



57 just designated mixed use redevelopment. And I think that would help make better  
58 decisions, parking calculation decisions going forward for our strip malls.

59 CHAIR STOODLEY: Would you like to put it in form of a motion for Council?  
60 MR. WILLIAMSON: Can I ask a question first?  
61 CHAIR STOODLEY: Sure.  
62 MR. WILLIAMSON: Why isn't it applied today?  
63 MR. BOYLE: The definition of what developments are eligible for the MUR  
64 does not apply to standard retail in a shopping center. It has to be a Mixed Use  
65 Redevelopment application with a shared site plan. And Cafe Nessma is reaching its  
66 solution by doing an off site locating of its parking within a 500 foot travel from  
67 their location, which satisfies the Code but in reality it's probably not going to  
68 function very well.

69 The Mixed Use Table, if that development were done under the MUR  
70 application, they could blend their parking in a more studied way than what we see  
71 and they don't meet the definition of a MUR application to have that parking ratio  
72 applied to them. So shopping centers go with a straight to 1 to 250 parking,  
73 regardless of what's in there and it's not realistic.

74 CHAIR STOODLEY: For example, if you look at where the Starbucks is at on  
75 Falls -- I forget the name of the shopping center, but that's a case. It's hard to  
76 park.

77 MR. BOYLE: So is Eden Center. So is the West Falls Plaza where the UPS and  
78 Z Pizza and Cafe Nessma are. If it's a shopping center, the ratio is 1 to 250  
79 based on square footage. It doesn't matter what the uses are. It's not realistic,  
80 so it would be great if this Board could come up with some suggestions and we'll  
81 pass it on.

82 MR. TAYLOR: The thing that happened was that the ratios were put in place  
83 decades ago and then in the relatively near past, the Mixed Use Redevelopment, more  
84 thoughtful calculations were put in place but they applied only to that Mixed Use  
85 Redevelopment, sort of as a test. But they've worked very well everywhere.

86 CHAIR STOODLEY: Tell us about Arlington.  
87 MR. TAYLOR: Well, Arlington applies the MUR just as we do. They are  
88 expanding the use of it and I would like to make a motion that we simply -- that we  
89 recommend the City Council simply allow the parking calculations under the MUR to  
90 apply to any mixed use development, whether it's being built today as a  
91 redevelopment or it was built 30 years ago.

92 CHAIR STOODLEY: Do I have a second?  
93 MR. WILLIAMSON: I want to continue to understand some of this.  
94 CHAIR STOODLEY: Okay.  
95 MR. WILLIAMSON: So would an impact of that then be more -- those are two  
96 helpful examples. So would the impact be more parking garages?  
97 MR. TAYLOR: No. It's simply the calculation. I've got a little piece of  
98 paper for you here. The way that the MUR works is that there are calculations  
99 based on both the type of occupant and the time of day. So restaurants that use  
100 most of their parking in the evening are weighted towards the evening with a lower  
101 ratio. That's 1 to 100 instead of 1 to 250. Restaurants actually require more  
102 parking but it's weighted towards the evening where most of the parking actually  
103 occurs.

104 For office, during the weekday it's when you have most of your parking. For  
105 retail, it's on the weekend when you have most of your parking. so all these  
106 calculations are taken in account. For the MUR calculations, all you do is plug in  
107 the square footage for the various type of tenants and you get a parking  
108 requirement that actually fits the need rather than just --

109 MR. WILLIAMSON: So in some instances there might be more, and some other  
110 instances, it might be less.  
111 MR. TAYLOR: Absolutely.  
112 MR. WILLIAMSON: It fits the profile.

113 MR. TAYLOR: If you had too many restaurants in a shopping mall, you run out  
114 of space. If you have too many of anything in a strip mall, you're going to run  
115 out of space at some time. So it helps you to strike a balance and come up with a  
116 real calculation for requirement rather than something that may or may not be  
117 accurate. And you can look around, we have some parking lots, they're always more  
118 than half empty and some of them, you can't find a parking space.

119 CHAIR STOODLEY: Mr. Boyle pointed out Right Aid as a good example, has how  
120 many parking spots, hundreds and --

121 MR. WILLIAMSON: Those two developments side by side are pretty good  
122 examples.

123 MR. BOYLE: Yeah.

124 MR. WILLIAMSON: Before and after.

125 CHAIR STOODLEY: I think the issue is that it considers two variables: Type  
126 of business and the use of that parking for that business as a function of time.  
127 That's where it's different. Just putting down a flat requirement for 24 hours a  
128 day, so many spaces depending on use, doesn't give you the whole picture.

129 MR. WILLIAMSON: Right. Okay. I understand.

130 CHAIR STOODLEY: So we have a motion. Do I have a second?

131 MR. CASTILLO: Could I ask one more question?

132 CHAIR STOODLEY: Certainly. Of course. Ask all the questions you want.

133 MR. CASTILLO: So the idea here is -- I'm trying to make the leap from going  
134 from the existing regime to the MUR regime and understanding whether and how we  
135 have to do that and what additional steps might be entailed in that.

136 So is this simply saying we'll draft the MUR requirements onto this  
137 particular application and dispense with it or --

138 MR. TAYLOR: No, this has absolutely nothing to do with any action in front  
139 of us.

140 CHAIR STOODLEY: In other words, the applicant had applied for relief from  
141 the parking issue and has found his own solution and it has been withdrawn. That  
142 is not an issue tonight. This is just a general thing that Mr. Taylor did, sensing  
143 the problem.

144 MR. TAYLOR: We were discussing it beforehand. My concern is that our next  
145 tenant, for instance, in that same strip small there's an empty storefront so our  
146 next tenant would not be able to move in.

147 MR. CASTILLO: It does raise some interesting issues there.

148 MR. TAYLOR: But I think it's reasonable to restrict the parking but maybe  
149 apply something, the MUR would actually fit the requirement more and not be just,  
150 you know, it's a rule. We realize there's parking available. It's a rule. Too  
151 bad.

152 It's worked very well in all the cities that I know that are using it, and  
153 it works here for the MUR properties. So why not just take a leap and say we have  
154 the MUR code and the City Code. We have the parking calculations and the City  
155 Code. We have a paragraph in there that says or sentence in there that says that  
156 the MUR calculations are just for designated MUR. Why not just take that sentence  
157 out? Or put another sentence in that says it can be for that and mixed use or  
158 chain them all together.

159 CHAIR STOODLEY: I just want to raise one issue and Mr. Taylor and I have  
160 talked about this earlier. And that issue, of course, is that when you do that and  
161 it's not sufficient, then you drive the parking into residential areas and that  
162 could be a concern. And you know how difficult it is, if you're going down East  
163 Columbia and you don't get anywhere near the East Falls Church Metro. You've got  
164 to have a parking permit. All those people have parking permits so that's my  
165 concern.

166 MR. TAYLOR: Which would probably happen city-wide if we were to say there  
167 is no parking requirement. I think you're going to have -- we have that  
168 artificially now. Some lots are over capacity and some lots are under capacity

169 because we're using the same number, 1 to 250, for all the different mixed use  
170 development. I think you would have less spill over.

171 CHAIR STOODLEY: Any further questions?

172 MR. CASTILLO: I'm playing a bit of catch up here.

173 CHAIR STOODLEY: That's okay.

174 MR. CASTILLO: And some of my -- I don't want to say reluctance but I'm  
175 still trying to think through, whether and to what extent mixed use really becomes  
176 an --

177 CHAIR STOODLEY: My suggestion would be to defer the motion to next meeting.

178 MR. CASTILLO: I would agree.

179 CHAIR STOODLEY: And that way we can think about it and brief Mr. Murphy who  
180 is not here today and then we can consider it at the next meeting.

181 What I need is a motion to table the motion.

182 MR. CASTILLO: I would move to table it.

183 CHAIR STOODLEY: Second?

184 MR. WILLIAMSON: I second that.

185 CHAIR STOODLEY: All in favor?

186 (Upon voice vote, the motion to table the motion passed unanimously.)

187 CHAIR STOODLEY: So we're tabling the motion to make the MUR applicable  
188 throughout the spectrum of businesses until the next meeting.

189 MR. BOYLE: Mr. Chair, if I would make a suggestion, we may have people here  
190 for the other items that we've received notice on. If we can poll the group here  
191 and see if anyone is waiting for those items, the items that have been withdrawn.

192 CHAIR STOODLEY: I'm sorry.

193 MR. BOYLE: Any members of the public.

194 CHAIR STOODLEY: U1488-08, application for Special Use Permit for a Bank  
195 Drive-through Facility for BB&T, has been delayed until the next meeting.

196 MR. TAYLOR: Next month.

197 SPEAKER: I've got a piece of -- this doesn't tell me where the proposed  
198 drive through is. Does anybody have that?

199 MR. BOYLE: If you want, I'll give you -- why don't you contact me tomorrow.  
200 Or actually I'll be out until Monday.

201 SPEAKER: Okay. Because this is my property here and I'm right in it.

202 MR. BOYLE: Give us a call on Monday and we'll get you that information.

203 CHAIR STOODLEY: The reason that BB&T, as I understand from Mr. Boyle, the  
204 reason it withdrew or delayed their application was because they had to redo some  
205 plans for the Planning Commission.

206 SPEAKER: I see.

207 CHAIR STOODLEY: So we don't know really what the plans are but Mr. Boyle  
208 will inform you.

209 SPEAKER: Okay. Great. Thanks. I'm just curious.

210 MR. BOYLE: Here. This will help in the meantime. Here's a better map.  
211 Okay. And then contact my office on Monday and we will clarify that for you.

212 SPEAKER: Thank you very much.

213 CHAIR STOODLEY: Sorry to keep you waiting.

214 SPEAKER: I'm here in town.

215 CHAIR STOODLEY: And also the Appeal of Zoning Administrator's decision for  
216 Cafe Nessma has been withdrawn. So there's really only one new business and that's  
217 the application for the variance for the deck.

218

219 5. OLD BUSINESS: None.

220

221 6. PETITIONS: None.

222

223 7. NEW BUSINESS:

224 V1493-09, an application for a Variance to Chapter 38-28, (b)(5)(a), of the City

225 Code to allow a deck to project 11 feet into a rear yard setback instead of 6 feet  
226 on the premises known as 315 North Maple Street, Lot 23, Colonial Garden  
227 Townhouses, RPC 51-108-041 of the Falls Church Real Property Identification Map  
228 zoned R-TH (Residential-Townhouse) by Sophie Gerber and Frank  
229 Villamer.

230

231 CHAIR STOODLEY: And before you come forward because you'll be sworn in, we  
232 have anybody else going to speak on this issue?

233 Applicants are here.

234 How about in the back? Are you going to speak?

235 SPEAKER: No, thank you.

236 (Witnesses sworn.)

237 CHAIR STOODLEY: Mr. Boyle.

238 MR. BOYLE: Mr. Chair, the applicant is before the Board to discuss a  
239 variance to allow a deck on a planned housing development, townhouse development,  
240 that would project 11 feet into the rear yard setback. The Code currently  
241 restricts deck projections into rear yards to only 6 feet and I think I'm available  
242 for questions on the particulars and what have you. But I'll defer to the  
243 Applicant's presentation.

244 They've been before the Architectural Advisory Board for comments to the  
245 Planning Commission. They've appeared before the Planning Commission on this  
246 matter for purposes of Planning Commission making a recommendation to this Board,  
247 and depending on what you do tonight they'll be back to the Planning Commission for  
248 a site plan revision.

249 CHAIR STOODLEY: What was the Planning Commission's decision?

250 MR. BOYLE: For that we have Elizabeth Perry from the Planning Office here  
251 to speak to the staff report that went to the Planning Commission and has been made  
252 available to the BZA and to answer any questions that you might have.

253 CHAIR STOODLEY: I think I'll let you speak, present the case first and get  
254 your report.

255 MS. GERBER: Okay. Can I stand?

256 CHAIR STOODLEY: Sure.

257 MS. GERBER: I just want to give you a little bit of history. We asked in  
258 June of 2008, what we could do. We were told we could do 20 percent of the back  
259 yard. We could do 11 feet. So we kind of sat on it.

260 CHAIR STOODLEY: Who told you that?

261 MS. GERBER: Who told us that? We have a letter from the City of Falls  
262 Church. I have the name of the person that we were told we could do, you know, 11  
263 feet deck. So we sat on it for a year and gathered the money.

264 CHAIR STOODLEY: When did you purchase the property?

265 MS. GERBER: 5 years ago.

266 CHAIR STOODLEY: 2003.

267 MS. GERBER: Yes.

268 CHAIR STOODLEY: 2004.

269 MS. GERBER: Yes.

270 CHAIR STOODLEY: Time passes.

271 MS. GERBER: 5 years ago. So we got the rules. We didn't do anything and  
272 then this June we said, okay, let's build a deck. So we did the plat and we did 11  
273 feet and, you know, the changes, and then we submitted it and then we were told you  
274 can do no deck. Zero.

275 CHAIR STOODLEY: Zero?

276 MS. GERBER: Zero. Okay. And this is -- I'm just telling the history. At  
277 the end it's kind of funny.

278 CHAIR STOODLEY: Who told you zero?

279 MS. GERBER: Suzanne Cotellessa. So they said you can do no deck, so you  
280 have to do a variance and that's really why we're here, for a variance to the BZA.

281 We worked hard. We took pictures. We wrote a letter of the hardship and  
282 all this. And then a few weeks before the variance we were told, oh, no, you can  
283 do 6 feet. I was like, okay.

284 Well, and then there was the last two weeks ago and then you did some  
285 research and then we found a 1965 variance and now thanks to, you know, we were  
286 told you could do 8 feet deck. Okay.

287 Which is, had we known this at the beginning we would have kind of changed  
288 the things. So one -- the first thing I'd like to get here is can you please  
289 confirm. I mean, we were told we can do 8 feet. I mean, this is the fourth  
290 announcement and I'd like to at least get the confirmation that we can do 8 feet  
291 and that's the thing.

292 We requested 11 feet. All the townhouses in front of us have decks. The  
293 one we're facing has a 12 foot deck and a similar size back yard. So, you know, it  
294 would be nice to have, you know, 11 or 10 or just a little more than 8 but that's  
295 why I'm here.

296 MR. WILLIAMSON: Okay. And you said you were told you could have 8 feet?

297 MS. GERBER: Right, right, right.

298 MR. WILLIAMSON: Was that evaluated by zoning staff at all?

299 MR. BOYLE: Yeah, if I can elaborate a little bit. I don't mean to  
300 interrupt this.

301 MS. GERBER: No, please.

302 MR. BOYLE: This has been an interesting process from the beginning. It's  
303 evolved from a discussion of do townhouses have to go through a site plan revision  
304 for a feature such as a deck. Was that ever addressed by the Planning Commission  
305 originally? Was that their intent? It speaks to any site features that are  
306 altered. Is a deck a site feature? Initially, I think the Planning Director, Sue  
307 Cotellessa, felt that the intention was that no decks were permitted. Then we  
308 discovered subsequently that many decks are there and perhaps it would be more  
309 reasonable to allow this through a site plan revision.

310 And once that discussion began, then we looked at what is out there in the  
311 field. Where are the setbacks and what have you. And none of the buildings seem  
312 to match Code and we couldn't find -- the site plan was confusing, as Elizabeth  
313 Perry will attest to, it seems like all of our townhouse developments it's unclear  
314 where they're measuring their setbacks from.

315 So we had to struggle with determining where these buildings are actually  
316 set at and so our applicant didn't know exactly to what distance were they going to  
317 be allowed to build their deck.

318 Fortunately our research turned up a variance related to the site plan that  
319 cleared up the position of the buildings and where they actually exist in relation  
320 to their property line.

321 And the matter as it stands for clarification and so she understands what  
322 this Board is going to be asked to do, is the Code does restrict projections into  
323 the rear yard and limit them to 6 feet. The building appears to be 2 feet beyond  
324 the minimum setback established by a variance in 1965. So they've got their 2 feet  
325 to the good plus the 6 feet allowed by Code, so they could build a deck 8 feet  
326 beyond the back wall of their building now, 2 feet is on their own property outside  
327 the setback. The other 6 the Code allows into the setback. And then they're  
328 requesting a deck that actually measures a distance that would require an 11 foot  
329 projection into the rear yard setback.

330 So it's been quite a process for our citizen here and some of it is staff  
331 struggling with what was the intent of the Planning Commission in 1965 and what  
332 does the site plan say, what does the survey say, and meanwhile the Code only  
333 allows projections into the rear yard of 6 feet.

334 So we've shepherded them through this process and they're before you now for  
335 we hope some clarity and resolving their projection into the rear yard setback.

336 CHAIR STOODLEY: Thank you, Mr. Boyle.

337 Before we proceed any further, I should have said this in the beginning.  
338 There are only four members available tonight, four out of five. The problem for  
339 that with you is if we tie, it's a rejection. You must have a majority. You must  
340 have three of the four. It's a go for it or not go for it.

341 You have the right to have a continuance until there is a Board of five next  
342 month and you continue tonight at your own risk.

343 I'm not saying it's a risk but it could be that. So I want you to  
344 understand that completely and decide whether you want to go forward or not.

345 MS. GERBER: Well, yeah, I want to go forward.

346 CHAIR STOODLEY: Thank you, ma'am.

347 Miss Perry, will you give us your report please.

348 MS. PERRY: As noted, this application went before the Planning Commission  
349 for a recommendation. Initially a staff report issued on September 2nd from me to  
350 the Planning Commission which you received a copy of which became irrelevant once  
351 the variance for the yard at the subject property was revealed.

352 On September 8th at the public hearing, I gave an oral updated staff report  
353 and I updated in writing a copy of what I presented to you and I believe that was  
354 e-mailed today.

355 At the Planning Commission Public Hearing there was a motion made to  
356 recommend that the BZA approve the subject application. There was a tie vote, 3-3,  
357 which under their Rules of Procedures is deemed a failure so they did not pass the  
358 motion in favor of the application.

359 The tie vote in the discussions, the planning commissioners noted that the 6  
360 feet extension provided in the Code seemed very conservative, not necessarily  
361 consistent with the way decks are built today. And with what had been described by  
362 the Applicant as already occurring in the neighborhood, they also thought a deck  
363 was consistent with how the neighborhood appeared to be developing and with  
364 townhouse development today.

365 However because the Code did provide for a deck, albeit not the dimensions  
366 requested by the Applicant, half the commissioners felt there were Code provisions  
367 in place that would allow them the use and therefore could not support the  
368 application at this time.

369 Thank you.

370 CHAIR STOODLEY: Thank you. Any questions by any members of the Board?

371 MR. TAYLOR: I know this is asking you to read minds and maybe you don't  
372 even want to answer it, but if the choices were between 8 and 11 at the time, do  
373 you think the vote would have been different than 3-3?

374 MS. PERRY: No. There actually was a little bit of discussion about what  
375 kind of deck could be constructed. And one of the planning commissioners did  
376 interject and said they should really just look at what the application is before  
377 them and what the variance is asking for.

378 So that discussion did not go very far, especially because the follow-up  
379 questions had to do with where could the stairs go and can the stairs encroach and  
380 how wide can the deck be.

381 And as planning staff, that's something that we consult with the zoning  
382 administrator on. And I advised the Planning Commission that I can only read them  
383 what the Code says and I really couldn't confirm for them at that time what the  
384 true dimensions of the deck could be. So they went back to what the application  
385 was requesting and voted on that element.

386 Because this deck, whether it's the 8 foot option or any one that you  
387 approve by variance, regardless, it will have to be documented in a site plan  
388 amendment. The planning commissioners did indicate they supported a deck at the  
389 property. So when the site plan amendment goes through, I expect there to be  
390 support for it.

391 MR. CASTILLO: Can I ask in terms of splitting the issues into deck and  
392 stairs, did the Planning Commission address both issues or just the deck and does

393 your updated report address just one or both?  
394 MS. PERRY: What we talked about at the Planning Commission, we looked at  
395 the provision of the Code that talks about uncovered stairs. And separate from  
396 stairs associated with a deck, they cannot encroach any further. In fact, they can  
397 encroach less than an open deck.  
398 In further consultation with John Boyle, we researched and decided that  
399 really 6 foot is the maximum extension of a deck and its stairs. So they cannot  
400 encroach any more than 6 feet with that combination.  
401 MR. CASTILLO: Thank you.  
402 CHAIR STOODLEY: Any other questions of Ms. Perry?  
403 MR. WILLIAMSON: Knowing that, if you did build a --  
404 CHAIR STOODLEY: I don't want you to address her.  
405 MR. WILLIAMSON: I'm sorry.  
406 CHAIR STOODLEY: I'll tell you why in a minute.  
407 Any other questions of her?  
408 MR. WILLIAMSON: No, I don't.  
409 CHAIR STOODLEY: Mr. Boyle, do we have any comments for or against?  
410 MR. BOYLE: Yes. You should have a -- in your packet, I'm sorry, it was e-  
411 mailed this afternoon, a letter from one of the neighbors.  
412 CHAIR STOODLEY: Would you just read that in the record.  
413 MR. WILLIAMSON: I've got it.  
414 CHAIR STOODLEY: We all have it. We'll put it on the record.  
415 MR. BOYLE: We received a letter dated September 15th, regarding this matter  
416 from Lyn J. McDermott.  
417 Do you want the letter read into the record?  
418 CHAIR STOODLEY: Yes. Please do.  
419 Mr. Boyle, I think what we'll just do is enter that into the written record.  
420 MR. BOYLE: Okay.  
421 CHAIR STOODLEY: All of the members have had a chance to read it.  
422 CHAIR STOODLEY: Before we proceed further, the Chair recuses himself from  
423 this issue and will not vote tonight with the following rationale: 17 years ago, I  
424 came before the Board as a townhome owner and asked for an 8 foot deck and was  
425 denied. I got so angry, I came on the Board and I've been here ever since. So I  
426 don't think I can judge it fairly, so I won't make the judgment. I will let you  
427 plead your case and let my cohorts here decide.  
428 With that, I'll turn it over to you and you can ask anybody any questions.  
429 MR. WILLIAMSON: Well, my question was you're going to continue to act as  
430 Chair but I guess not.  
431 CHAIR STOODLEY: No. I'll act as Chair. I won't vote.  
432 MR. WILLIAMSON: Okay. So I can ask my question now?  
433 CHAIR STOODLEY: Yes. Absolutely.  
434 MR. WILLIAMSON: So are these steps, knowing the information that was talked  
435 about prior to the reading of that letter was about the steps, would the steps as  
436 it's envisioned be within the 11 feet space?  
437 MS. GERBER: Right. We will do the steps within the either 8 feet or 11 or  
438 whatever you end up granting.  
439 CHAIR STOODLEY: Okay.  
440 MS. GERBER: We will have it within that.  
441 MR. WILLIAMSON: So that would be the maximum use of that space?  
442 MS. GERBER: Right.  
443 MR. WILLIAMSON: And we would extend beyond it?  
444 MS. GERBER: Right, because we would like steps into the back yard.  
445 MR. WILLIAMSON: I see.  
446 MS. GERBER: As an access to the back yard also and also as an exit. And as  
447 a way to bring large items into the house that might not fit through the staircase  
448 should there be.

449 MR. WILLIAMSON: And you mentioned in your testimony that there were other -  
450 - you said there were other townhouses that had decks including one that had 12  
451 feet?  
452 MS. GERBER: Right, right.  
453 CHAIR STOODLEY: And you mentioned that as well. Is that along the same  
454 road or is that in a different part of the neighborhood? Where is that in relation  
455 to your townhome?  
456 MS. GERBER: I'm facing it. I'm on North Maple, okay, so I'm facing North  
457 Maple. And all these houses have the similar architecture. They're kind of  
458 Spanish style and you have similar houses on Garden Court and on James Thurber.  
459 I'm on North Maple and I'm facing all the houses of Garden Court and every single  
460 one of them has a deck. So I'm looking at a line of six decks. And the one that's  
461 right in front of me is 12 feet and the same back yard.  
462 Now the one, like Lyn said, the one to my right and the one to my left and  
463 the other one to my left don't have decks, but the one across Garden Court at the  
464 corner of Maple and Great Falls has a deck and all the ones on James Thurber have a  
465 deck so.  
466 CHAIR STOODLEY: Okay. So I'm just trying to visualize. Yours would be the  
467 second deck in a row of townhomes.  
468 MS. GERBER: Yes, yes. Right. If you look at that, that is true. And if  
469 you look at that one, they all have it.  
470 MR. WILLIAMSON: You're looking down at that.  
471 MS. GERBER: And if you look at James Thurber, you know, a good two thirds  
472 of them have it, yeah.  
473 MR. WILLIAMSON: Okay. I understand.  
474 CHAIR STOODLEY: Questions?  
475 MR. WILLIAMSON: No more questions.  
476 CHAIR STOODLEY: Any further questions?  
477 MR. CASTILLO: Just another question in terms of the dwellings with the  
478 decks. Do you know if those decks were built as of right or with variances?  
479 MS. GERBER: Well, I know some of them were built when the house was built.  
480 I know some of them were probably added after. I did not go into too much history.  
481 I suspect some of them were just built, like some people told me, why didn't you  
482 just build it. But I did not go into any of that history.  
483 CHAIR STOODLEY: Mr. Boyle, can you shed some light?  
484 MS. GERBER: I just wanted to do it the right way.  
485 MR. BOYLE: The records from that period are not good and the only reason we  
486 were able to identify the variance is there is a handwritten note on the original  
487 site plan. Once we located the information from the BZA, those records were  
488 excellent. I'll credit the BZA for that time.  
489 But the building officials' records really going back more than 5 years or  
490 so are very sketchy. So we have really no ability to determine if any building  
491 permits were ever pulled for those decks and I haven't found any other variances at  
492 that location other than the original ones granted. There were a number granted at  
493 site plan.  
494 So, we weren't able to locate a history on those decks. I suspect a lot of  
495 them were done without proper permits.  
496 CHAIR STOODLEY: Okay. Any further questions?  
497 Mr. Taylor?  
498 MR. TAYLOR: No.  
499 CHAIR STOODLEY: Okay.  
500 MS. GERBER: Can I add something? One of the reasons is the kitchen and the  
501 dining room is at the level where I'd like the deck to be and hence the reason for  
502 the deck, to be able to have a cup of coffee with that.  
503 CHAIR STOODLEY: You have a deck by right. It's the size of the deck that's  
504 the issue. That's the variance. The variance is not for the deck. You have a

505 deck by right. And you can extend 6 feet, in your case 8 feet, into the offset  
506 without any variance.

507 MS. GERBER: So can you confirm that I have a deck by right for 8 feet.

508 CHAIR STOODLEY: I think we already have that confirmation.

509 MR. BOYLE: Yes.

510 MS. GERBER: I just want a warm and fuzzy.

511 CHAIR STOODLEY: Well, the warm and fuzzy, you have the officials here who  
512 say you have that right.

513 MS. GERBER: So when I go to get the request and change the plat, it will be  
514 approved?

515 MS. PERRY: I would like to add, there is an e-mail that I did send to Miss  
516 Gerber. Before that was sent, I consulted with John Boyle and also Sue Cotellessa,  
517 the Planning Director, to make sure that we could solidify this information,  
518 especially given the circumstances and the previous information issued to the  
519 Applicant which was very unfortunate.

520 So it has been vetted by both of those staff members and one way or the  
521 other either of those decks will be accepted by the Planning Director as a site  
522 plan amendment.

523 CHAIR STOODLEY: Okay. Now what I'm trying to do, again I'm not voting but  
524 I'm trying to clarify the issue. The issue now is with the 3 feet additional, that  
525 is what the variance will be. It's not for the 8 feet.

526 MS. GERBER: Yeah. And I'm willing to -- I'm open to if you think 11 is too  
527 much.

528 CHAIR STOODLEY: Do you want to withdraw your variance application? Or do  
529 you want to vote on it?

530 MS. GERBER: I mean, this is the 11th hour.

531 CHAIR STOODLEY: I understand.

532 MS. GERBER: No, I'd like -- but if you decide.

533 CHAIR STOODLEY: We'll proceed then.

534 MS. GERBER: And what you feel is comfortable, I'll accept it.

535 CHAIR STOODLEY: You certainly have a right to have a decision, if that is  
536 what you want.

537 MS. GERBER: Yeah.

538 MR. CASTILLO: I guess I'll first ask a point of order. If we were  
539 presented with a document where the issue is 6 versus 11 and now it's 8 versus 11,  
540 can we still analyze the issue of the 6 or 8 versus 11?

541 CHAIR STOODLEY: I think you can because of the issues that are here.

542 MR. BOYLE: The key point there is what moved was the location of the house  
543 and actually retreated further away from the setback. So the question of can the  
544 deck project more than 6 feet in, that number has not changed so.

545 CHAIR STOODLEY: Exactly. In other words, the 6 feet is by right. It turns  
546 out because the house is set back 2 feet, it's really 8 feet but you don't have to  
547 know that. The 6 feet is by right and the question is above the 8 feet, if she  
548 wants to go to 11, then that's the variance.

549 Any other questions?

550 MR. CASTILLO: Can I ask a question?

551 CHAIR STOODLEY: Sure.

552 MR. CASTILLO: Would you have come here with this petition if it were the  
553 issue of 8 versus 11 and how does the 8 versus 11 change the arguments that you put  
554 forth in these documents?

555 MS. GERBER: Well, 11 is bigger than 8 and it would be nicer than 8, okay.

556 No, if in June I was told, you know, you can do 8 feet, go ahead, I would  
557 have --

558 CHAIR STOODLEY: You'd be sitting on your deck.

559 MS. GERBER: I would have given it some thought. I would have given it some  
560 thought. But I found out this week and the hearing is now and, you know, 8 feet,

561 we're a couple with two kids and it would be nice to have a little more, so you can  
562 have a little more room. That's all.  
563 CHAIR STOODLEY: All right. Thank you.  
564 Do we have a motion?  
565 MR. CASTILLO: But given the issues, given what we have to do to find the  
566 case for hardship, can you still articulate the case here.  
567 MS. GERBER: Yeah.  
568 MR. CASTILLO: "A little more space would be nice", I don't think would make  
569 it.  
570 MS. GERBER: Yeah, I'll articulate all you want.  
571 I'm looking at a 12 feet deck right in front of me. I have a 12 feet deck  
572 of my neighbor. And the back yard is the same size. So, you know, she gets 12, I  
573 get 8?  
574 I'm looking at a row of deck, every single house has a deck, you know. I'd  
575 like to have an emergency exit into the back yard, yes, just because I like an  
576 emergency exit.  
577 The day I buy a new fridge, you know, bringing it through the staircase is  
578 going to be impossible. You can't buy a small fridge anymore, you know, bringing  
579 it through the deck is going to be much better. And the bigger the deck, the  
580 better it is.  
581 And I think the value of the house will also improve. And the pleasure of  
582 being in a space with a bigger deck is much better and, you know, I'd like to eat  
583 outside.  
584 CHAIR STOODLEY: Anyone else? Any questions?  
585 Do I have a motion?  
586 Gentlemen, we need to proceed here. Motion one way or the other.  
587 MS. GERBER: We're having a deck party after, when we build it.  
588 MR. WILLIAMSON: In regard to V 1493-09 application for variance, Chapter  
589 38-28 (b)(5)(a) of the City Code, I would make a motion to grant the variance.  
590 CHAIR STOODLEY: Do I have a second?  
591 Do I have a second?  
592 No second.  
593 Do I have an alternative motion?  
594 MR. CASTILLO: I would move to, in the matter of -- I would move in the  
595 matter of the Application V1493-9 for a variance, to Chapter 38-28 (b)(5)(a), be  
596 denied.  
597 CHAIR STOODLEY: Do I have a second?  
598 MR. TAYLOR: Second.  
599 CHAIR STOODLEY: Can I have a voice vote please? Roll call, I'm sorry.  
600 RECORDING SECRETARY: Mr. Castillo.  
601 MR. CASTILLO: Yes.  
602 RECORDING SECRETARY: Mr. Williamson.  
603 MR. WILLIAMSON: No.  
604 RECORDING SECRETARY: Mr. Taylor.  
605 MR. TAYLOR: Yes.  
606 CHAIR STOODLEY: Okay. The variance has been denied by the fact that you  
607 didn't get a majority of the vote.  
608 MS. GERBER: You sure you don't want to vote? Come on, with all your  
609 experience, you know.  
610 CHAIR STOODLEY: I'm sure I don't want to vote. I'm sure you don't want me  
611 to vote.  
612 But in any event, you have your 8 foot deck. I had a 6 foot deck so it's  
613 little but I don't have any small children anymore. But I'm sorry but that's the  
614 way it is.  
615 I want you to understand what the Board's requirements are. In other words  
616 it's like a garage or a portico. It's a convenience. And when you bought the

617 property, you bought whatever the inconvenience was and it's very difficult to  
618 grant a variance. You have to show a hardship as opposed to a convenience.  
619 MS. GERBER: Right.  
620 CHAIR STOODLEY: And that is where you fell short. But thank you for your  
621 time.  
622 MS. GERBER: Okay. Thank you.  
623 CHAIR STOODLEY: Any other business?  
624 MR. BOYLE: No.  
625 CHAIR STOODLEY: Move to adjourn please.  
626 MR. CASTILLO: Move to adjourn.  
627 MR. WILLIAMSON: Move to adjourn.  
628 CHAIR STOODLEY: All in favor.  
629 (A chorus of "ayes.")  
630 (The meeting was adjourned at 8:21 p.m.)  
631