

1 BOARD OF ZONING APPEALS MEETING AGENDA

2 VIRTUAL PUBLIC HEARING

3 Thursday, August 13, 2020

4 7:30 p.m.

5
6 1. CALL TO ORDER

7 MR. BOYLE: I believe the recording may not have been
8 working at the very beginning, so what I'd like to do is simply
9 restate that this is the Special Meeting for the Board of Zoning
10 Appeals for August 13, 2020.

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12 2. ROLL CALL

13 MR. BOYLE: Members present are David Calabrese, Roy
14 Jones, Keith Bartlett, Peter Kien. Absent are Dale Eppler and
15 John Misleh. Zoning Administrator is present. Deputy Zoning
16 Administrator and BZA Secretary Akida Rouzi is absent. And I
17 think that catches us up.

18 And just for the recording secretary, when she hears
19 this, for the record, insert this at the beginning for your
20 notes.

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22 3. PETITIONS

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4. OLD BUSINESS

5. NEW BUSINESS

a. Variance application V1616-20 by Jeff and Katie Skalka, applicant and owner, for a variance to Section 48-238, to allow 27.4% lot coverage instead of 25% maximum permitted by Code, and 37.2% impervious lot coverage instead of 35% maximum permitted by Code, for the purpose of constructing a front porch on premises known as 205 Patterson Street, RPC #52-113-008 of the Falls Church Real Property Records, zoned R-1A, Low Density Residential.

(Continuing)

MR. BOYLE: In their presentation you should have a multi-page presentation from the applicants that shows a cover letter detailing what they feel their hardship is and scrolling through, several graphics showing the proposed footprint shot from their grading plan, and a depiction of what they're hoping to do.

This Board has heard applications for increases in lot coverage before and typically that's when the lot is substandard for area and a consideration is given to what would they have

44 been allowed had the lot been the required minimum of 11,250.

45 And they address that in their cover letter.

46 The Board should have three emails sent yesterday and
47 today from neighbors. One in opposition, I think a second one
48 that was concerned about mitigating, and a third in favor.

49 What I think what the Board should consider is the
50 concerns raised by the neighbors deal with water runoff. And
51 it's something I think we struggle with in Zoning and in the
52 functions of this Board is that the Board typically and Zoning
53 typically is not concerned with where the water goes but are the
54 percentages being met.

55 And there is precedent in other considerations such as
56 special use permits where if a problem is created by granting
57 the variance or a special use permit, if that problem can be
58 mitigated by the imposition of conditions, then it can be
59 approved contingent on those conditions being applied.

60 And if the Board so chose to approve this variance
61 tonight, this project, these building plans and the accompanying
62 grading plan, are headed to the engineers and building
63 inspection for an extensive review and a grading plan review.

64 At that point the Board could condition an approval if
65 it chose, on whatever those reviewers felt would mitigate the
66 concerns of the neighbors.

67 So I don't want the Board -- and the reason I say this
68 is I don't want the Board to feel that in your expertise you
69 should feel obligated to determine how to mitigate the water
70 runoff concerns of the neighbors. That is something that can be
71 dealt with by the engineers and it's part of their routine
72 reviews.

73 So personally in Zoning, we don't have an answer for
74 questions like that. So don't be surprised if you find yourself
75 in a similar situation: What do we do to address these
76 neighbors' concerns. That can be handled, if the Board chooses,
77 in the following reviews by the engineers and the building
78 inspectors. They do have ways to address these things.

79 And they don't have to approve it at their level of
80 review. The neighbors will be invited to that conversation as
81 well, particularly the grading plan. If they're not satisfied
82 with the mitigation, then that staff, that group of staff that
83 reviews, in their expertise can decide not to approve it.

84 So by all means don't feel that you need to be an
85 expert in how to mitigate water runoff this evening. The focus
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87 is in, is it a reasonable hardship based on the application that
88 you have in front of you to increase the percentages for
89 building coverage and impervious coverage with whatever
90 conditions that you feel are appropriate.

91 So I did feel that a little bit of background
92 explanation was appropriate for where this process will lead to
93 assist the Board in their deliberation this evening.

94 So with that, I'll defer to the applicants for their
95 presentation.

96 MR. JONES: Thank you, Mr. Boyle.

97 MS. SKALKA: Thank you, John. That was very helpful.
98 It was a very arduous process already to get some of these plans
99 together so forgive me if I stumble and don't say numbers quite
100 the way that they're supposed to be. I'm an educator by trade
101 but there's so many numbers so thank you for your patience as we
102 have obviously never done this before.

103 So, it came to our attention that our lot was
104 undersized and that if our lot were the standard size of 11,250
105 square feet, we would be afforded about 254 square feet of
106 additional coverage and about 355 square feet of additional
107 impervious area.

108 So when we applied for this covered area, we made sure
109 to design it within that constraint so that our percentages
110 based on an 11,250 site would still be within the 25 percent and
111 the 35 percent.

112 So we're hoping that you take a look at the numbers
113 difference and realize that we are right up at that minimum or
114 that maximum rather but we aren't a minimum lot size. So we're
115 hoping that given that hardship you'll afford us this extra
116 space on our lot.

117 I could rattle off all the numbers. I think that
118 would just sound like numbers soup. We understand that this is
119 our preference to build this way and that's not your
120 consideration. We understand that there will be water runoff
121 and that we have already contracted engineers at LDC. They have
122 an extensive grading plan that's already put into review. I
123 think it's already paid for and being reviewed right now.

124 And it's an extensive water mitigation, just so you
125 know, not that you need to be experts as John said, but the goal
126 is to be equal to or less than our current. And right now the
127 plan that we have in place for review is equal to. So we're
128 looking to not increase hardships to our neighbors because I
129 know that is something that you would be concerned about.

130 I guess I'm mostly interested in hearing what your
131 questions are because I feel like, you know, it's a very basic
132 construction. It's not laying on the ground. We have the
133 ability to mitigate with conditions anything that you would
134 propose. It's a very standard back porch actually, I know that
135 was a typo. We're hoping you don't make us put it on the front
136 if you approve it tonight.

137 So, I think we're ready to field questions if that's
138 how we proceed.

139 MR. JONES: Thank you very much for your presentation.

140 With that, I think, if that sort of concludes your
141 presentation, we'll start with questions from the Board.

142 If my colleagues don't mind, I'd like to lead off with
143 a question about your description of the hardship that would
144 sort of ensue by being within the current parameters of the
145 Code.

146 The Code, one of the things we look for besides any
147 potential negative impact on your neighbors which I think we can
148 touch on a little bit later, is whether the strict application
149 of the Code creates an un -- I forget the term, I think it's
150 unreasonable restriction on the utilization of your property.

151 So, for me, I think my first question, if my
152 colleagues would indulge me, is if you could speak a little bit
153 about how the hardship, how staying within the current Code is
154 sort of unreasonably restricting on your ability to enjoy your
155 property.

156 MS. SKALKA: It's an excellent question actually. So
157 our house is actually designed with what I'm calling "door to
158 nowhere" right now. The home was always intended for and
159 initial grading plan indicates the presence of a deck that was
160 not previously built.

161 So right now we have an entire section of our property
162 that we can't access through the doors to our house because it
163 stands six feet above the sewer, above the ground.

164 So that's one. I think that's kind of glaring as
165 we're in our house. And the way that the lot is designed, is
166 there's a very obvious section that should have a deck, or
167 something built on to the house there.

168 The majority of the rest of our property is landscaped
169 that we've improved upon even since the last grading plan so
170 this would be kind of the only area where we could enjoy and
171 being outside.

172 MR. JONES: Two of your neighbors submitted letters I
173 believe with concern about the water runoff which is sort of a
174 separate issue that Mr. Boyle touched upon.

175 Did any of your other neighbors indicate any concerns
176 with the actual building of the structure itself; i.e., it would
177 encroach upon a view or anywhere else? Did your neighbors sort
178 of indicate any other concerns other than just the water runoff
179 issue?

180 MS. SKALKA: Not to our knowledge. The house is set
181 back from the property of the two people that did write letters.
182 And we have -- when we built the privacy fence when we first
183 bought the property, we consulted them and made sure that they
184 were cool with what we put up.

185 That was a very smooth process. Everyone was very
186 glad to see us tear down the chain link fence and put up some
187 nice landscaping and fence and actually improve upon some of the
188 drainage at that point, which the current drainage plan does not
189 -- or the grading plan does not indicate any improvements that
190 we've done since then.

191 No, not that I know of. The way that the house is
192 structured, we're actually, if you look at the plans, just kind
193 of filling in an "L" to make the house a true box. Like I said,

194 it was always designed to have a deck that was within kind of a
195 contiguous rectangle. So it's not going to the side or going
196 deep into the property at all.

197 MR. JONES: Did you try to talk to any of your
198 neighbors about your structure? I know there's a notice
199 requirement. But did you try to engage them and say, Hey,
200 here's what we're doing?

201 MS. SKALKA: Yeah. Jeff, you talked to Jason a couple
202 of times.

203 MR. SKALKA: Mentioned it to Jason, who's directly
204 behind us. And I think that the understandable concern is
205 exactly what those letters written upon which is the drainage.

206 And prior to even having conversation with neighbors
207 or even John Boyle and the engineering firm that we engaged, we
208 thought of the idea of how do we be certain to mitigate any
209 potential additional runoff which would be inevitable.

210 And through the conversation with the engineering
211 firm, was when we started discussing what that could look like
212 and certainly we're very much in favor of doing so, for not only
213 environmental reasons but, of course, also being certain to keep
214 the neighbors and the City happy.

215 MS. SKALKA: Yeah, so, in short, I think, no, it's not
216 a higher roof line, it's not an extended footprint. In any of
217 our conversations, it's almost always has come back to water.

218 MR. JONES: Thank you. And my last question, I don't
219 want to monopolize all the time, I'll turn it over to my
220 colleagues, could you speak a little bit more to these "doors to
221 nowhere", and how that sort of creates a hardship on your
222 current living situation. Is this a situation where you open
223 the back door and you've got a drop-down or if you could speak a
224 little bit more to the "doors to nowhere".

225 MS. SKALKA: Yeah, yeah, that's exactly right. So
226 there's double sliding glass doors that currently have
227 construction tape across them so that nobody could fall out of
228 the house. You would fall down about six feet.

229 MR. JONES: Okay. Thank you. I appreciate that very
230 much.

231 That answers my questions so with that, I will happily
232 turn it over to my colleagues.

233 MR. CALABRESE: If I could ask a question.

234 So, you mentioned that you would be able to do work to
235 address additional runoff. But it appears from your neighbors'
236 letter that there's a significant problem now with runoff. So

237 if you could answer or address what would appear to be a bad
238 situation that could be getting worse with this add-on. Could
239 you address that.

240 MS. SKALKA: Yeah. Thank you for mentioning that.

241 So in reviewing Scott -- let me just make sure I get
242 the names right, his letter did mention that in the process of
243 building the house, and you should know that we did not contract
244 this particular house. It was a set house that we bought I
245 think several months after it sat on the market in 2018. We
246 bought it the last work day of 2018 and moved in in January of
247 2019.

248 And if you look at a lot of Scott's pictures, much of
249 that damage happened prior to us moving in and during the
250 construction process. I don't know how much of that was, that
251 they cleared the lot and let it sit there, that they didn't take
252 proper mitigation protocols when they were building the house.

253 We had noticed that there could be potential -- when
254 we took up the fence, that there could be potential for us to
255 disturb what were some natural blockages and filters, just weeds
256 and brush and old chain link fence.

257 So when we put in the fence, and we had talked about
258 it with him then, we put in extra landscaping and moved some of
259 the drainage around.

260 So I'm not entirely sure that some of what he's citing
261 is very current. Even the picture of 2020, it's not clear that
262 that damage occurred in 2020.

263 So, I guess I certainly wouldn't want to increase his
264 hardship but I'm not convinced that that's something that we
265 should necessarily be responsible for at this time.

266 And if our engineers come back to us and say that we
267 are putting off too much water already, then as I said before,
268 our goal is to be at what we're at or less. And that written in
269 as a special condition would be acceptable to us for sure.

270 MR. CALABRESE: Well, I think he's saying that it's
271 now, that the problem is now. That's what I got from his letter
272 and the other neighbor also appears to have a similar concern.

273 So you mentioned that the hardship of not building the
274 deck or the outside porch. Now, typically when we hear these
275 hardship requests, they're when you're building, you redesign
276 the house, you're adding another room, you're adding another
277 level. We don't typically hear it in terms of a hardship that
278 you cannot build a screened porch.

279 The question I would have is, well, maybe there's this
280 door that's non-functional. What about another design that
281 would keep you within a smaller design, that would keep you
282 within the numbers.

283 MS. SKALKA: So, I think currently we do not have
284 enough square footage to do anything that would be considered an
285 acceptable design. It wouldn't be worth constructing anything,
286 you could only fit a chair, for instance.

287 We're suggesting 15 by 17 feet, which if we add it's
288 still within the percentage of the adjusted lot size. And
289 actually to fill that entire space would be -- I think it's only
290 just filling in this corner.

291 So, I don't know, do you want to add something to that?
292 So, I agree with you that it feels like a preference or an extra
293 and the house was designed to have something there. It just
294 was not previously built prior to our buying the house.

295 MR. SKALKA: I agree and I think that -- I don't want
296 to harp on this but the design that we would look to have
297 approved would certainly require an engineer and the City's
298 approval of a mitigation tool that would ensure that there is no
299 additional runoff.

300 MR. CALABRESE: Right. And I'll just finish up with
301 kind of repeating my first question. You mentioned again,
302 additional runoff. It sounds like there's some very serious
303 concerns from some neighbors who appear to be suffering from a
304 current runoff.

305 So when we look at a hardship and looking at the
306 equities here, unless there's more information, it appears that
307 we're talking about an existing problem that we're going to add
308 on to but then we're going to try to mitigate the added-on
309 problem.

310 I don't know how, if you already have a runoff
311 problem, it would seem to me that we should be mitigating that
312 first before we go to the next stage, building an additional
313 area that could exacerbate a situation.

314 So, I don't know if we have enough information but
315 these are very strong letters. Stronger than what we normally
316 receive from directly-affected neighbors.
317 So that's my only comment I think.

318 MS. SKALKA: I appreciate that.

319 I read Jason's letter definitely as a hasn't had any
320 problems recently. I definitely read Scott's feeling like he
321 has a current problem.

322 We have not heard any of that until just now.

323 MR. SKALKA: I talked with Jason and Jason's mentioned
324 it. And he also mentioned that after we planned it, the
325 multiple plans that seems to have -- I don't know if he would
326 say the word "resolve" but it would be close to that, if not
327 resolve.

328 MR. CALABRESE: Thank you.

329 MR. JONES: Thank you, Mr. Calabrese.

330 I'm not able to see any of my other colleagues, but,
331 Mr. Kien or Mr. Bartlett, do you have any questions for the
332 applicants?

333 MR. BARTLETT: Yes, I have a question related to your
334 reference to lot size and why that's relevant to your hardship.

335 You keep saying that if you had a lot that was 11,320
336 feet, then you'd be able to build this. But the Code requires,
337 based on my understanding, the Code requires whether or not
338 you're R-1A or R-1B to comply with the same building
339 restrictions as far as lot coverage and impervious surface, 25
340 or 35 as well. So whether or not you're R-1A or R-1B, you have
341 to comply with the same percentages.

342 I know you're listed as a R-1A and you bought it as a
343 R-1A. I'm trying to figure out why we should create this

344

345 precedent to allow people to exceed strict adherence to the Code
346 based on that.

347 MS. SKALKA: It's my understanding that it wouldn't be
348 creating a precedent, that this is a hardship that has been
349 mentioned before when people want to exceed their percentage
350 based on an undersized lot.

351 MR. BARTLETT: Are you claiming your lot's undersized?

352 MS. SKALKA: Yes. Yes. A minimum standard lot for
353 our zone is 11,250 square feet and our lot is 10,234 square
354 feet.

355 MR. BARTLETT: Just to make sure I'm understanding what
356 you're saying, because your lot is below 11,000, that equates to
357 a hardship?

358 MS. SKALKA: Yes. It does not meet the minimum
359 standard for the zone.

360 MR. SKALKA: I don't know if there is any information
361 that Mr. Boyle has that would confirm that we're not setting a
362 precedent or if that's not appropriate for this time, we'll skip
363 that.

364 MR. BOYLE: I think the Board has considered lack of
365 square footage based on what the Code requires in the past,
366 maybe not for impervious and pervious issues. Staff does

367 consider a lack of square footage as substandard and then
368 there's a number of things that cascade from that. It's
369 potential for the height of the building or setbacks to be
370 reduced.

371 So staff would consider this a substandard lot.

372 MR. BARTLETT: So Mr. Calabrese asked a question
373 earlier about design alternatives. Did you think of installing
374 a different structure if you want to use this area that might
375 not lead to this issue?

376 MS. SKALKA: This is definitely the design that we'd
377 like to consider at this time. If our variance is not granted,
378 I think we'll have to go back and look at what our options are.

379 At the beginning of this process we looked at various
380 restructures that would stay within the percentage. There's a
381 system called the Equinox that's a louvered roof that I think
382 some people have used in the past. We were unable to find a
383 contractor that was willing to install it in Falls Church City,
384 just couldn't find anybody that had the product and had the
385 license to work in the City.

386 That's when it kind of came to our attention that we
387 could apply for a variance based on the substandard lot.

388 So, yeah, we did look at many different designs for a
389 roof and were unable to find anything other than a traditional
390 design, so.

391 MR. JONES: Mr. Boyle, can I ask you a question.

392 If this was a standard size lot, 11,250 square feet,
393 and the applicant had this exact same application package, would
394 the design as presented be within Code if this was a standard
395 size lot, 11,250 square feet?

396 MR. BOYLE: Let me do some quick math here. 11,250
397 times 35 percent is 3937.

398 Applicants, do you have your numbers on what your --

399 MS. SKALKA: Yes. Yeah. Would you like us
400 to --

401 MR. BOYLE: Yes.

402 MS. SKALKA: It's in the cover letter. Somewhere
403 toward the bottom of the first paragraph I believe. I don't
404 have it in front of me.

405 It says if our project were on a lot of 11,250 square
406 feet, we would be within the coverage maximum of 25 percent at
407 24.9 percent with 2808 square feet and we would be below the 35
408 percent impervious surface coverage of 3809.

409 So, yes, is our answer anyway. And like I said, the
410 math was a little much. I didn't want to rattle off all those
411 numbers but, yes, it would be within a standard lot.

412 MR. BOYLE: Yes, I'd agree with that point. It
413 appears what they're proposing would be by right if they had the
414 square footage.

415 The lot is shy 5 feet in width. It's 70. This zone,
416 175. And I think to make the math work it would have to be 150
417 feet deep. So they're missing on depth and width and that's
418 where the shortfall is.

419 So I think what they're proposing would be by right if
420 they had the square footage.

421 MR. JONES: Thank you.

422 Mr. Bartlett, any questions?

423 (No response.)

424 MR. JONES: Mr. Kien?

425 MR. KIEN: None for me.

426 MR. CALABRESE: If I could go back, so back to the
427 question about alternative design.

428 When you were answering the previous question, you
429 mentioned, you focused on the roof. Is this about the roof or
430 is this about the size of the porch?

431 MS. SKALKA: I think it's mostly about the roof,
432 increasing our coverage.

433 MR. CALABRESE: But the roof design you said was the
434 problem.

435 MS. SKALKA: Well, yes, it would be a standard roof so
436 it would be considered coverage on the lot versus something that
437 might be a pergola or a louvered system.

438 MR. BOYLE: I might be able to assist with that, Mr.
439 Chair.

440 Our Code defines a building as a roof supported by
441 columns or walls. So even something that is built as a deck
442 with planks that in and of itself were pervious, if a roof goes
443 over it, then the Code defines it as a building. Then it's
444 capped for both the building coverage of 25 and the impervious
445 coverage of 35. So that's where the roof plays a role in this
446 conversation.

447 MR. CALABRESE: Right. But I guess the question I had
448 was when we were asking the question about alternative designs,
449 now there was a comment made that you could go back and look at
450 alternative designs. But I thought what you were saying though
451 is that the problem isn't the size, it's the type of roof that

452 is the problem, finding the right type of contractor to build
453 that type of roof, was not available or --

454 MR. BOYLE: I might be able to speak to that as well.

455 There is a type of roof where the surface rotates 90
456 degrees. Instead of being a flat surface roof it rotates and
457 becomes a pergola. And currently in our Code, the Code doesn't
458 anticipate that type of design. So I like to phrase it as the
459 "pergola police" will not go out and check and see if your roof
460 is flat or are the slats vertical.

461 So that type of design is not defined as a roof, so
462 it's not then defined as a building.

463 And what the applicant was referring to, is there is a
464 design out there that rotates its panels. So at one moment it's
465 maybe flat, the next moment it's rotated to let sun and water
466 come through.

467 We do not define that as a roof or coverage at this
468 time. Code change in the future might change that and I think
469 her point was that they couldn't find a contractor of that type
470 of product that would come in and do the work here.

471 MR. CALABRESE: Okay. My question was more on the
472 hardship side. Are we talking about a hardship because of the
473 design, a preferred design that's not available, or just

474 difficult design, or are we talking about something that's
475 essential, that has to be this type of roof?

476 MR. BARTLETT: Or that it has to have a roof at all.

477 MR. CALABRESE: Right, right.

478 MR. BARTLETT: Because if this was a deck, we wouldn't
479 be having this conversation.

480 MR. CALABRESE: Right.

481 MR. BARTLETT: And I feel for the applicant because
482 the builder maxed out impervious and covered surface based on
483 percentages and then they left it vacant space here for the
484 potential owners to resolve.

485 I do empathize.

486 MR. CALABRESE: Yeah, I agree.

487 MS. SKALKA: The thing that we're willing to -- yes,
488 thank you. The builder was not as considerate as he could have
489 been.

490 And at the same time, the focus that we want to stick
491 with during this application process is the Code itself and what
492 conditions we need to meet to achieve a variance and the
493 hardship of an undersized lot being something that people cite
494 in other cases and that the design that we're asking for still

495 puts us under the maximum if we consider the difference between
496 our substandard lot and a standard lot.

497 MR. CALABRESE: Yes. I would be interested in hearing
498 more about the precedential value of undersize lots being the
499 source of a hardship. I mean, people buy the lots knowing that.

500 And excuse me for saying this, but you bought it
501 knowing it was a substandard or undersize lot.

502 MR. BARTLETT: One of my initial reactions to the
503 question is, then we wouldn't have percentages. We would just
504 have a fixed number of buildable area that if your lot was
505 10,000, then you could build 3500 square feet, and 2500 square
506 feet, instead of a percentage which is for all residential
507 zoning structures because of the variability of these lots.

508 MR. CALABRESE: Right.

509 MS. SKALKA: My understanding that the percentages are
510 specifically though to mitigate potential environmental hazard.
511 And our desire is not to increase any environmental hardships to
512 ourselves or our neighbors and our ultimate design would be
513 taking those things into consideration.

514 So we're hoping that you'll hear our one neighbor that
515 says that we do care very deeply about the City and we do want
516 everyone to feel as included in the process as possible and to

517 ultimately be much better off. I mean, this project could very
518 well solve a lot of problems that this neighbor Scott is having.

519 It's interesting to me, you know, I understand and I
520 agree that his design to be a percentage and we're hoping that
521 you'll grant the variance based on the difference.

522 MR. JONES: Okay. If there's no more questions for
523 the applicants, we will close the presentation.

524 Thank you very much for the amount of work you've put
525 into this. And we will sort of confer -- I'm sorry, are you
526 all done with your presentation?

527 MR. SKALKA: I believe so.

528 MS. SKALKA: Unless there are more questions, yes.

529 MR. BOYLE: Mr. Chair, a point if I could.

530 MR. JONES: Absolutely.

531 MR. BOYLE: I think with four or five members, I
532 neglected to point out that we should give them that option of
533 continuing for a full Board. We appreciate the Board making
534 time in August for a special meeting.

535 Secondly I see, on my screen anyway, that we have two
536 or more guests that are observing.

537 MR. JONES: Okay.

538 MR. BOYLE: Perhaps we should give them an opportunity
539 to speak. I did not notice that during the public conversation.

540 MR. JONES: Okay.

541 MR. BOYLE: Number of Board plus the public who would
542 like to speak, if possible.

543 MR. JONES: Great. Thank you for pointing that out.

544 I guess on my screen, I wasn't able to see that we had
545 any members of the public, so I apologize.

546 If you would like to speak about this variance
547 application, if you could please state your name clearly for the
548 record and then once you've stated your name, we will swear you
549 in.

550 MS. SAVITZ: Hi, can you hear me?

551 MR. JONES: Yes.

552 MS. SAVITZ: This is Natalya and Scott Savitz. We
553 live at 212 South West Street. We own that property and we're
554 the neighbors of the 205 Patterson Street, like we're
555 kitty-corner to that property.

556 MR. JONES: Okay. Thank you.

557 Is there any other members of the public who are going
558 to speak on this application?

559 (No response.)

560 MR. JONES: Not hearing or seeing anyone else, Mr.
561 Boyle, if you see any other members of the public, please let me
562 know. I'm unable to see them from my screen.

563 Ma'am, would you and your husband raise your right
564 hand and swear to tell the whole truth.

565 MS. SAVITZ: Yes, we do.

566 MR. SAVITZ: Yes.

567 MR. JONES: Thank you.

568 So we understand that you wrote a letter to this
569 Board about this application and if you have anything that you
570 would like to say, I think we would appreciate hearing it.

571 MS. SAVITZ: Yes. We bought our house in 2012. At
572 that time the 205 Patterson Street had a relatively small house
573 with a small shed. We didn't have any problems at that time.
574 We didn't have any flooding on our lot.

575 After their house was gutted and the new structures
576 were built, we started getting periodic flooding on our property
577 which resulted in pretty much standing water in the back and the
578 side of our property and also damage to our finished basement.

579 So we're very concerned about the proposal to increase
580 the variance, even the proposals for them to just build the deck
581 because that means that they are increasing impermeable surface.

582 There will be no planting under that deck to absorb the water so
583 the water will be running downhill right to our property and
584 creating more damage.

585 I feel for the Skulkas. I understand they would like
586 to have a deck but in this case it's creating damage to the
587 surrounding properties which is not fair and is not desirable
588 for anyone.

589 Would you like to add anything?

590 MR. JONES: When you say that it's creating damage --

591 MS. SAVITZ: Our letter to show the damage, both the
592 outside damage, how the water was standing there, as well as the
593 inside damage that we've incurred.

594 We've already spent thousands of dollars trying to
595 mitigate that and we still are looking at 20,000 or more to fix
596 what was already broken because of this new structure.

597 MR. JONES: And when you say the damage to your
598 property, this is a recent phenomena, it started I guess in
599 20 --

600 MS. SAVITZ: The end of 2018, yes.

601 MR. JONES: And it still continues currently.

602 MS. SAVITZ: Yes.

603 MR. JONES: Thank you.

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Any questions from the Board for the presenter?

MR. KIEN: I have one.

So your property, the northeast corner of your property abuts the southwest corner of the Skulkas' property, is that accurate?

MS. SAVITZ: Yes.

MR. KIEN: And the water flow from what I can tell from the topographical maps basically flows kind of due south, from corner to corner on your lot; would that be accurate to say, that it flows from the northeast corner to the southwest corner?

MS. SAVITZ: Yes. Because we have a retaining wall so that kind of moves the water down to the south side of our property, yes.

MR. KIEN: Between your property and where your property joins the Skulka property, can you describe what that looks like. Is it green open space or is it other space? I'm trying to get a sense of where the water was standing in the pictures that you were sending because I can't see them in regards to the wall.

MS. SAVITZ: Right. So the back of our property is a garden. There are a lot of trees and vegetation there. Where

627 the water was standing is on the south side of our property, so
628 that's on the side of the building, not in the back of the
629 building for the most part. And that's grass and there's some
630 vegetation there as well.

631 MR. KIEN: Okay. Thank you.

632 MR. CALABRESE: You say you had some professional
633 remediation. Have those individuals posited any opinion on
634 where the water is coming from?

635 MS. SAVITZ: Basically they said it's coming from the
636 neighbors. It's running downhill and then accumulating on our
637 property.

638 MR. CALABRESE: Neighbors referring to?

639 MS. SAVITZ: The Skulkas.

640 MR. CALABRESE: Okay.

641 MR. JONES: Okay. Any additional comments?

642 MR. CALABRESE: Do we have a letter from the Becks,
643 David and Jennifer Beck? There was no letter from them, was
644 there?

645 MR. BOYLE: No, sir.

646 MR. JONES: I don't believe so.

647 Mr. Boyle, there are no more members of the public
648 that want to opine or express an opinion on this application, is
649 that correct?

650 MR. BOYLE: I think that's correct. They show up as
651 guests, so all we can do is poll them and see if they're willing
652 to speak. I think you've done that.

653 MR. JONES: I appreciate that. I don't know if my
654 technical limitations but I can't see anybody, so that's
655 helpful. Thank you very much.

656 Now that we've heard from the members of the public
657 and the applicants, we'll close the presentation and the
658 comments and now we'll open it up to the Board to discuss among
659 themselves any thoughts or comments or opinions.

660 MR. CALABRESE: I guess I'm concerned that it sounds
661 like we do have an existing problem unfortunately. And the
662 Savitz, it sounds like they are experiencing some pretty severe,
663 moderately severe water problems. And I think, well those,
664 that's up to the neighbors how they wish to address that.

665 But to me, that has to be resolved before you would
666 add on, you would go grant any exceptions to allow an expansion
667 of the impervious area which may be the problem now, the
668 expanded building.

669 So I'm just very concerned about again, as I
670 mentioned, making a bad situation worse.

671 MR. KIEN: So, John, I emailed you during this. Can
672 you pull that up and show the two pictures that I sent to you.

673 MR. BOYLE: Let's see. Who's speaking? I'm sorry.

674 MR. KIEN: I'm sorry, John. This is Peter.

675 MR. CALABRESE: And, John, my screen is frozen. Maybe
676 it's just me but I'm frozen here. If others can see, then maybe
677 it's okay.

678 MR. KIEN: So, David and other Board members, I shared
679 the same concern regards when I saw those pictures. So I
680 personally went to the property today and walked both streets to
681 try to see what we were dealing with here.

682 And much of this is topography-driven in that the
683 water naturally wants to flow from Patterson Street to the
684 southwest street due to elevation change. And it looks as
685 though the water wants to flow basically perfectly south which
686 would sheet across the applicant's yard towards the Savitz'
687 yard.

688 Where I'm struggling, I certainly understand the
689 mitigation factor for what the new build was. I'm struggling
690 somewhat with holding the Skalkas responsible for 100 percent

691 where their builder or their property 100 percent for the water
692 issues on the adjacent property based on the composition of that
693 property and what has been built there, which is from the
694 existing structure to the Skalkas' property is almost all
695 impervious area on the Savitz home and they're very much reliant
696 on the Skalkas' green space for their yard to keep water off
697 their property, which I don't know if that's a fair
698 responsibility to place on your neighbor. And I say that, just
699 saying I don't know if that's fair or not.

700 But it looks as though there's nothing to stop the
701 water to enter their property until it almost gets to the back
702 of their home due to the driveway and detached garage that is in
703 that northeast corner of their lot.

704 So I think there are contributing factors on both
705 properties and it would be hard to determine which one was
706 ultimately responsible.

707 MR. JONES: Okay.

708 MS. SAVITZ: Can I respond to that please?

709 So, our driveway and garage are on a different side of
710 the building than the one that's getting flooded. Getting
711 flooded is entirely where we have green area and the water is
712 going through our garden as well. So we're not expecting

713 Skulkas to take care of, absorb all of that water. We're
714 absorbing a lot of their water.

715 The driveway actually functions perfectly because it
716 just lets the water flow right on to South West Street. It's
717 the other side, the green side of our house that's actually a
718 problem.

719 MR. KIEN: So that's the lowest point on the property
720 there that's collecting the water at these times and that's
721 where the entry point is.

722 MS. SAVITZ: Yes. And furthermore, the damage is also
723 because the grading on the Skulkas' property changed when the
724 new house was built. The grading became much steeper. The
725 trees that were there were removed, so Skulkas' property was not
726 absorbing the water that they're generating, in addition to a
727 much bigger house.

728 So this all started, we owned our house for six years
729 with no problems. Then that building went up and we started
730 having problems. That's pretty much 100 percent their -- like
731 the builders.

732 MR. JONES: Okay. Mr. Kien, any other comments?

733 (No response.)

734 MR. JONES: And, Mr. Boyle, procedurally I think when
735 we close, I appreciate the public's input but I think my concern
736 is once we close it, are we still able to engage in additional
737 conversations with either the applicants or members of the
738 public?

739 MR. BOYLE: Mr. Chair, I did receive an email from a
740 neighbor that's trying to communicate and is not being heard.
741 I've suggested they try the instant message option on the lower
742 left.

743 But I think they must be the guest here. It looks
744 like their microphone is off. I'm seeing a guest, Mr. Bartlett,
745 a council member, and that's everyone accounted for.

746 So I'm not sure how to make contact. If that party
747 can send me an email, I could read their concerns.

748 I'll show you the email I received from Jason Hobbie,
749 variance application.

750 "We're watching the public hearing. We tried to
751 speak, we not able to. No one heard us."

752 So, they may be the guest shown on the screen. For
753 whatever reason, they're -- if they can hear us, you need to
754 turn your microphone on there or try the Instant Messenger
755 option over on the bottom left of the screen.

756 I'm troubled that they're not able to communicate.

757 Everyone else is accounted for.

758 MR. JONES: Okay. I want to make sure that members of
759 the public have the ability to either voice their concerns or
760 their support of the applicant. I'm a little concerned that a
761 member of the public is not able to do that.

762 MS. SKALKA: I see them typing right now.

763 MR. BOYLE: Yes. Can you see that?

764 Boy, in the future will we have stories to tell of
765 what we went through to have a public discourse. We had it
766 tough.

767 MR. CALABRESE: I can't -- maybe if you can read. For
768 some reason my screen is just frozen. I'm having some problem.

769 MR. BOYLE: Mr. Jason Hobbie is typing a message.

770 "Just clarifying that we are the owners of the Beck's
771 property shown on the plat. The current owners."

772 So on the -- looks like -- immediately behind.

773 So on the survey shown on the screen, the Hobbies are
774 the owners of the property indicated as Beck, directly behind.

775 MR. CALABRESE: So we have a letter from Mr. Hobbie,
776 right?

777 MR. BOYLE: Yes. Can everyone see what they're typing
778 or shall I read it?

779 MR. CALABRESE: I can't see it.

780 MR. BOYLE: They're the current owners directly
781 behind. "I am not sure what the current drainage discharge
782 point is currently on the Skalkas' property."

783 "Before they purchased the property I noticed that the
784 builder had routed everything to a point near the corner of
785 their lot with ours and the Savitzes. Routed all the drainage.
786 There was a corrugated black pipe discharging there. That
787 probably is contributing to the amount of water the Savitzes are
788 experiencing. If it is still there."

789 MR. JONES: Thank you, Mr. Hobbie.

790 Do you have any other comments or concern that you'd
791 like to type?

792 MR. BOYLE: He's typing.

793 He says he just wanted to provide clarification and
794 because a BZA member had asked about ownership.

795 So again, he's the owner of the property to the rear
796 on the document shown on the screen.

797 As staff, is anyone who could hear me satisfied that
798 they -- is anyone who could hear me not satisfied that they have
799 been able to make their positions known?

800 While we did have a glitch in the advertisement, the
801 public notice that went out, this particular item did have the
802 benefit of being advertised in the paper for two months plus two
803 neighbor notices, so staff is confident that everyone with an
804 interest in this case was notified that it was going to be heard
805 by a special meeting tonight.

806 For whatever reason, the electronics are a bit of a
807 challenge tonight. But I want to make sure from Zoning
808 Administrator's point of view, that everyone who has something
809 to say feels they've been adequately heard.

810 And as I speak, Mr. Hobbie says, "Because a BZA member
811 had asked about ownership. And how the water was draining."
812 And he says, Thank you.

813 So not to interrupt the Chair's duties, but if there's
814 anyone monitoring tonight that feels that they have not been
815 given an opportunity to speak, please do so using your
816 microphone or using the messaging tool, the little cloud on the
817 bottom left, and we'll receive your comments.

818 I think everyone is accounted for.

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Mr. Chair.

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MR. JONES: Thank you very much, Mr. Boyle.

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So I just, in my mind there's two issues and the

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public concerns that I have just for consideration on the Board.

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One is the obvious concern with the runoff situation

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as far as negatively impacting the neighbors is a concern for

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me. And the second concern I have is the percentages and how

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that relates to the hardship as presented by the applicants in

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this case, especially any precedential value that this could

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have.

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Those are my concerns. I'm struggling with this one,

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sort of what in my mind is something that is in favor of

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approving the application, in my mind is that it's a substandard

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lot. If this was a standard lot, 11,250 feet, the structure as

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built would be within Code. So that weighs in favor for me.

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Also, the way that the house is constructed, having

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the doors, you know, so to speak, that aren't functional that

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are leading essentially to nowhere in my mind is a favorable --

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in favor of approving the application.

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But my main concern is how this is going to impact the

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neighbors.

840 Mr. Boyle, I don't know if we can present -- I know we
841 able to attach conditions to any variance approval but I think
842 for me, Mr. Calabrese hit it sort of right on the head, is that
843 the negative impact on the neighbor's property weighs very
844 heavily and if the grading plan or the engineering can be
845 created such that the neighbors could have enjoyment of their
846 property without this runoff sort of mitigates some of my
847 concerns.

848 I think Peter also in my mind hit it right on the head
849 that there are some topographical concerns with the runoff. I
850 don't think it's completely the Skalkas' fault that the water is
851 running off in the direction that it is.

852 So those are my concerns and those are sort of the
853 things that are weighing in favor of approving the application
854 for me. Those are my thoughts. I'm very interested to hear any
855 other thoughts or comments from my colleagues on the Board.

856 MR. CALABRESE: Yeah, I think you, John, have
857 identified the issues correctly.

858 In my weighing of it, I guess I'm probably in a little
859 bit of a different direction. I'm weighing the hardship
860 presented to the petitioner that they cannot build the type of
861 deck that they would prefer with the roof design they prefer.

862 You know, when we hear concerns from neighbors, they
863 usually are revolving around sight lines and proximity to their
864 property and trees. Here we're talking about what appears to be
865 from the one guest here, actual monetary damages they're
866 suffering.

867 And I guess, I must say if I were to balance the
868 hardship of not being able to build this compared to what is
869 already happening and could I think reasonably assume would
870 continue or if not, be exacerbated, I would lean towards not
871 granting it.

872 So, that's I think where I am.

873 MR. JONES: Thank you, Mr. Calabrese.

874 Mr. Bartlett, Mr. Kien, do you have any thoughts?

875 MR. BARTLETT: I do. I thank you both for your
876 discussion, Mr. Jones and Mr. Calabrese, and I also thank
877 everyone for participating today.

878 I am uncomfortable with the outcome of approving a
879 variance on the neighbors and that's one of the elements that we
880 have to consider, is the granting of the variance will not be a
881 substantial detriment to adjacent property, nearby property.

882 But I'm also very concerned about the precedential
883 nature of basically changing the Code. As a substandard lot, if
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885 we're going to say a substandard lot is a hardship, then
886 regardless of the size of the lot, then they get to build up to
887 35 percent of 11,250 feet, or 25 percent of that same standard
888 minimum lot coverage, then any lot that's R-1A or R-1B is going
889 to say, I want to build up to the percentage of the minimum lot
890 size instead of the percentage of your lot as it is and as it's
891 outlined in our Zoning.

892 To me, that's more of a concern. No, we're not water
893 experts. And we discussed a lot of water issues, about where it
894 comes from and where it goes. We're not engineers and I don't
895 know that's our role. It would be a potential detriment to
896 neighbors but I believe the biggest issue is, as I said, about
897 changing Code practice. People would use this going over the
898 issue, the variance for lot coverage grievances because it's
899 deemed a substandard lot.

900 MR. KIEN: So, and I appreciate the comments of all
901 the other Board members tonight and change the comments that I
902 would have made had I spoken first.

903 Certainly I do understand, Keith, you're coming from
904 that kind of slippery slope type of situation that you do set
905 there but I also believe that the purpose of this Board is to
906 weigh individual circumstance and then apply reasonable to that.

907 The substandard lot size and, John, please correct me
908 if I'm wrong, the substandard lot size is something that the
909 City weighs in on in allowing build to occur in the first place
910 when they don't meet the minimum.

911 And I do feel that it can weigh in in affecting the
912 homeowner's ability to reasonably improve the lot.

913 I agree that none of us are engineers and I almost
914 prefer (inaudible) those who are more qualified to figure out a
915 way to mitigate that.

916 I do know that a grading plan and storm water drainage
917 plan was submitted to the City and approved in order to build
918 that house. The homeowner to be held accountable for the
919 detriment of that plan, it's hard for me to put that
920 responsibility when that process pre-dated them. They did not
921 participate in that process.

922 I do feel that preference to design like David said
923 versus truly a hardship, I think you said it earlier, I think
924 they can build a deck on this house and this is not an issue and
925 the doors that are now not operable doors, while I think it's
926 not the preferred design, I think it's the least intrusive based
927 on the set of facts and circumstances.

928 MR. JONES: If I can just pin you back on that, I
929 think I agree with Peter's sort of assessment. In my mind I
930 think if this was a single story home that had a door that had
931 two steps and goes down to the ground, that would weigh sort of
932 against the design of it. But here we have, the hardship in my
933 mind is we have a house that was constructed pre-current owners
934 and now you have these doors that essentially go nowhere.
935 They're not useable for the current house. They're not useable
936 for the current structure. And the addition, if I can call it
937 that, to the house would just make use of those doors.

938 So in my mind I am concerned with the precedential
939 value. I do know that we sort of evaluate each case that comes
940 before this Board on a very fact- specific case by case basis.

941 So I tend to agree with what Peter is saying. In my
942 mind I think the substandard lot with the current structure of
943 the house, those doors that essentially are non-operable, they
944 don't lead to anything, that adding this structure would make
945 use of those doors, allow the applicants to have full use of
946 their property, in my mind weighs in favor of approving the
947 application.

948 I think any, certainly in my mind if this Board were
949 to approve the application, we would have to certainly weigh

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951 very heavily the impact on the neighbors. They very rightly
952 voiced their concerns and with the water and the damage that
953 they're experiencing is certainly a factor that weighs very,
954 very heavily with me as far as everybody having the right to
955 reasonably enjoy the use of their property.

956 So I think in my mind if we were going to approve this
957 variance, the condition would be the engineers or the planning
958 or the grading would certainly have to mitigate or reduce the
959 amount of water such that it could on the neighbors' properties,
960 I think we sort of highlighted the fact that we're not water
961 experts, but I do think that mitigating any damage to the
962 neighboring properties to reduce that water that they're
963 experiencing, it weighs very, very heavily with me.

964 And I think the applicants in their presentation did
965 not object to taking measures that would mitigate any sort of
966 runoff to their neighbors, so all these factors sort of weigh
967 very, very heavily with me but I think I would be in favor of
968 approving the application subject to the engineering firms, the
969 grading plan mitigating the water damage that is experienced by
970 the neighbors.

971 MR. CALABRESE: I'll add one more thing.

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I think after hearing Mr. Bartlett, I want to amend my comments that I'm also very concerned about the precedential value of this.

And the only other comment I would make, is in terms of their enjoyment, petitioner's enjoyment of the property, again I go back to a comment I made, when they bought the house, the house was substandard at that time, it had the door to nowhere, and as most things happen in this market, everything is priced accordingly.

So I understand the concerns about there could be a detriment but it was purchased with this information known. So I think it's perfectly reasonable that someone would want to build this type of structure. I would too. But again, we have some other considerations and it was purchased knowing these facts.

I'll leave it at that.

MR. JONES: Okay. Thank you for that.

Mr. Boyle, I just want to make sure that we're very clear with the applicants that before any motion is called, they do have the option to continue this to our next meeting when we do have a full Board, is that correct?

993 MR. BOYLE: That's correct because we're shy one
994 member.

995 MR. JONES: Okay.

996 MS. SKALKA: Thank you again. I think that we would,
997 if it's okay with the Board members, we would like to continue.
998 We would like a continuance this evening.

999 MR. JONES: Okay. Mr. Boyle, is there any official
1000 action that we need to take with the applicants' request for a
1001 continuance?

1002 MR. BOYLE: The Rules of Procedure says the Board
1003 shall grant one motion to continue, so perhaps there's a need to
1004 take a vote, but the "shall" is -- let's go ahead and take a
1005 vote. There's no harm in staff carrying this over anyway but
1006 the Board should probably speak on that continuation.

1007 So we need a motion and a vote.

1008 MR. JONES: Okay. So to be clear, we would need a
1009 motion to approve the request for a continuance and a "yes" vote
1010 would be in favor of the continuance and a "no" vote would not,
1011 is that correct?

1012 MR. BOYLE: Yes.

1013 MR. JONES: Okay. Do I have a motion on the
1014 applicant's request for a continuance?

1015 MR. KIEN: I make a motion to approve the continuance
1016 request.

1017 MR. JONES: Is there a second?

1018 MR. BARTLETT: I'll second that motion.

1019 MR. JONES: Roll call vote please, Mr. Boyle.

1020 MR. BOYLE: Mr. Calabrese.

1021 MR. CALABRESE: Yes.

1022 MR. BOYLE: Mr. Jones.

1023 MR. JONES: Yes.

1024 MR. BOYLE: Mr. Misleh.

1025 (No response.)

1026 MR. BOYLE: Mr. Bartlett.

1027 MR. BARTLETT: Yes.

1028 MR. BOYLE: Mr. Kien.

1029 MR. KIEN: Yes.

1030 MR. BOYLE: Okay. Four in favor.

1031 MR. JONES: Thank you.

1032 Mr. and Mrs. Skalka, I can't see you but I think we'll

1033 I guess see you at the next meeting. Thank you for your time.

1034 MR. BARTLETT: Mr. Jones, can we clarify what the
1035 requirements are for continuing and if they're continuing this

1036 with the intent that they will be providing new information at
1037 the next meeting.

1038 MR. BOYLE: If I could, Mr. Chair, I'll clarify what
1039 the Code provides. I don't think there's a hurdle they need to
1040 clear. There is in the event of a refusal, there is a statement
1041 in the Code about presenting new information. I don't think
1042 there is one for a simple continuance.

1043 The catch is that or the limitation is that there's
1044 only one continuance allowed by the request of the applicant.

1045 I'll check the Code to see if they need to come back
1046 with additional information. Because we've had this in the past
1047 and then if we do have a new member present, they haven't heard
1048 this case. So, how do we proceed? Do we rehear everything?

1049 So my sense is that there has to be something new for
1050 the Board to consider but I'll double check that and present it
1051 to everyone, including the applicants and the public.

1052 MR. BARTLETT: Thank you, John.

1053 MR. JONES: Thank you, Mr. Boyle.

1054 Thank you, Mr. and Mrs. Skalka.

1056 6. APPROVAL OF MINUTES

1057 7. OTHER BUSINESS

1058 MR. JONES: Mr. Boyle, I don't believe you said we
1059 have any Approval of Minutes or any Other Business, is that
1060 correct?

1061 MR. BOYLE: That's correct.

1062 And that I think completes our business.

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8. ADJOURNMENT

1065 MR. JONES: Very good. Thank you.

1066 Do I have a motion to adjourn?

1067 MR. BARTLETT: So moved.

1068 MR. JONES: Roll call please, Mr. Boyle.

1069 MR. BOYLE: Mr. Calabrese.

1070 MR. CALABRESE: Yes.

1071 MR. BOYLE: Mr. Jones.

1072 MR. JONES: Yes.

1073 MR. BOYLE: Mr. Bartlett.

1074 MR. BARTLETT: Yes.

1075 MR. BOYLE: Mr. Kien.

1076 MR. KIEN: Yes.

1077 MR. BOYLE: Four in favor of adjournment.

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MR. JONES: Thank you, everyone. That concludes the

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1080

Appeals. Thanks, everyone.

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MR. BOYLE: See you in September.

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