

CITY OF COLLEGE PARK, MARYLAND

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CITY COUNCIL

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ORAL ARGUMENT IN CASE CPV-2013-04

SIRAK AND MESERET TEFFERA

4810 NANTUCKET ROAD

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TUESDAY

AUGUST 13, 2013

+ + + + +

The City Council met in the City Council Chambers, 4500 Knox Street, College Park, Maryland, at 7:00 p.m., Andrew M. Fellows, Mayor, presiding.

COUNCILMEMBERS PRESENT:

ANDREW M. FELLOWS, MAYOR

MARCUS AFZALI

ROBERT T. CATLIN

ROBERT W. DAY

MONROE S. DENNIS

FAZLUL KABIR

DENISE C. MITCHELL

STEPHANIE STULLICH

PATRICK L. WOJAHN

STAFF PRESENT:

JONATHAN BROWN, City Planner

SUELLEN FERGUSON, City Attorney

SUE FORD, City Attorney

JANINE MILLER, City Clerk

JOSEPH L. NAGRO, City Manager

TERRY SCHUM, Director of Planning

ALSO PRESENT:

SIRAK TEFFERA

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

7:00 p.m.

1
2
3 MAYOR FELLOWS: Good evening and
4 welcome to the 7:00 p.m. August 13th hearing,
5 the oral argument in CPV-2013-04. This is
6 concerning 4810 Nantucket Road. And I
7 believe, Ms. Schum, you'll begin things.

8 MS. SCHUM: Yes, good evening, Mr.
9 Mayor, members of council. For the record,
10 Terry Schum, planning director for the City of
11 College Park. Tonight you are hearing oral
12 argument on case CPV-2013-04. And what you
13 have in a packet before you is a complete
14 record of the case that the planning
15 department prepared for you.

16 And in this record you will have
17 the rules of procedure for the hearing
18 tonight, the notice of public hearing, the
19 Applicant's request for oral argument, the
20 recommendation of the APC in the form of a
21 resolution, the staff report and associated
22 exhibits, as well as a verbatim transcript

1 from the APC hearing.

2 So, in terms of the rules of
3 procedure, it's been a while since maybe
4 you've had oral argument like this. I think
5 you will remember that you are limited to the
6 facts and information contained in the record
7 made at the APC hearing.

8 That's why we have provided this
9 packet of information for you. Anyone who
10 speaks is limited to that as well. And the
11 Applicants tonight are the only persons who
12 will be arguing against the recommendation of
13 the APC since there were no other parties of
14 record to the hearing at the APC level.

15 So, if you're ready, I'd like to
16 begin with a brief orientation to the case,
17 and then we'll proceed to the Applicant's
18 argument before you.

19 MAYOR FELLOWS: All right, thank
20 you.

21 MS. SCHUM: So, we've said this is
22 CPV-2013-04. The address of the property is

1 4810 Nantucket Road. And on May 7, 2013,
2 Sirak and Meseret Teffera submitted an
3 application for two variances related to the
4 widening of a driveway in the front yard of
5 their home at the address I just mentioned,
6 4810 Nantucket Road.

7 And we have an exhibit, and it's
8 exhibit 7a in your packet, that shows the
9 existing house and the original driveway. And
10 I will pull that up on the screen for you
11 right now. So, this is exhibit 7a showing the
12 original asphalt driveway in the western side
13 yard of the property.

14 The first variance request that
15 the Applicant made was in effect a waiver of
16 the requirement of Section 27-120.01c that
17 states, "No parking space, parking area, or
18 parking structure other than a driveway no
19 wider than its associated garage, carport, or
20 other parking structure, may be built in the
21 front yard of a dwelling except a townhouse or
22 multifamily dwelling in the area between the

1 front street line and the sides of the
2 dwelling." That's the first variance request
3 asking that they be permitted to actually
4 expand their driveway in the front yard of the
5 property.

6 The second variance related to the
7 first. It's from Section 27-442c, table 2,
8 which proscribes the maximum lot coverage for
9 a single family detached home in the R-50 zone
10 to be 30 percent. The Applicants proposed to
11 exceed this maximum lot coverage by four
12 percent, so the total would be 34 percent.

13 If you look at Exhibit 6, and I'll
14 - this is Exhibit 4, let's see, 5 - Actually,
15 it's Exhibit 5 on the screen, but it's in
16 Exhibit 6 in your packet. And this shows the
17 proposed site plan and illustrates the
18 situation before you tonight.

19 So, the site itself measures 55
20 feet wide and 100 feet deep, for a total of
21 5500 square feet. The original asphalt
22 driveway, which you saw previously, was six

1 feet wide and 24 feet long, located in the
2 side yard of the property, and that area is
3 shown in gray up on the screen, so that's this
4 area right here.

5 The yellow portion shows the area
6 of expansion of the driveway, which is an
7 addition of 11 feet by 20 feet, so that's the
8 area right here. So, the gray plus the yellow
9 equals the expanded area of the driveway.

10 The work to reconstruct the
11 driveway was performed without obtaining
12 county or city building permits as required.
13 A stop work order was issued by the city and
14 posted on the property on May 3, 2013, while
15 the Applicants were at work.

16 The concrete was being poured at
17 the time of the stop work order, so the pour
18 was completed and the concrete was smoothed
19 out. And I have an exhibit that illustrates
20 that if I can get to it.

21 Yes, this shows that the entire
22 driveway, the original asphalt and additional

1 land area, was reconstructed, concrete was
2 poured. So the photo on the left shows the
3 rough concrete actually being poured, and the
4 photo on the right shows the stop work order
5 that was issued on the same day.

6 And if we go back to - let's see,
7 I'm trying to find Exhibit 5, let's see.
8 Pardon me, I'm sorry. I actually think the
9 best thing to do is to all the way back to the
10 beginning. And this shows the finished
11 product.

12 So the concrete that was poured
13 was actually smoothed over on the same day
14 that the stop work order was issued. So once
15 it was poured, there was really little for the
16 contractor to do but to actually finish it off
17 unless it were to be left in a rough state.
18 So this photograph shows the reconstructed
19 driveway.

20 For your information, a city and
21 county standard or typical driveway width is
22 about 10 feet wide. And the city allows one

1 standard width driveway apron, which the city
2 maintains in the city's right of way. And if
3 someone wants a second curb cut or a non-
4 standard driveway apron, in other words, a
5 wider driveway and associated apron, then
6 permission must be obtained from you, the city
7 council, for that to happen, and then the
8 Applicant would be required to maintain it.

9 So, in this instance, because no
10 permit was obtained before the work started,
11 there was no associated, you know, driveway
12 apron permission before you. It was all in
13 discovery before the APC.

14 So the APC held a public hearing
15 on the application on June 6, 2013, at which
16 time the Applicants testified, and there were
17 no other parties of record. The APC made the
18 following conclusions of law which I will read
19 to you based on the three criteria that are
20 required to be met in order to grant a
21 variance. And I can just get these back on
22 the screen for you for your reference.

1 So the first conclusion based on
2 the criteria is that - and you can follow
3 along with this in the resolution from the
4 APC. It says, "There is exceptional
5 narrowness, shallowness, shape or topographic
6 conditions or other extraordinary situations
7 or conditions related to the property. It is
8 similar to other properties in the
9 neighborhood."

10 The second conclusion the APC made
11 is that, "The strict application of the county
12 zoning ordinance will not result in peculiar
13 and unusual practical difficulties to, or
14 exceptional or undue hardship upon the
15 property owner. The property had a standard
16 sized driveway.

17 While the Applicant will have to
18 remove the expanded portion of the driveway,
19 this hardship is self-created as the work was
20 done without a permit, such that the removal
21 of the non-permitted improvement should not be
22 considered an exceptional or undue hardship."

1 And the third conclusion is that,
2 "Granting the requested variances would impair
3 the intent of the master plan. The code of
4 the county prohibits driveways in the front of
5 houses where they do not connect to a garage
6 or carport, and a double wide driveway is not
7 characteristic of the neighborhood and results
8 in excessive lot coverage."

9 The APC voted 5-0 to deny the two
10 variance requests, and the APC notice of
11 recommendation was mailed on June 19, 2013.
12 The Applicant subsequently filed a request for
13 oral argument on June 28, 2013, within the 15
14 day appeal period that's required.

15 That concludes the staff
16 orientation. And if you have questions, I'll
17 be happy to try to answer.

18 MAYOR FELLOWS: Questions of the
19 staff? Mr. Wojahn?

20 COUNCILMEMBER WOJAHN: Sorry.
21 Thank you, Ms. Schum for your presentation.
22 I was wondering if you could give us a sense

1 of the houses on the street. And I don't know
2 if - I think there were some pictures of
3 different houses and their driveways. Do you
4 have a sense of how many have the single wide
5 driveways versus double wide?

6 MS. SCHUM: No, that's not
7 something that's in the records. Staff did
8 not count, but I believe you can see from the
9 aerial photograph which is in the record, that
10 there are several houses that do have double
11 wide driveways.

12 We have no way of knowing when
13 they were actually constructed. And the law
14 that prohibits parking in the front yard is a
15 fairly new requirement of the county. It's
16 about 10 years old. So any property that
17 constructed their property in the front yard
18 prior to that is obviously grandfathered in.
19 They're not a violation of the law.

20 So there are some properties on
21 the street with these so-called double wide
22 driveways, and they're, I would say, the

1 majority of the driveways on the street have
2 a single wide driveway, a nine or 10 foot wide
3 driveway that's actually solely within the
4 side yard of the property. There may be a few
5 that encroach a foot or so in the front yard,
6 but we don't have those calculations as part
7 of the record.

8 COUNCILMEMBER WOJAHN: Right. And
9 I'm sorry, but the aerial location map that's
10 in our packets is - makes it a little bit
11 difficult to see.

12 MS. SCHUM: Let's see if I can go
13 back and - yeah.

14 COUNCILMEMBER WOJAHN: I'm not
15 sure that that helps much.

16 (Laughter)

17 MS. SCHUM: Some of the driveways
18 are showing up fairly well on here, and - but
19 not all of them.

20 COUNCILMEMBER WOJAHN: Okay, but
21 do you -

22 MS. SCHUM: So obviously this is

1 Nantucket Street properties front on both
2 sides. You can see some of the driveways.

3 COUNCILMEMBER WOJAHN: Yeah, it's
4 hard to tell if they're -

5 MS. SCHUM: Right. Most of the
6 properties do have a driveway though. I think
7 that is characteristic of the street is to
8 have off street parking.

9 COUNCILMEMBER WOJAHN: Okay.

10 MAYOR FELLOWS: Thank you, Mr.
11 Wojahn. Dr. Kabir?

12 COUNCILMEMBER KABIR: Thank you,
13 Ms. Schum, and thanks for the presentation.
14 Yeah, it's in my district in District 1, and
15 you know, I do actually know quite a few
16 neighbors. I do drive on that street a lot.

17 So, it looks like there are some,
18 or a dozen houses on the one side, east side,
19 and I was driving the other day on the side
20 where 4810 is located.

21 MAYOR FELLOWS: Dr. Kabir, I just
22 wanted to note your questions should be

1 related to things that are in the record.

2 COUNCILMEMBER KABIR: Yeah, it's
3 related to, related to the same questions my
4 colleague asked.

5 MS. FERGUSON: And Mr. Mayor?

6 MAYOR FELLOWS: Yes?

7 MS. FERGUSON: In particular, a
8 councilmember should not be testifying from
9 personal knowledge in terms of the record, to
10 fill in for the record. If there is something
11 that council wishes to know that isn't in the
12 record, you can always remand it to the APC to
13 find that.

14 But since there's no testimony at
15 this level, a councilmember may not substitute
16 their factual knowledge at this point.

17 COUNCILMEMBER KABIR: Yes.

18 MS. FERGUSON: Okay.

19 COUNCILMEMBER KABIR: It was
20 actually my question. I was going to ask a
21 question and that's -

22 MAYOR FELLOWS: What prompted me

1 to say that was you were talking about driving
2 around and about your observations, and I
3 thought that's not part of the record, so -

4 COUNCILMEMBER KABIR: Yes, it's
5 not, but as my council - my job -

6 (Laughter)

7 COUNCILMEMBER KABIR: I actually
8 do that all the time. Maybe that shouldn't be
9 on the record.

10 MAYOR FELLOWS: So do you have a
11 question based on the record?

12 COUNCILMEMBER KABIR: I do have a
13 question. And there is one house, which is
14 4716, and that - I saw the driveway and it was
15 kind of new.

16 MAYOR FELLOWS: Again, you're,
17 you're stating your observation instead of -

18 COUNCILMEMBER KABIR: No, I'm
19 asking, is there any way to find out when it
20 was built? It looks like the answer is no.

21 MS. SCHUM: Well, there is, of
22 course, a way to find out when the house was

1 built, but if it's not in the record, I don't
2 know that it's relevant tonight, and I don't
3 have that information before you tonight.

4 COUNCILMEMBER KABIR: Okay, thank
5 you.

6 MAYOR FELLOWS: Thank you. Mr.
7 Day?

8 COUNCILMEMBER DAY: Is it safe to
9 say that most of these driveways that are on
10 this road, that are single, go straight to the
11 back yard?

12 MS. SCHUM: From - They go
13 straight to the back yard, but they are
14 located in the side yard.

15 COUNCILMEMBER DAY: Okay, they're
16 located in the side yard -

17 MS. SCHUM: Some of the houses
18 have fences. You can't see beyond the fence.

19 COUNCILMEMBER DAY: Right, but do
20 they go past - does the driveway go past the
21 front of the house?

22 MS. SCHUM: Does it extend into

1 the front yard?

2 COUNCILMEMBER DAY: Does it - no,
3 no. Does it go past the front edge of the
4 house? Does it go into - along the side yard,
5 does it go, continue - If you look at their -
6 the picture that you had up, they have a deck
7 that's there. Do most of those driveways
8 continue back along that fence?

9 MS. SCHUM: I, I don't know. I
10 don't have that information.

11 MAYOR FELLOWS: Any other
12 questions?

13 COUNCILMEMBER DENNIS: I do have a
14 question.

15 MAYOR FELLOWS: Mr. Dennis?

16 COUNCILMEMBER DENNIS: Yes. So,
17 I'm looking at Exhibit 5 and Exhibit 6 from
18 our package, and it appears that not only was
19 the original driveway widened, but it appears
20 that there was work done to the curb which
21 would have been normally - Well, would that
22 curb work have been done by a contractor to

1 widen the driveway, or would it have been done
2 by some city-provided contract work?

3 MS. SCHUM: City practice is for a
4 city permit to be released to a private owner
5 or contractor to actually perform the work of
6 constructing the apron. So the city's staff
7 or crews do not go out and actually construct
8 the apron in the city right of way. Rather,
9 the city engineer would issue a permit
10 according to the city standard to allow that
11 apron to be constructed.

12 COUNCILMEMBER DENNIS: Thank you.

13 MAYOR FELLOWS: Thank you, Mr.
14 Dennis. Other questions based on the record?
15 Ms. Mitchell?

16 COUNCILMEMBER MITCHELL: This
17 question is just for clarification so I
18 understand what I heard you to report. That
19 prior to - 10 years ago, prior to this, people
20 - some individuals did have the double wide
21 driveway, but after the new law was put in
22 place, those individuals were grandfathered,

1 but moving forward you could no longer have
2 this type of driveway?

3 MS. SCHUM: That is correct. And
4 in your packet, the Applicant has submitted
5 Exhibit 9a, 9b, and 9c which provide you with
6 three examples of three addresses on Nantucket
7 that, in fact, illustrate that situation, that
8 do have driveways expanded into the front
9 yard.

10 COUNCILMEMBER MITCHELL: Thank
11 you, Mr. Mayor.

12 MAYOR FELLOWS: All right, thank
13 you, Ms. Mitchell. Some other questions? Mr.
14 Wojahn?

15 COUNCILMEMBER WOJAHN: And it may
16 be difficult to tell this, but just in regards
17 to Exhibits 9a, 9b, and 9c, can you say do you
18 know when those were built? Do you know if
19 they were - Is there any record of a recent
20 variance request in regards to either of those
21 for - before the city?

22 MS. SCHUM: No, the city has no

1 recent record of variances for any of those
2 properties.

3 COUNCILMEMBER WOJAHN: Okay. All
4 right, thank you.

5 MAYOR FELLOWS: All right. Seeing
6 no other questions of Ms. Schum, is it time
7 for the Applicant?

8 MS. SCHUM: Yes.

9 MAYOR FELLOWS: All right. I
10 believe the Applicant is here. Come on up to
11 the microphone. And again, please restrict
12 your remarks to things that are on the record.
13 And thank you and welcome. And your name and
14 address for the record?

15 MR. TEFFERA: Yes, my name is
16 Sirak Teffera. My wife should be here, but
17 she started a new work job which is in
18 Forestville. It's a bit far. She wasn't able
19 to be here on time.

20 You know, the whole thing is, we
21 improved to our property. We've been here in
22 this house over 14 years. We love, you know,

1 our neighborhood. We just, we are very
2 connected to the city. Me and my wife both
3 are members of the University of Maryland
4 University College alumni, and we - our two
5 kids, we are just planning to join to the
6 University of Maryland soon.

7 Even, you know, my - both my
8 wife's and my friends are just moving to new
9 developments and properties. We are very much
10 connected here and we love it, and we wanted
11 to do something on the property, and we did.

12 And we had some difficulties on
13 the driveway, which is on the old driveway.
14 Always my wife and me, we weren't able to, you
15 know, to park our cars. Sometimes on the
16 street has a problem to get a parking spot.

17 And the drive, you know, the
18 street is just getting busy, just, you know,
19 even it is, you know, what it used to be years
20 ago.

21 And when we just tried to make
22 some improvements, we just, you know, see how

1 goes the street in the neighborhood. Some
2 people have expanded, you know, double parking
3 space. And we don't have any idea when we
4 start to resurfacing and doing our driveway,
5 we wanted just, okay, to be convenient to the
6 - our family, my wife and my kids, my mother-
7 in-law, she is, she is of the same time.

8 And when we started doing that,
9 the work was - took over a week and to - just
10 to do the job, the whole thing. So on the
11 last, you know, very last on finishing time,
12 we found the, you know, the stop work sign.
13 And this was eventually - we don't even have
14 idea.

15 That was the last minute, if you
16 can see that on the, on the picture. By the
17 time when we get home, the work was done. And
18 the only thing is they take care of the clean
19 up after that.

20 So, you know, just - the
21 beginning, we don't have any idea on this
22 because we are working on existing driveway,

1 that was our understanding, and we shouldn't -
2 we didn't know that we have to go through the
3 permits.

4 We did all this when we do all
5 other works, and there is no, just, you know,
6 hiding. This is in the front of our property.
7 But we - I wish we knew this and we didn't go
8 through all this stuff.

9 This is really just, you know,
10 since that day, you know, all my family, we
11 don't feel that good which is, you know, is a
12 stabbing to our emotion actually. This is a
13 very innocent mistake we did. We didn't know
14 that, and we didn't want to go through all
15 this stuff.

16 It's difficult just, you know,
17 living on the same property and doing, you
18 know. We wanted to have like our neighbors in
19 the neighborhood. And, you know, I just
20 wanted to bring it, you know, we wanted to
21 bring it to this - to the mayor and the
22 council just to present ourselves, you know,

1 honestly. I just - we don't know.

2 Maybe it's the right way how to
3 present it, but you know, this is very - from
4 the bottom of our feelings and, you know, this
5 is - nothing is hidden. And just, you know,
6 to make you - to make a decision.

7 MAYOR FELLOWS: Okay, thank you.
8 Questions of the Applicant? Is that
9 appropriate based - again, based on the
10 record? Dr. Kabir?

11 COUNCILMEMBER KABIR: I'll be
12 careful.

13 (Laughter)

14 MAYOR FELLOWS: Thank you.

15 COUNCILMEMBER KABIR: I'll ask
16 questions from the record and based on the
17 testimony. So you said that you had
18 difficulties in building it and now you feel
19 the pain of taking it out. Can you give us a
20 sense?

21 It looks like it's something to do
22 with the costs that are involved right? How

1 much did you spend to build it? Can I ask
2 that?

3 MAYOR FELLOWS: I believe not
4 because that's not in the record.

5 COUNCILMEMBER KABIR: Okay.

6 MS. FORD: That's outside of the
7 record, sorry.

8 MAYOR FELLOWS: So unfortunately
9 we have lots of people to keep us on track -

10 COUNCILMEMBER KABIR: Okay.

11 MAYOR FELLOWS: I realize this is
12 a little bit challenging, but please restrict
13 -

14 COUNCILMEMBER KABIR: It is
15 challenging.

16 MAYOR FELLOWS: - your questions -

17 COUNCILMEMBER KABIR: That's fine.
18 That's fine.

19 MAYOR FELLOWS: - to things that
20 are in the record.

21 COUNCILMEMBER KABIR: Yes, I meant
22 to follow it.

1 MAYOR FELLOWS: All right, Mr.

2 Wojahn?

3 COUNCILMEMBER WOJAHN: First of
4 all, I just want to say I sympathize with you
5 being here tonight if I can speak candidly for
6 a second. My first time here in these
7 chambers was actually standing where you are
8 now trying to do the same thing, so I, I know
9 it's not an easy position and I appreciate you
10 coming down here and presenting your case to
11 us.

12 Just so you know, what we have to
13 look at is a series of rules, and we have to
14 look at the justification for whether or not
15 to grant this variance according to the rules
16 that we have to follow, and look at a set of
17 criteria.

18 And one of those criteria, just so
19 you understand, is whether or not your
20 property is different, is exceptional than the
21 properties around you. My question is, based
22 on, based on the record, based on what's in

1 the record, can you tell us what makes your
2 property different, exceptional, that might,
3 that might, that might justify us granting
4 your variance?

5 MAYOR FELLOWS: Again,
6 unfortunately, you'll have to answer with
7 things that are in the record.

8 MR. TEFFERA: Yes, I think I put
9 some pictures - we put some pictures very much
10 is the same. It is no different than the
11 other property, the other property across the
12 street which is a little bit farther to north,
13 has the same, you know, the same double park
14 space and the same kind of property.

15 And we were just, you know, we
16 knew - or we didn't know the whole thing when
17 we started doing this, we just - just tried
18 too much, not necessarily just if they - we
19 could ever to have access for two cars to be
20 parked, you know, side by side.

21 And it's, you know, the same
22 thing, it was very difficult for us to get

1 access to our cars, especially, you know, we
2 have aged - my mother-in-law, she is older.
3 She uses canes. Eventually she's going to
4 need more accessible just to, you know, we
5 don't know what will happen. So, this is some
6 kind of difficulties.

7 MS. FORD: This isn't relevant to
8 the case. The testimony about the mother-in-
9 law and the cane is outside of the record.
10 That wasn't part of the record.

11 MAYOR FELLOWS: Thank you, and
12 please -

13 COUNCILMEMBER WOJAHN: And maybe,
14 because I want to be more clear about what I'm
15 asking, and what you talked about is mostly
16 stuff that's unique to your situation and what
17 you have as individuals, but the first
18 criteria that we have to look at is about the
19 property, and about what makes a property
20 unique, exceptional from the other properties
21 in the area.

22 MR. TEFFERA: Okay, if I -

1 MAYOR FELLOWS: Just - so again,
2 to remind you -

3 MR. TEFFERA: Okay.

4 MAYOR FELLOWS: In your response,
5 you'll have to respond with things that were
6 in the record during the planning hearings.

7 MR. TEFFERA: I - We added some
8 addition to the property, and we lifted up the
9 value of the property. And at the same time,
10 we got a new, you know, assessed value from
11 the state in these last two weeks.

12 MS. FORD: Again, this is outside
13 of the record, the assessed value of the
14 property.

15 MR. TEFFERA: Well -

16 MAYOR FELLOWS: It is challenging,
17 I realize that, but - Ms. Mitchell?

18 COUNCILMEMBER MITCHELL: Thank
19 you, Mr. Mayor, and thank you again for coming
20 down to present your case to us so we have a
21 face to a name. But I guess my question I
22 would like to ask you is to be clear, you did

1 not understand the process for obtaining a
2 permit from the city to do this?

3 MR. TEFFERA: I swear we had no
4 idea on this.

5 MAYOR FELLOWS: Mr. Day?

6 COUNCILMEMBER DAY: So you had
7 gone to the county to get a county permit, and
8 the county did not clarify to you about any of
9 the other permits that you needed?

10 MR. TEFFERA: Yes, just all - any
11 of the work done in the property is through
12 the permits, you know, we need the - just
13 involve all kind of - yeah, this is a major
14 work we did on the property.

15 COUNCILMEMBER DAY: So when you
16 were doing the driveway, were you aware that
17 you needed -

18 MR. TEFFERA: No.

19 COUNCILMEMBER DAY: - a city
20 permit along with -

21 MR. TEFFERA: We told we are
22 working on existing driveway, and we didn't

1 have any idea on this. Even the people who
2 were working for us on that say they don't
3 have any idea. Even if we knew it, we just
4 block, you know, stop paying the payment, but
5 no, no idea.

6 MAYOR FELLOWS: Thank you, Mr.
7 Day. Other questions for the Applicant based
8 on the record? All right, thank you. I
9 believe - is there - I have forgotten what the
10 next step of this process is.

11 MS. FORD: At this point, if there
12 was anybody who wanted to testify in favor of
13 the APC decision, if there had been a neighbor
14 who was in favor of that or something like
15 that, that would be appropriate now. I don't
16 believe anybody here is because there was no
17 one else testifying that night.

18 So, you have the APC's
19 recommendation and exhibits before you, so at
20 this point, I think it would, unless there's
21 more questions, it would be appropriate to
22 deliberate and make a decision.

1 MAYOR FELLOWS: Okay, thank you,
2 and thank you very much for coming down here,
3 sir.

4 MR. TEFFERA: Thank you, thank you
5 very much.

6 MAYOR FELLOWS: So, open it to
7 deliberation.

8 COUNCILMEMBER KABIR: Yes, I -

9 MAYOR FELLOWS: Sure, Dr. Kabir?

10 COUNCILMEMBER KABIR: Okay. Yes,
11 it's very hard because it looks like based on
12 the testimony that we have - and I want to
13 thank actually the members of APC, I have a
14 huge respect for them, their hard work, and
15 just look at the volume of work they have done
16 and they spent quite a lot of time.

17 But it looks like the Applicant
18 was kind of, I would say he is innocent, and
19 I do support that because he didn't know the
20 rule, which has been actually noted in here.
21 And the contractor who worked on the case, he
22 did not tell him that the work needs to be

1 done, and he never actually had to go through
2 this. That's also in the record. I think I
3 saw that.

4 So I think a variance is a
5 variance. It's, you know, every variance case
6 is unique, and you know, I have a lot of
7 sympathy for this person, this resident, and
8 I don't think it would be creating any
9 precedence if we allow this small variance.

10 Because as, you know, based on the
11 pictures I have seen, there are quite a few
12 houses on the same street that do have
13 actually double driveways. So, I'm kind of
14 leaning towards supporting the variance. I
15 understand it's a unique case, but that's
16 based on the testimony.

17 MAYOR FELLOWS: All right, thank
18 you, Dr. Kabir. Mr. Wojahn, did I see your
19 hand?

20 COUNCILMEMBER WOJAHN: Yeah, is a
21 motion in order at this point, or how do we do
22 this?

1 MS. FORD: Yes, you could have a
2 motion, and if there is a second, then
3 discussion would be appropriate on that
4 motion.

5 COUNCILMEMBER WOJAHN: Okay, in
6 that case I'd like to move to affirm the APC's
7 recommendation to deny the two variances.

8 COUNCILMEMBER MITCHELL: Second.

9 MAYOR FELLOWS: I have a motion by
10 Mr. Wojahn, a second by Ms. Mitchell. And
11 further comments, Mr. Wojahn?

12 COUNCILMEMBER WOJAHN: Yes, I
13 mean, I agree with Mr. Kabir in a couple of
14 senses. I have a lot of sympathy for Mr. and
15 Mrs. Teffera, and it seems like what might
16 have happened here is an unscrupulous
17 contractor, which we have a number of in the
18 community, not following the proper
19 procedures, not directing Mr. Teffera and his
20 wife to the proper procedures.

21 But that doesn't change the facts
22 and the law that are before us. And as

1 essentially a judicial entity that has to
2 apply the law to the facts, we don't set the
3 policy in this case. It's not our job to set
4 the rules in this case. It's our job to take
5 the rules that exist and apply them to the
6 facts.

7 And I asked Mr. Teffera to discuss
8 the first criteria that we have to look at.
9 And the three criteria that we have, they're
10 all requirements. They're all things that we
11 have to, that we have to make sure are in
12 place in order to grant this variance.

13 The first one of those is that
14 this property has to be unique, exceptional
15 from other properties in the area. And it's
16 not. It doesn't have a unique size. It
17 doesn't have a unique shape. It doesn't have
18 any particular characteristics that are unique
19 about it.

20 And I appreciate that there are,
21 that there may be hardships here for some of
22 those that were discussed are off the record,

1 but just for Mr. Teffera to be able to go to
2 his car and with the traffic that exists, I
3 know that traffic is a problem on Nantucket,
4 there may be some hardships involved here.
5 But that's - that goes to another criteria,
6 and all three criteria have to be met.

7 So, I can't get past this first
8 one that says that the property has to have
9 exceptional and inherent - Thank you for
10 placing it up for me on the screen -
11 exceptional narrowness, shallowness or shape,
12 exceptional topographic conditions or other
13 extraordinary situations or conditions.

14 There's nothing that differs this
15 property from other properties in the
16 neighborhood. So, I just can't, with the
17 unanimous decision of the APC, 5-0 decision,
18 which is somewhat rare that they all agree on
19 something like this, I can't see us
20 overturning the decision that they made.

21 MAYOR FELLOWS: Thank you, Mr.
22 Wojahn. Mr. Afzali?

1 COUNCILMEMBER AFZALI: Thank you,
2 Mr. Mayor. First of all, again I'm going to
3 have to agree with Councilmember Wojahn.
4 Reading the decision, I feel the same way, if,
5 you know, you read through all the comments in
6 them. I feel the same way the board members
7 do, which is I really want to pass this.

8 I really want to grant them this
9 variance. And that's kind of a common theme
10 actually reading the comments is - I see why.
11 You just come across extremely likable. I
12 trust everything you're saying, and I want to
13 be able to do this for you.

14 And I feel like we're in the same
15 unfortunate situation that the board, the APC
16 was in, which is simply the laws are stated.
17 This just simply doesn't apply. I think
18 there's a reason for a 5-0 vote. Our job as
19 a council tonight is to really see if there's
20 anything that we saw in any of the testimony
21 that would make us believe that that 5-0 vote
22 was incorrect.

1 And I can't think of anything we
2 heard in the 30 minutes of testimony tonight
3 from either our staff or from the Applicant
4 that would make me think that all three of
5 these criteria are met and that the APC was
6 simply wrong.

7 I can't think of something that
8 would just say all three - And really if you
9 want to vote against the APC's decision, you
10 have to make an argument why I believe all
11 three of these conditions are incorrect, I
12 mean, why all three of these conditions are
13 met, why the APC was wrong, and assert some
14 basis of those on the record. I just don't
15 know how anyone can possibly make that
16 argument.

17 That being said, the one
18 possibility, and I really don't feel - I would
19 really give this to Councilmember Wojahn and
20 Fazlul to see what they think. The only thing
21 they could do to make me not vote for the
22 APC's decision tonight was if you two, as the

1 councilmembers for District 1, felt that there
2 was more information that needs to come out
3 and wanted to send this recommended back to
4 the APC.

5 I honestly don't think that would
6 change anything. I think that would just
7 probably take more time, create more
8 annoyances you have to go through, back
9 through this process again. I think it would
10 be the same result and just make the Applicant
11 go through a lot of work.

12 So, I don't think we should do it.
13 If you guys thinks there is information out
14 there that would truly make a difference on
15 this that did not come up, that's a
16 possibility. But besides that, I'm going to
17 have to agree with Councilmember Wojahn and
18 vote with him on this.

19 MAYOR FELLOWS: Thank you, Mr.
20 Afzali. Mr. Day?

21 COUNCILMEMBER DAY: This is tough
22 one because we are, as a former member of the

1 APC, I will tell you this is a tough one
2 because I've sat through these types of cases
3 before. I do think that there is a lot of
4 information that probably could be brought
5 out, and was not asked or was not searched for
6 in this situation.

7 This is tough because I look at
8 this from a former member of the board, and I
9 look at it as a councilmember, and as a
10 councilmember, I can't really see how to
11 change this short of remanding it back to the
12 APC. And I too would refer back to the two
13 council members from that district to have a
14 look at that and maybe consider that.

15 COUNCILMEMBER AFZALI: Before
16 continuing comments, can I ask Suellen a
17 question, just a clarification?

18 MAYOR FELLOWS: Yes.

19 COUNCILMEMBER AFZALI: Okay, thank
20 you, Mr. Mayor. I mean, again, I don't think
21 this is the right decision unless Patrick and
22 Fazlul really make, or Councilmembers Kabir

1 and Wojahn make a compelling case. If it's
2 reprimanded, is that just general, or do we
3 have to say we want this specific information?

4 MS. FERGUSON: If you are talking
5 about remanding it?

6 COUNCILMEMBER AFZALI: Remanding
7 it, sorry, I apologize.

8 MS. FERGUSON: It would be for
9 specific items. And I will note that the one
10 question Councilmember Kabir was getting to
11 would actually be irrelevant anyway -

12 COUNCILMEMBER AFZALI: Okay.

13 MS. FERGUSON: - the one about the
14 value of the work that was done. That is
15 what's called a self-imposed hardship, and
16 those don't count if you proceed without
17 permit, without getting the variance, and
18 you've imposed a hardship on yourself so that
19 you have to take the drive - part of the
20 driveway out, that doesn't count as a
21 hardship.

22 So that was one thing I wanted to

1 make sure you knew because I know that was a
2 question and we wouldn't let you go any
3 further on that. But it's mainly not just
4 it's not in the record, it's not relevant to
5 the record. We don't take testimony on that
6 at the APC level because it doesn't matter.

7 COUNCILMEMBER AFZALI: That is
8 very useful, thank you.

9 MAYOR FELLOWS: Thank you. Ms.
10 Stullich?

11 COUNCILMEMBER STULLICH: Yes, I, I
12 share the pain that I think maybe all of us
13 are feeling in this situation. It's hard when
14 you have an Applicant come before you and say,
15 or an Appellant, I'm sorry, in this case who
16 seems like a, you know, a good person, a good
17 citizen of the city, and you know, acted in
18 all innocence in doing something that was a
19 violation.

20 But the dilemma that we have is
21 that we aren't here to make decisions based on
22 how we feel about somebody, but based on the

1 facts of the case. I would argue against
2 remanding this back to the APC because I
3 believe that would just prolong the pain of
4 this case.

5 I don't see how it will be
6 possible to overcome criteria number one. The
7 property simply does not meet that criteria,
8 and there's really no way to say that it does.
9 And if we are to send it back, if we were to
10 send it back to the APC, I think they would
11 have a hard time knowing what to do other than
12 to make the same decision and then be back
13 here again.

14 I think it's hard when somebody,
15 you know, honestly is not aware of the law or
16 the code, but that doesn't really change the
17 facts of the situation. I know I, myself,
18 have made mistakes in my life that cost me
19 some money, and that was painful. But, you
20 know, it's nothing something that we can
21 really fix by saying -

22 We can't find that these criteria

1 are met when they're not met. So, as much as
2 I sympathize with the Applicant, I think - I
3 do also want to say that this requirement is
4 in place for a reason, like all requirements,
5 and that we sometimes have to implement and
6 adjudicate.

7 And residents do generally have
8 concerns about what is perceived as too much
9 of a property being turned into parking, and
10 turned into pavement, and impervious surface.
11 And those requirements are there because of
12 perception of policy makers that they're
13 wanted.

14 And if, you know, we didn't think
15 that that was - You know, if that's not a
16 value or a priority, then that should be
17 changed. But if it - You know, once there's
18 a requirement in place, we have to implement
19 it in an even-handed manner. I believe there
20 are good reasons for the requirement.

21 I think the problem here is just
22 that we have someone who wasn't aware of the

1 requirements, and I'm sure if he was he would
2 have acted differently. But, you know, the
3 facts are what they are. Thank you.

4 MAYOR FELLOWS: Thank you, Ms.
5 Stullich. Mr. Wojahn, did you want to comment
6 further on your motion?

7 COUNCILMEMBER WOJAHN: Yeah, well,
8 I just, I wanted to respond to the suggestion
9 about remanding it to the APC - not
10 suggestion, okay. Thank you.

11 (Laughter)

12 COUNCILMEMBER WOJAHN: Well, I do
13 appreciate the whatever you'd like to call it.

14 (Laughter)

15 COUNCILMEMBER WOJAHN: And I -
16 That was an approach that I recommend - that
17 I actually made a motion for in a previous
18 variance that came before us that was similar
19 to this case where it was a very sympathetic
20 appellant, a very difficult decision to make,
21 and very difficult to, in that case as well,
22 to apply the law to the facts and not grant

1 the variance.

2 But unfortunately, it had the same
3 result that Ms. Stulich just suggested, that
4 it basically just prolonged the, the difficult
5 decision making, and ended up with exactly the
6 same result. It went back to the APC, the APC
7 made the same recommendation, and then the
8 council ultimately went with the APC's
9 decision.

10 I just fail to see in this case
11 what issue there is remaining that the, that
12 the Appellant could still show to allow this
13 variance to be granted. He's - there - not to
14 say that there's always a perfect opportunity
15 to develop a record and develop someone's
16 case, but, but he has - he and his wife had
17 had an opportunity to put forward the three
18 criteria.

19 They were discussed with the
20 staff. I just don't know what at this point,
21 what other issue could cause us to reconsider
22 this. Again, it was a 5-0 decision by the, by

1 the APC, who had a much greater opportunity to
2 develop the record more fully than we do here.

3 And they, if you read the
4 transcripts, they did ask a lot of questions,
5 a lot of the things were going - the same
6 things were going through their mind that is
7 going - that are going through our mind now in
8 terms of really wanting to try to grant this
9 variance for the, for the Applicant, but just
10 not seeing anyway that it could be done.

11 So, I think if we remand it, we're
12 just going to be prolonging the inevitable.

13 MAYOR FELLOWS: Thank you, Mr.
14 Wojahn. Dr. Kabir, did you want to comment
15 further on the motion?

16 COUNCILMEMBER KABIR: I understand
17 that we all are trying to help, and kind of we
18 are helpless too. So, I have a question for
19 Suellen or Tony. I understand it's not on the
20 record, but in general terms, if - it's
21 nothing to do with this case, but in general -
22

1 MAYOR FELLOWS: Well, if it has
2 nothing to do with this case -

3 COUNCILMEMBER KABIR: I mean, not
4 particular -- I'm just giving - I'm asking,
5 actually. So, if the Applicant comes up with
6 some reason which is not in the record here,
7 can he go back to the APC with that reason?
8 For example, he was talking about his mother-
9 in-law who is very ill and he cannot walk
10 along. And I understand it's not on the
11 record, I recognize that. Can he go back?

12 MS. FERGUSON: Actually, I think
13 you're catching me a little flat footed on
14 this one. This is - We are implementing
15 county law here.

16 COUNCILMEMBER KABIR: Right.

17 MS. FERGUSON: And I believe that
18 a denial of this kind is - it fits for a
19 certain period of time. Is it - there's a
20 certain period of time during which you cannot
21 come back and ask for the same thing again,
22 but I'm not sure how long that is.

1 COUNCILMEMBER KABIR: Yeah.

2 MS. FERGUSON: I believe that that
3 is the case though. This is not our self-
4 imposed rules. These are - we're doing the
5 variances in concert with the county zoning
6 law, and so, the procedures that we adopt have
7 to be consistent with those.

8 COUNCILMEMBER KABIR: Yeah.

9 MS. FERGUSON: And that is my
10 recollection that it's - you are precluded
11 from applying again for a period of time.

12 MS. FORD: It's in Section 190-8
13 of the city code, and it says if the mayor and
14 council denies a variance, no further variance
15 covering the same specific subject on the same
16 property shall be filed within the following
17 12 month period. The second variance is also
18 denied.

19 No other subsequent variances
20 covering the same specific subject on the same
21 property shall be filed within each 18 month
22 period following the respective denial. So

1 there's a 12-month hiatus during which the
2 Applicant could not ask for the same variance.

3 COUNCILMEMBER KABIR: 12 months
4 from the denial?

5 MS. FORD: From the time that the
6 mayor and council would deny the variance.

7 COUNCILMEMBER KABIR: Okay. It's
8 on the city code, right?

9 MS. FORD: Correct, that's in
10 Section 190-8 of the city code.

11 COUNCILMEMBER KABIR: Okay. And
12 how soon he needs to take out the driveway?

13 MS. FORD: That would be a
14 question for the enforcement people. The APC
15 doesn't have the authority in a variance
16 request or denial to issue orders with regard
17 to building code violations, so that would be
18 something for Ms. Ripley's department to
19 determine, if it's a code violation, if it
20 needs to be addressed, right. And she would
21 work - her department would work with the
22 Applicant on the removal time.

1 COUNCILMEMBER KABIR: Okay.

2 MAYOR FELLOWS: Thank you, Dr.
3 Kabir. Any other comments? All right, all
4 those in favor of the motion, say aye.

5 MULTIPLE SPEAKERS: Aye.

6 MAYOR FELLOWS: Opposed?

7 COUNCILMEMBER KABIR: I'll
8 abstain.

9 MAYOR FELLOWS: I'm going to have
10 to do a roll call on that because I - So, Ms.
11 Mitchell?

12 COUNCILMEMBER MITCHELL: Aye.

13 MAYOR FELLOWS: Mr. Afzali?

14 COUNCILMEMBER AFZALI:
15 Unfortunately, aye.

16 MAYOR FELLOWS: All right. Mr.
17 Day?

18 COUNCILMEMBER DAY: Nay.

19 MAYOR FELLOWS: All right, Ms.
20 Stullich?

21 COUNCILMEMBER STULLICH: Aye.

22 MAYOR FELLOWS: All right, Mr.

1 Dennis?

2 COUNCILMEMBER DENNIS: Aye.

3 MAYOR FELLOWS: Mr. Catlin?

4 MR. CATLIN: Aye.

5 MAYOR FELLOWS: All right, Mr.

6 Wojahn?

7 COUNCILMEMBER WOJAHN: Aye.

8 COUNCILMEMBER KABIR: Actually, I
9 vote no.

10 MAYOR FELLOWS: And Dr. Kabir, no.
11 All right, so it's 6-2 in favor of the motion,
12 and so the appeal is denied.

13 Mr. Teffera, I just wanted to say
14 thank you for coming down here tonight. And
15 I am, I think we're all very sorry for your
16 having to go through what you're going
17 through. I do hope you work with our city
18 staff, and that somehow there's some good that
19 comes out of this, but I'm sure you're pretty
20 frustrated at this point. So, thank you again
21 for coming down.

22 And that concludes - actually, is

1 there anything else? I think that concludes
2 the -

3 MS. FORD: I'll excuse myself, and
4 thank everybody.

5 MAYOR FELLOWS: All right, well
6 thank -

7 (Laughter)

8 MS. FORD: My name is Susan Ford.

9 (Laughter)

10 SPEAKER: Yeah, we saw your name.

11 (Laughter)

12 MAYOR FELLOWS: Well it's very
13 nice to see you.

14 COUNCILMEMBER DAY: She does a
15 great job with the APC.

16 MAYOR FELLOWS: All right.

17 COUNCILMEMBER DAY: Believe me.

18 COUNCILMEMBER KABIR: Thank you.

19 MAYOR FELLOWS: This concludes the
20 - this hearing.

21 (Whereupon, the above-entitled
22 proceeding went off the record at 7:52 p.m.)

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In the matter of: Oral Argument in Case CPV-2013-04

Before: City of College Park, MD

Date: 08-13-13

Place: College Park, MD

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