

CITY OF COLLEGE PARK, MARYLAND

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CITY COUNCIL

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ORAL ARGUMENT CPD-2014-01

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TUESDAY
JANUARY 27, 2015

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The Council met in the 2nd Floor Council Chambers, City Hall, 4500 Knox Road, College Park, Maryland, at 7:00 p.m., Andrew M. Fellows, Mayor, presiding.

PRESENT

ANDREW M. FELLOWS, Mayor
 PATRICK L. WOJAHN, Councilmember, District 1
 S.M. FAZLUL KABIR, Councilmember, District 1
 P.J. BRENNAN, Councilmember, District 2
 MONROE S. DENNIS, Councilmember, District 2
 ROBERT W. DAY, SR., Councilmember, District 3
 STEPHANIE E. STULLICH, Councilmember,
 District 3
 DENISE C. MITCHELL, Councilmember, District 4,
 Mayor Pro Tem

ALSO PRESENT

MIRIAM BADER, Senior Planner
 COLE HOLOCKER, Student Liaison
 SUELLEN M. FERGUSON, City Attorney
 JOSEPH L. NAGRO, City Manager
 BILL GARDINER, Assistant City Manager
 JANEEN S. MILLER, City Clerk
 TERRY SCHUM, Director of Planning

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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Roll Call Vote on Motion to Remand 109

Adjourn

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

2 7:00 p.m.

3 MAYOR FELLOWS: Good evening and
4 welcome to the public hearing on the exception
5 filed for the recommendation of the College Park
6 Advisory Planning Commission in Case No. CPD-
7 2014-01.

8 This is related to the Applicant,
9 Steven Behr, the property at 4618 College Avenue.
10 The subjects are departure of 11.4 feet from the
11 required 22-foot driveway width.

12 The rules of procedure are going to
13 be, we're going to start with an orientation by
14 Planning staff on the subject.

15 Ms. Schum?

16 MS. SCHUM: Thank you, Mr. Mayor.

17 For the record, Terry Schum, Planning
18 Director.

19 I believe this evening we'd like to
20 start with an introduction and some explanation
21 by the City.

22 MS. FERGUSON: Good evening, Council.

1 This is a case about a house on
2 College Avenue. We wanted to do a little bit of
3 a free presentation because this is somewhat more
4 complicated than you usually run into.

5 This involves a house in the Historic
6 District which is also a historic site. It
7 involves a request for a change in use from
8 single-family home to a rooming house. So that
9 is something that is handled by Park and Planning
10 and by the County by issuance of a use and
11 occupancy permit through DPIE.

12 The second issue is that to be a
13 rooming house, the house must have a certain
14 number of parking spaces and it also must have a
15 certain width of driveway. It doesn't have the
16 width of driveway required so a departure was
17 requested. Now under the current zoning law, the
18 City handles departures of this type from design
19 standards.

20 The third agency that became involved
21 in this was the Historic Preservation Commission
22 because they are also requesting permission to

1 put parking spaces at the rear of this property,
2 which is an environmental setting and a
3 contributing resource. So an HAWP permit had to
4 be issued.

5 The way that it was figured that this
6 would go most efficiently was to go to the HPC
7 first. That is why it was before you a while
8 back to approve the environmental setting
9 changes, or not to approve them but to support
10 them. Now it's back to you on the departure.

11 There are also landscape manual
12 changes that are handled at the director level,
13 at Ms. Schum's level. So mainly you're looking
14 at the departure, which is to change the required
15 width of the driveway.

16 So that's the first thing we wanted to
17 explain as to why this is in front of you this
18 evening when you know that you've seen at least
19 part of this previously.

20 The second thing is that through no
21 fault of the Advisory Planning Commission who saw
22 this first, there was a failure to make one of

1 the findings below. It's the fourth finding,
2 that the departure will not impair the visual,
3 functional, or environmental quality or integrity
4 of the site or of the surrounding neighborhood.

5 You can take care of that at this
6 level. Having looked at this, I believe that
7 there is sufficient evidence in the record for
8 you to make that determination without having to
9 send it back to the APC for that purpose.

10 There is an argument in the record
11 that in fact the departure does not impair the
12 visual, functional, or environmental quality or
13 integrity. But you will have to make that
14 finding this evening. I think you have enough
15 evidence there to make that finding.

16 So that is the second explanation that
17 we wanted to make.

18 Then I think we had one about the
19 rooming house. The rooming house is allowed in
20 the R18 as a right.

21 You will recall that this property
22 applied for a two-family home through a special

1 exception in 2011. The City opposed that.

2 There was a proposal to have two
3 families, so that would be up to 10 unrelated
4 people in the house. The City opposed that and
5 the District Council agreed with the City, and
6 that was denied. That was for special exception
7 use.

8 Currently under the R18 zone a rooming
9 house is an allowed use. It allows for an
10 operator to have a rooming house with up to nine
11 persons in five guest rooms or suites of rooms on
12 the property. So that's the occupancy load
13 that's required or allowed, between four and nine
14 guests in five guest rooms or suites of rooms.

15 In the record that you have before
16 you, you will see the floor plans that have been
17 provided to you which are showing seven guest
18 rooms or suites of rooms plus a bedroom for the
19 operator.

20 So we wanted to explain this is not a
21 case that you have seen before. It's not an
22 everyday use in the zone so we wanted to give you

1 that background before we go into the merits of
2 this case.

3 MS. SCHUM: Okay. Thank you.

4 I'm going to try to give a brief
5 orientation to the case and show you some
6 exhibits that are part of the record and part of
7 the PowerPoint presentation that was made by
8 staff previously.

9 Then have you refer to the resolution
10 unless you want me to go into great detail when I
11 get to that point. I'll leave that up to you,
12 Mr. Mayor and Council.

13 Again, CPD-2014-01 is an application
14 for a departure from the design standards for a
15 commercial driveway which is required by the
16 Prince George's County zoning ordinance when the
17 property is used as a rooming house.

18 So this application, as the attorney
19 has indicated, was triggered because the property
20 owner filed for a use and occupancy permit with
21 Prince George's County to convert the use from a
22 single-family dwelling, which it is today, to a

1 rooming house use.

2 A rooming house is a permitted use but
3 requires a commercial parking lot with one
4 parking space required for each guest room and a
5 minimum 22-foot wide driveway, that's the
6 commercial standard, as well as compliance with
7 the landscape manual.

8 The specific request that's before you
9 tonight and was before the APC is to allow the
10 width of the driveway to be less than the
11 required 22 feet. The driveway currently is only
12 10.6 feet wide at its narrowest and therefore the
13 departure request is for 11.4 feet.

14 The subject property is located at
15 4618 College Avenue in the Old Town Historic
16 District. The Applicant is Steven Behr, who is
17 also the property owner.

18 If we look at this slide it shows the
19 location of the property on College Avenue
20 between Rhode Island Avenue and Norwich, excuse
21 me, and Hopkins Avenue as well as the zoning in
22 the block which is split between R18, R55, and

1 local commercial or C1 which is on the corner at
2 Rhode Island Avenue.

3 The property outlined in red right
4 here is only one lot and it measures 10,000
5 square feet.

6 On this slide it's a bird's-eye view
7 of the property. It indicates here the shared
8 driveway that exists between the subject
9 property, which is the blue dot right here.

10 This is the outline of the subject
11 property. It's a fairly narrow lot but it's
12 pretty deep in the back.

13 Miriam, you've got the better one.
14 Much better. Okay.

15 This is the shared driveway that
16 exists between the two houses here. Parking for
17 this house is shown here. Parking for the
18 subject property directly behind the house.
19 What's also shown is the adjacent property to the
20 east, which is a single-family rental property,
21 and the adjacent property to the west, which is
22 also a rooming house use.

1 On this slide you see the proposed
2 site plan with the layout of the commercial
3 parking lot with the required five parking
4 spaces, one for each guest room, and a gravel
5 driveway that varies in width at its narrowest
6 from 10.6 feet here to 22 feet in the rear yard.

7 These are the five parking spaces
8 including one handicapped space, which is
9 required.

10 The driveway in the rear is wide
11 enough to allow for two-way traffic. Of course
12 in the narrower section as you move towards the
13 front it's really only suitable for one-way
14 traffic at the same time.

15 The important thing to note I think
16 here is that the shared driveway under a joint
17 agreement with this adjoining property owner adds
18 an additional 6 feet in width to the existing
19 driveway.

20 However, under the rules of the county
21 that extra 6 feet in width cannot be included as
22 part of the application or counted as part of the

1 applicant's driveway. It can be considered when
2 addressing required findings. But for purposes
3 of the departure, the departure needs to be 11.4
4 feet.

5 It would be less if the county allowed
6 this portion of the driveway here belonging to
7 this property to be counted, but that's not the
8 case.

9 On this slide it's just a picture
10 showing how the existing driveway looks today.
11 You can see that it has encroached a bit into the
12 front yard of the property. So initially the
13 driveway was here. It has over time spread to
14 the west to create what's being used as a parking
15 area in this location. It wasn't part of the
16 original driveway.

17 This is just a bigger close-up. As
18 you move further into the site and go towards the
19 rear of the property you can see just how narrow
20 it is between the two houses.

21 If we're counting 10.6 feet from this
22 point here, this is a window well and the

1 structure that covers the window well, to this
2 part of the house here, the free and clear area
3 of the driveway is only 10.6 feet. So that's how
4 we calculated the numbers to get to the required
5 departure of 11.4 feet.

6 This is the landscape plan that was
7 submitted by the Applicant under the alternative
8 compliance provision, which really is a companion
9 application to this departure request and will
10 only be implemented if the departure is approved.

11 If the departure isn't granted and a
12 rooming house is not established then the
13 Applicant does not need to meet the requirements
14 of the landscape manual, and therefore this
15 particular plan would not be implemented.

16 What it does, it adds a hedge planting
17 along the edge of the driveway in the front yard
18 here to take back that area of creep that I
19 showed you earlier in the picture, and also to
20 replace some plantings at the perimeter of the
21 house, add some trees in the front yard.

22 It also replaces some existing

1 invasive bamboo in the rear property with trees
2 and will relocate a shed.

3 You don't need to take action on this
4 particular case tonight. I'm just providing it
5 to you for your information.

6 Finally what I've condensed on the
7 screen, it sort of shouts at you, are the
8 required findings that must be made in order to
9 grant a departure including the fourth and last
10 required finding, which the APC failed to find
11 because it wasn't in our code.

12 What the City attorney referred to
13 earlier, you have the ability to make that
14 finding if you so choose.

15 On December 4, 2014 the APC held a
16 public hearing on the case and voted 5-0
17 unanimously to recommend approval of the
18 departure with conditions based on their
19 determination that all the required findings were
20 met.

21 Their rationale is included in
22 Resolution 14-RR-13, Section 2, which was served

1 to all parties of record on December 19, 2014.

2 Their seven conditions relate to
3 additional site improvements including posting of
4 no parking signs so that cars don't park in the
5 driveway, only the parking lot in the rear.

6 That's the purpose of a commercial parking lot,
7 to leave the driveway free and clear.

8 And a particular interest, again as
9 the attorney has indicated, one of the conditions
10 asks the Applicant for a written determination
11 from Park and Planning and the Department of
12 Permits and Inspection and Enforcement (DPIE)
13 concerning what's permitted under a rooming
14 house.

15 In terms of the number of guests that
16 can be in the home or the number of occupants, if
17 there is a difference, the number of kitchens
18 that are permitted, and whether furnishings would
19 be required to be provided to the guests of the
20 rooming house.

21 We know now that the house currently
22 has eight bedrooms, four bathrooms, and three

1 kitchens.

2 When the resolution was mailed to the
3 parties of record there was in fact only one
4 party of record besides the Applicant in this
5 case here, who is represented by his attorney,
6 Bradley Farrar.

7 The other party of record was Kathy
8 Bryant. As an individual she also serves as
9 President of the Old Town Civic Association.
10 However, she did not attend the hearing but
11 submitted an email comment that was forwarded to
12 the APC and became a party of record. Ms. Bryant
13 is here tonight and I assume she wants to speak
14 on this case.

15 I will conclude my remarks now unless
16 you would like me to go into more detail about
17 the rationale for the APC's decision, that the
18 findings were met, or if you have questions about
19 the conditions or anything else regarding the
20 case. Other staff is here as well to answer.

21 MAYOR FELLOWS: Request from Mr.
22 Wojahn?

1 COUNCIL MEMBER WOJAHN: Thank you, Mr.
2 Mayor.

3 Thank you, Ms. Schum, for your
4 presentation.

5 My question is, I was wondering what
6 the effect would be if we were to reverse the
7 decision or the recommendation of the Advisory
8 Planning Commission and deny the departure, what
9 the options for the Applicant would be to come
10 into compliance with the zoning code.

11 MS. SCHUM: The Applicant as the house
12 is today currently complies with the zoning
13 ordinance. It has a use and occupancy permit as
14 a single-family home and it is registered with
15 the city as a rental unit. There are five
16 unrelated persons residing in the home.

17 COUNCIL MEMBER WOJAHN: Okay. So
18 basically the choice that the Applicant would
19 have would either be to figure out a way to widen
20 the driveway, or to just keep on operating and
21 not be a rooming house, or keep the house as it
22 currently is and not have to widen the driveway?

1 MS. SCHUM: That's correct.

2 COUNCIL MEMBER WOJAHN: Okay. Thanks.

3 MS. SCHUM: As is, the driveway
4 doesn't need to be widened.

5 The departure of course is before you
6 because the Applicant does not have enough room
7 to widen the driveway to meet the standard.

8 COUNCIL MEMBER WOJAHN: All right.
9 Thank you.

10 MAYOR FELLOWS: Other questions or
11 additional information?

12 All right. Thank you.

13 MS. SCHUM: Thank you.

14 MAYOR FELLOWS: I'm sorry. Mr. Day?

15 COUNCIL MEMBER DAY: Thank you, Mr.
16 Mayor.

17 Ms. Schum, has the Applicant agreed to
18 all of the requirements that have been put in
19 front of him from all the requests from the
20 different committees and groups that have
21 reviewed this?

22 MS. SCHUM: The Applicant has agreed

1 to the conditions that are contained in the
2 resolution of the APC. Those are the seven
3 conditions, including alternative compliance
4 which is a separate case.

5 As I explained, the additional
6 landscaping and improvements to the driveway and
7 yard would not be required unless the departure
8 is approved. Because the use as a rooming house
9 requires two things, the commercial parking lot
10 and driveway and compliance with the landscape
11 manual.

12 So the plan we showed you is
13 acceptable for alternative compliance. It's
14 impossible for this property to meet landscape
15 buffers and screening just given the sheer
16 proximity of the houses, how close they are to
17 one another.

18 Alternative compliance is what you
19 apply for if it's impossible to achieve
20 compliance. And then it's a negotiation, really.

21 So staff and the APC -- well, this is
22 really up to staff although we shared this

1 information with APC. That's why you see it in
2 the record. Staff felt that the improvements
3 shown on the landscape plan were good and
4 acceptable, and therefore approvable by staff.

5 MAYOR FELLOWS: All right. Thank you.

6 Ms. Stullich?

7 COUNCIL MEMBER STULLICH: Thank you,
8 Mr. Mayor.

9 With respect to the question about
10 whether the owner is complying with everything
11 that's been asked, one of the things that
12 happened to this property in 1992 or sometime
13 after 1992, the owner at that time cleared the
14 rear yard of grass and vegetation and covered it
15 completely with gravel in order to allow more
16 parking spaces for the higher occupancy with the
17 addition that he built, which shouldn't have been
18 done.

19 So what we have is a backyard that was
20 done inappropriately without approval and that
21 has not been corrected in all of this time,
22 including the time that Mr. Behr has owned the

1 property.

2 Is that correct?

3 MS. SCHUM: I might defer to the
4 attorney.

5 I don't know that this Applicant, who
6 is not the property owner that you're referencing
7 because the property has changed hands, I don't
8 know that there is a requirement in place
9 currently for this property owner and Applicant
10 to do that. But I'll defer to the attorney on
11 that.

12 MS. FERGUSON: Your recollection is
13 correct. The environmental setting originally
14 was a regular backyard with grass. Without
15 getting a historic area work permit, the prior
16 owner graveled the backyard.

17 Part of the application that's been
18 made at this time for the use and occupancy
19 permit for a rooming house includes an
20 application, which is now actually not in place
21 because it expired. But there is an application
22 for a building permit to put the five parking

1 spaces in the backyard and also to do various
2 landscaping changes.

3 That is part of what went to the
4 Historic Preservation Commission for review as to
5 whether this change to the environmental setting
6 would be acceptable to them. I believe that you
7 have that decision in the packet.

8 They agreed that with certain changes
9 it would be okay to have the five parking spaces
10 in the backyard. So that issue about the HPC
11 compliance has been taken care of.

12 That's what you voted on the last time
13 when you were dealing with this. That was that
14 request.

15 COUNCIL MEMBER STULLICH: Thank you.

16 MAYOR FELLOWS: Other questions?

17 All right. We next go to the oral
18 argument against the recommendation.

19 I believe Ms. Stulich -- will you be
20 making the oral argument or do we have someone
21 who is prepared to?

22 MS. FERGUSON: The Council Member I

1 believe may have some questions of her own. But
2 the way that we should proceed at this point is
3 anyone who is in opposition to this below would
4 speak.

5 The Council Member has the right to
6 call it up if she does not believe that the
7 criteria were met or has other questions based on
8 the record.

9 Then you of course would vote as to
10 whether to accept the recommendation of the APC,
11 modify it, or remand it for further fact-finding.
12 So that's what you will do.

13 The Council Member would not be making
14 a presentation, Council Members would not. It's
15 whoever was party of record below that would be
16 presenting. And then questions from Council can
17 be taken.

18 MAYOR FELLOWS: Ms. Stullich?

19 COUNCIL MEMBER STULLICH: If I may ask
20 the attorney, would it be appropriate at this
21 time for me to state the required findings that I
22 believe are not met?

1 MS. FERGUSON: The order of
2 presentation is for the opposition to speak first
3 and then for the Applicant to speak next. Then
4 you will have heard all sides of the issue.

5 Then if you have additional questions
6 about whether one of the required findings, which
7 are up on the screen, have been met and/or other
8 questions based on what you've heard and what's
9 in the record, and the record is pretty extensive
10 here, then you can ask those questions then.

11 COUNCIL MEMBER STULLICH: Okay. Thank
12 you.

13 MAYOR FELLOWS: Ms. Bryant? Welcome.
14 Thank you.

15 MS. BRYANT: Kathy Bryant, 7406
16 Columbia Avenue.

17 This is at least the third time I have
18 appeared before the City Council and in Upper
19 Marlboro on this issue in front of Mr. Behr.

20 Frankly, as a resident over the last
21 10 years, I'm kind of offended that I have to
22 keep opposing this issue. I have opposed his

1 desire to change this property every single time.

2 Even though I'm speaking as a
3 resident, I feel like I probably represent Old
4 Town. Because we cannot tolerate the increase of
5 number of students or anybody in this house as a
6 rooming house, the influx of more people.

7 I want to say just so the Council
8 knows this, do you all know who this person is?
9 (Speaker points to a photo) This is Mike Jacobs,
10 who was a former mayor of College Park.

11 I don't know if everybody lived here
12 when Mike Jacobs was mayor of College Park. I
13 did.

14 Mike Jacobs and I had many
15 conversations. Mike Jacobs told me over and over
16 and over that College Park has no control over
17 its zoning.

18 And he said because we have no control
19 over our zoning with Prince George's County, we
20 want to make sure we do not give up any land to
21 variances. Because then we lose total control
22 over zoning in College Park because that's the

1 only zoning control we have.

2 So I am here tonight to oppose what
3 Mr. Behr is proposing again for at least the
4 third time.

5 I just want to add that in the 1980s
6 I attended some hearings in Upper Marlboro that
7 were supposed to downzone this specific property
8 and other properties in Old Town College Park
9 from R18 to R55.

10 For some reason it's not on record.
11 But I attended hearings, other residents attended
12 hearings that were supposed to downzone these
13 properties to R55 single-family.

14 This property has operated as a
15 single-family residence for all these years.

16 I do not support an increase of this
17 property into a rooming house by approving the
18 variance. So bottom line, I oppose the variance
19 request.

20 MAYOR FELLOWS: Thank you.

21 I don't believe there's any other
22 parties of record.

1 Mr. Schnabel, are you a party of
2 record?

3 COUNCIL MEMBER STULLICH: He is not.

4 MAYOR FELLOWS: Okay. So that
5 concludes the oral argument against the
6 recommendation of the Advisory Planning
7 Commission.

8 Next is the oral argument in favor of
9 the recommendation, if you would like to make
10 that.

11 PARTICIPANT: Do we go at a separate
12 time?

13 MAYOR FELLOWS: All at one time.

14 MAYOR PRO TEM MITCHELL: Excuse me?

15 MAYOR FELLOWS: Pardon me?

16 MAYOR PRO TEM MITCHELL:
17 Clarification, both parties have one person
18 speak?

19 MS. FERGUSON: No. The question was,
20 is Mr. Behr's time separate from his attorney's
21 time. The answer to that is no, it's the same.
22 It's all one.

1 MAYOR FELLOWS: The earlier oral
2 argument was limited to 30 minutes. The rebuttal
3 is limited to 10 minutes.

4 APPLICANT BEHR: Good evening,
5 everyone, Mayor, Council Members. I really
6 appreciate your time tonight.

7 I would like to say that I feel, as
8 the Applicant, in this situation I have done
9 everything in my power to make sure that this
10 property has met every level of concern from all
11 parties involved, from the LAC to the APC, the
12 Historic Commission, the County, and now of
13 course the City Council.

14 I respect everybody's feedback on this
15 project, especially the opposition. I am sorry
16 that you feel that way about my property.

17 I took it over in 2006 and I didn't
18 create a lot of these issues. I've been trying
19 to correct as much as I can.

20 This has been going on since I bought
21 the property. This would represent a final
22 resolution of this entire thing in a way that is

1 I think beneficial both to the property itself
2 and to the City of College Park.

3 The improvements that we're making
4 with this plan are incredible. The landscaping
5 is going to be tremendous.

6 The limitation on the parking is
7 something that everybody wants.

8 The property as a whole is going to
9 have more control over it because as a rooming
10 house you have to have an authorized person there
11 monitoring the situation. So it's not like it's
12 a single-family home and there's no control.

13 I believe that this is really going to
14 be in favor of everyone involved. I personally
15 have made the commitment to do whatever is in my
16 power to make sure that my property is a benefit
17 to the City and not a hindrance.

18 I'd be glad to work with you as well
19 if you feel that there's some improvements that
20 can be made. Because I really would like to put
21 this whole issue to rest and really get it
22 resolved in a way that's mutually beneficial to

1 everyone.

2 In regards to the reason we're coming
3 here today, it's a carry-on from the fact that I
4 didn't request this change just to request this
5 change.

6 There was a zoning violation on the
7 back of the property and the only way that I
8 could resolve that issue that was done way before
9 I owned the property was to get the rooming house
10 designation. There was not enough land or lot
11 coverage otherwise.

12 So that's why I'm here today. This
13 was the best possible solution to the scenario.

14 I really hope that everybody comes
15 down in favor of this and that we can move on and
16 continue to make the property beneficial to the
17 community.

18 Thank you all.

19 MAYOR FELLOWS: Thank you.

20 We'll continue. This is still within
21 the 10 minutes.

22 MR. FARRAR: Good evening, Mr. Mayor

1 and members of the City Council.

2 For the record, my name is Bradley
3 Farrar. I'm the attorney for Mr. Steven Behr.

4 For the record, my address is 4614
5 Clemson Road in College Park.

6 As Mr. Behr discussed briefly, the use
7 of the home as a rooming house is allowed in the
8 R18 zone.

9 As such, as it's planned and
10 programmed as we worked with the staff, listened
11 to the LAC, listened to the APC and came up with
12 a plan to address all of their concerns and put
13 forth a program that is beneficial to the
14 neighborhood. It resolves and addresses a number
15 of issues including the issue about the parking
16 lot in the back of the home.

17 As Mr. Behr pointed out, he did
18 receive a zoning violation. Once the City
19 Council approves this, that issue would be
20 resolved. Again, it would be a permitted use
21 within the R18 zone.

22 With respect to issues with the Civic

1 Association, for the record, at the APC it was
2 addressed and it was noted that there was not any
3 opposition from the Civic Association. Again,
4 there wasn't general opposition.

5 MAYOR FELLOWS: There will be an
6 opportunity for rebuttal.

7 MR. FARRAR: The record was clear on
8 page 132. I point your attention to page 132 of
9 the APC hearing, beginning with line 1 where Mr.
10 McFadden and Ms. Cook have discussion about
11 whether or not the Old Town Civic Association was
12 in opposition.

13 They say that there has been no email
14 chatter. And then Mr. McFadden says that he is
15 on the LAC and they unanimously approved the plan
16 with some comments that are included in the staff
17 report.

18 I was kind of surprised that I didn't
19 see anybody from the neighborhood there then.

20 Once again, they are not here tonight
21 so I don't think that they are after them with
22 pitchforks. I take that to mean that this is a

1 plan that the Civic Association was not in
2 opposition to, that they found it to be
3 acceptable in all respects and terms.

4 Therefore I would again urge the City
5 Council to approve the APC's recommendation.

6 With that, I have no further comments.

7 MAYOR FELLOWS: Thank you.

8 We'll just give you an opportunity to
9 ask questions of that argument.

10 Any Council Members wishing to ask
11 questions?

12 Mr. Wojahn?

13 COUNCIL MEMBER WOJAHN: I guess I'm a
14 little bit confused. After the staff
15 presentation we asked what the results would be
16 if we denied this tonight. The response as I
17 understand it was that they could keep on
18 operating the house as it currently is.

19 But now the Applicant is saying that
20 they got a violation for having the parking lot
21 in the back.

22 Is the parking lot in the back

1 currently in violation of the zoning ordinance as
2 it is?

3 MS. FERGUSON: The parking lot was a
4 violation of the zoning ordinance because the
5 environmental setting was changed without a
6 historic area work permit. So whatever happens
7 with the use of this house, that was a separate
8 problem which was known back in 2011 when the
9 special exception was denied.

10 The District Council noted it at the
11 time that the environmental setting had been
12 changed without getting a proper permit.

13 They do now have a proper permit to
14 have -- well, they've applied for two things.
15 One is a new use, which is the rooming house, and
16 the second is a building permit for the back, for
17 the parking spaces. Those really are separate
18 things.

19 There's five because that's what would
20 be required for a rooming house. If it retained
21 the single-family home it would only require two.
22 But at this point as far as I understand it there

1 are two different items.

2 The HPC has approved the placing of
3 the five parking spaces in the backyard and so
4 that building permit would issue. But that's
5 separate from the use as a rooming house, which
6 is the departure that you're looking at this
7 evening. And that's needed to change the 22-foot
8 wide required driveway.

9 COUNCIL MEMBER WOJAHN: Right. But
10 the use as a rooming house is not necessarily
11 related to the parking lot in the back?

12 MS. FERGUSON: As far as I understand
13 it, it would be related in the way that there are
14 five parking spaces required for a rooming house.

15 That would have been one of the
16 reasons that Mr. Behr would have given at the HPC
17 as to why he needed five in the backyard instead
18 of two.

19 COUNCIL MEMBER WOJAHN: Okay.

20 MS. FERGUSON: Unless someone else
21 goes back in and starts arguing about that, I
22 assume that permit is going to issue. That's the

1 approval for the permit. There are two pieces of
2 this.

3 So, no. That zoning violation notice
4 wasn't related to the use of the property. It
5 was related to the fact that they had actually
6 destroyed the environmental setting in the back
7 without getting a permit for it.

8 COUNCIL MEMBER WOJAHN: Okay. All
9 right. Thank you.

10 MAYOR FELLOWS: Ms. Stullich?

11 COUNCIL MEMBER STULLICH: Thank you,
12 Mr. Mayor.

13 I have a number of questions that I'd
14 like to ask of Mr. Behr.

15 APPLICANT BEHR: Sure.

16 COUNCIL MEMBER STULLICH: If you could
17 come up to the podium there?

18 APPLICANT BEHR: Yes.

19 COUNCIL MEMBER STULLICH: Thank you,
20 Mr. Behr.

21 I'm looking at Exhibit 17.

22 It's not up there. I don't know if

1 you can put it up there.

2 In any case, it shows the floor plan
3 for the first, second, and third floors.

4 APPLICANT BEHR: Okay. Great.

5 COUNCIL MEMBER STULLICH: With a total
6 of eight bedrooms, nine beds, plus an operator
7 bed.

8 Does this mean a total occupancy of 10
9 occupants altogether in this house? That would
10 mean the maximum number of occupants is 10?

11 APPLICANT BEHR: As far as I have it
12 configured, that's what it would be. If the
13 operator has a wife, I couldn't say for that.
14 Zoning allows that. But we're not expecting it
15 to be any more than that, nine guests and the
16 owner/occupant.

17 COUNCIL MEMBER STULLICH: The
18 owner/occupant?

19 APPLICANT BEHR: The owner or
20 occupant. I could be in there eventually one
21 day, or I can have an operator running the place
22 and that would be their room.

1 COUNCIL MEMBER STULLICH: What kind of
2 person would this operator be?

3 APPLICANT BEHR: It would be someone
4 that I approve and I sign an agreement with who
5 can run the place and will have the
6 responsibilities of operating the facility under
7 the rooming house regulations.

8 COUNCIL MEMBER STULLICH: Going to the
9 driveway specifically, it's true that the width
10 of the driveway at its narrowest point between
11 your house, 4618 College, and the adjacent house,
12 4620 College, the distance between those two
13 houses is 16.6 feet, is that correct?

14 APPLICANT BEHR: I believe so. But
15 it's a shared driveway.

16 COUNCIL MEMBER STULLICH: Right. So
17 you own 10.6 feet out of the 16.6 total feet?

18 APPLICANT BEHR: I believe that's how
19 it must be set up. I don't have the exact
20 dimensions myself, Stephanie. But that's what
21 the County determined so we're going by what the
22 County is determining.

1 They determined that we needed a
2 variance of at least -- I think the City
3 increased it a little bit. But it was around
4 that amount, yes.

5 COUNCIL MEMBER STULLICH: Okay. The
6 other 6 feet then is owned by the adjacent
7 property owner and the record shows that you're
8 able to use that 6 feet through a joint driveway
9 agreement, which we have in our packets here?

10 APPLICANT BEHR: Yes. That was put in
11 place by Texier back before, in 1992 sometime I
12 believe or before.

13 COUNCIL MEMBER STULLICH: So the
14 residents of the house next door, 4620, they can
15 use your 10.6 feet and you can use their 6.0 feet
16 but they can use in fact the full length and
17 breadth of the drive part of the driveway that
18 you own?

19 APPLICANT BEHR: Correct.

20 COUNCIL MEMBER STULLICH: Is that
21 right?

22 APPLICANT BEHR: Yes, indeed. That's

1 worked out very well for us ever since I've owned
2 the place.

3 COUNCIL MEMBER STULLICH: How do we
4 know what kind of usage will be made of the
5 portion of the driveway by the residents of --
6 I'm sorry. How do we know what usage will be
7 made of the entire driveway by the residents of
8 4620?

9 APPLICANT BEHR: I cannot control what
10 the folks in 4620 do. But I can tell you from
11 history that nobody has parked along that side of
12 the driveway at all during the time of me owning
13 the place.

14 MS. FERGUSON: Mr. Behr can only
15 respond based on what's in the record. I don't
16 think there are any answers to that particular
17 question in this record.

18 MAYOR FELLOWS: Thank you.

19 COUNCIL MEMBER STULLICH: Okay. So
20 two houses and it seems unclear as to how many
21 people will be coming and going in this driveway.

22 The decision of the APC requires that

1 no parking signs will be posted along the
2 driveway on the west side, on your side of the
3 driveway.

4 APPLICANT BEHR: Correct.

5 COUNCIL MEMBER STULLICH: But there's
6 not a requirement for no parking signs on the
7 other side, the 4620 side of the driveway because
8 that's a separate property, is that correct?

9 APPLICANT BEHR: That's correct.

10 COUNCIL MEMBER STULLICH: And 4620
11 College Avenue is not a part of this application?

12 APPLICANT BEHR: Correct. I do not
13 own that property so there is no way I would be
14 able to control any of their land or their
15 property.

16 COUNCIL MEMBER STULLICH: Right.
17 Okay. So signs couldn't be required or enforced
18 there.

19 APPLICANT BEHR: Not by me.

20 COUNCIL MEMBER STULLICH: Right. So
21 you don't have any plan to resolve that issue or
22 to address that issue?

1 APPLICANT BEHR: As far as I know
2 there is no issue because there is no parking
3 that has historically occurred along that
4 driveway on their side.

5 MS. FERGUSON: We're going outside of
6 the record. I know the Council Member is asking
7 you a question about whether there is anything in
8 this record to resolve that issue. And from the
9 record, there isn't.

10 Mr. Behr is now testifying outside of
11 that record. He wouldn't be allowed to do that.

12 COUNCIL MEMBER STULLICH: Okay. The
13 APC's recommendation to not allow parking in the
14 driveway, wouldn't that violate the terms of your
15 joint driveway agreement by limiting the use of
16 the driveway by 4620 residents, which you've said
17 you can't control?

18 APPLICANT BEHR: We aren't limiting
19 the use. They have full reign to drive in and
20 out of that driveway as the shared use allows.

21 COUNCIL MEMBER STULLICH: The
22 limitation is on the ability to use the driveway

1 for parking.

2 APPLICANT BEHR: My side of the
3 driveway, there will be no parking there. I can
4 tell you that as far as I know there wouldn't be
5 on the other side either.

6 You can ask that owner if you would
7 like. But I don't have any control over that. I
8 have no intentions of parking any cars along
9 either side of the driveway.

10 COUNCIL MEMBER STULLICH: Right. I
11 think the issue with so many houses in Old Town
12 is not just what the property owner's intention
13 is but what happens.

14 APPLICANT BEHR: Understandable.

15 COUNCIL MEMBER STULLICH: And what is
16 difficult to control.

17 One of the criteria is that the
18 departure has to be necessary to alleviate
19 circumstances that are unique to the subject use
20 given its nature at this location, or alleviate
21 circumstances which are prevalent in the
22 District. So this is criteria number three.

1 The width of the frontage of this
2 property which is 50 feet, is that unique in this
3 neighborhood?

4 APPLICANT BEHR: The unique portion is
5 the fact that the driveway is so narrow.

6 And the request in for the rooming
7 house that we have, it requires a larger width of
8 driveway. Barring tearing up the whole front
9 yard to create that width and create an entry to
10 the driveway, there is no way to do that.

11 The best way to go was to get a
12 departure to keep the historical nature of the
13 home from the front looking right and to keep the
14 driveway narrow, as is the way in College Park.

15 COUNCIL MEMBER STULLICH: The
16 alternative is to occupy it with five occupants
17 as it has been for -- no more than five unrelated
18 persons as it has been for most of its history.

19 MR. FARRAR: That certainly is an
20 alternative.

21 But again, what's unique is within the
22 R18 zone a lot of this size. It's in the staff

1 report. Having a lot of this size and being
2 designated as an R18 lot. A rooming house is a
3 permitted use by right within the R18 zone. So
4 that would be the unique character.

5 Being that it's clustered in a
6 residential neighborhood, this departure is
7 necessary because it preserves the residential
8 character of the neighborhood.

9 Some of the alternatives that would be
10 necessary to have the permitted use would not
11 preserve the residential character and the charm
12 and the aesthetics of the Old Town neighborhood.

13 COUNCIL MEMBER STULLICH: The rooming
14 house is permitted by right if the property meets
15 the required conditions. One of the requirements
16 is a 22-foot wide driveway.

17 So as I think you're alluding to, it's
18 not a large property to hold a large number of
19 people and a large number of cars. It's a
20 standard 50-foot wide lot.

21 It is not a right to have a rooming
22 house no matter what. It's a right to have a

1 rooming house if you meet all of the criteria.

2 APPLICANT BEHR: Stephanie, if I may,
3 the other unique condition here is the lot
4 coverage.

5 The reason that we went this route was
6 the zoning violation that was brought upon us
7 through the whole exemption process and resulted
8 in a zoning violation for the backyard.

9 That meant the only way we can get the
10 backyard resolved is to go through a rooming
11 house if I want to maintain any parking
12 whatsoever for the house. Otherwise there would
13 be no parking. All the parking that's there
14 would end up going on the street.

15 COUNCIL MEMBER STULLICH: I think
16 that's -- I'm sorry. Ms. Ferguson?

17 MS. FERGUSON: We're going beyond the
18 record here. You do have the record of that
19 determination in your packet. You'll need to
20 look at that for this. Mr. Behr's testimony
21 about that isn't there, isn't in your record.

22 COUNCIL MEMBER STULLICH: Right. What

1 I'm asking about is where in the record is
2 evidence that this change would alleviate
3 circumstances that are special to the subject use
4 given its nature at this location or alleviate
5 circumstances which were prevalent in the
6 District. That's what I'm not seeing.

7 MR. FARRAR: I think that staff
8 delineated that in their recommendation. And the
9 APC agreed to that as well. It's in the record.

10 COUNCIL MEMBER STULLICH: Okay. I
11 have no further questions at this time.

12 MAYOR FELLOWS: All right. Thank you.

13 For the hearing, we've had the oral
14 arguments against the recommendation and the oral
15 argument in favor of the recommendation.

16 Now we come to the rebuttal.

17 Ms. Bryant, you have 10 minutes to
18 rebut the argument you just heard. Just remember
19 you need to keep to things that are in the
20 record.

21 MS. BRYANT: Thank you.

22 I did not misrepresent myself. I have

1 appeared tonight as a resident.

2 I have appeared against Mr. Behr in
3 opposition at every single public hearing that
4 has been held regarding his property in Upper
5 Marlboro and here. But I could not come to the
6 APC meeting because I had to work that night. I
7 did send an email.

8 I feel like I am not getting advanced
9 notice on these meetings far enough ahead to make
10 arrangements to be able to always attend with my
11 work schedule. I'm just saying that I care about
12 the neighborhood and I want to appear on these
13 issues.

14 I think that this is a very, very
15 important issue for Old Town and all of College
16 Park. The departure just is not what is wanted
17 in the Historic District nature of Old Town
18 College Park or the kind of neighborhood where we
19 live.

20 If he is allowed to build a rooming
21 house with nine, 10 people or even more later,
22 that just adds density that our neighborhood

1 cannot tolerate. Those strains are already very
2 difficult on our neighborhood.

3 He said that he could have an
4 owner/operator live in the house, the rooming
5 house. But there's no guarantee.

6 I have been lied to by many landlords,
7 by owners of properties who have told me -- I had
8 a guy build a house on Columbia Avenue, a little
9 box house. And he told me his daughter was going
10 to live there for four years while she went to
11 college and then he was going to live there. He
12 never lived there. I don't think he owns the
13 property now.

14 MS. FERGUSON: You're going -- I'm
15 sorry.

16 MS. BRYANT: Am I off the record?

17 MS. FERGUSON: Way off.

18 MS. BRYANT: I'm sorry, Suellen.

19 Okay. I'm just -- I have to illustrate --
20 anyway.

21 This is not in the nature of Old Town
22 College Park. This property was never intended

1 to be a rooming house.

2 I want to say again that during public
3 hearings in Upper Marlboro this property was
4 recommended to be downgraded to R55. It was not
5 supposed to stay R18. A lot of the old
6 properties were supposed to be downgraded to R55.

7 This has not been used as a rooming
8 house. When I was growing up here it was always
9 a single family.

10 I just want to make sure I say what I
11 need to say.

12 MAYOR FELLOWS: Do you have a
13 transcript of the hearing?

14 MS. BRYANT: No, I don't.

15 MAYOR FELLOWS: Oh. Well, that makes
16 it hard for you to know what was in the hearing.

17 MS. BRYANT: Yes, it does. I'm just
18 going by my memory of attending public hearings.

19 MAYOR FELLOWS: For the purpose of
20 this hearing, it really is only supposed to be in
21 response to things that were in the hearing at
22 the APC hearing.

1 MS. BRYANT: Yes. All the
2 correspondence I've received had nothing about --
3 no information about that. I read everything
4 that was sent to me but I did not have any
5 information about the hearing.

6 I don't see how Mr. Behr can say this
7 is going to add to residential charm and
8 character. This is a historic district.

9 To increase the number of residents in
10 a rooming house so that a large enough piece of
11 building to have residents -- I'm sorry. To
12 increase the size of the building to accommodate
13 that many residents is not going to add to the
14 charm of the neighborhood.

15 He says he'll keep the landscape. You
16 can only have so many things on a piece of
17 property.

18 So I disagree with him. It is our
19 experience just by numerical numbers, if you
20 increase the number of people you downgrade the
21 charm of the neighborhood.

22 I don't think there is a right to have

1 a rooming house in this zone. I live in an R55.
2 There is not a right to have a rooming house.
3 That is just a zoning name but it's not a right
4 to have a rooming house.

5 You don't have to expand to the
6 maximum width of a property to increase the
7 number of residents.

8 I hope I've conveyed how I feel about
9 this. I live in this neighborhood. It upsets me
10 terribly that this might happen.

11 I don't believe that Mr. Behr really
12 wants to add to the charm of the neighborhood. I
13 feel like the departure will downgrade the
14 neighborhood, maybe incrementally but I think it
15 will downgrade the neighborhood and the charm
16 that's already here.

17 MAYOR FELLOWS: All right. Thank you,
18 Ms. Bryant.

19 Ms. Stullich?

20 COUNCIL MEMBER STULLICH: I just
21 wanted to clarify a point. Mr. Behr is not
22 asking to expand the house. The house was

1 already expanded some years ago. He's trying to
2 change the use of the house but not to expand it.

3 MS. BRYANT: But I understand that by
4 changing the use of the house or the width of the
5 driveway that it might allow more people to live
6 there.

7 COUNCIL MEMBER STULLICH: Yes.

8 MS. BRYANT: Thank you. That's what
9 I'm trying to address not having received any
10 literature. I looked over my attachments several
11 times and I didn't receive anything saying
12 anything about this.

13 I wasn't 100 percent sure how that
14 went but I knew that his intent was to increase
15 the number of people. That's what's always been
16 his intent at every hearing I've gone to. So
17 that's why I'm here opposing this.

18 MAYOR FELLOWS: All right.

19 COUNCIL MEMBER STULLICH: Thank you.

20 MAYOR FELLOWS: Ms. Mitchell, did I
21 see your hand?

22 MAYOR PRO TEM MITCHELL: Yes. Thank

1 you, Mr. Mayor.

2 Ms. Bryant, thank you for coming down.
3 I just want to make sure that I'm clear. I know
4 you said tonight you're representing yourself as
5 an individual.

6 But in regards to the Civic
7 Association's stance, they were in opposition to
8 this?

9 MS. BRYANT: I am not representing the
10 Civic Association tonight.

11 I started attending these hearings
12 back -- the first one probably was 2006, around
13 that time, as a resident. I somehow learned
14 about this and I went to Upper Marlboro by
15 myself. I went as a resident protesting what Mr.
16 Behr wanted to do. So I'm a party of record from
17 back then.

18 I am always attending hearings against
19 Mr. Behr because I am a concerned resident.

20 I cannot -- even if I'd had a Civic
21 Association meeting, they are not parties of
22 record because this happened long before I was

1 president of the Civic Association. We've gone
2 through many incarnations in the Civic
3 Association. So I'm just attending as a resident
4 who's been here from the very beginning opposing
5 Mr. Behr.

6 I believe Mr. McFadden has been also
7 opposing him.

8 But I have been at every single one.
9 I just regret that I worked the night of the APC
10 hearing. I greatly regret that I worked that
11 night.

12 I will make sure if anything comes up
13 against Mr. Behr that I will not work. I will
14 say that I can't so I can attend the hearing so I
15 will not be said that -- that nobody can say I
16 didn't show up.

17 MAYOR PRO TEM MITCHELL: Thank you,
18 Mr. Mayor.

19 MAYOR FELLOWS: Thank you, Ms.
20 Mitchell.

21 Ms. Stullich?

22 COUNCIL MEMBER STULLICH: I just

1 wanted to clarify a little bit. I think what I
2 heard you saying is that the Civic Association
3 hasn't taken a position on this.

4 MS. BRYANT: No.

5 COUNCIL MEMBER STULLICH: And the
6 Civic Association hasn't been meeting regularly
7 so there hasn't been a meeting where this was
8 discussed since this application was made.

9 MS. BRYANT: Right. I thought about
10 having one but I'm the only party of record, so I
11 didn't see the point. I'm planning on having one
12 to address other issues. I had planned to have
13 one and inform them of this issue but only
14 parties of record can speak.

15 COUNCIL MEMBER STULLICH: Right.
16 Again to clarify, I think that's a bit of a
17 misunderstanding.

18 At this point parties of record are
19 people who testified at the APC hearing. It's
20 the same property but it's a different request,
21 it's a different application. So the slate kind
22 of starts clean for parties of record.

1 MS. BRYANT: Okay. But I did appear
2 and then I did send an email for the APC.

3 COUNCIL MEMBER STULLICH: Right.
4 Thank you. I just wanted to clarify that. Thank
5 you, Ms. Bryant.

6 MS. BRYANT: You're welcome. I
7 appreciate it.

8 Just for a layperson, like you all are
9 versed in what's a new record and what's, you
10 know -- I've been attending hearings all along
11 against this property without attachments that
12 explain this and without, you know -- it's hard
13 to always know what's coming along.

14 To me as a resident, I keep hearing
15 the same property. And yeah, anyway.

16 MAYOR FELLOWS: Thank you for coming
17 down.

18 COUNCIL MEMBER STULLICH: Thank you.

19 MS. BRYANT: I hope that made sense.
20 It's just hard as a resident to know everything
21 that you all know all the time.

22 MAYOR FELLOWS: Thank you.

1 Now the rebuttal by the parties in
2 support of the recommendation of the Advisory
3 Planning Commission.

4 APPLICANT BEHR: I'll keep it brief.
5 I don't have a whole lot to say. I just wanted
6 to clear up a few things.

7 In terms of the floor plan layout that
8 was presented, it is five suites of rooms, not
9 seven or eight suites of rooms. It's five as per
10 the County suggested. That's how I've laid it
11 out. As far as we could tell, it is in
12 compliance with what the County requires. So
13 that's number one.

14 Number two, like you said, thank you,
15 Stephanie, this is a whole new process. We've
16 only had one hearing outside of the City Council.
17 So this is the first hearing on this matter in
18 this regard. The other processes were a long
19 time ago and this is a new matter.

20 Again I just want to say I'm really
21 looking forward to supporting the community and
22 ensuring that this property is done correctly and

1 meets the needs of the folks who have an interest
2 in it.

3 Because I've seen through this process
4 there are a lot of people who have a lot of
5 concerns about Old Town College Park. I can
6 understand a lot of those concerns. I'd like to
7 be a person who is helping to push things forward
8 and not continually being roadblocked and being
9 constrained with limitations.

10 I'm doing my very best to put
11 everything correct with this property. This was
12 the only venue I had left to resolve this matter.

13 I hope everyone can come to an
14 agreement that would be beneficial to all parties
15 involved. Thank you very much.

16 MAYOR FELLOWS: All right. Thank you.

17 Ms. Stullich?

18 COUNCIL MEMBER STULLICH: Thank you,
19 Mr. Mayor.

20 Just a clarifying question.

21 APPLICANT BEHR: Sure.

22 COUNCIL MEMBER STULLICH: There are

1 five as it's currently designed?

2 APPLICANT BEHR: Yes.

3 COUNCIL MEMBER STULLICH: There are
4 five suites of rooms?

5 APPLICANT BEHR: Yes. If you look,
6 we've shaded the suites and coded them on the
7 floor plan. You'll see what the suites of rooms
8 are. When you look back at the floor plan you'll
9 see how that is.

10 COUNCIL MEMBER STULLICH: The five
11 suites include a total of eight bedrooms?

12 APPLICANT BEHR: Yes. There are a
13 total of eight.

14 The house now, it used to have nine
15 bedrooms. We opened it up to make it a single-
16 family home as per the last measures that
17 happened. So I lost a bedroom in fact.

18 We only have eight bedrooms in the
19 whole house. We've set it up so that there are
20 five suites of rooms as per the county code.

21 COUNCIL MEMBER STULLICH: The operator
22 would occupy one of those suites?

1 APPLICANT BEHR: Only one.

2 COUNCIL MEMBER STULLICH: One of those
3 suites?

4 APPLICANT BEHR: Yes.

5 COUNCIL MEMBER STULLICH: Okay. Thank
6 you.

7 APPLICANT BEHR: Actually, to clarify
8 that, the five guest suites he would not be
9 occupying.

10 COUNCIL MEMBER STULLICH: Oh, it's
11 five guest suites plus an operator suite?

12 APPLICANT BEHR: Five guest suites
13 plus the operator's room. Right.

14 COUNCIL MEMBER STULLICH: The operator
15 has a room or a suite?

16 APPLICANT BEHR: One room, yeah.
17 Right now it's set up as one room. So there
18 wouldn't be room for any more operators at that
19 point. There's room for one person pretty much.

20 COUNCIL MEMBER STULLICH: It could be
21 reconfigured at some later date?

22 APPLICANT BEHR: We could I'm sure do

1 that. But there would be no reason to because
2 there's only so many ways to fit nine total
3 guests in the property.

4 If I were to take away a suite from
5 the rest of the folks then there would be less
6 guests. So if I were to reconfigure it would be
7 for less people, not more.

8 COUNCIL MEMBER STULLICH: Unless the
9 operator were similar to the guests?

10 APPLICANT BEHR: It wouldn't make any
11 difference because there's only so many people
12 you can fit in those rooms.

13 I know the folks from City Planning
14 have seen the property as well and were very
15 positive that the size of the house would
16 accommodate what's being presented.

17 It would not be a matter of crowding
18 in any way, shape, or form. We're not trying to
19 squeeze more people in than we need to. I'm only
20 trying to utilize the property as it was
21 intended.

22 I believe it was said that this was

1 never a rooming house. In fact it's called the
2 Holbrook House. The Holbrooks themselves used
3 this as a rooming house when they first bought
4 the house. Ms. Holbrook for a very long time
5 used it as a rooming house.

6 So we're just bringing this house back
7 to its roots. It's going to continue to be used
8 as a rooming house I hope if we have an agreement
9 from everyone here.

10 COUNCIL MEMBER STULLICH: If I'm not
11 mistaken, she used it as a rooming house for
12 three roomers and then at one point four roomers.

13 APPLICANT BEHR: Very possible at that
14 time.

15 COUNCIL MEMBER STULLICH: She didn't
16 have the number of roomers that --

17 APPLICANT BEHR: It was a smaller
18 house at that time.

19 COUNCIL MEMBER STULLICH: Before it
20 was illegally expanded.

21 APPLICANT BEHR: It was expanded
22 through the appropriate processes by the prior

1 owner. They actually went through a historic
2 area work permit to do that addition. So it was
3 not an illegal expansion.

4 What he -- I don't want to go further
5 into those details.

6 MAYOR FELLOWS: This is beyond the
7 scope of this hearing.

8 APPLICANT BEHR: That's how it was
9 bought by me. I didn't have anything to do with
10 that expansion.

11 COUNCIL MEMBER STULLICH: Thank you.

12 APPLICANT BEHR: Thank you.

13 MAYOR FELLOWS: Thank you.

14 All right. We've gone through the
15 arguments for and against, the rebuttals.

16 I will declare this hearing having
17 been held.

18 At the close of the hearing the
19 majority, the Mayor, and Council shall accept,
20 deny, modify, or return the recommendation of the
21 Commission.

22 I guess we next go to the Council.

1 Is there more instructions that we
2 should get?

3 MS. FERGUSON: Well, what Council
4 would do would be to make a determination as to
5 whether you agree to grant this departure as has
6 been requested. Then you would direct that a
7 resolution be prepared based on whatever your
8 decision is.

9 If you wish to grant this, you would
10 have to pick up the fourth criteria that was not
11 addressed by the APC. As I said, that was
12 through no fault of theirs. So you'd have to
13 deal with that and you could direct that that
14 happen.

15 You could also send it back to the APC
16 if you find that there's not enough in the record
17 about some of these items to make a full
18 determination or you can deny it.

19 MAYOR FELLOWS: Ms. Stullich?

20 COUNCIL MEMBER STULLICH: The fourth
21 criteria that the APC did not consider through no
22 fault of their own is number four on the list

1 here?

2 MS. FERGUSON: That is correct.

3 COUNCIL MEMBER STULLICH: Thank you.

4 MAYOR FELLOWS: Members of Council?

5 Ms. Stullich?

6 COUNCIL MEMBER STULLICH: As Ms.

7 Bryant said, this house and its status, use, and
8 occupancy have been discussed for a long time.
9 The City has been in court over this, over this
10 property, not this issue before us today, and
11 were successful in court.

12 This is ultimately about whether and
13 how houses can be expanded to have a greater
14 occupancy, which is what the rooming house would
15 allow him to do.

16 Mr. Behr has stated that this is the
17 only option open to him. But in fact, the option
18 that's open to him is also to use the house as a
19 single-family house for no more than five
20 unrelated people.

21 I understand that there was a change
22 in ownership and that things were done by the

1 previous owner. That happens all the time. If
2 somebody does things that are not appropriate or
3 not in compliance and then it changes ownership,
4 and then it's like, okay, now we're starting
5 fresh and so all of that history doesn't matter
6 anymore, that concerns me greatly.

7 I can think of another property where
8 somebody is building an addition without any
9 permits. The City is fighting that but it seems
10 to take a long time.

11 If he were to sell that property and
12 then a new owner said, "Well, that addition was
13 there when I bought it so I should be able to
14 occupy it," whatever is necessary to be able to
15 do that.

16 I think everybody in this room knows
17 that we have very difficult problems in Old Town
18 and that many houses have been one by one
19 steadily changed to include more occupants than
20 they were originally intended to house.

21 This house was originally an owner-
22 occupied property. And yes, Ms. Holbrook had

1 roomers, a small number compared to what's
2 proposed now.

3 The houses in Old Town that are some
4 of our biggest problem houses are these R18
5 houses that often end up having more than five,
6 sometimes a lot more than five people living in
7 them. Those are prime candidates to become
8 fraternity satellite houses and to be very
9 disruptive to the community. So I think the
10 occupancy really is a very important issue here.

11 Yes, the driveway departure is
12 necessary to allow a rooming house. But a
13 rooming house does not have to be allowed in this
14 property.

15 A rooming house is only allowed by
16 right if the conditions are met. And the
17 driveway condition is not met.

18 These circumstances aren't really
19 special to this property. It's a standard 50-
20 foot wide property along the frontage. It's a
21 property like so many that was constructed to be
22 a single-family house and to not try to

1 accommodate this many people and this many cars.
2 I think that's really the issue before us.

3 I know the APC was not aware of the
4 fourth criteria, the departure will not impair
5 the visual, functional, or environmental quality
6 of integrity of the site or the surrounding
7 neighborhood.

8 That really is the issue. The
9 departure would allow a more intensive use that
10 really does impair the quality and integrity of
11 the neighborhood.

12 That's my kind of opening comments.
13 I'm eager to hear what others have to say.

14 Thank you.

15 MAYOR FELLOWS: At this time are you
16 ready to say what you think the Council should
17 do?

18 COUNCIL MEMBER STULLICH: Yes. I
19 would like to move -- should I make a motion at
20 this time?

21 MAYOR FELLOWS: No. I was wondering
22 if you might.

1 Mr. Day?

2 COUNCIL MEMBER DAY: In the opening
3 statements by our City staff, it was referred to
4 as the house next door as being a rooming home.
5 If we were to put the picture back up on the
6 screen we would see a driveway that is probably
7 just as narrow if not the same.

8 This is a tough one because I have a
9 great deal of respect as the former chair of the
10 APC for the people that sit on that board and
11 take their time to make these decisions.

12 One of those members is James
13 McFadden, who lives in Old Town, who I respect
14 greatly because he has stood there and he has
15 fought a long time to make sure that things go
16 the right way. He also sits on the LAC, which is
17 another body who has reviewed this project.

18 Both bodies have voted unanimously to
19 support this issue.

20 It is tough because I know the
21 commitment they make. And I know they didn't
22 take this lightly. I know they would never take

1 this lightly in their own backyard or anywhere
2 else in College Park.

3 So I'm tending to lean with the APC on
4 this and support this. I'm trying to figure out
5 how we would address number four. I'm not sure
6 how we'll do that yet. But I'm leaning that way.

7 MAYOR FELLOWS: All right. Thank you.

8 Mr. Wojahn?

9 COUNCIL MEMBER WOJAHN: Thank you, Mr.
10 Mayor.

11 First of all, I want to start off by
12 thanking the Applicant and the staff and the City
13 Attorney and Ms. Bryant for your testimony and
14 for all the information that you've presented
15 this evening.

16 I respect my colleague Mr. Day's
17 comments about the work that the APC does. I
18 know that the APC works very hard and really
19 looks and analyzes these issues very thoroughly.

20 But I think there's a fundamental
21 issue of premise here that in reading through the
22 record of the case I don't think is one that was

1 really thoroughly examined. That is the issue of
2 whether or not the property that we're talking
3 about is a single-family home or a rooming house.

4 I hear that the Applicant wants it to
5 be a rooming house. That's what they're working
6 on making it into. But currently what it is,
7 it's a single-family home.

8 The criteria that we're looking at,
9 and they're all very clear -- can we put those
10 back up on the screen, the criteria?

11 Ultimately what this comes down to is
12 the criteria that we have to look at as a Council
13 and what the law is in terms of when one of these
14 departures needs to be granted.

15 They're all very clear that these
16 departures must only be granted when necessary.
17 It has to be the minimum necessary given the
18 circumstances and the request must be necessary
19 to alleviate circumstances.

20 If you take as a premise the notion
21 that this is a rooming house then perhaps it is
22 necessary to grant the departure. Because then

1 if you don't grant the departure, it's clear that
2 you don't have the space to widen the driveway
3 and it's clear that they would have to get a
4 variance to expand the driveway into the front
5 yard.

6 What I don't see in the record is why
7 it's necessary, and I haven't heard the Applicant
8 make this case, why it's supposedly necessary
9 that this property be made into a rooming house
10 as opposed to a single-family residence when it's
11 been used as a single-family residence now for
12 years.

13 I'm not sure why the APC didn't
14 address that issue. I might consider that maybe
15 we should send it back to them to consider that
16 issue in greater detail.

17 But right now I don't see any
18 information on the record that indicates that it
19 is. I believe it's the Applicant's burden to
20 make that case.

21 So absent seeing that evidence, I'm
22 inclined to support Ms. Stullich's -- the

1 direction that Ms. Stullich is going in, and deny
2 this departure request.

3 MAYOR FELLOWS: Ms. Mitchell?

4 MAYOR PRO TEM MITCHELL: Thank you,
5 Mr. Mayor.

6 First I have a question for my
7 colleagues. Just out of curiosity, when we talk
8 about historic preservation, how many homes are
9 part of the historic preservation in your
10 district, how many homes total?

11 COUNCIL MEMBER STULLICH: I would have
12 to ask staff to answer that question.

13 But I can say that this house is not
14 only a contributing property to the Historic
15 District, but it's also an individually
16 designated historic site that was subject to the
17 County Historic Preservation Ordinance before
18 there was a Historic District.

19 There are only, is it five or six
20 total properties in the neighborhood that are
21 individually designated.

22 MAYOR PRO TEM MITCHELL: Okay.

1 COUNCIL MEMBER STULLICH: Can I ask if
2 staff have the information on the total number of
3 contributing properties?

4 MS. SCHUM: I'm going by memory. I
5 would say maybe 300 properties.

6 COUNCIL MEMBER STULLICH: Okay. Or is
7 it 300 total properties in the District?

8 MS. SCHUM: I mean, I'm doing this by
9 memory. I don't -- 250? The Old Town Historic
10 District is smaller than the Old Town
11 neighborhood. I'm not recalling offhand.

12 MAYOR PRO TEM MITCHELL: Okay. So
13 you're saying about five or six? Okay.

14 COUNCIL MEMBER STULLICH: Five or six
15 individually designated houses.

16 MAYOR PRO TEM MITCHELL: Okay. Thank
17 you.

18 I guess I also have a query in regards
19 to -- not a question. Let me rephrase.

20 APC took a stance in regards to this
21 decision. Now it's being brought back to us
22 because of item number four.

1 MAYOR FELLOWS: Not exactly.

2 MAYOR PRO TEM MITCHELL: It's two
3 parts.

4 COUNCIL MEMBER STULLICH: It's brought
5 back because I asked to bring it back.

6 MAYOR PRO TEM MITCHELL: All right.
7 I have some concerns.

8 Go ahead, Mr. Mayor, to some other
9 Council colleagues for comments. I will come
10 back in order to have a proper statement made.

11 MAYOR FELLOWS: Thank you, Ms.
12 Mitchell.

13 Mr. Brennan?

14 COUNCIL MEMBER BRENNAN: Thank you,
15 Mr. Mayor.

16 Thanks to Mr. Behr, our staff, Ms.
17 Bryant for coming out this evening, and Ms.
18 Stullich for investing a lot of time into
19 understanding this.

20 I think Ms. Bader made a good
21 statement on the record when she said that she
22 thinks that most of the people's concerns are

1 more about the rooming house than with the
2 departure.

3 It's hard to discuss a technical
4 variance when the real disagreement is with the
5 residence. But the two things are linked.

6 In terms of the operator issues, I
7 think that a number of residents are concerned
8 that an operator is an operator on paper, but
9 it's not an operator in the sense of what you
10 would think of for a boarding house.

11 I've read many books on when boarding
12 houses were operated and used in our country. It
13 wasn't a student that was just used on paper as a
14 boarding house. It was normally a widow or a
15 widower or somebody of that nature who was
16 looking to collect additional income to
17 supplement her expenses, or provide travelers
18 with an opportunity.

19 In a sense this is, and I'm making an
20 assumption here but I think a good one, it's
21 going to be a group of 10 students living in a
22 house. And one of the students is going to be an

1 operator on paper.

2 I think that causes a lot of concerns
3 with people. When you kind of gloss over that
4 detail I think it raises people's awareness a
5 little more.

6 I think most people would prefer to
7 know that that person is a full-time caretaker
8 who is going to be there year after year and has
9 a stake in your property, and is going to have a
10 legal and liable stake in your property.

11 From my understanding of the product
12 that a boarding house provides, it doesn't seem
13 to me that that's how it's going to be used in
14 our city.

15 I also think that this sets a
16 precedence for houses that have been exploited by
17 previous owners to modify them without proper
18 permit to then be purchased by somebody else, and
19 that person then exploits that change to create
20 an argument for something new.

21 The integrity of the neighborhood is
22 really important here.

1 I think that 10 people, going from
2 five to 10 people is doubling the occupancy of
3 this house. It's putting 10 more people in the
4 house.

5 It's putting five cars in the backyard
6 potentially and five cars on the street, and cars
7 potentially in the neighbor's driveway that could
8 potentially create an obstruction. But as you
9 stated, there could be an agreement made there.

10 I just have to agree that I would like
11 to stick with the integrity of our community.
12 The house has been operating as a single-family
13 home as long as I know. There are rumors that
14 it's been a boarding house but not to the extent
15 that it's being used here.

16 Just as a personal anecdote, I was
17 walking by this property last year and there was
18 a loud party in the backyard. I can't tell if it
19 was in your backyard or your neighbor's backyard,
20 but it was a party that emanated all the way up
21 into Berwyn.

22 It just makes me question density of

1 people in our community and how we have to be
2 mindful about having too many people in
3 residences and on our properties.

4 Those are my comments for now.

5 MAYOR FELLOWS: Okay. Thank you.

6 Dr. Kabir?

7 COUNCIL MEMBER KABIR: Thank you, Mr.
8 Mayor.

9 I have a question for the attorney.

10 The options we have, one of the
11 options we have is to deny the application. The
12 other is to send back to APC. Is that correct?

13 MS. FERGUSON: Yes. It's in the code.
14 You may deny, you may modify and approve, you may
15 approve, or you can remand if there is
16 insufficient information in the record in your
17 opinion to support all of these required
18 findings.

19 You do have a number of things that
20 came up this evening in the record, such as the
21 questions about how the use of the driveway can
22 be controlled when there's joint use, among other

1 things. But there's a number of things that have
2 come up that you could decide that you want to
3 know more about before making your decision.

4 Or you can make your decision on the
5 record. I think there's enough in the record at
6 this point for you to make a decision.

7 But if you're not comfortable with
8 that and you want to know more, you can send it
9 back to the APC to inquire into these other
10 areas.

11 COUNCIL MEMBER KABIR: The reason why
12 I'm asking is because I'm hearing what my
13 colleagues are talking about, particularly Ms.
14 Stullich. And I understand, I take her point on
15 number four, that APC probably did not address
16 the issue of impact on the neighborhood.

17 If that is the case, I think it might
18 be better if we can send it back to APC instead
19 of denying outright.

20 MAYOR FELLOWS: Other comments?

21 Ms. Stullich?

22 COUNCIL MEMBER STULLICH: Thank you.

1 I realize that one option is we could
2 send it back to the APC.

3 I also have a great deal of respect
4 for APC. I think they take their jobs very
5 seriously. They do good work. That doesn't mean
6 that we always have to agree with the decision
7 that they make.

8 In this particular case there was one
9 criteria that they were not aware of.

10 But aside from that criteria I think
11 there's some other issues that I think I've
12 raised, including that the property really is not
13 special or unusual in its shape and its size.
14 It's a relatively small property with a 50-foot
15 frontage, as is true of many single-family
16 houses.

17 Also the issue which Mr. Behr has
18 stated, he can't control use of the driveway by
19 neighbors.

20 I actually have seen the driveway
21 being used for very large parties. It wasn't
22 really possible to tell which household was using

1 it in that way. But nobody would have been able
2 to use the driveway for several hours when that
3 was happening.

4 Yes, we could send it back to the APC.
5 I don't know that we'd do the APC any favors by
6 doing that. I think we can appreciate their
7 service and yet come to a different decision.

8 The motion that I would like to make
9 is that we deny this departure.

10 MAYOR FELLOWS: All right. We have a
11 motion to deny. That needs a second.

12 COUNCIL MEMBER WOJAHN: Second.

13 MAYOR FELLOWS: Seconded by Mr.
14 Wojahn.

15 Further comment?

16 Ms. Stullich?

17 COUNCIL MEMBER STULLICH: Thank you,
18 Mr. Mayor.

19 I know this can feel like a hard case
20 because I think Mr. Behr seems very sincere in
21 his desire to do something that he perceives as
22 good for the community.

1 Whatever decision is made will last
2 for a long time, not just the time that Mr. Behr
3 owns the property. As we have seen, properties
4 change hands and things turn out differently.

5 I think, as I said before, everybody
6 knows very well the problems that we have in Old
7 Town which are related to density and to the
8 steady expansion of the density of occupancy in
9 many houses that were constructed and long used
10 as single-family houses.

11 And then they become something
12 different one way or another with more people
13 than they were originally built for, additions
14 that are built improperly, sometimes under
15 previous owners. And then it all becomes kind of
16 the past history that we can't look at because it
17 was done before.

18 It's just a steady erosion in the
19 quality of life in Old Town. Each individual
20 case by itself may not make a huge difference.
21 But collectively these changes do make a big
22 difference.

1 This departure is not necessary. It's
2 only necessary to allow a rooming house. A
3 rooming house is not permitted by right. It's
4 only allowed by right if the conditions are met.

5 One of the conditions is for a 22-foot
6 wide driveway, which is not possible on this site
7 because there's not that much space between the
8 two houses.

9 You can see to accommodate the cars
10 what's been done is to turn what was once green
11 space into just gravel. It's not attractive.
12 The landscaping improvements will help a little
13 bit but it will still be an awful lot of gravel
14 and a lot more cars than ever were intended to be
15 there.

16 I'm pretty sure when Ms. Holbrook ran
17 the house with a few boarders that there were not
18 huge numbers of cars on the property. The
19 property is just not designed for that.

20 So I hope my colleagues will support
21 me and the welfare of the Old Town neighborhood
22 in supporting my motion.

1 Thank you.

2 MAYOR FELLOWS: In the instance of
3 this type of a decision, do we go out to the
4 audience for comments on this? I don't think we
5 do.

6 MS. FERGUSON: No. This is a hearing.

7 MAYOR FELLOWS: So we're staying with
8 the Council.

9 Mr. Day?

10 COUNCIL MEMBER DAY: Number four, I'm
11 baffled here. Because right there it says the
12 departure will not impair the visual, functional,
13 or environmental quality or integrity of the site
14 or the surrounding neighborhood. But that's part
15 of our resolution that the APC put to us.

16 So if they didn't address it and they
17 didn't view it, they wouldn't have put it in this
18 whereas in their statement, correct?

19 MS. FERGUSON: This was not included
20 as a finding that the APC took up unfortunately.
21 The Applicant's attorney addressed this
22 requirement because it's a County requirement so

1 it applies to the City also. This was an error.

2 There is evidence in the record here
3 to show, and you have enough evidence one way or
4 the other to make your determination.

5 But the required finding is required
6 and they did not make that in the APC resolution.
7 That is actually a separate matter.

8 To do anything approving this
9 application you would need to deal with all four
10 of the findings, not just the three. So you'd
11 have to do that.

12 The issue is whether you feel that the
13 record supports what the APC found as discussed
14 this evening and as you see in the record.

15 If you were to support this
16 application you would need to make the finding
17 for number four or your record would be
18 deficient. That's why we've brought it up
19 separately.

20 MAYOR FELLOWS: Since now the motion
21 before the Council is to deny, the comments of
22 Council Members should be related to whether

1 denial is appropriate.

2 COUNCIL MEMBER DAY: I don't feel
3 denial is appropriate for this at this point. I
4 think we should be considering looking at
5 possibly sending this back to the APC.

6 MAYOR FELLOWS: All right. Thank you.

7 Other comments?

8 Mr. Brennan?

9 COUNCIL MEMBER BRENNAN: Just a
10 response to Mr. Day. I think if we send it back
11 to the APC for number four, I don't see a way of
12 them addressing the environmental quality or
13 integrity of the site that's going to be impacted
14 by having the number of people living on that
15 property as a result of granting this variance.

16 I would support the motion to deny
17 because I don't feel that that can be addressed
18 unless it's kept at five people.

19 MAYOR FELLOWS: Let me take a shot at
20 this. There are many ways we could return it.

21 Mr. Day's point is that we should
22 return it to the APC. But I don't know if he was

1 saying just to do it for four. There could be
2 lots of other reasons to do it.

3 COUNCIL MEMBER BRENNAN: I'm sorry.
4 That was my assumption.

5 MAYOR FELLOWS: I just wanted to make
6 it clear that if we chose not to accept the
7 denial motion, if we chose to return it there
8 could be a number of things that we could ask
9 them to consider or reconsider.

10 Mr. Wojahn?

11 COUNCIL MEMBER WOJAHN: Thank you, Mr.
12 Mayor.

13 I brought up an issue before, this
14 issue of whether or not -- I think this is a
15 fundamental issue here. If the departure is
16 truly necessary and the departure is related to
17 having a rooming house, do we need to be able to
18 see that an actual rooming house is necessary.

19 But I think because this is tied up
20 with the issue of whether or not -- all these
21 criteria are tied up with whether or not we're
22 looking at a rooming house here as opposed to a

1 single-family residence.

2 We can also look at the record and
3 look at whether or not a rooming house, using
4 this property as a rooming house meets these
5 criteria or not.

6 I think the record shows that we have
7 before us that having a rooming house as we heard
8 from the residents would impair the visual,
9 functional, or environmental quality or integrity
10 of this site or the surrounding neighborhood. We
11 haven't seen any evidence that it is necessary to
12 use this as a rooming house.

13 Therefore with the record that we have
14 before us, I don't think we need to go any
15 further. I don't think we need to remand it to
16 the APC. I think we can decide tonight that the
17 Applicant's burden isn't met and deny this.

18 COUNCIL MEMBER DAY: May I respond to
19 that?

20 MAYOR FELLOWS: Yes. Mr. Day?

21 COUNCIL MEMBER DAY: Statements made
22 tonight made it very clear that it has been used

1 as a boarding house, or a rooming house rather.

2 COUNCIL MEMBER WOJAHN: Years ago.

3 COUNCIL MEMBER DAY: It has been done.

4 COUNCIL MEMBER STULLICH: With a
5 smaller number of people.

6 COUNCIL MEMBER DAY: It was a rooming
7 house.

8 COUNCIL MEMBER STULLICH: A smaller
9 number.

10 MAYOR FELLOWS: Ms. Mitchell?

11 MAYOR PRO TEM MITCHELL: Yes, Mr.
12 Mayor.

13 I appreciate my colleague Kabir first
14 asking about the opportunity to remand it back to
15 APC. We're saying it was no fault of their own
16 that they did not take component number four into
17 consideration.

18 If we do that then it will refute the
19 environmental landscape concerns that you're
20 talking about, Council Member Wojahn, if it's
21 being met or not.

22 But other than that we should uphold

1 our APC's decision. We have boards and
2 commissions here to take time to research, to
3 listen to testimony and they made a decision.

4 This is negating what they say.
5 You're saying what they said is not worthwhile or
6 to the point.

7 I know my Council colleagues are going
8 to tell me, well, the premise. The premise here
9 is they made a decision and we should uphold it.

10 MAYOR FELLOWS: Thank you.

11 Mr. Wojahn, Ms. Stullich, then Dr.
12 Kabir.

13 COUNCIL MEMBER WOJAHN: I want to
14 respond to a couple of comments that my
15 colleagues have made.

16 The APC did not make a decision as to
17 whether or not a boarding house is necessary.
18 They did not look at that issue.

19 We can either send it back to them to
20 look at that issue, or if the evidence on the
21 record is enough for us to decide that a boarding
22 house is not necessary, that this property does

1 not have to be a boarding house, then we don't
2 need to waste our time. We can decide that
3 ourselves tonight.

4 With respect to Mr. Day's comments,
5 yes, it has been used as a boarding house before.
6 I understand that. But that doesn't mean that it
7 has to be used as a boarding house.

8 It's the burden of the Applicant to
9 show not just that it has been used as a boarding
10 house before but that being a boarding house is
11 necessary. That's what those criteria up there
12 say, that it has to be necessary.

13 Thank you.

14 MAYOR FELLOWS: Ms. Stullich?

15 COUNCIL MEMBER STULLICH: Thank you,
16 Mr. Mayor.

17 We do rely greatly on our boards and
18 commissions. The APC in particular handles many
19 complex and difficult issues.

20 However it is in the order of things
21 that sometimes, if we do not agree with their
22 decision, if we think there are some

1 circumstances or issues that they did not
2 consider, we can make a different decision. That
3 is the procedure.

4 I don't think it's proper that we
5 should say we should always uphold the decision
6 of the APC. That makes us just a rubber stamp
7 and that is not what the process is.

8 The process allows for our review.
9 And if the process allows for a review then it
10 must as a necessity allow for the possibility
11 that we could come to a different decision.

12 To come to a different decision, a
13 different conclusion is not by any means a sign
14 of disrespect for the APC. It is simply that we
15 reviewed the facts of the case, we reviewed the
16 record, we reviewed the arguments, and we came to
17 a different decision.

18 I think the idea that we can never do
19 anything other than uphold the APC's decision or
20 send it back to them is not correct.

21 Ms. Ferguson?

22 MS. FERGUSON: I was waving at the

1 Mayor.

2 COUNCIL MEMBER STULLICH: Okay. So
3 just in conclusion, I think we all greatly
4 respect and appreciate our APC members and their
5 service and their commitment. And to come to a
6 different decision in this case does not in any
7 way negate or undermine that respect. It just
8 means coming to a different conclusion.

9 Thank you.

10 MAYOR FELLOWS: Thank you.

11 Ms. Ferguson?

12 MS. FERGUSON: In response to some of
13 the Council comments, I did want to clarify one
14 thing.

15 A rooming house is a use as of right
16 in the R18. There's not any necessity for you to
17 find by law that a rooming house is necessary.

18 As has been noted at various times
19 during this conversation, it's only allowed by
20 right if certain criteria are met.

21 One is a commercial width driveway and
22 that is not met. That's clear from this

1 application. That's why a departure is being
2 requested.

3 When the departure is requested you
4 are required to make certain findings to support
5 that departure. It's like a variance. It's a
6 give. It's not something that someone gets of
7 right.

8 Those four criteria are up there. You
9 have your record. There are a number of
10 questions that have been raised this evening
11 about whether or not the -- about the control of
12 the property, the uniqueness of the property,
13 which are things that go to these required
14 findings.

15 So those are proper matters for you to
16 decide on this evening if you care to. Or to
17 send back down if you care to because you don't
18 feel that you have enough information.

19 But the necessity for a rooming house
20 as opposed to a single-family home is not one of
21 the items that you can decide. All you can
22 decide is whether or not this use of right should

1 be allowed since it's not of right at this point
2 because they don't have the proper width of
3 driveway.

4 COUNCIL MEMBER WOJAHN: Mr. Mayor?

5 MAYOR FELLOWS: Yes.

6 COUNCIL MEMBER WOJAHN: I'm going to
7 respond to that. The way I read these criteria,
8 these required findings, it says that a departure
9 is the minimum necessary given the specific
10 circumstances of the request.

11 So for us to say that the departure is
12 necessary, that we need to grant this departure,
13 accepts the notion that the property is a rooming
14 house.

15 Am I wrong on that?

16 MS. FERGUSON: The departure itself
17 has to do with the driveway.

18 COUNCIL MEMBER WOJAHN: Right.

19 MS. FERGUSON: Now what that ends up
20 being is a decision as to whether this is going
21 to be a rooming house or not. Because if they
22 aren't granted a departure, he cannot have a

1 rooming house there because that requirement
2 stays and there's no way to conform to that
3 requirement without a departure.

4 COUNCIL MEMBER WOJAHN: Exactly.

5 MS. FERGUSON: But the departure in
6 all these references refer to the driveway.

7 Things such as not having control of
8 the driveway, not being able to ensure that
9 there's going to be other parking in that
10 driveway, which was a requirement of the APC
11 frankly, does go very probably to the functional
12 nature of that driveway and also to whether the
13 purposes of the zoning ordinance are being well
14 served.

15 There are a number of things here that
16 you can look at that have been raised in this
17 record and have been raised this evening.

18 COUNCIL MEMBER WOJAHN: Right. I
19 understand that.

20 Just so that I'm clear, if the
21 property stays a single-family house then no
22 departure is necessary. The minimum departure is

1 zero because you don't need a departure.

2 MS. FERGUSON: That is correct. A 22-
3 foot wide driveway is not needed. The house
4 would continue as it is with the driveway as a
5 single-family home. That is correct.

6 COUNCIL MEMBER WOJAHN: Okay. Thank
7 you.

8 MAYOR FELLOWS: Dr. Kabir?

9 COUNCIL MEMBER KABIR: Thank you.

10 If we send this back to the APC can we
11 ask them only to look into number four, the
12 concerns we have about number four, instead of
13 looking at the entire case?

14 MS. FERGUSON: Specifically?

15 COUNCIL MEMBER KABIR: Yes.

16 MS. FERGUSON: Yes, you could do that.
17 But if you're going to remand something back to
18 the APC it is a good idea to be specific as to
19 what you believe is missing in the record.

20 One of the things that we have to look
21 at here is, this is a recommendation to you that
22 stands unless you call it up or someone else

1 does. But you're the final decider of whether
2 this departure is going to be granted or not.
3 That's why it's always on your agenda. It's not
4 automatic at the APC level.

5 If you are going to send it back to
6 them, it would not be for another determination
7 of law. It would be for them to get more facts
8 and then answer some questions that you are
9 unclear about now and what their feeling about
10 those are once they get those additional answers.

11 So the more direction that you give to
12 them about what it is that has been causing you
13 to have questions, the better.

14 But the overall answer is you can say,
15 we don't think we need any more facts about these
16 others but we do need some more facts about
17 number four. So send us more information about
18 that, explore that more. You could do that.
19 That's pretty general. Or you could be more
20 specific.

21 COUNCIL MEMBER KABIR: Thank you.

22 MAYOR FELLOWS: Thank you, Dr. Kabir.

1 Mr. Dennis?

2 COUNCIL MEMBER DENNIS: Yes. Thank
3 you.

4 We have a motion and we have a second.
5 That is denial of this issue.

6 Following what you've just said, Ms.
7 Ferguson, my question is if we wanted to remand
8 this to the APC we have to have another motion
9 and another second and discussion, is that
10 correct?

11 MS. FERGUSON: Yes.

12 COUNCIL MEMBER DENNIS: Okay. Thanks.

13 MAYOR FELLOWS: Yes. We have a motion
14 before us, a motion that we are currently
15 considering to deny. I believe everybody has
16 spoken and I believe you've heard each other's
17 comments.

18 Any other comments before we vote on
19 the motion?

20 COUNCIL MEMBER KABIR: May we have the
21 roll call?

22 MAYOR FELLOWS: All right.

1 COUNCIL MEMBER STULLICH: I'm sorry.
2 I did have another comment.

3 MAYOR FELLOWS: Ms. Stullich?

4 COUNCIL MEMBER STULLICH: I just
5 wanted to be clear because Mr. Kabir spoke about
6 condition number four. But my concerns are with
7 condition number three as well.

8 So I don't think that the
9 circumstances are particularly -- sorry. Are you
10 wanting to interrupt me or say something?

11 MS. FERGUSON: No. I'll wait.

12 COUNCIL MEMBER STULLICH: I don't
13 believe that the circumstances at this property
14 are that it's necessary to alleviate those
15 circumstances. It is what it is. It's a
16 standard property.

17 Sorry. I feel like you do want to say
18 something.

19 MS. FERGUSON: A denial or an approval
20 generally speaking in a case of this nature where
21 there has been a lot of back and forth about it
22 and you have had a lot of discussion this

1 evening, you would generally refer that for a
2 written resolution that you could then approve.

3 You could take your general motion and
4 then have a resolution, a formal written
5 resolution that you would then approve. Because
6 there are obviously legal requirements that need
7 to be stated.

8 Sitting up here on the dais, you are
9 not addressing matters as you would normally do
10 in a written decision.

11 That would be put together for you by
12 staff and by me, and then you would be able to
13 look at it and approve or not approve the final.
14 It's called being referred for document or
15 referred for a decision.

16 Especially when we have had the kind
17 of conversation that we have had this evening,
18 you would probably want to do that.

19 COUNCIL MEMBER STULLICH: Thank you,
20 Ms. Ferguson. I think you understood what I was
21 trying to get to, which was the concern that we
22 are clear about -- if my motion passes that we're

1 clear about the reasons.

2 Because a lot of different things are
3 said at the dais and we're not always able to say
4 things in the proper manner. So your
5 recommendation or description of the next step
6 should my motion pass sounds very good.

7 Should I have formulated my motion in
8 a different way to allow for that?

9 MS. FERGUSON: You could vote to deny
10 based on the record before you, that the criteria
11 are not fulfilled, and refer it for document to
12 come back to Council for a final.

13 MAYOR FELLOWS: So we'll consider the
14 motion she made earlier to deny.

15 MS. FERGUSON: You could do that.

16 COUNCIL MEMBER STULLICH: Right.

17 Thank you.

18 COUNCIL MEMBER DENNIS: Explain that
19 again.

20 MAYOR FELLOWS: Ms. Ferguson, Mr.
21 Dennis just asked for that explanation one more
22 time.

1 MS. FERGUSON: You could make the
2 motion to deny based on the fact that you cannot
3 make the required findings based on what's been
4 presented to you, they have not been fulfilled,
5 and refer it for document, the formal written
6 resolution to come back to you for final
7 approval.

8 COUNCIL MEMBER DENNIS: So that would
9 have to be an amendment to the standing motion?

10 MS. FERGUSON: The City manager has
11 just been noting that very same thing actually.

12 COUNCIL MEMBER STULLICH: Okay. So
13 can I say that I would like to amend my motion?

14 MS. FERGUSON: Yes. Generally
15 speaking, if your second is agreeable, you could
16 do that.

17 COUNCIL MEMBER STULLICH: Okay. So I
18 would like to amend my previous motion to include
19 the language that the City attorney just stated,
20 that it would be to refer the matter for
21 documentary support? I'm sorry.

22 MS. FERGUSON: Your motion would be

1 that you move to deny the application as the
2 required findings have not been met, and you're
3 referring for document so that the written
4 resolution can be prepared and brought back to
5 you for final approval.

6 COUNCIL MEMBER STULLICH: Thank you.
7 That is my amended motion.

8 MAYOR FELLOWS: Acceptable to the
9 second?

10 COUNCIL MEMBER WOJAHN: Yes.

11 MAYOR FELLOWS: All right. The motion
12 has been amended.

13 Other comments before we vote?

14 I've had a request for roll call.

15 Dr. Kabir?

16 COUNCIL MEMBER KABIR: No.

17 MAYOR FELLOWS: All right. Mr.
18 Wojahn?

19 COUNCIL MEMBER WOJAHN: Yes.

20 MAYOR FELLOWS: Mr. Brennan?

21 COUNCIL MEMBER BRENNAN: Yes.

22 MAYOR FELLOWS: Mr. Dennis?

1 COUNCIL MEMBER DENNIS: No.

2 MAYOR FELLOWS: Ms. Stullich?

3 COUNCIL MEMBER STULLICH: Yes.

4 MAYOR FELLOWS: Mr. Day?

5 COUNCIL MEMBER DAY: No.

6 MAYOR FELLOWS: Ms. Mitchell?

7 MAYOR PRO TEM MITCHELL: No.

8 MAYOR FELLOWS: That is 4-3. The
9 motion fails.

10 From other comments I've heard
11 certainly an interest in remanding for many
12 reasons.

13 Would someone like to make that
14 motion?

15 Mr. Wojahn?

16 COUNCIL MEMBER WOJAHN: Mr. Mayor, I'd
17 like to move that we remand to the APC for
18 further consideration of criteria two, three, and
19 four.

20 And I'd like to ask that the, I'm
21 trying to think of a way to articulate this, but
22 that the APC be certain to consider the current

1 status as a single-family house.

2 And that these criteria be considered
3 in that light with the understanding that, and
4 maybe you can help me articulate this better, to
5 look at whether or not the departure is necessary
6 given that fact.

7 MAYOR FELLOWS: Actually I have a
8 question. In the previous one where we were
9 referring it to staff to record a document that
10 records our decision, it would also seemingly be
11 good to refer to staff to record the many
12 concerns that Council Members raised about this,
13 to record them all and have the APC consider all
14 of those concerns rather than having Mr. Wojahn
15 try to remember them.

16 MS. FERGUSON: You could certainly ask
17 that the remand referral be placed into writing
18 for your final okay so that it would be clear to
19 all of you that what you wanted remanded to the
20 APC had in fact been included.

21 COUNCIL MEMBER WOJAHN: Okay. Thank
22 you.

1 MAYOR FELLOWS: So moved?

2 COUNCIL MEMBER WOJAHN: So moved.

3 COUNCIL MEMBER STULLICH: Second.

4 MAYOR FELLOWS: Second by Ms.

5 Stullich.

6 Additional comments, Mr. Wojahn?

7 COUNCIL MEMBER WOJAHN: I think we've
8 discussed this enough. Thank you.

9 MAYOR FELLOWS: All right. Other
10 comments?

11 Do you want another roll call on this
12 one?

13 COUNCIL MEMBER KABIR: No.

14 MAYOR PRO TEM MITCHELL: Yes, Mr.
15 Mayor.

16 MAYOR FELLOWS: All right. We'll take
17 a roll call.

18 Dr. Kabir?

19 COUNCIL MEMBER KABIR: Yes.

20 MAYOR FELLOWS: Mr. Wojahn?

21 COUNCIL MEMBER WOJAHN: Yes.

22 MAYOR FELLOWS: Mr. Brennan?

1 COUNCIL MEMBER BRENNAN: Yes.

2 MAYOR FELLOWS: Mr. Dennis?

3 COUNCIL MEMBER DENNIS: Yes.

4 MAYOR FELLOWS: Ms. Stullich?

5 COUNCIL MEMBER STULLICH: Yes.

6 MAYOR FELLOWS: Mr. Day?

7 COUNCIL MEMBER DAY: Yes.

8 MAYOR FELLOWS: Ms. Mitchell?

9 MAYOR PRO TEM MITCHELL: Yes, Mr.

10 Mayor.

11 MAYOR FELLOWS: It's unanimous in
12 support for remand.

13 Thank you all very much. That
14 concludes the hearing.

15 (Whereupon, the above-entitled matter
16 went off the record at 8:54 p.m.)

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Date: 01-27-15

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