

CITY OF COLLEGE PARK, MARYLAND

+ + + + +

PUBLIC HEARING

+ + + + +

CPV-2011-01

+ + + + +

ILAN LAGZIEL
9511 49th Place

+ + + + +

TUESDAY,
SEPTEMBER 27th, 2011

The above-entitled matter convened
at 7:00 p.m., Andrew M. Fellows, Mayor,
presiding.

COUNCIL MEMBERS PRESENT:

ANDREW M. FELLOWS
MARCUS AFZALI
MARK COOK
CHRISTINE NAGLE
JOHN E. PERRY
STEPHANIE STULLICH
PATRICK L. WOJAHN

STAFF PRESENT:

JOSEPH L. NAGRO, City Manager
SUELLEN M. FERGUSON, ESQ., City
Attorney
TERRY SCHUM, Planning Director
CHANTAL R. COTTON, Assistant to
the City Manager
YVETTE ALLEN, Assistant City Clerk

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C-O-N-T-E-N-T-S

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

2 [7:10 p.m.]

3 MAYOR FELLOWS: Good evening, and
4 welcome to a meeting of the Mayor and City
5 Council for the purpose of hearing oral
6 argument on exceptions from any decision of
7 the Advisory Planning Commission, the APC.

8 This is on the record of Case CPV-
9 2011-01, Ilan Lagziel, 9511 49th Place.

10 The order of presentation before
11 the Mayor and Council shall, unless I direct
12 otherwise but I'm probably not going to be,
13 will be as follows.

14 Orientation by the planning staff,
15 and if necessary, a representative of the
16 Office of the City Attorney. But I believe
17 the planning staff will suffice.

18 Oral argument against the
19 recommendation of the Advisory Planning
20 Commission.

21 Oral argument in favor of the
22 recommendation of the Advisory Planning

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1 Commission, rebuttal by the parties in
2 opposition to the recommendation of the
3 Advisory Planning Commission, rebuttal by the
4 parties in support of the recommendation of
5 the Advisory Planning Commission, and oral
6 argument shall be limited to 30 minutes, at
7 most 30 minutes each for parties in support,
8 collectively, and parties in opposition,
9 collectively, except that no person shall be
10 given fewer than five minutes to speak, and
11 the mayor may extend the total time allotted,
12 sufficiently to accomplish that objective.

13 And persons wishing to make oral
14 argument shall advise the City Clerk prior to
15 the hearing.

16 Before the start of argument, the
17 mayor shall divide the total time allotted to
18 the parties in support and in opposition.

19 Rebuttal shall be limited to ten
20 minutes each for parties in support,
21 collectively, and parties in opposition, and I
22 may extend the total time to accomplish that

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1 objective. And the decision of the Mayor and
2 the Council as to a recommendation of the
3 Advisory Planning Commission shall be made in
4 accordance with subsections D and E of Section
5 197 of the City Code.

6 And so we'll begin with the
7 orientation by the planning staff.

8 Ms. Schum.

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

10 For the record, Terry Schum, Planning
11 Director for the City of College Park.

12 What I'd like to do is start out
13 by reviewing a little bit of the chronology of
14 this case, then talk a little bit about what's
15 in the record, and then go to the specifics of
16 the variance request.

17 MAYOR FELLOWS: Thank you. And,
18 Ms. Schum, I may just mention that the
19 arguments tonight are just the arguments that
20 are already on the record. You can't bring in
21 new information. So I just wanted to make
22 that very clear before we started. Ms. Schum,

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1 I'm sorry.

2 MS. SCHUM: Thank you.

3 So this application was filed on
4 June 28th, 2011, by Ilan Lagziel for two
5 variances. One variance was from the front
6 yard, a setback requirement in order to build
7 a new front porch, and the second variance was
8 from the requirement for the side yard
9 setback, in order to construct an attached
10 garage.

11 So the Advisory Planning
12 Commission held a public hearing on July 7th,
13 2011, and heard testimony from the Applicant,
14 and two neighborhood residents. The North
15 College Park Citizens Association Variance
16 Committee submitted e-mail comments that were
17 read into the record at that time.

18 The Advisory Planning Commission
19 then issued their recommendation in Resolution
20 11-RR-02, on July 15th, 2011, for approval of
21 both variances.

22 The front porch variance was

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1 approved by a vote of four to one, Commission
2 members, and the garage variance, by a vote of
3 three to two.

4 On August 3rd, 2011, you, the
5 Mayor and Council, remanded the case to the
6 Advisory Planning Commission for further
7 proceedings in order to allow testimony from
8 adjoining property owners who did not receive
9 the required notice the first time around.

10 New notices were then mailed to
11 all adjoining property owners and parties of
12 record established in the hearing, and the
13 Advisory Planning Commission held a second
14 public hearing on August 11th, 2011.

15 New testimony was provided by one
16 adjoining property owner.

17 The Advisory Planning Commission
18 then issued an amended resolution on August
19 22nd, 2011, that upheld the first resolution
20 in approving both variances. On September 6,
21 2011, Council Members Nagle and Wojahn
22 requested that oral argument be scheduled for

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1 the case. So in the record you have before
2 you are the resolutions, the initial
3 resolution, the amended resolution, the
4 transcripts of the proceedings of both
5 Advisory Planning Commission meetings, and the
6 staff's report and exhibit on the specifics of
7 the case.

8 So let's look, now, at the
9 specific case before you, and what's on the
10 screen is also in your packet. It's Exhibit
11 2, and you might need the page number for
12 that. Let's see. That would be page number
13 60. But you can also just look at the screen
14 before you.

15 This shows the site plan in the
16 case, and as you know it's CPV-2011-01, Ilan
17 Lagziel. The address of the property is 9511
18 49th Place. It's part of the Hollywood on the
19 Hill subdivision, and it's in Block 19, Lots
20 40, 41, and part of Lot 42.

21 And if you go to the next page in
22 your packet, or Exhibit 3--let's see if I can

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1 work this--this locates that particular
2 address of the subject property on 49th
3 Street, and in the context of the
4 neighborhood.

5 So the property has an area of
6 7,812 square feet. It's 62.5 feet wide and
7 125 feet deep. It's improved with a one-and-
8 a-half story home, a front stoop that is
9 uncovered, and a driveway on the north side of
10 the house.

11 The house is set back 27 feet from
12 the property line, and the front stoop is
13 three feet deep, and that excludes the steps.

14 The steps are permitted to encroach within
15 the front yard setback, by law.

16 And currently, the front stoop
17 encroaches into the 25 foot setback
18 requirement by one foot.

19 The north side yard is 18 feet
20 deep, and the southern side yard is 14 feet
21 deep.

22 The Applicant, in his application

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1 to the APC, requested two variances, as
2 mentioned previously. The first variance was
3 to construct a six-foot deep front porch
4 across the entire front facade, which requires
5 a variance of four feet from the minimum
6 setback requirement of 25 feet. So the front
7 porch is located in this location. Obviously,
8 the existing front stoop would be removed in
9 order to construct the front porch.

10 The second variance requested is
11 to construct an attached garage that measures
12 13 feet wide and 20 feet deep, and which would
13 require a variance of three feet from the
14 required eight-foot side yard setback.

15 So again, the proposed garage
16 would be attached to the existing house, set
17 back 10 feet from the front of the existing
18 property, and encroach into this northern side
19 yard setback here.

20 The APC deliberated both of these
21 variances separately, and they reached the
22 same findings of fact for both variance

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1 requests, but did reach different conclusions
2 of law regarding both of them.

3 So what I'd like to do is just
4 review what the APC concluded for each
5 variance.

6 So starting with the variance for
7 the six-foot deep porch, the APC concluded
8 that the property in question had an
9 extraordinary situation, in that the existing
10 home, which was constructed in 1946, before
11 zoning was enacted in Prince George's County,
12 is sited two feet from the building
13 restriction line. That building restriction
14 line is 25 feet from the front property line.

15 So the APC concluded that this
16 limits the Applicant's ability to construct a
17 functional front porch that can accommodate
18 seating without the need for a variance.

19 The second conclusion of law was
20 that the strict application of the County
21 zoning ordinance would result in peculiar and
22 unusual practical difficulties to the

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1 Applicant, because the existing home is sited
2 in such a way that a variance is required to
3 construct a porch of sufficient depth to be a
4 functional front porch.

5 And the third conclusion of law
6 that the APC reached is that granting a
7 requested variance will not substantially
8 impair the intent and purpose of the
9 applicable general plan or County Master Plan,
10 because a reasonably-sized porch is not
11 inconsistent with other properties in the
12 surrounding neighborhood.

13 Now these three conclusions of law
14 address the specific three criteria that's
15 required of the APC in order to grant a
16 variance. So that was the porch.

17 In regard to the variance for the
18 garage, the APC concluded that, although there
19 is sufficient depth in the northern side yard
20 for the Applicant to construct a ten-foot wide
21 attached garage without the need for a
22 variance, the structure's functionality and

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1 aesthetics would be compromised.

2 A ten-foot wide garage could
3 accommodate a small vehicle, but the front
4 facade would be dominated by the roll-up door,
5 with little room for trim and clearance on the
6 sides.

7 The second--oh. And there's more
8 to that. To construct a detached garage that
9 meets the required 60 foot setback from the
10 front property line--this is for an accessory
11 building, which the garage would be, if it
12 ended up not being attached to the existing
13 home as the property owner has requested--the
14 Applicant would then be required to extend the
15 existing driveway, thereby increasing the
16 impervious surface on the property.

17 The second conclusion of law.
18 Although detached and attached garages are
19 both found in the neighborhood, the
20 construction of an attached garage will
21 provide direct access to the living space for
22 the Applicant, and will not require extension

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1 of the driveway, and an increase in impervious
2 surface.

3 Furthermore, construction of an
4 attached garage preserves the rear yard of the
5 property for enjoyment by the Applicant.

6 And finally, the APC concluded
7 that granting the requested variance will not
8 substantially impair the intent and purpose of
9 the applicable County General Plan, or County
10 Master Plan, because an attached garage is not
11 inconsistent with other properties in the
12 surrounding neighborhood.

13 The Applicant is minimizing lot
14 coverage by constructing an attached garage
15 that covers a portion of the existing
16 driveway. Furthermore, the Applicant is
17 reducing the visual impact of the garage by
18 setting it back ten feet from the front facade
19 of the existing home.

20 The garage will also be clad in
21 the same material, the roof and the siding, as
22 the existing home.

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1 So that represents the conclusions
2 by the APC. Tonight, before you, I believe in
3 your red folders, you have written comments--
4 no? Okay.

5 MS. FERGUSON: An e-mail was
6 received today from one of the parties of
7 record who is unable to be here this evening.

8 That e-mail has been edited to take out
9 various portions that don't really have
10 anything to do with what you're hearing
11 tonight, and if you're willing to accept that
12 testimony in the edited form, then the Clerk
13 has the e-mail for you as evidence to hand
14 down.

15 MAYOR FELLOWS: That's fine. That
16 was my concern, was that without having read
17 it, I didn't know if it was properly--

18 MS. FERGUSON: It just came in
19 today, so we handled it as quickly as we could
20 but--

21 MAYOR FELLOWS: Yes. I think we
22 should distribute that. And is there anyone

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1 else to present the opposing argument?

2 MS. SCHUM: I don't think so.

3 MAYOR FELLOWS: Okay. So what's
4 going to be handed out really represents the
5 opposing argument.

6 MS. SCHUM: Yes.

7 MS. FERGUSON: Yes, other than
8 the, what's in your record currently. You're
9 required also to look at what's in the record,
10 whether they're here for oral argument or
11 they're not.

12 MAYOR FELLOWS: All right. So the
13 Council now has the written testimony that's
14 argument against the recommendation of the
15 APC, and now it's time to hear the oral
16 argument in favor of the recommendation of the
17 Advisory Planning Commission.

18 MS. FERGUSON: It would be
19 appropriate for the mayor to designate the
20 testimony, that you're accepting that's just
21 been handed to you, as to whom it's from.

22 MAYOR FELLOWS: Okay. I'm sorry.

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1 The written testimony is from Lisa Ealley,
2 and she submitted this, I believe today, by e-
3 mail, and we've accepted it into the record.

4 And so--

5 MS. SCHUM: The Applicant,--

6 MAYOR FELLOWS: The Applicant.

7 MS. SCHUM: --Ilan Lagziel, is in
8 the audience, and--

9 MAYOR FELLOWS: Come on up, sir.
10 And thank you. So you have an opportunity to
11 make an argument in favor of the
12 recommendation of the Advisory Planning
13 Commission, but please make sure you keep your
14 arguments for what's on the record already.
15 And obviously you can take up to 30 minutes,
16 but you don't need to take that long.

17 COUNCILMEMBER WOJAHN: Mr. Mayor.

18 MAYOR FELLOWS: Yes. Mr. Wojahn.

19 COUNCILMEMBER WOJAHN: I have a
20 procedural question. When are we going to
21 have a chance to ask questions of the Planning
22 Staff?

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1 MAYOR FELLOWS: Actually, when is
2 the--

3 MS. FERGUSON: You may do so while
4 Planning Staff is at the microphone. So if
5 you'd like to do that now, you may do so.

6 MAYOR FELLOWS: All right. Sir,
7 before you begin, I think the Council's going
8 to ask some questions of the Planning Staff.
9 So questions for Ms. Schum.

10 Mr. Wojahn.

11 COUNCILMEMBER WOJAHN: I'd like to
12 ask a question about the staff report, on
13 page--particularly the recommendations
14 regarding the garage. Now page 55, this is,
15 I'm looking at. It states the condition that
16 it speaks of is, number one, for granting the
17 variance--property has an exceptional
18 narrowness, shallowness, or shape, exceptional
19 topographic conditions, or extraordinary
20 situations or conditions.

21 And I'm not quite certain how the
22 narrative underneath that gets to that

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1 particular condition, and I was wondering if
2 you could help me understand that.

3 MS. SCHUM: Well, actually, that's
4 in the staff report, and what's in the record
5 now as the position of--the APC considered the
6 city's staff report, but they reached their
7 own conclusions. So those conclusions I just
8 read into the record again, and you'll find
9 them in the resolution.

10 So they did adopt some of those
11 findings, but the staff report was just
12 information to the Advisory Planning
13 Commission, and their resolution is actually
14 what is the decision before you, rather than
15 the staff recommendation.

16 COUNCILMEMBER WOJAHN: I
17 understand that. But I mean, this is all part
18 of the record; correct? I mean, it's all part
19 of the record for us to review--

20 MS. SCHUM: It is part of the
21 record.

22 COUNCILMEMBER WOJAHN: --in making

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1 our determination; right? So I'm asking this
2 because I'm trying to understand whether or
3 not what the staff is saying, in relation to
4 this first condition, and then also what the
5 APC is--but I think they're separate issues,
6 and they're both informative.

7 So in terms of this first
8 condition, can you help me understand how this
9 relates to this first condition. If this is
10 trying to show that there's an extraordinary
11 situation or condition. I mean, the reason
12 why I'm asking is because it doesn't seem to
13 speak, at all, to the shape of the yard, or
14 the size of the yard, or as to whether or not
15 that's actually an exceptional condition in
16 the neighborhood.

17 MS. SCHUM: This really speaks to
18 what would be considered an extraordinary
19 situation or condition. You're not required
20 to find everything, only--only one. You can
21 find more than one. But this particular
22 narrative here addresses the extraordinary

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1 situation or condition, which is basically
2 that the options available to the Applicant
3 are: one, for an attached garage, which then,
4 once you attach a garage to a structure, it
5 becomes part of that structure, it becomes
6 part of the house and has to meet the setback
7 requirements for the main house.

8 So for a side yard, that would be
9 a minimum of eight feet from the side yard,
10 from the property line. That's what the
11 Applicant is requesting.

12 The other option, which the
13 Applicant did not want to pursue, is
14 constructing an accessory building, or a
15 detached garage, and the requirements then are
16 different. The requirements state that an
17 accessory structure has to be built 60 feet
18 from the front property line, and a minimum of
19 two feet from either the side or the rear
20 yard.

21 So different requirements come
22 into play. Two options--and the Applicant

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1 could do the latter option--do the detached
2 garage, and comply with the requirements in
3 the zoning ordinance, and not need a variance.

4 There would be other impacts to the property,
5 an increase in impervious surface. It affects
6 the use of the rear yard, and just the way you
7 access the garage.

8 COUNCILMEMBER WOJAHN: I think
9 what you just answered was the question of why
10 the Applicant needs a variance, and what the
11 Applicant's various options are. And I'm not
12 sure, I'm still not entirely clear on how that
13 gets to this first condition about narrowness,
14 shallowness, or shape, about exceptional
15 conditions.

16 MS. SCHUM: As I said, to meet
17 this particular criteria, you do not have to
18 find that the property has exceptional
19 narrowness. You do not have to find that it
20 has shallowness, an exceptional shape, or an
21 exceptional topographic condition.

22 You can find just that it has an

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1 extraordinary situation or condition.

2 COUNCILMEMBER WOJAHN: Okay. So I
3 understand now. I understand what you're
4 saying. So what you're saying is that the
5 extraordinary situation is that a variance is
6 necessary, or--

7 MS. SCHUM: Well, that was
8 information staff included in its staff
9 report. What the APC found was that the
10 extraordinary situation was the fact that the
11 property was constructed prior to zoning, in
12 1946, and it's currently sited just two feet
13 from the building restriction line, which
14 makes the addition--oh, I'm sorry. I'm dealing
15 with the porch.

16 COUNCILMEMBER WOJAHN: It is the
17 porch; yes.

18 MS. SCHUM: Sorry. All right.
19 Let me go to the--what they found is--well,
20 similarly, as the staff did, that trying to
21 build an attached garage within the
22 requirements of the zoning ordinance would

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1 require the garage to be ten feet wide, which
2 would not make it very functional, given, you
3 know, the sizes of cars today. So it would
4 make actually using the garage for the stated
5 purpose difficult.

6 And then they also found that it
7 would be difficult to make it fit in with the
8 existing house. So being attached to the
9 house, aesthetics becomes important. You
10 don't want your garage to look like, you know,
11 an appendage. You want it to be compatible
12 with the house, in materials and style, to the
13 extent possible.

14 So I believe that's what the APC
15 is getting at in their conclusion.

16 COUNCILMEMBER WOJAHN: And so the
17 extraordinary condition that the APC is
18 pointing out is basically the distance, the
19 length from the side of the house to the side
20 yard line. Is that what I'm--because it
21 requires a narrower--it only allows for a
22 narrow garage. Am I stating that correctly?

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1 MS. SCHUM: I believe so; yes.

2 COUNCILMEMBER WOJAHN: Okay.

3 MAYOR FELLOWS: Other questions?

4 Ms. Stullich.

5 COUNCILMEMBER STULLICH: I'm also
6 trying to understand the extent to whether
7 this is truly an extraordinary condition. Is
8 this lot, and the siding of the house and the
9 lot, atypical for this street? Are there
10 houses that have a larger space between them
11 and the side property line? Or is this a
12 typical--is this lot and the siting of the
13 house and the lot, is it typical? Is it the
14 typical development pattern for that street?

15 MS. SCHUM: If you look at Exhibit
16 3, it's also on the screen, I know it's hard
17 to read the--

18 COUNCILMEMBER STULLICH: Can you
19 give us a page number.

20 MS. SCHUM: It's 61.

21 COUNCILMEMBER STULLICH: 61. I'm
22 there. Right; right.

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1 MS. SCHUM: 61. You can see the
2 lot pattern in the immediate vicinity, and you
3 can also see the way the sizes of the
4 footprints, the way the properties are sited,
5 whether or not they have accessory buildings.

6 You can't tell here whether they're sheds or
7 garages. So I wouldn't call this house
8 atypical. No.

9 COUNCILMEMBER STULLICH: So in
10 some ways, it actually has a wider side yard
11 there than some of the other properties that
12 are on the street.

13 But it also seems fairly typical
14 to have accessory buildings in the rear yards,
15 in this area?

16 MS. SCHUM: Correct.

17 COUNCILMEMBER STULLICH: I guess
18 I'm just struggling with seeing this as an
19 extraordinary circumstance, because it seems
20 like it's just the pattern of development here
21 that, in general, the side yards are too
22 narrow to permit a garage, and that may be why

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1 we see so many accessory buildings in the rear
2 yards.

3 MS. SCHUM: I would agree. I
4 mean, it's difficult to tell from this
5 exhibit, because we did not actually show the
6 lot lines for every individual property. We
7 did not measure the distances between houses
8 and the property lines. That's not something
9 that staff would typically do. But I think
10 you're correct in stating, that with an 18-
11 foot wide side yard, that is a pretty wide
12 condition, when the minimum required side yard
13 is eight feet.

14 COUNCILMEMBER STULLICH: Right.
15 Just looking at the diagram, and without the
16 benefit of measurements, but I'm not sure it
17 would really change what I've seen here--it
18 appears that most of the houses in this area
19 don't have room for a garage immediately next
20 to the house, because of the conditions of the
21 neighborhood and the way that development
22 happened in that neighborhood.

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1 MS. SCHUM: At least on the
2 Applicant's street, 49th Place, it appears
3 that most of the properties reside on two
4 lots. The Applicant has two and a half lots.

5 COUNCILMEMBER STULLICH: Okay.
6 Thank you. Oh, I did have one other question.
7 I'm not sure if it's for Ms. Schum. But we
8 have written testimony from Ms.--and from a
9 person who opposed this, and I just wondered
10 if the Applicant has a copy of this.

11 MR. LAGZIEL: Yes.

12 COUNCILMEMBER STULLICH: They do.
13 Okay. Thank you.

14 MAYOR FELLOWS: All right. So now
15 we do go to the argument in favor. Mr.
16 Lagziel, would you like to come on up. And
17 again, please make your argument in support of
18 based on things that are already in the
19 record. And thank you.

20 MR. LAGZIEL: Good evening, Mr.
21 Mayor, Council Members. Let me first say that
22 it's a honor for me to meet you personally, as

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1 I see who are my representative.

2 MAYOR FELLOWS: Your name and
3 address for the record.

4 MR. LAGZIEL: My name is Ilan
5 Lagziel, and the address is 49 Place in
6 Hollywood on the Hill in College Park.

7 MAYOR FELLOWS: Thank you.

8 MR. LAGZIEL: I'm not residing
9 there yet because it's standing all by itself
10 right now, 'cause I didn't start the project
11 since all those delays.

12 I would like to start first with
13 this--image has just arrived today, and I just
14 got it today, and looked at it, and basically
15 the lady that was here and sent this e-mail,
16 already said those words previously before,
17 and I must dismiss this one as irrelevant to
18 the case, since this lady lives just in this
19 property behind my house, which is this one
20 here. This is my house. She lives here. And
21 she objects to my garage to be built way
22 further than her house instead of building a

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1 detached garage, which is the same basic
2 complex, closer to her house.

3 So all these hazards and hazardous
4 material that might be a problem to her, in
5 that specific location, is even worse than if
6 I built it as a detached one closer to her
7 house.

8 MAYOR FELLOWS: Sir, what you're
9 saying makes sense. I would actually say
10 you're doing a rebuttal of the opposition's--
11 the argument of the other side. So I guess
12 you can make it as part of your comments, but
13 please state your case for the variance that--

14 MR. LAGZIEL: So all I want to say
15 is just what--a few words, and let me read it
16 to you, and basically what I'm trying to say
17 here--I have no argu--I have no technical
18 arguments to--for my case. All I want to say
19 is a few emotional words about this case, if I
20 may say.

21 So when I purchased the house in
22 the City of College Park in May of 2011, I had

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1 high expectation for me and for my family when
2 I purchased this property. I purchased an
3 abandoned, foreclosed property, in an
4 extremely neglected condition, and that
5 property caused a nuisance to the whole
6 neighborhood and to this specific street.

7 And I had high intentions of
8 tastefully renovating the house to benefit my
9 family, and absolutely the City of College
10 Park and the street itself, with accordance to
11 the street look.

12 My adjacent neighbors--and I
13 believe one of them is here tonight, and he
14 was in favor of my case, and he lives across
15 from me. And not only him. David, which
16 facing me, and Mr. Carlos next to me, to the
17 south side, and I don't remember the name of
18 my north-side neighbor--but all of them were
19 in favor of me doing those projects because it
20 makes the community looks better.

21 When I spoke to Ms. Vitale, who
22 was very helpful and kind, she advised me that

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1 her interpretation is such, in accordance with
2 the general neighborhood look, are generally
3 approved. The two opposing neighbors, that
4 spoke before the committee, once in the first
5 committee, and later Ms. Ealley in the second
6 committee, because she was not notified to
7 come to the first committee, and lately sent
8 this e-mail just today--I believe, from my
9 point of view, was pitiful and narrow-minded.

10 She is irrelevant, and nothing to do with my
11 case.

12 This three month delays, which
13 will lead to the fourth month delays, will
14 bring me to the winter, and will cause me a
15 serious hardship, and seriously--I don't even
16 know how to express what I feel about it.

17 I like my neighbors facing me. I
18 like the community. But the idea of just
19 neighbors behind me who never saw me even,
20 came here today just to oppose an idea that
21 has nothing to do with them. I don't--I don't
22 get it. I just--I feel like it's seriously

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1 pitiful. Nothing with the technicalities.
2 It's you to decide. It's the laws to decide
3 about technicalities.

4 I'm talking about right here,
5 right now, the idea, the feelings, the
6 emotion, the neighbors--all these ideas.

7 So I explained to all my family,
8 as soon as I started the project, and within
9 two months was planning to move there. Right
10 now, it's not going to happen for this school
11 year. Probably, hopefully, will happen,
12 whenever you decide, yes or no, it will happen
13 next year only, which cause me one year delay,
14 living wherever I live.

15 So therefore, I ask you kindly,
16 and reasonably, to look at the case and judge
17 it upon the technicalities of what the--the
18 only people that showed you today, and not
19 because of some seriously pitiful neighbors
20 from--the rest of the case, so they said.

21 So I ask you to vote favorably for
22 my family. I appreciate your time and

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1 efforts, and all the things you decide here.
2 Thank you.

3 MAYOR FELLOWS: All right. Thank
4 you very much, sir.

5 Ms. Nagle.

6 COUNCILMEMBER NAGLE: Questions
7 for the Applicant.

8 MAYOR FELLOWS: Is there a
9 question portion of this?

10 MS. FERGUSON: Certainly. You're
11 to ask questions about what the oral arguments
12 are, and the basis of the case.

13 MAYOR FELLOWS: All right. Mr.
14 Lagziel, come on back up. I think there's a
15 couple questions for you.

16 Ms. Nagle.

17 COUNCILMEMBER NAGLE: Thank you.
18 And I definitely apologize for the
19 inconvenience you've suffered because of this
20 process, and, you know, I fail to see where
21 the two things that were holding you up would
22 keep your family from moving into the house.

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1 But if that's been a consideration, I do
2 greatly, you know, apologize for that.

3 I do think, for the record, we
4 should have your current address on the
5 record, in this testimony.

6 MR. LAGZIEL: I live right now in
7 Rockville, in--you want the exact address?

8 COUNCILMEMBER NAGLE: Yes.

9 MR. LAGZIEL: 236 Watts Branch
10 Parkway in Rockville, Maryland.

11 COUNCILMEMBER NAGLE: Okay. And
12 that's the previous house that you owned prior
13 to buying this one?

14 MR. LAGZIEL: Yes.

15 COUNCILMEMBER NAGLE: Okay. With
16 regards to your variance request for the
17 garage, could you explain to us your rationale
18 for--your reasoning. I understand that you
19 want an attached garage, and the understanding
20 being that you could walk directly into the
21 home from that, and the problem with that
22 being, why you need the wider garage, in your

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1 own words?

2 MR. LAGZIEL: For--beside the
3 facts that I already expressed here today, the
4 lawyers, I believe that the lawyers--what I'm
5 trying to say is a ten-foot garage will barely
6 fit a small car. So when you open the doors,
7 it knocks the walls of the space between
8 opening the door and the wall, will be
9 something that you have to come like this. So
10 you can't really enjoy the garage. It's very
11 narrow garage, ten feet.

12 So I asked a variance to extend it
13 a little bit to the sides, so I can enjoy the
14 garage. Otherwise, there's no reason for the
15 garage, at all. In that location, I have to
16 do the detached one, all the way back, and
17 they explained already why I don't really like
18 it, because I have to walk with all my
19 groceries and kids, and everything, every time
20 it's raining or snowing, whatever, from all
21 the way back into the house.

22 COUNCILMEMBER NAGLE: You do have

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1 a driveway as well, that you could park right
2 next to the door.

3 MR. LAGZIEL: But there's no roof
4 or anything, and I have to go around again,
5 raining or shines, or whatever, with kids and
6 everything, all the way around to the house,
7 through the main door. If that's what you're
8 asking. Right?

9 COUNCILMEMBER NAGLE: That is what
10 I'm asking; yes.

11 MR. LAGZIEL: Yes. So the garage
12 would be in the front, open space, without a
13 roof, without anything, and I have to go all
14 the way around to come to the main door.

15 COUNCILMEMBER NAGLE: Okay. So if
16 I'm understanding you correctly, then the
17 criteria that you're asking for is for
18 convenience?

19 MR. LAGZIEL: Not only
20 convenience, but as they explained already,
21 because of the variance limitation, and I
22 cannot build the detached one all the way at

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1 the back, and I cannot build it at the front,
2 at all. So either would be a detached one in
3 the back, or nothing at all, at the front.

4 MAYOR FELLOWS: Mr. Wojahn.

5 COUNCILMEMBER WOJAHN: First of
6 all, Mr. "Lagziel"?

7 MR. LAGZIEL: Yes, sir.

8 COUNCILMEMBER WOJAHN: Thank you
9 very much for coming down this evening, and
10 thank you for taking a property that was
11 foreclosed and was in a bad condition, and
12 purchasing it, and trying to make it better.
13 I do appreciate all your work and all your
14 effort in that.

15 I just want to say, at the risk of
16 delving into argument, which I'm not trying to
17 do right now, but just to clarify a little bit
18 for you. We aren't here tonight to decide
19 whether the garage is the best thing for the
20 neighborhood or whether the garage is going to
21 be liked by neighbors, or whether the garage
22 is going to be the most aesthetically

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1 appealing thing. The one task before us
2 tonight is to decide whether this garage fits
3 the requirements to allow for a variance.

4 So I just hope you understand
5 that.

6 MR. LAGZIEL: Absolutely, sir.

7 COUNCILMEMBER WOJAHN: And that's
8 why we're trying to get at some of the things
9 that we're trying to get at right now.

10 So one of the requirements for a
11 variance is--there has to be something
12 exceptionable about the property. The zoning
13 rules are in place in order to set a certain
14 standard, and there has to be a justification,
15 a reason to go, to vary from that standard, to
16 make an exception to that standard.

17 So what I want to ask you is: What
18 is it about your particular property, that
19 makes it different than other properties
20 around it, that would allow for us to
21 consider, to allow you to put--to vary from
22 the rules that are in place, that are supposed

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1 to be generally evenly applied for all
2 properties? What is that makes your property
3 different, that would allow us to do that?

4 MR. LAGZIEL: From my point of
5 view, I believe two issues. The first issue
6 is the fact that I'm not the only property
7 within the Hollywood on the Hill that have a
8 garage, closed garage that attach to the
9 house. So they're plenty of them in the
10 neighborhood, in the street next to me, all
11 around the neighborhood. I'm not the first
12 one.

13 I have, actually, a picture of one
14 of the neighborhood--of one of the houses very
15 close to my neighborhood. I took a picture.
16 If you want to see, I can look for it and show
17 you later. But I don't think it's necessary,
18 'cause you know, you're from the neighborhood.

19 What makes my specific house a problem to
20 have--a need to have this variance, is the
21 fact that my house, if you can see, is very--I
22 mean, most of my yard is in the back. The

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1 house is hitting the front and very close to
2 the sides, and therefore I cannot build a
3 garage next to it. It's very narrow to the
4 sides of this, north and the south. But
5 plenty of space in the east. So that makes
6 it--if I--I can't reach that high, but the
7 east is that way--

8 [Applicant points to a map.]

9 COUNCILMEMBER WOJAHN: Mr. Lagziel
10 is moving away from the microphone. We have a
11 portable microphone he can use? Yes. That'll
12 work.

13 MR. LAGZIEL: So this square over
14 there is my house, as you can see, the east
15 side is a huge area, but the side of the north
16 and the south are very narrow, and I can't do
17 anything with this space. I can't do anything
18 with this space, sir, but to ask for a
19 variance, and I asked for the variance to the
20 north side because the kitchen, and the
21 stairs, and everything is the only way to put
22 a garage. I can't put a garage in the south

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1 side. I can't ask for a variance to the south
2 side; only to the north side.

3 This is the only way I can ask a
4 variance to build a garage. Attached garage.

5 Of course a detached garage, as I said
6 before, I can build all the way back to the
7 front, but I already explained why it's
8 illogic to do that.

9 From my point of view, if the
10 Mayor and you Council Members decide that
11 it's--that's the way it should be, there's
12 nothing else I can do.

13 MRS. LAGZIEL: See, it complies
14 with the given space--

15 MR. LAGZIEL: I already explained
16 that, they have in front of them, that I
17 wanted to keep as much green space, as much
18 open space, and I don't want to wind with the
19 cement all the way, 'cause if I have to do
20 with it attached--I mean detached in the back,
21 I have to do--build a cement line all the way
22 from the house, all the way to the back. It

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1 looks really not nice, it kills the green
2 area, it makes the neighborhood look like a
3 cement--doesn't look good. And it
4 compromises, of course, the back yard,
5 totally.

6 COUNCILMEMBER WOJAHN: Okay.
7 Thank you.

8 MAYOR FELLOWS: Thank you, sir.
9 Mr. Cook.

10 COUNCILMEMBER COOK: Actually, my
11 question is for staff.

12 If the garage was detached and
13 placed in the back, would the impervious area
14 exceed the limitations that we have?

15 MS. SCHUM: No; it would not
16 affect lot coverage.

17 COUNCILMEMBER COOK: It would not?

18 MS. SCHUM: No.

19 COUNCILMEMBER COOK: Okay. And
20 approximately how many--I mean, if it's 60
21 feet long and 13 feet wide, it's like what?

22 MS. SCHUM: I don't have those

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1 computations for you now but--

2 MR. LAGZIEL: 700 square feet,
3 about.

4 COUNCILMEMBER COOK: Yes. That's
5 about 700 square feet of impervious lot
6 coverage.

7 MR. LAGZIEL: Which is already
8 cemented over there. I didn't--I don't have
9 permission to do over there.

10 COUNCILMEMBER COOK: But as part
11 of the variance that the APC was providing is
12 that this was--this community was built
13 previous to zoning, and that the lots are very
14 narrow. But you are trying to improve the
15 property.

16 And looking at the street, there's
17 a number of properties that have not ever been
18 improved since they were originally built
19 after World War II.

20 MR. LAGZIEL: Yes, sir.

21 COUNCILMEMBER COOK: And--

22 MR. LAGZIEL: But some of them

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1 were built very nicely on this street and
2 improved nicely. The one in front of me, and
3 the one across from me, and actually the one
4 next to me had built a little, I would say
5 addition, in his north side. This house. So
6 this neighbor actually built a little addition
7 to his north side, right close to the fence,
8 and the house goes from my house that way, two
9 houses basically, improved a lot.

10 There are three houses all the way
11 to the 49th Street. And the whole area is--
12 slowly, takes time to improve.

13 COUNCILMEMBER COOK: Can someone
14 give him the microphone.

15 MR. LAGZIEL: Sorry. Here's the
16 porch that the neighbor in front of me--this
17 is the porch of my neighbor, facing me. They
18 got the variance to build.

19 MAYOR FELLOWS: Any other
20 questions?

21 COUNCILMEMBER COOK: No.

22 MAYOR FELLOWS: All right. Thank

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1 you, Mr. Lagziel.

2 MR. LAGZIEL: Thank you, Mr.
3 Mayor. Thank you.

4 MAYOR FELLOWS: There are no
5 parties here, I believe, to rebut, and
6 therefore--and actually, I think we heard the
7 rebuttal earlier about--

8 MS. FERGUSON: Maybe you should
9 ask whether or not there's anyone else that
10 wants to testify with respect to supporting
11 the APC's recommendation.

12 MAYOR FELLOWS: All right. Is
13 there anyone here who would like to testify in
14 support of the APC's recommendation?

15 [No response.]

16 MAYOR FELLOWS: Seeing none,
17 should I ask the question about opposing?

18 MS. FERGUSON: No, I just--the
19 reason for the last question was whether
20 anyone else, other than Mr. Lagziel, wanted to
21 testify.

22 MAYOR FELLOWS: Okay.

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1 MS. FERGUSON: There's really no
2 rebuttal because you're not receiving any
3 rebuttal from the opponents to the APC. So
4 there's no reason to go into rebuttal for
5 anyone else.

6 MAYOR FELLOWS: So I mean, at this
7 time, there's really nothing left for the
8 hearing process. We've heard the arguments
9 for. We've read arguments against, and staff
10 was questioned, some things which actually
11 raised reasons to oppose, and so at this time--
12 - is this the time, actually, that it would be
13 proper to take a vote of the Council?

14 MS. FERGUSON: Yes. You may do
15 so.

16 MAYOR FELLOWS: All right.

17 MS. FERGUSON: You can close the
18 oral argument, and then you will take up the
19 decision, and because this is a zoning matter,
20 you do have to do that in public. Yes.

21 MAYOR FELLOWS: All right. Well,
22 I will declare the hearing having been held.

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1 So I close the hearing, and we now, as a body-
2 -is it taking a motion? Is it that form of a-
3 -

4 MS. FERGUSON: That would be how
5 you would start the discussion.

6 MAYOR FELLOWS: All right. So do
7 I hear a motion--the motion could be to
8 support the recommendation of the APC
9 Commission.

10 COUNCILMEMBER PERRY: So move, Mr.
11 Mayor.

12 MAYOR FELLOWS: All right. I have
13 a motion. And a second. All right. I guess
14 further comment, or is it just an up/down
15 vote?

16 MS. FERGUSON: You definitely
17 should discuss it. Now is the time to do
18 that.

19 MAYOR FELLOWS: Okay. All right.
20 So we have a motion and a second.

21 Any discussion?

22 Mr. Afzali.

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1 COUNCILMEMBER AFZALI: Thank you,
2 Mr. Mayor. I'm not sure the APC vote was
3 correct or not, or they should have approved
4 this or not. But I believe that they have
5 voted on this twice already. I think our job
6 is to see if there is anything that they, for
7 some reason just--for some reason failed in
8 the duty, were negligent, some reason just--
9 and APC isn't perfect. They messed up my
10 neighborhood with the pink wall thing. So
11 they make mistakes. God knows that.

12 But I don't see any real new
13 evidence, or new information come out here
14 tonight, that would make me want to reverse
15 that decision. Based on the questions, I
16 think I may be in a minority view on this, but
17 I just didn't see anything come out here
18 tonight, that made me think the APC wasn't
19 doing their job, didn't have the same
20 information that we have access to, and I
21 don't really see a reason we should overturn
22 the decision, unless there's kind of

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1 compelling evidence that they were wrong.

2 So I'm supporting the decision,
3 unless my colleagues can convince me
4 otherwise, that the APC has already made.

5 MAYOR FELLOWS: All right.

6 Ms. Stullich.

7 COUNCILMEMBER STULLICH: I just
8 wanted to comment on the issue of whether we
9 should only overturn this decision, if we
10 believe they made, the APC made some kind of
11 error, and I didn't think that that was the
12 case.

13 I thought that when the case is
14 appealed to us, that we look at the full
15 record, and the merits of the arguments on
16 both sides, not necessarily stating that we
17 think that--if we were to overturn a decision
18 of the APC, does that mean that we would have
19 to find that they made an error, or just that
20 we came to a different conclusion?

21 MS. FERGUSON: You can phrase it
22 as coming to a different conclusion, if you

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1 don't feel that the evidence that the APC
2 considered--because they're a recommending
3 group, and they recommend to you. You have to
4 adopt, one way or the other. So they made a
5 recommendation based on certain facts.

6 You can see those differently.
7 You can decide that those facts do not support
8 the conclusion of law that was made. You have
9 to be careful about not accepting their facts.

10 They will define their fact--they
11 did see everybody who testified, and so
12 generally speaking, you would not disturb
13 that, unless there's really something in the
14 record that was clearly not right.

15 But in reviewing the facts, as
16 they've stated them to you, if you find that
17 you would apply the law differently to those
18 facts, you can certainly do that.

19 COUNCILMEMBER STULLICH: Thank
20 you. I guess I would just, at this time, say
21 that I am having trouble seeing that this is
22 an extraordinary situation. It seems to me

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1 that this property is fairly typical for the
2 neighborhood, that the neighborhood was
3 constructed with narrow side yards that, in
4 most cases, don't have room for a garage to be
5 sited immediately adjacent to the house.

6 So I'm, you know, interested in
7 hearing comments of my colleagues on this
8 matter, before making a decision. Thank you.

9 MAYOR FELLOWS: Thank you, Ms.
10 Stullich. Mr. Wojahn.

11 COUNCILMEMBER WOJAHN: Thank you,
12 Mr. Mayor. With all due respect to
13 Councilmember Afzali, our role here is to
14 review the facts before us, de novo, not to
15 give undue weight to the determination of the
16 Advisory Planning Commission, and whether they
17 made mistakes before is irrelevant in this
18 case.

19 The matter before us is whether or
20 not this particular request for a variance
21 meets the legal standards, the three
22 requirements to grant or allow for a variance

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1 that are written out in the application form.

2 And I think we've explored
3 tonight, in quite a bit of detail, and given
4 the Applicant many opportunities to explain
5 why his property has something exceptional to
6 it. What I didn't hear was anything that fit
7 that standard.

8 Although the property is certainly
9 narrow, too narrow to put a garage in, it's no
10 narrower than any other property in the area.

11 In fact it's wider. It appears to be wider,
12 based on what we see on the map.

13 When asked what, based on the
14 staff's recommendation, the staff's
15 recommendation stated that what made the
16 property exceptional was that it required,
17 essentially it required a variance to
18 construct a garage there.

19 And if that's the standard, if any
20 property that requires a variance in order to
21 construct a garage, or any other item, if that
22 makes it exceptional, then that basically

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1 writes out of the law the requirement that we
2 even grant the variance.

3 So I appreciate the Applicant's
4 effort on the property. I appreciate the work
5 that he's gone through to make it nice. I
6 appreciate the fact that he purchased a
7 foreclosed property and is doing something
8 with it. We certainly need more of that in
9 the neighborhood.

10 But given the legal standard, I
11 can't say that this request for a variance
12 meets that, and I may have to vote against
13 this.

14 MAYOR FELLOWS: Thank you, Mr.
15 Wojahn.

16 Ms. Nagle.

17 COUNCILMEMBER NAGLE: Thank you,
18 Mayor, and I too disagree with Councilmember
19 Afzali's opinion of what our role is here
20 tonight. And in looking at what the legal
21 standards are before us, I do not think that
22 they have been met by the Applicant, and

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1 they're not found in the opinion that we have
2 before us, the APC, and I think it's our role
3 to follow that, regardless of whether--I mean,
4 I, too, appreciate that the Applicant wants to
5 come in, and he had certain ideals in place
6 that he wanted to put before us, to improve
7 the property, and not knowing about an old
8 existing property that was in place before
9 zoning, he got caught into a situation where
10 the ideas he had in place have run into this
11 variance concern.

12 That said, as Councilmember Wojahn
13 alluded to, if we were to go ahead, and in
14 this case, just say for these reasons, we will
15 not adhere to the criteria before us, then the
16 whole process becomes where every property
17 comes in, there won't even be a need for a
18 variance, because all the properties will meet
19 the criteria. There's nothing exceptional.

20 For those reasons, and because I
21 do not think that beyond the fact that there's
22 going to be a need in plans for the Applicant,

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1 that there's been undue hardship. I'll be
2 voting against the variance request, too.

3 MAYOR FELLOWS: Thank you, Ms.
4 Nagle. Other comments?

5 Mr. Afzali.

6 COUNCILMEMBER AFZALI: Thank you,
7 Mr. Mayor. I do want to state that I still
8 don't think that we're doing the right thing
9 in opposing this, but since this is in
10 District 1, and both councilmembers are united
11 on this issue, I think it would be
12 inappropriate for me to tell them what should
13 happen in their own district.

14 So I won't support the variance,
15 but I do personally believe that we should.

16 MAYOR FELLOWS: Okay. Ms.
17 Stullich.

18 COUNCILMEMBER STULLICH: I just
19 wanted to comment to one of the statements
20 that was made in the APC decision, stating
21 that one of the reasons that they believed
22 that the property has an extraordinary

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1 situation is because the house was constructed
2 in 1946, and predates zoning in Prince
3 George's County.

4 And I'm not convinced that that--
5 in fact, I quite disagree, that that creates
6 an extraordinary situation, because many
7 houses and structures in College Park were
8 built in that period that predates the zoning.

9 So I have trouble seeing that just because a
10 house is of that era, you know, an older
11 house, that that causes an extraordinary
12 situation.

13 To me, it just seems that this is
14 a neighborhood where modestly-sized houses
15 were constructed fairly close together,
16 without room for garages in between them, but
17 the desire of property owners for garages has
18 been accommodated through accessory structures
19 in the rear yard.

20 And to me, that seems to be the
21 typical pattern of development for this area,
22 and I don't see this particular property as

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1 being extraordinary in that regard. I see it
2 as just being typical for the area.

3 So the legal standard that we have
4 to look at is whether the property is in an
5 extraordinary situation, and I do not believe
6 that criteria is met here.

7 So having heard the arguments of
8 the Applicant, and having read the record, and
9 hearing the arguments of my colleagues, I am
10 not convinced that there is in fact an
11 extraordinary situation here. And thank you.

12 MAYOR FELLOWS: Mr. Cook.

13 COUNCILMEMBER COOK: With all due
14 respect to my colleagues, having been the
15 chair of the APC, we have given a good number
16 of variances for these properties that were
17 laid out, and their communities were laid out
18 before the most robust zoning standards were
19 established in the county.

20 And we have granted the variances
21 a number of times, so the properties in the
22 neighborhood could be improved, and I'm sorry

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1 that none of my fellow colleagues ever enjoyed
2 serving on the APC, 'cause they would have
3 learned that this happens more often than not,
4 to help improve the properties.

5 One of the problems with College
6 Park is that there's too many properties have
7 failed to have been improved over the last 50
8 or 60 years of their life.

9 We have a couple here, who are
10 coming in, bringing their family, buying a
11 foreclosed home, greatly improving a property
12 that was originally constructed post-war for
13 the returning soldiers, when materials were
14 short, and it's about a six- or 800 square
15 foot home, and they're working to improve it
16 greatly.

17 As we can see on this particular
18 property that's on the screen, I believe that
19 was one that was given a variance for that
20 porch while I was on the APC, and we see how
21 it now looks like a beautiful modern bungalow,
22 as opposed to the other houses that are

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1 essentially boxes that were dropped down,
2 quickly and cheaply, with the idea that they
3 would be improved over time.

4 That is an extraordinary
5 condition, that the properties in this
6 community were built on very, what we call
7 "bowling alley lots," and once again, I'm
8 sorry that more of my fellow councilmembers
9 fail to see that.

10 I think that the property owner
11 may be able to build this garage, if maybe
12 it's made ten feet wide, given the full eight-
13 foot variance on the side yard, if I'm
14 correct, and that may be something that they
15 explore, if this Council fails to see the
16 advantage of having a 13-foot wide garage, and
17 I would hope that they would explore that,
18 cause I would like to see them improve this
19 property, make it, bring it up to modern
20 standards for the modern family, and to move
21 in here and raise their family in College
22 Park.

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1 MAYOR FELLOWS: Thank you, Mr.
2 Cook.

3 Ms. Stullich.

4 COUNCILMEMBER STULLICH: Two
5 things. One is that--I guess I believe that
6 zoning requirements that were adopted after
7 the construction of some of these earlier
8 houses are generally not a bad thing that we
9 should be continually seeking to overturn.

10 I think the zoning requirements
11 were adopted because of a belief that they
12 would improve the neighborhoods and the
13 community. So I am generally somewhat
14 reluctant to support variances, because I
15 believe that the zoning requirements, the
16 setback requirements, do serve a legitimate
17 and useful and important function.

18 I did want to speak to the porch,
19 because most of our discussion has focused on
20 the garage, and I do support the request for a
21 variance for a porch. I think that's a
22 different situation, and, you know, if the

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1 motion--can someone remind me of what the
2 motion is. Was the motion specific just to
3 the garage, or did it address both?

4 COUNCILMEMBER WOJAHN: The APC
5 recommendation.

6 COUNCILMEMBER STULLICH: Oh, the
7 motion was to accept the APC recommendation.

8 So I'm going to vote against that
9 motion, but I would support a motion that is
10 to accept the APC's recommendation just with
11 respect to the porch. Thank you.

12 MAYOR FELLOWS: All right. Thank
13 you. Other comments?

14 Ms. Nagle.

15 COUNCILMEMBER NAGLE: I'd just go
16 back to comments, back to the garage for a
17 second, and then I will address the porch as
18 well. But to go to Councilmember Cook's
19 comments, I, too, agree, that sometimes the
20 zoning can cause a problem for properties to
21 improve. However, in the case with the garage
22 request before us, when you look around the

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1 community that it's in, I think there's a
2 reason why we don't have any pictures of
3 comparables in the area, because it's not
4 something that's common in the community, and
5 I think that one of the things we don't want
6 to see with a variance is a variance that
7 creates a situation that's not comparable to
8 the other houses in there.

9 If it's a porch that we add on,
10 like this porch here that fits into the
11 community, fine. But if it's something that
12 takes away from the community, or creates a
13 different standard that anybody else thinks
14 they have to build up to or change because of,
15 then I think that's not a good variance to
16 grant, and it's not "in criteria" with the
17 third problem with the criteria before us.

18 With the porch, I, too, do not
19 feel as strongly. I don't feel that the
20 criteria's necessarily been met in the opinion
21 before us. However, I can understand the
22 desire for that, and I don't feel that--I do

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1 not have a problem voting in favor of the
2 porch variance--

3 MAYOR FELLOWS: All right.

4 COUNCILMEMBER NAGLE: --strongly.

5 MAYOR FELLOWS: Mr. Wojahn.

6 COUNCILMEMBER WOJAHN: I'd like to
7 address the porch as well. I think the porch-
8 -it is at least--there's a much more logical
9 argument that, for a house to be built that
10 close to the front yard setback line, is an
11 extraordinary circumstance. I think in most
12 cases, houses at least have the ability to
13 accommodate a porch in the location where
14 they're built. So I think that is at least
15 somewhat more logical, that that would be an
16 extraordinary argument.

17 I hear, really, no comparable
18 argument based on the sideyard setback and the
19 garage, that there was an extraordinary
20 circumstance there. So I would agree, that I
21 support the variance for the porch, but
22 continue to be opposed to the variance for the

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1 garage.

2 MAYOR FELLOWS: All right. Well,
3 this certainly sets the stage for another
4 motion after this vote.

5 Mr. Cook.

6 COUNCILMEMBER COOK: Just one last
7 comment before we take a vote. Of the 18
8 properties on the street, thirteen of them are
9 only built on two lots each. This is one of
10 only five that are on more than two lots, and
11 so that's why this one should be viewed in a
12 different light, and why the other ones do not
13 have side garages, 'cause they do not have
14 anywhere near the room for building a side
15 garage.

16 MAYOR FELLOWS: All right. Thank
17 you, Mr. Cook. Any other comments?

18 [No response.]

19 MAYOR FELLOWS: All right. All
20 those in favor of the motion to support the
21 APC recommendations on both variances, say
22 aye.

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1 [Chorus of ayes.]

2 MAYOR FELLOWS: Opposed?

3 [Chorus of nays.]

4 MAYOR FELLOWS: All right.

5 COUNCILMEMBER AFZALI: I abstain.

6 COUNCILMEMBER NAGLE: Show of
7 hands, Mr. Mayor.

8 MAYOR FELLOWS: All right. Can I
9 see a show of hands. So we'll start over
10 again. Those in favor of the motion say--or
11 raise your hand--aye.

12 [Show of hands.]

13 MAYOR FELLOWS: That's two.

14 Opposed?

15 [Show of hands.]

16 MAYOR FELLOWS: That's three. And
17 I see one abstention. So the motion fails, 2-
18 3-1, and now do I hear another motion?

19 Mr. Wojahn.

20 COUNCILMEMBER WOJAHN: Mr. Mayor,
21 I'd like to move to, in regards to the
22 variance, in regards to the request for a

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1 variance--let me make sure I get this right--a
2 variance of four feet from the minimum
3 required front yard depth of 25 feet to
4 construct a front yard, front porch. That we
5 accept the recommendation of the APC in
6 granting the variance. But in regards to the
7 request for a variance to--of three feet from
8 the minimum required sideyard depth to build
9 an attached garage, that we reverse the
10 recommendation of the Advisory Planning
11 Commission and deny the variance.

12 MAYOR FELLOWS: All right. Thank
13 you for the motion. Do I hear a second?

14 COUNCILMEMBER NAGLE: Second.

15 MAYOR FELLOWS: Second by Ms.
16 Nagle. Did the motion accurately capture the
17 APC's comments? Okay. All right. Comments
18 on the motion?

19 [No response.]

20 MAYOR FELLOWS: All right. Seeing
21 none, all those in favor say aye.

22 [Chorus of ayes.]

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1 MAYOR FELLOWS: Opposed?

2 [Chorus of nays.]

3 MAYOR FELLOWS: I guess we'll do
4 the hands again. Those in support of the
5 motion, raise your hand and say aye.

6 [Show of hands]

7 MAYOR FELLOWS: All right. That's
8 three.

9 MAYOR FELLOWS: And opposed?

10 [Show of hands.]

11 MAYOR FELLOWS: That's two. And
12 any other votes?

13 [No response.]

14 MAYOR FELLOWS: All right. So the
15 motion--that motion passes 3-2-1. So your
16 porch variance is granted, and unfortunately,
17 well, for you, the variance for the garage is
18 not. So I hope you'll explore the things that
19 were mentioned earlier by Mr. Cook, and thank
20 you for coming in, and thanks for your time in
21 this process.

22 COUNCILMEMBER PERRY: I move we

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1 adjourn the hearing, Mr. Mayor.

2 MAYOR FELLOWS: All right.

3 MS. FERGUSON: Mr. Mayor, if I
4 may, that abstention, that causes a problem.

5 MAYOR FELLOWS: Oh.

6 MS. FERGUSON: You have a problem
7 with the abstention.

8 MAYOR FELLOWS: Okay.

9 COUNCILMEMBER PERRY: It's not a
10 majority.

11 MAYOR FELLOWS: Could you explain
12 the abstention. I mean the problem.

13 MS. FERGUSON: Well, Mr. Afzali is
14 sitting there, so out of six people that are
15 voting, you can't adopt with three.

16 COUNCILMEMBER AFZALI: Can I just
17 vote over?

18 MS. FERGUSON: Yes. You can
19 change your vote, if you wish to.

20 COUNCILMEMBER AFZALI: I'll vote
21 yes.

22 MAYOR FELLOWS: All right. So

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1 then on the second motion, you're voting yes.

2 So that motion carries 4-2-0. I'm sorry, 4
3 to 2. All right. Thank you for the
4 clarification.

5 MS. FERGUSON: And you should also
6 direct staff to write an opinion consistent
7 with the comments that have been made with
8 respect to the failure to comply with the
9 legal requirements for the garage.

10 MAYOR FELLOWS: Okay. All right.
11 And the staff is so directed. Thank you very
12 much. All right. Thanks again, for everyone,
13 and we are now going to go to the regular
14 Council meeting. So that concludes this
15 process.

16 [Whereupon, at 8:18 p.m., the
17 above-entitled matter was concluded.]
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22

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