -- I
think we can amend something like this without detriment to public
notice.

12 MR. HOOD: Right. I just wanted to make sure that --

13 CHAIRPERSON REID: Yes, yes.

14 MR. HOOD: -- wasn't nothing going to come back on
the board.

16 CHAIRPERSON REID: And you have to speak
loudly.

18 MR. SULEKOIKI: Yes, ma'am.

19 VICE CHAIRPERSON KING: Start with your name
and home address.

21 MR. SULEKOIKI: My name is Darryl Olusola
Sulekoiki. Home address, 11709 Duckettown Road, Laurel, Maryland
20708, zip code.

24 CHAIRPERSON REID: You're here for a variance?

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1 MR. SULEKOIKI: I'm here for a variance to request
your permission to build a two unit dwelling on a lot that does not meet
the minimum lot coverage requirement.

4 VICE CHAIRPERSON KING: Is this unique or
unusual?

6 MR. SULEKOIKI: It's unique in a way but you have
so many of them all around, really.

8 VICE CHAIRPERSON KING: You mean, other
similar sized lots?

10 MR. SULEKOIKI: Yes, definitely. The problem with
this particular lot is we had an addition house on this particular lot
before and the house was burned down I think about a year ago
before we bought the lot. And we're trying to put another house back
in there. The lot is currently vacant right now.

15 BOARD MEMBER GILREATH: How can you build a
house within the minimum lot coverage -- it appears you're running all
the way from Rhode Island over to S Street.

18 MR. SULEKOIKI: Yes, the lot spans from Rhode
Island to S Street.

20 BOARD MEMBER GILREATH: How much -- Do you
have any set back --

22 MR. SULEKOIKI: Oh, yes, I do. It's quite a bit. I
mean, it's not a big lot really for what we have put in there. It's enough
to put the -- the house on the lot. This is going to have quite a --

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plenty of space on the back for two, three, four car parking spaces in the back from Rhode Island.

3 BOARD MEMBER GILREATH: Why can't you build a smaller house? Is there a problem that --

5 MR. SULEKOIKI: It's almost impossible to build a small house and just like put in a much -- on that lot, if we try to do that, the house would be too small.

8 We're trying to build something comparable to what they had in there before because we're pretty much using the same footprint of the house that was originally there.

11 BOARD MEMBER GILREATH: What if you were to build a single family house for just one family, would that be large enough for one family?

14 MR. SULEKOIKI: Whichever way you look at it, it will still be too small.

16 BOARD MEMBER GILREATH: Really?

17 MR. SULEKOIKI: Right. Because the lot as such that I think it's about 15 feet -- 20 feet wide originally. But with encroachment and -- on one or two of the housing adjoining the property, it's impossible to build to the property line. So, we have to go within -- then the width of the house is about 16 feet and go back all the way.

23 VICE CHAIRPERSON KING: What is the width of the lot? 24

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1 MR. SULEKOIKI: The width of the lot, if I'm not
mistaken, I think it's 16 -- 20, 20 feet. And you have an alley way on
the right-hand side. So, what we're going to do is build on it so that
we still have a little bit of room on the side to access the alley way
because the alley way is only about 6 feet wide. So, we're trying to at
least create a buffer between that alley way and the house.

7 CHAIRPERSON REID: So, your problem is that the
regulations require that there be a building not less than 1,800 square
feet but the lot is only 1,640 square feet?

10 MR. SULEKOIKI: Say that again.

11 CHAIRPERSON REID: Looking at your statement, it
says that the lot, that the regulation requires you build on a lot not less
than 1,800 square feet.

14 MR. SULEKOIKI: Right. That's the lot size.

15 CHAIRPERSON REID: No, no. No, the regulation is
1,800 square feet. And then you say the lot size is 1,640 square feet.

17 MR. SULEKOIKI: Right. In other words, the
regulation requires the minimum lot --

19 CHAIRPERSON REID: I understand that.

20 MR. SULEKOIKI: -- you can build on to be 1,800.

21 CHAIRPERSON REID: But -- But --

22 MR. SULEKOIKI: But the actual lot size is 1,600 and
something square feet.

24 CHAIRPERSON REID: But it's impossible.

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1 MR. SULEKOIKI: It's not impossible. The footprint of
the house is not 1,600.

3 CHAIRPERSON REID: Oh, I see. I'm sorry, I
reversed it.

5 MR. SULEKOIKI: Right. Because the house is only
20 by 16 I think it's about 42 feet.

7 CHAIRPERSON REID: So, it requires 1,800 and then
you've got -- the lot size is 1,640. All right. So, now you said it's
impossible to require the needed 1,600 square feet that is for --

10 MR. SULEKOIKI: To meet the minimum lot
requirement. The difference between the 1,600 and the 1,800 is 160.

12 BOARD MEMBER GILREATH: You can't build on the
lot unless you get a variance.

14 MR. SULEKOIKI: We can. Yes, we cannot.

15 BOARD MEMBER GILREATH: You cannot build
without a variance, right?

17 MR. SULEKOIKI: Yes.

18 BOARD MEMBER GILREATH: You've got to have
1,800. You don't have it.

20 MR. SULEKOIKI: Exactly. I don't have the 1,800.
But in order to build anything, we need 1,800. So, the variance is --

22 CHAIRPERSON REID: With the set back.

23 MR. SULEKOIKI: Right.

24 CHAIRPERSON REID: Okay.

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1 MR. SULEKOIKI: The set back and all that stuff.
Right. 2

3 VICE CHAIRPERSON KING: Have you discussed
this with any of the neighboring property owners or with the Advisory
Neighborhood Commission?

6 MR. SULEKOIKI: I've spoken to just a couple of
people there. One, there's nobody on the left-hand side. The house
on the right-hand side is being renovated and there's nobody behind.
And we also have the next variance which is a similar situation which
is another property almost adjacent to it on 5th Street.

11 VICE CHAIRPERSON KING: Have you attempted to
meet with the Advisory Neighborhood Commission or with the local
citizens association?

14 MR. SULEKOIKI: Not particularly because I was
hoping once they saw the sign they would call me back. But
apparently nobody called back. But each time we've gone back there,
I mean, to talk to the people because I know -- I've spoken to at least
two people and they're quite happy to see somebody come in there
and do something with this lot.

20 CHAIRPERSON REID: So, you can't put -- that's
what I was saying at first. The regulations require that not put a house
on a lot on any lot, less than 1,800 square feet.

23 BOARD MEMBER GILREATH: Can't build at all.

24 CHAIRPERSON REID: So, he can't -- And, the lot

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size is 1,640 square feet. That's what I was saying, that you can't do that. So, the point I'm making is that in order for you to be able to get your variance, and you have to meet out the test, come here to meet your burden of proof which is the three prong test which requires that you show that the property is unusual, or irregular, or unique, or something about it that prevents you from being able to comply with the existing zoning regulations. In other words, it would cause you a practical difficulty. It's impossible for you to do it. It just can't work.

9 MR. SULEKOIKI: Yes. I understand. The best way to explain that is in order to meet the zoning requirement --

11 CHAIRPERSON REID: We understand. We understand.

13 MR. SULEKOIKI: I'm going to have to find a way to acquire additional property.

15 CHAIRPERSON REID: And there's no land available on either side.

17 MR. SULEKOIKI: Exactly.

18 CHAIRPERSON REID: So, you can't.

19 MR. SULEKOIKI: I can't. Right.

20 CHAIRPERSON REID: That's what we need to know. And then Ms. King asked you if there was any problems or objections with the neighbors and you said no.

23 MR. SULEKOIKI: No.

24 CHAIRPERSON REID: And then the other part of it

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is, if it is -- would it impair the intent and integrity of the zoning regulations or maps, which the answer to that is would it impair the zoning regulations or maps if we gave you this variance?

4 MR. SULEKOIKI: No.

5 CHAIRPERSON REID: Then let's --

6 Is there anyone here in support of or opposition to this particular application?

8 All right. Within the file, were there any letters submitted in opposition, do you know? I have none in my file.

10 MR. HART: No, Madam Chair.

11 CHAIRPERSON REID: You talked to the ANC?

12 VICE CHAIRPERSON KING: No. There are two ANCs. It's 5C and 2C.

14 CHAIRPERSON REID: You haven't talked to either of them? And they haven't -- We've notified them. They did not respond?

17 MR. SULEKOIKI: No response.

18 CHAIRPERSON REID: So, we can assume that they have no objection to your application.

20 Are there any government reports?

21 VICE CHAIRPERSON KING: Not that I'm aware of.

22 CHAIRPERSON REID: All right. No opposition, no support -- no person in opposition or support. And then, your closing remarks. Let's just go right to the -- cut right to the quick.

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1 MR. SULEKOIKI: My closing remarks are really to
request your permission to go ahead and proceed and get the
approved variance and begin the construction. Do appreciate it if that
is done.

5 CHAIRPERSON REID: Would you like to ask for a
summary order, a bench decision, today to get your decision today?

7 MR. SULEKOIKI: It would be nice, yes, ma'am.

8 CHAIRPERSON REID: Board members?

9 BOARD MEMBER GILREATH: Madam Chair, what
about the parking. Is there any kind of -- do you have to provide one
parking space or something --

12 VICE CHAIRPERSON KING: He's going to pave the
backyard and put four parking spaces.

14 MR. SULEKOIKI: Right. Yes, ma'am. There's going
to be parking in the back.

16 CHAIRPERSON REID: What's required?

17 MR. SULEKOIKI: There's no parking requirement
whatsoever --

19 CHAIRPERSON REID: But you're going to provide.

20 MR. SULEKOIKI: -- because parking on the street.
Right. But, as an added upgrade to the property, we're going to
provide parking in the back.

23 CHAIRPERSON REID: And you're going to build this
property and then rent it out?

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1 MR. SULEKOIKI: Yes, ma'am.

2 MS. BAILEY: Madam Chair, just for clarification
purposes, I'm looking at the zoning regulations and in the R-4 district,
it's one for each three dwelling units. And I think he's doing two units.
So, that would be indicated there are no parking spaces required by
the zoning regulations.

7 CHAIRPERSON REID: Thank you, Ms. Bailey.

8 Mr. Hood, do you have any questions, comments?

9 MR. HOOD: I have some -- I would just be a little
reserved because he hasn't -- I guess we -- you've made an attempt
to get in touch with the surrounding ANCs and --

12 MR. SULEKOIKI: Right.

13 MR. HOOD: -- and that kind of concerns me. I'll let
you know that up front. But since nobody's stepped forward, I guess
nobody has a problem.

16 Now, you said to the left. What is to the left?

17 MR. SULEKOIKI: To the left is a vacant lot and I'm
trying to --

19 MR. HOOD: Another vacant lot to the left. So, there
is a chance you can obtain that lot.

21 MR. SULEKOIKI: But unlikely, yes. As a matter of a
fact, there are at least about two or three other vacant lots in the area
within immediate nature of this property.

24 VICE CHAIRPERSON KING: This is quite close to

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Howard University, is it not?

2 MR. SULEKOIKI: Yes, about -- I'd say about four --
no, about six blocks, six, seven blocks away.

4 CHAIRPERSON REID: Board members? Ms. King,
do you have any problem with this?

6 VICE CHAIRPERSON KING: I have none.

7 CHAIRPERSON REID: Are we ready to vote?

8 BOARD MEMBER GILREATH: I'm prepared.

9 Madam Chair, I move that we approve this
application. To me, the existing zoning prohibits him from any kind of
construction on this site so that is unique. And the practical difficulty
that he has a lot that is unusable.

13 CHAIRPERSON REID: Irregular shaped lot.

14 BOARD MEMBER GILREATH: Irregular shaped.

15 CHAIRPERSON REID: Irregular size lot.

16 BOARD MEMBER GILREATH: And therefore, I think
that he's met the burden of proof. So permit this variance.

18 CHAIRPERSON REID: I would second it.

19 All in favor?

20 (Whereupon, a chorus of ayes.)

21 CHAIRPERSON REID: Opposed?

22 (No response.)

23 MR. HART: Staff records the vote as 4 to 0 to grant,
Mr. Gilreath, Ms. Reid, Mr. Hood, and Ms. King. And this is for a

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summary order.

2 CHAIRPERSON REID: You'll have your order in
about two weeks.

4 MR. SULEKOIKI: Thank you.

5 I have the next one as well.

6 CHAIRPERSON REID: You have what?

7 MR. SULEKOIKI: The next case.

8 CHAIRPERSON REID: You do?

9 BOARD MEMBER GILREATH: It's a lot that's right on
the same block.

11 CHAIRPERSON REID: Oh, that's you, too.

12 BOARD MEMBER GILREATH: Two lots over.

13 CHAIRPERSON REID: Okay. Is that the next case?

14 BOARD MEMBER GILREATH: Can we take that in
order? They're in sequential order.

16 CHAIRPERSON REID: Just stay right there. Just
has to call it, that's all.

18 MR. HART: The next case is 16463, Application of
Osunde F. and Felicia Bassey-Akamune, pursuant to 11 DCMR
3107.20 for a variance from Subsection 401.3 from the minimum lot
coverage requirement for the construction of a two unit dwelling in an
R-4 District at premises 1723 - 5th Street, N.W. (Square N-508, Lot 7).

23 Raise your right hand.

24 Do you swear or affirm that the testimony you're about

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to give is the truth?

2 MR. SULEKOIKI: So help me, God.

3 MR. SULEKOIKI: In this Mr. Osunde is the owner of
the property that in question now and I'll be representing --

5 CHAIRPERSON REID: You have to speak louder. I
can't hear you.

7 MR. SULEKOIKI: I said, Mr. Osunde is the owner of
the property in question and he expects to reside in the property when
it's built. So, it's the same scenario, similar to what I requested for.

10 VICE CHAIRPERSON KING: But you can't just say
just what I said before. You have to go through all the steps. This is a
new property. How is it unique and so forth?

13 MR. SULEKOIKI: It's --

14 CHAIRPERSON REID: Is he speaking --

15 MR. OSUNDE: Yes, I do, ma'am.

16 CHAIRPERSON REID: You're involved with this case
as well?

18 MR. SULEKOIKI: Yes, ma'am.

19 CHAIRPERSON REID: What is your involvement
with this case?

21 MR. SULEKOIKI: I'm going to build it for him.

22 MR. OSUNDE: He's the builder.

23 MR. SULEKOIKI: I'm going to be the contractor.

24 CHAIRPERSON REID: I see.

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1 MR. SULEKOIKI: I'm doing all the applications in the
property.

3 CHAIRPERSON REID: All right. So --

4 MR. OSUNDE: Yes, ma'am.

5 CHAIRPERSON REID: So, tell us about your
particular property and why you think that you should be granted your
variance?

8 MR. OSUNDE: We -- I feel --

9 MR. HART: Excuse me. Could we have your name
and address, please?

11 MR. OSUNDE: Excuse me, sir?

12 MR. HART: Your name and address.

13 MR. OSUNDE: My name is Osunde Frank Akamune
and my wife's name is Doctor Basse, Felicia Basse-Akamune.

15 MR. HART: Address?

16 MR. OSUNDE: Address, 8634 Brae Brook Drive,
Lanham, Maryland 20706.

18 MS. BAILEY: You --

19 MR. OSUNDE: Thank you, ma'am.

20 I actually bought this lot from the Veterans Affairs, VA.
And we're planning to put a structure out there for our residence in
D.C. since my wife works at Howard University and D.C. General
Hospital. And she has some patients at Howard University also. So,
we're trying to move closer to her place of work.

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1 According to our builder, the lot size does not meet
the minimum requirement and we are trying to put a three bedroom,
two units, structure. One unit will be used as an office space while we
live in the top half, three bedroom upstairs.

5 VICE CHAIRPERSON KING: The ground floor, or
basement, or whatever it is, is going to be -- is it going to be a ground
floor or a basement?

8 MR. SULEKOIKI: It's going to be ground floor.

9 MR. OSUNDE: It's going to be a ground floor.

10 VICE CHAIRPERSON KING: And the ground floor
will be used as a separate residence, is that correct?

12 MR. OSUNDE: Well, the way it's structured, it's
structured as a separate residence but actually we will be using it as
an office space.

15 MR. SULEKOIKI: In-house.

16 MR. OSUNDE: In-house office.

17 VICE CHAIRPERSON KING: You need a home
occupancy permit.

19 MR. SULEKOIKI: It's not something that they will be
getting people to come in and out. No, it's just --

21 VICE CHAIRPERSON KING: But it's designed as a
rental unit.

23 MR. SULEKOIKI: A rental unit, right. So, once
they're in there, they will use it as their own like anybody would have.

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1 VICE CHAIRPERSON KING: And this is -- you're
going to be the owner-occupier of this premises?

3 MR. OSUNDE: Correct, ma'am.

4 CHAIRPERSON REID: So, this is the same scenario
that we just had where you have a requirement of 1,800 square feet
and you only have 1,671?

7 MR. SULEKOIKI: That's correct.

8 CHAIRPERSON REID: And that gives you adequate
enough space to build this property?

10 MR. SULEKOIKI: Yes, ma'am.

11 MR. OSUNDE: Correct, ma'am.

12 CHAIRPERSON REID: But again, the issue is with
the setback?

14 MR. SULEKOIKI: We have the set back in the back.
We have approximately, if I remembering something right, about 200
square foot in the back after the house is put up.

17 MR. OSUNDE: And an alley.

18 MR. SULEKOIKI: And there's an alley, there's a six
foot alley back there as well.

20 CHAIRPERSON REID: So, the variance is for the
occupancy?

22 MR. SULEKOIKI: The lot coverage, minimum lot
coverage.

24 CHAIRPERSON REID: Now, is your submission, I

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see you're a little confused, but I see that there are two Sandborn maps and --

3 BOARD MEMBER GILREATH: One may be a tax map and the other may be Sandborn.

5 MR. SULEKOIKI: Right. One would be for the entire area and --

7 CHAIRPERSON REID: Can you come forward and tell me what you're --

9 MR. SULEKOIKI: This is the exact lot right here.

10 CHAIRPERSON REID: Is this it also right here?

11 MR. SULEKOIKI: That's the same thing.

12 CHAIRPERSON REID: But it looks like the shape of it is different.

14 MR. SULEKOIKI: If you look at it, it's cut out right here. This is the drawn up side.

16 This is the lot in question right here.

17 CHAIRPERSON REID: Can you give this to staff and they can give it to me, please, so I can look at it.

19 VICE CHAIRPERSON KING: Is there an existing building on the property?

21 MR. SULEKOIKI: Unfortunately, the existing building was razed down last year because the house, it went on fire.

23 CHAIRPERSON REID: Like this?

24 MR. SULEKOIKI: Right here.

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1 VICE CHAIRPERSON KING: That's the last one.

2 MR. SULEKOIKI: Seven. The first one was lot 4.

3 CHAIRPERSON REID: Oh, I see. Yes. So this is --

4 MR. SULEKOIKI: Lot 7.

5 CHAIRPERSON REID: It has like a dog leg on it?

6 MR. SULEKOIKI: Right, something like that.

7 CHAIRPERSON REID: And all this is the shape, all
going in to here?

9 MR. SULEKOIKI: Right. That's the lot right there.

10 CHAIRPERSON REID: So then, we can see that it's
definitely irregular in shape.

12 MR. SULEKOIKI: Oh, definitely, right.

13 CHAIRPERSON REID: That would make it unusual
and unique.

15 MR. SULEKOIKI: And unique. That's correct.

16 CHAIRPERSON REID: That's the first part of that
test. You remember that when you come here you have to prove that
you have the basis for receiving the relief that you're asking for.

19 MR. SULEKOIKI: Right.

20 CHAIRPERSON REID: All right. That would cause a
practical difficulty for you to comply with the existing regulations?

22 MR. SULEKOIKI: Definitely.

23 CHAIRPERSON REID: Definitely. It's impossible.

24 MR. SULEKOIKI: It's impossible, right.

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1 CHAIRPERSON REID: Again, just as the first one,
did you have discussion with any neighbors regarding any complaints
or opposition to your application?

4 MR. SULEKOIKI: Nobody so far has any opposition.

5 MR. OSUNDE: I did have a meeting with the
neighbors and they were very pleased.

7 CHAIRPERSON REID: Oh, they were pleased.

8 MR. OSUNDE: Very please that we're coming out
there to put a better structure in the neighborhood.

10 CHAIRPERSON REID: No adverse impact with
regard to parking, traffic, noise, lights, pollution?

12 MR. OSUNDE: No, ma'am. No, ma'am.

13 BOARD MEMBER GILREATH: What will the parking
with your building? In the back, too?

15 MR. OSUNDE: No sir, it's street parking, sir, on 5th
Street

17 CHAIRPERSON REID: And there are no -- Ms.
Bailey, there are no parking requirements, correct? There's no
parking requirements pursuant to your just reading the regulations.

20 MS. BAILEY: Well, the way it's advertised it's not the
same situation here because the way he's advertised it, it says for two
single families. But you mean two units.

23 CHAIRPERSON REID: Exactly.

24 MS. BAILEY: Right.

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1 CHAIRPERSON REID: It's the same thing with the
other one.

3 MS. BAILEY: Exactly. Exactly.

4 CHAIRPERSON REID: Two unit dwelling.

5 MR. SULEKOIKI: That's correct, ma'am.

6 CHAIRPERSON REID: No parking requirement.

There is ample street parking?

8 MR. SULEKOIKI: Yes, ma'am.

9 CHAIRPERSON REID: All right. Does your
application -- would the application cause any impairment to the
zoning regulations or maps?

12 MR. OSUNDE: No, ma'am.

13 CHAIRPERSON REID: All right.

14 The ANC, did you contact your ANC?

15 MR. OSUNDE: What's an ANC?

16 CHAIRPERSON REID: The --

17 BOARD MEMBER GILREATH: The neighborhood
advisory commission.

19 CHAIRPERSON REID: The Advisory Neighborhood
Commission. They're the body, the specific association, the body
there that would have some -- that would be effected by your property.

22 MR. OSUNDE: The neighbors in front of us, the
neighbors on the side, on both sides, and they were very pleased that
we're coming up to put this structure.

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1 CHAIRPERSON REID: Mr. Hart, we notified the
ANC? 2

3 MR. HART: Yes.

4 CHAIRPERSON REID: And we've not received
anything from them. So, when we don't, we assume that they are not
opposed to the application.

7 MR. OSUNDE: No, ma'am.

8 CHAIRPERSON REID: And we have no government
report. 9 There's no one here in opposition to and no one here in
support of the application, so we go to closing remarks by the
applicant.

12 MR. OSUNDE: Well, I'm pleased that I will see a nice
structure in the District of Columbia and to assist in improving the
area. 14 I can tell that the area is -- my neighbors are very pleased that
I'm coming in there to put a nice structure.

16 CHAIRPERSON REID: And so, you would like to
have your application approved?

18 MR. OSUNDE: Yes, ma'am. Correct, ma'am.

19 CHAIRPERSON REID: And if possible, you'd like to
have a summary order, a bench decision, so you can get the approval
today? 21

22 MR. OSUNDE: I will be glad, very glad, ma'am.

23 Thank you.

24 CHAIRPERSON REID: Board members, is there a

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motion?

2 VICE CHAIRPERSON KING: I move that we approve
this with a summary order and a bench decision. It seems to me that
he's met his burden of proof. It would be impossible to build anything,
any kind of residential structure, on this property.

6 MR. HOOD: I second the motion.

7 BOARD MEMBER GILREATH: I would add that it's
certainly not compared -- some regulations do not want to make it so
prohibitive in a residential area, you cannot build any kind of structure
on a vacant lot. So having unique conditions, I think it's great to have
it. 11

12 CHAIRPERSON REID: Yes, I think so, too. I think it
certainly enhances the neighborhood where you don't have vacant
lots, where you can -- it can contribute to the listed activities in a
community, and it helps to revitalize that area there.

16 Yes?

17 MR. SULEKOIKI: May I be allowed to add something
to the first one, 1642?

19 CHAIRPERSON REID: No.

20 MR. SULEKOIKI: I can't? No, because I made a
request for a change of address because the original, the existing
address is on the --

23 CHAIRPERSON REID: No, that would not be
something that we would -- That would definitely be beyond our

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purview. That would be something --

2 MR. SULEKOIKI: It's approved so I just wanted to
notify you so that when the --

4 CHAIRPERSON REID: For the record?

5 MR. SULEKOIKI: For the record.

6 CHAIRPERSON REID: Just let staff know.

7 So, it's been moved and seconded.

8 All in favor?

9 (Whereupon, a chorus of ayes.)

10 CHAIRPERSON REID: Opposed?

11 (No response.)

12 MR. HART: Staff records the vote as 4 to 0 to grant,
Ms. King, Mr. Hood, Mr. Gilreath and Ms. Reid. This is a summary
order.14

15 The next case is 16464, Application of Earl and Helen
Williams, pursuant to 11 DCMR 3107.2, for a variance from
Subsection 403.2 from the allowable percentage of lot occupancy
requirement for proposed addition to a semi-detached dwelling in an
R-2 District at premises 1125 Branch Avenue, S.E. (Square 5500, Lot
17). 20

21 Please raise your hand for the oath.

22 Do you swear or affirm that the testimony you're about
to give is the truth?

24 Say I do.

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1 MR. WILLIAMS: I do.

2 MS. WILLIAMS: I do.

3 MR. McCLARDY: I do.

4 CHAIRPERSON REID: Go ahead.

5 MS. WILLIAMS: My name is Helen Williams.

6 MR. WILLIAMS: My name is Earl Williams. I reside at 11257 Branch Avenue, S.E. And ladies and gentlemen, I ask you today to request permission to grant me a permit to build onto my present residence, a semi-detached dwelling, onto my house in the back and my house.

11 I've talked with all the neighbors. I've been there over 30 years, 1968. I know all the people there. They are quite for it. It will improve my home. I do something to my home every 10 to 15 years since I've been there. I believe in improving things and for my comfort I'm passed 60 years old. I know everybody down there and I have two witnesses here to day. This is Mr. Hill who's known me for a long time. And all the neighbors said they are for it. They're happy that I can have it done.

19 I have a letter here from the company that I have made a contract with them to build the attachment and he is here now to witness for me concerning this here.

22 CHAIRPERSON REID: Give us what it is that you're asking. Give us a basis for your being here and how you feel you can meet your burden of proof for granting of your variance.

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1 MR. WILLIAMS: We wish to build a glass patio enclosure on the back of our house. What happened is, we tried having a patio so that you can sit out in the summer time but it's not really safe at this time because you have so many different people walking back and forth through the community. So, you have a certain amount of fear. And by having the glass enclosure built, it would come off from the kitchen so that you really would not have to be exposed to the outside and people who are coming through the alleys and the neighborhood because you would be going from the kitchen to the enclosure.

11 And we would still have a reasonable amount of land left in the back. But, as the zoning is now, we have -- the house takes up the amount of space that we are suppose to use. But we are hoping that the board will grant us the privilege of building the patio so that at our age now we would be able to enjoy the backyard, the back of the house.

17 VICE CHAIRPERSON KING: It's going to have a roof on it and have glass --

19 MS. WILLIAMS: it will have roof.

20 VICE CHAIRPERSON KING: -- side panels on three sides, is that correct?

22 MS. WILLIAMS: Yes, it will have. And plus, the company is going to build a fire wall between my -- our house and our neighbor's house. So, you would have the three sides that would be

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enclosed in glass.

2 MR. McCLARDY: I wonder if I could speak about the

-- 3

4 CHAIRPERSON REID: Give your name and your
address.

6 MR. McCLARDY: My name is Shawn McClardy. My
address is 13122 Mercury Lane.

8 CHAIRPERSON REID: You been sworn?

9 MR. McCLARDY: Yes, I was.

10 The reason for this variance, it is for lot coverage.

And best of my calculations, they're about 40 square feet short.

Because of the way the property is built and because there are a set
of steps that go down to a basement area, we can only build this room
in this specific area. It's a modest sized room. And to conform to the
lot coverage, it would make it literally the room unusable. They would
not be able to put furniture in there. Maybe a couple of chairs. And
it's -- at that point, to go through the expense to put a fire wall in and
to do all that, they don't -- they would not be able to have something
out there that would be thoroughly usable.

20 By just allowing this small amount of area, and it is --
these lots are fairly narrow and there is an easement in the front part
of the lot that belongs to the District that makes it even smaller, the lot.
It takes away the lot coverage calculation.

24 So, that's why they're requesting this variance. It is

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an improvement on the property. It allows them more space and it's not something that's overwhelming and it would be built to all codes.

3 BOARD MEMBER GILREATH: Are you saying if the easement along -- were the easement of the property belong to the property owner, that you would have the necessary area to build it?

6 MR. McCLARDY: Yes.

7 CHAIRPERSON REID: In this submission, what's your name again?

9 MR. McCLARDY: Shawn McClardy.

10 CHAIRPERSON REID: I have a handwritten letter, To Whom It May Concern, and it says that the structure is a semi-attached home and the reason application is being made is because of exceptional shallowness of lot making it is small enough to comply with lot coverage requirements would render the room too small and useful -- unuseful. Who submitted this?

16 MR. McCLARDY: I believe I did.

17 CHAIRPERSON REID: You did. It says --

18 MR. McCLARDY: Shawn McClardy.

19 CHAIRPERSON REID: Oh, that's McClardy. I didn't understand.

21 MR. McCLARDY: My handwriting is not so great.

22 CHAIRPERSON REID: So now, tell me about the shallowness because looking at the Sandborn map, and it appears that it's pretty much the same as the other houses that are on that

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row. 1

2 MR. McCLARDY: I understand. And frankly, any
house that is on that row with that easement, they're not going to be
able to build anything of any decent size out there without a variance.

5 What makes it exceptionally shallow is because of
that easement.

7 CHAIRPERSON REID: The easement, tell me about
the easement again. I'm sorry. I think I was reading something.

9 MR. McCLARDY: What there is, is there is a certain
easement from the front of the property to, frankly, I believe is right in
front of the porch.

12 MS. WILLIAMS: Right at the steps.

13 MR. McCLARDY: Right in front of the steps of their
house that is -- it's an easement. It's a District easement. They can
come in and do anything they want in there. And because of that, it
has made the lot coverage -- it has taken up --

17 CHAIRPERSON REID: I see.

18 MR. McCLARDY: It's not included in the lot coverage.

19 CHAIRPERSON REID: It's a municipal easement for
the city. It's a municipal easement?

21 MR. McCLARDY: Yes, ma'am.

22 CHAIRPERSON REID: I understand. So, that--

23 MS. WILLIAMS: And that is the entire front yard.

24 CHAIRPERSON REID: Then that becomes the

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unusual --

2 MR. McCLARDY: Size.

3 CHAIRPERSON REID: Yes, unusual situation that
would cause a practical difficult for you to comply with the zoning
regulations?

6 MR. McCLARDY: Yes, ma'am.

7 CHAIRPERSON REID: That's what we needed to
hear. 8

9 All right. Well, that takes care of the first prong of the
test. The second one is, in regard to adverse impact, have you heard
any complaints or opposition from any of your neighbors or abutting
property owners?

13 MR. WILLIAMS: As I told you, I talked to everybody.
I talked to everybody. I went out and I went and talked to them. And
they are definitely for it.

16 CHAIRPERSON REID: We don't have anything in
our files, in our packages, that indicates that there is any displeasure
with your application, sir.

19 MR. HOOD: And the ANC was notified of this?

20 CHAIRPERSON REID: Has your ANC --

21 MS. WILLIAMS: I attend one of the meetings at
Center Baptist Church. I can't remember the date offhand but I did
attend one of the meeting and I brought it up in the meeting. And no
one opposed it.

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1 CHAIRPERSON REID: And they didn't submit
anything to us so we assume that they don't have any opposition.

3 The application, granting the application will not
impair the integrity or terms of the zoning regulation or maps?

5 VICE CHAIRPERSON KING: No, it's going to
continue to be a single family -- single family residence, is it?

7 MR. McCLARDY: Single family, semi-detached.

8 VICE CHAIRPERSON KING: Right. But the building
we're talking about that they own is a single family residence. So,
there's no change in the usage of the property.

11 CHAIRPERSON REID: No ANC report. No
government reports. There's no one here in opposition to. Is there
anyone here in support of -- Did you all wish to testify or are you just
waving your hands in support.

15 MR. HILL: We're for it.

16 CHAIRPERSON REID: All right. Thank you very
much.17

18 Closing remarks by the applicant?

19 VICE CHAIRPERSON KING: You'll give your witness
cards to the recorder over there, if you'd be so kind.

21 CHAIRPERSON REID: And they'll record that you
were here and that it's in the report.

23 VICE CHAIRPERSON KING: And you spoke and
indicated your support.

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1 BOARD MEMBER GILREATH: What you have to do
-- 2

3 CHAIRPERSON REID: So, you have this opportunity
to have closing remarks by the applicant.

5 MR. McCLARDY: Basically, the closing remarks that
the Williams want me to convey is that they very much like living
where they're living. They would very much like to add some space to
that. They do a lot to keep their property up and it would be a shame
if they weren't allowed to do something like this, something of a useful
area because of a section that they've been taking care of for 30 years
that's really not theirs. So, they just request that you grant this
variance so they can start fairly soon enjoying their new sunroom.

13 CHAIRPERSON REID: Would you like a summary
order or bench decision?

15 VICE CHAIRPERSON KING: Yes.

16 CHAIRPERSON REID: A decision to --

17 VICE CHAIRPERSON KING: You don't have to ask
that. 18

19 CHAIRPERSON REID: Ms. King is asking for you.

20 VICE CHAIRPERSON KING: Yes, I move that we
grant this application. They've met their burden of proof and I think
that there will be no impairment of any zoning regulations if we grant
the opportunity to put in an enclosed patio.

24 MR. HOOD: I second the motion.

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1 CHAIRPERSON REID: I agree with you, Ms. King,
the fact that this easement on their land which renders it almost
impossible to comply with the zoning regulations, definitely makes
their application one that we can feel comfortable with approving.

5 All in favor?

6 (Whereupon, a chorus of ayes.)

7 CHAIRPERSON REID: Aye.

8 Opposed?

9 (No response.)

10 MR. HART: Staff would record the vote as 4 to 0 to
grant, Ms. King, Mr. Hood, Mr. Gilreath, and Ms. Reid. This is for a
summary order.

13 CHAIRPERSON REID: You should have your order
in about two weeks.

15 MR. McCLARDY: Thank you.

16 MR. WILLIAMS: Thank you very much.

17 MS. WILLIAMS: Thank you very much.

18 MR. McCLARDY: Thank you for the time.

19 (Whereupon, at 1:49 p.m., the public hearing was
concluded.)

21

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23

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