

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 20, 2017

+ + + + +

The Regular Public Hearing convened in the
Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441
4th Street, N.W., Washington, D.C., 20001, pursuant to notice
at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARLTON HART, Vice Chair
LESYLLEÉ M. WHITE, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
BRANDICE ELLIOTT
CRYSTAL MYERS
STEPHEN MORDFIN
KAREN THOMAS
ELISE VITALE

The transcript constitutes the minutes from the
Public Hearing held on December 20, 2017.

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10:08 a.m.

CHAIRPERSON HILL: So, it looks like we're moving onto the hearing cases. And if you could, Mr. Secretary, call the first case.

SECRETARY MOY: Thank you. That would be -- this is a, as you'll recall, a continued hearing, Case Application Number 19572 of SIM, S-I-M Development, LLC.

This is an Application for variances from a nonconforming structural requirement of Subtitle C, Section 202, and the parking requirements of Subtitle C, Section 701.5, which would add two stories containing 16 units to an existing two story nine unit mixed-use building in the MU-4 at premises 1916 15th Street Southeast, square 5766, lot 845.

This was last heard by the Board on November 15. And I believe the Board left the record open. This is a continued hearing, but left the record open and determined to hold a continued, limited scope hearing to focus on any transportation issues.

CHAIRPERSON HILL: And Mr. Vice Chair, I wasn't here for the original hearing. But just to let the Board know, I have read the entire record and watched all of the testimony.

But since you were chairing, I think maybe it would be just appropriate that you continue to chair and I

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1 can just stay quiet.

2 VICE CHAIR HART: Why thank you, Mr. Chairman.
3 Much appreciated.

4 So, I think for this case we have some preliminary
5 matters that we need to address. There is a postponement
6 request for ANC 8A.

7 And this postponement request is connected to the
8 ANC 8A's, I guess they're rescinding their support of the
9 project. And so they're just rescinding their support by a
10 vote of zero to -- excuse me, four to zero to two. And
11 that's Exhibit 64.

12 Does the Board have any -- any comments on the
13 postponement request?

14 CHAIRPERSON HILL: Mr. Vice Chair, I'd be
15 interested to see if the ANC is here. Whoever made the
16 request? I'm sorry, who's the ANC?

17 Oh, okay. I'm sorry, sir. I guess -- and
18 actually, Mr. Vice Chair didn't mention, but I guess, --

19 VICE CHAIR HART: Yes.

20 CHAIRPERSON HILL: I don't know if you want
21 everybody to introduce themselves.

22 VICE CHAIR HART: You're right. And thank you
23 very much for coming. If you could introduce yourselves from
24 my right to my left.

25 MR. PRESTWOOD: Absolutely. Good morning, Mr.

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1 Vice Chair. Troy Donte Prestwood, Chairman advisory
2 Neighborhood Advisory Commission 8A.

3 MR. JONES: Phinis Jones representing the
4 Developer on Community Outreach.

5 MR. SEMLER: Peter Semler representing Capital
6 Intelligence, opposed to the development.

7 MR. ANDRES: Good morning. Erwin Andres, Vice
8 President and Principal with Gorove/Slade Associates.

9 MR. CRUICKSHANK: Morning, Neil Cruickshank,
10 architect, Architectural Solutions, LLC, owner.

11 MS. KENNEDY: Good morning. Karinne Kennedy, 1920
12 15th Street. I'm a resident directly across from the
13 proposed property.

14 VICE CHAIR HART: You have to push the button.
15 There you go.

16 MS. AGYEI: Dorcas Agyei, 1926 15th Street. A
17 resident opposed to the development.

18 MS. MUHAMMAD: Holly Muhammad, ANC 8A.

19 VICE CHAIR HART: Thank you. And so the ANC, Mr.
20 Don -- Prestwood, thank you. I had put down Donte and I
21 realized that it wasn't.

22 MR. PRESTWOOD: I go by Donte. That's fine.

23 VICE CHAIR HART: No. Mr. Prestwood, could you
24 talk a little bit about the necessity for the postponement?

25 MR. PRESTWOOD: Absolutely. So --

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1 VICE CHAIR HART: For your -- why you're proposing
2 it.

3 MR. PRESTWOOD: Sure. So, our communication to
4 the BZA was in twofold. One was to let you know that we
5 rescinded our support from the vote that we made back on
6 November 8, 20 -- November 7, 2017.

7 And then secondly to ask for a postponement. The
8 postponement is to allow more time with the developer and the
9 residents to continue discussions with regards to how this
10 will impact the community.

11 When we first voted in support of this, the
12 Commissioner that represented that area felt that, you know,
13 that everything that he had asked for, the developer was
14 going to do. Had reached out significantly to the community.

15 Had, you know, garnered the support that was
16 necessary. Had, you know, full support of everyone involved.

17 And what we later found out was that that was not
18 necessarily the case. As the ANC became aware that many,
19 many residents were very upset with what was about to occur.

20 My understanding is that the design, the scale,
21 the scope, the size of the building, the additional floors,
22 the traffic study that was done, was insufficient. Addition
23 to that, they remain unsatisfied with the type of building
24 materials that were being proposed by the Applicant, and what
25 that impact will have on the overall character of that

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1 neighborhood.

2 And so what we propose was that the developer and
3 the residents continue to discuss these issues. We
4 understand, and I did note that in my communication to the
5 Board that on November 30, 2017 that the developer and the
6 community did participate in a meeting where they began to
7 discuss these things.

8 But my read out of that meeting was that I was not
9 complete. That it was just the beginning of a discussion
10 that they -- my understanding is that they need to continue.

11 And so, what we decided to do was to ask that the
12 Board would, you know, direct the Applicant to ask that the
13 sup -- that they hold off on moving this forward.

14 We're asking you rather, if you will hold off on
15 approving this while we allow that process to take forward.
16 The ANC is fully prepared to provide additional comments on
17 this based on what the outcome of that conversation is with
18 the Applicant and the residents in a letter of support or a
19 letter of non-support.

20 VICE CHAIR HART: Okay. So, Mr. Prestwood, you
21 noted that there is -- that there was initially some
22 conversations, but that the information that you received,
23 or that the other ANC member, the single member district
24 received was -- was it that they were -- that there were
25 other conversations that had happened? That actually didn't

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1 happen?

2 I mean, I'm a little confused as to --

3 MR. PRESTWOOD: Sure. And I can --

4 VICE CHAIR HART: As to the time line.

5 MR. PRESTWOOD: Absolutely. So I can tell you
6 that one of the things that we had requested from the
7 Applicant was that we be provided with an impact study for
8 traffic and parking.

9 We did receive that. But we received that on the
10 day of our public hearing back on November 7.

11 As a result of that, the other Commissioners and
12 the community, or rather I should say, did not feel that was
13 sufficient time for them to inspect that record. Even though
14 we know that was uploaded to the BZA case records.

15 The community and many of them are here, did not
16 feel that was sufficient time for them to inspect the record.
17 To actually go over that. To even bring in a third-party to
18 examine that.

19 To see in fact if, you know, if that's sufficient
20 for them to be able to walk -- potentially have to walk
21 blocks from their park -- wherever they can find parking to
22 their home. Which is what some of the scenarios played out
23 may look with this additional structure in the community
24 adding 25 units I believe.

25 So that was one of the things that came up. The

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1 other issue was, I believe, that the community benefits
2 agreement -- the Applicant did in fact agree to a number of
3 conditions that we had discussed as a commission.

4 But, I don't believe, and the Applicant is here,
5 the representatives are here, that they in fact had these
6 conversations with the community. They had them with us.

7 But not necessarily with the community. At least
8 fully. And so, they have not fully vetted or have added
9 their input as to what they believe would be sufficient for
10 them to want to approve this particular project.

11 So those are the two things there, Mr. Vice
12 Chairman.

13 VICE CHAIR HART: And also, Mr. Prestwood, there
14 was -- the vote was four to two to zero at that -- at that --
15 the last ANC -- well, I shouldn't say the last, the ANC
16 meeting on November 7.

17 MR. PRESTWOOD: That's correct.

18 VICE CHAIR HART: And you're saying that's when
19 you received the transportation information on this same day.
20 Or maybe at that meeting.

21 MR. PRESTWOOD: Yes. So, we received the
22 transportation study and the benefits agreement that day.
23 The commissioner moved it forward.

24 And the commissioner -- the area moved it forward.
25 There was a vote to support it. But then after we understood

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1 what was fully in it and then once the community really began
2 to dissect it and to understand what was in it, there was
3 enough of a reason for us to say maybe we should pull back
4 on this and give this more time and consideration to go
5 forward.

6 CHAIRPERSON HOOD: Mr. Vice Chairman, I'm --

7 VICE CHAIR HART: Yes, sir?

8 CHAIRPERSON HOOD: I'm not catching up. I'm
9 moving a little slow, I guess, this morning.

10 VICE CHAIR HART: Okay.

11 CHAIRPERSON HOOD: I'm not understanding again,
12 the letter, and I know Chairman Prestwood, I know you've
13 explained it probably twice already.

14 MR. PRESTWOOD: Um-hum.

15 CHAIRPERSON HOOD: Maybe I need you to do it a
16 third time so Anthony Hood can understand it now.

17 MR. PRESTWOOD: Okay.

18 CHAIRPERSON HOOD: I'm looking at -- okay, let me
19 ask my question this way. On the letter we have, the
20 previous ANC vote where you all voted to support, four to two
21 to zero.

22 MR. PRESTWOOD: Yes.

23 CHAIRPERSON HOOD: What was that vote -- what was
24 the information given to the ANC on that vote? I'm trying
25 to figure out if there was a presentation made, what changed

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1 from this vote to that vote, other than the transportation
2 report?

3 And how come that -- I see you, Ms. Muhammad. Let
4 me finish -- let me ask the Chairman, you all have a
5 chairman, so what changed? Unless maybe Ms. Muhammad can
6 echo it. But what changed, Chairman Prestwood, to now to
7 where we've gotten here? What information happened from what
8 you all heard, the information you got there to vote in
9 favor, too now asking us to postpone, which I don't have an
10 issue yet.

11 And then also, rescinded the vote. How did we get
12 to that to this?

13 MS. MUHAMMAD: Can I --

14 VICE CHAIR HART: So, I think -- well, I'll let
15 the ANC just --

16 CHAIRPERSON HOOD: Ms. Muhammad -- Ms. Muhammad
17 wants to go ahead.

18 VICE CHAIR HART: Yeah. I know. I'll let Mr.
19 Prestwood and then Ms. Muhammad she can echo that.

20 MR. PRESTWOOD: So, Ms. Muhammad would like to add
21 something. So, I think we -- what happened for us was that
22 we did -- we moved forward -- I guess you could characterize
23 it that we moved forward too quickly.

24 That we -- the information that we had at the
25 time, we did not fully, I think fully ingest. And so -- or

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1 the commissioner for that area did not fully ingest.

2 And so what we did was, once we had a chance to
3 do that, because the commissioner for that area supported it.
4 So we supported the commissioner.

5 But once we had a chance to fully understand it
6 and vet it and then the community actually had a chance to
7 inspect the record, then that's when the additional insights
8 and understanding came back to our -- to our commission.

9 CHAIRPERSON HOOD: Is this -- is this Commissioner
10 Fuller?

11 MR. PRESTWOOD: This is Commissioner Hawkins, AL5

12 CHAIRPERSON HOOD: Trevon Hawkins. Okay.

13 VICE CHAIR HART: And just one other question.
14 Is there a -- for Mr. -- excuse me, Chairman Prestwood, is
15 there a particular piece of the parking and traffic
16 assessment that you are -- was there a parking issue that you
17 are, you know, more sensitive to?

18 Or that the community has been more sensitive to
19 that kind of came to light after this? Is there a specific
20 thing?

21 Or is this kind of a general concern that you're
22 raising?

23 MR. PRESTWOOD: I think for the ANC it's general.
24 But I do know that there are members of the community here
25 that can speak to the specifics.

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1 Because there are some very specific items in that
2 parking study, Mr. Vice Chair, that are of great concern to
3 the residents. Especially around the increase or the usage
4 of spaces in that neighborhood and what would do to those who
5 live in that area who may need to park blocks away in order
6 to get to their homes.

7 I know that's an issue that has come up. I also
8 think that there has been a question about the independence
9 of the parking study.

10 If that parking study was done by a third-party
11 without any connection to either my -- too either the ANC or
12 to the Applicant. And I think that was also another
13 question that was raised.

14 But, again I would like to note that there are
15 residents here who can speak specifically to your question
16 about any particular issues with the parking study. Thank
17 you.

18 VICE CHAIR HART: Thank you. Commissioner
19 Muhammad, you have a few words to add to this?

20 MS. MUHAMMAD: Yes, excuse me. Yes sir, I do.
21 And just to -- on November 7 at our ANC public meeting, the
22 SIM Development project was on our agenda for a vote.

23 And we're starting the meeting when we get the
24 agenda. So when I saw it on there for a vote, I began
25 questioning it because at our October 3 public meeting, ANC

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1 meeting, we told -- we asked the representatives to come back
2 in November with a parking study and do a presentation of the
3 development.

4 Because we hadn't -- the community hadn't even
5 seen what it looked like. So we asked them to come back and
6 do a presentation of the development with the parking study.
7 Which is what they agreed too.

8 So when we saw it on the agenda, the other
9 commissioners, we didn't know anything about any discourse
10 with Commissioner Hawkins regarding having that on the agenda
11 to -- for a vote. Because we didn't have the parking study.

12 So when we got to that vote, they started passing
13 the parking study down the table to us. Well, we don't have
14 time in the meeting to read a parking study and get questions
15 answered for the community before a vote.

16 So, they determined that they would go ahead and
17 place the vote anyway. And myself and Commissioner Fuller
18 were the two that opposed.

19 And we opposed because we did not have time to
20 review the parking study or to ask questions. Or the
21 community to even hear what was in the parking study.

22 So when that came letter came down, I wasn't able
23 to come to the last hearing. Commissioner Fuller came back
24 and said that we were required to, of course, have another
25 meeting with the community so that we could get some of this

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1 information across.

2 We did review the parking study. And there are
3 some very serious questions about the study because it looks
4 overstated.

5 We haven't had a chance to talk with DDOT, to
6 confer with them about the study, on behalf of the community.
7 The community was there in mass because they wanted this vote
8 to be rescinded, because we didn't have an opportunity to do
9 our due diligence before the vote.

10 So, we asked that it be postponed. There was
11 another issue in the initial letter that came down regarding
12 that vote that talked about a variance for non-conforming
13 structure requirements.

14 Well, we didn't even have that information. So
15 that vote was never taken. And that was part of the reason
16 we rescinded also.

17 We need time to try to review these issues
18 thoroughly and give the community the opportunity to respond.
19 So that they fell that they're adequately represented, before
20 we can actually vote on as Commissioner Donte said, either
21 for or against the project.

22 And we haven't had that opportunity. And that's
23 why we ask that you postpone this Application today.

24 VICE CHAIR HART: Thank you Commissioner Muhammad.
25 One thing I'll -- just a point of clarification.

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1 In the letter that we received, that's Exhibit,
2 I don't know what Exhibit this is, 53. Which is the ANC
3 letter in support, the November 8 letter.

4 MS. MUHAMMAD: I don't have that.

5 VICE CHAIR HART: It does state that the four to
6 two to zero vote was in support. And I'll read this.

7 Support of BZA Application 19572 of SIM
8 Development for a variance from the nonconforming structure
9 requirements of Subtitle C, 202, and parking requirements
10 from Subtitle C, 701.5. So those two things were included
11 in that.

12 I mean, I just want to make sure that we were --
13 that --

14 MS. MUHAMMAD: They were included in the letter.
15 But this was not the vote that was taken.

16 VICE CHAIR HART: Okay.

17 MS. MUHAMMAD: The vote was only taking -- taken
18 for the relief from parking enforcement -- parking
19 requirements.

20 We only became aware of this information in the
21 letter after the last hearing when we were able to see the
22 letter. When we had the November 30 meeting, Ms. Dorcas
23 brought the letter to that meeting.

24 And we were able to see that that was in the
25 letter. We didn't realize that that was in the letter.

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1 VICE CHAIR HART: Thank you.

2 MS. MUHAMMAD: We had no knowledge even at that
3 time that we needed to vote on that. Because we didn't have
4 it in our -- in our packets.

5 VICE CHAIR HART: Commissioner --

6 CHAIRPERSON HOOD: Ms. Muhammad --

7 VICE CHAIR HART: Oh, I'm sorry.

8 CHAIRPERSON HOOD: Let me just ask -- ask Mr.
9 Prestwood, --

10 VICE CHAIR HART: Yes.

11 CHAIRPERSON HOOD: I distinctly remember this
12 Board asking the Applicant to come back and go out to the ANC
13 for the same issues that I'm hearing. And they're now saying
14 that they haven't had time.

15 So, I'm concerned. What happened? How long has
16 it been? Because when was the last time we were here?
17 Thirty days ago?

18 Okay. So it's been 30 days. We, and particularly
19 myself, and I think the Board agreed with me, to go back out
20 to the community.

21 And I think at that hearing, Mr. Prestwood you
22 were here. And I know Ms. Fuller. That's why I called Ms.
23 Fuller's name. I remember seeing her here.

24 Where you here Mr. Prestwood?

25 MR. PRESTWOOD: I was not here. I watched it

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1 online.

2 CHAIRPERSON HOOD: Okay. Okay.

3 MR. PRESTWOOD: Yes.

4 CHAIRPERSON HOOD: Maybe you were at another
5 hearing that I was at.

6 MR. PRESTWOOD: Yeah.

7 CHAIRPERSON HOOD: Okay. And so anyway, I
8 remember Ms. Fuller being here. And we specifically asked
9 that the Applicant go back out and come back and talk to the
10 ANC and the community.

11 And at that time I think my colleagues will
12 remember that he agreed to do that.

13 MR. PRESTWOOD: Um-hum.

14 CHAIRPERSON HOOD: Or they agreed to come back
15 out. And some of those same issues that I'm hearing
16 Commissioner Muhammad saying today, are the same issues that
17 I heard at that previous hearing.

18 So I'm trying to understand what happened at that
19 meeting that this Board asked the Applicant to go back out?
20 From what I'm hearing, it sounds like nothing.

21 Let me go to the Chairman for the ANC.

22 MR. PRESTWOOD: Okay. And will recognize
23 Commissioner Hood, the two residents who are here, who are
24 in that community.

25 I would just back up just one second and say that

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1 the initial letter, Mr. Vice Chairman, was -- it had an
2 editing error in it. We had copied the entire verbiage for
3 the application and put that in the November 7 letter.

4 And that's how that error got in there. That we
5 voted for not just the nonconforming structure, but also the
6 parking relief.

7 In this letter that we dated December 6, explains
8 as much. It talks about the error and what we were trying
9 to do in terms of the rescinding of the vote.

10 In terms of what happened at that meeting that the
11 developer and the community had on November 30, Commissioner
12 Hood, I would like to recognize, we have two residents from
13 that community here. They could speak, I think,
14 extemporaneous in terms of what was -- what transpired and
15 what the conversation was.

16 CHAIRPERSON HOOD: Let me do this before you go
17 there. Mr. Vice Chair, is that the road that you want to go
18 down? Or do you want to deal with the postponement issues?

19 VICE CHAIR HART: I'd rather deal with the
20 postponement issues then this --

21 CHAIRPERSON HOOD: Okay. Let me -- let me hold
22 off on getting into those kind of merits. And I figure we --
23 I don't want to go too far.

24 VICE CHAIR HART: Yeah. Because we actually
25 haven't heard from the Applicant yet. And we have to hear

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1 from the Applicant.

2 And I'm not sure if Mr. Jones, you're going to be?

3 MR. JONES: I'm going to.

4 VICE CHAIR HART: Okay. Thank you.

5 MR. JONES: Thank you Mr. Vice Chair and members
6 of the Board. And the Chairman. Let me say that we started
7 this process in October, early October in the executive
8 meeting of the ANC.

9 As I testified before when I was here, there was
10 a request for a community benefit package. We agreed with
11 everything that was requested, the developer did.

12 In that meeting we requested -- the ANC requested
13 a transportation study. We brought on a transportation
14 consultant.

15 And in the October meeting the transportation
16 consultant appeared before the ANC. And we engaged him at
17 that point to do the study.

18 As soon as the study was completed, we transmitted
19 that -- transmitted that to the ANC office. The -- what
20 you've heard testified to today, is they got some courtesy
21 copies at the meeting.

22 I believe it was the morning of the meeting that
23 it was transmitted to the ANC office. And of course, we have
24 no control over how it gets to its members.

25 But, I just thought it would be nice, in case

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1 someone said they had not received it, I brought some
2 courtesy copies to the meeting to all the commissioners.

3 And there was a vote. The single member district
4 member voted -- moved the motion. And it passed four to two
5 and one.

6 It is my understanding that in this last meeting
7 the same single member district member still supported. He
8 was one of the two who supported it. And I'm not certain of
9 that. And you can inquire.

10 But the developer is prepared, and let me just
11 explain. When we came back in that last November meeting,
12 and presented. And the board asked that we go back and meet
13 with the community. We did that.

14 And the community basically, the two members that
15 are here, basically does not want the additional units on the
16 building. And the report has been filed.

17 It's not going to change. The transportation
18 committee report has been filed. It was filed in your
19 package before you heard the case.

20 The commissioners had it. At their own admission,
21 they got it on November 7. And they still haven't had time
22 to read it.

23 That was a tactic to delay this project to kill
24 it. The developer would like for you to make a decision.
25 And will live with the Board's decision, whatever that

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1 decision is.

2 MS. MUHAMMAD: I have a question.

3 VICE CHAIR HART: Please.

4 MS. MUHAMMAD: When you said that there was --
5 there were some issues with the additional units, can you
6 give me a little bit more detail about that?

7 MR. JONES: Yes. The two members of the community
8 who live adjacent to the building have asked us in the last
9 meeting to just develop the building as it is. Without any
10 additional units.

11 There was a question about parking. The building
12 it existed -- it's a renovation. It exists on the footprint
13 of the land, 90 -- 98 percent of the land.

14 There was some discussion, could we go under the
15 building and build parking underneath the building? And we
16 explained that the building is there.

17 And there is no space for parking as it exists
18 today.

19 MEMBER WHITE: How many units are we talking about
20 again? It's in the record, but --

21 MR. JONES: Let me turn to the architect.

22 VICE CHAIR HART: You have to speak on the mic,
23 please.

24 MEMBER WHITE: Twenty-four, is that right? Okay.

25 MR. CRUICKSHANK: Yeah. We were able to get 25

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1 units into the building.

2 VICE CHAIR HART: Thank you.

3 MEMBER WHITE: Okay. That's I wanted to know.

4 MR. JONES: But I want to reemphasize. We've been
5 before the Board. We've been to the ANC since early October.
6 The developer is prepared to live with the decision of the
7 Board. Thank you.

8 VICE CHAIR HART: And Mr. Jones, also you said
9 that you met with the ANC executive committee in October.
10 And at that point they requested a transportation plan?

11 MR. JONES: Yes.

12 VICE CHAIR HART: And then you hired somebody and
13 then had a report delivered to the -- or sent to the ANC the
14 morning of the ANC meeting?

15 MR. JONES: Slightly altered. We hired them. The
16 report had not been done for the October meeting.

17 VICE CHAIR HART: Yes.

18 MR. JONES: We appeared to the October meeting
19 with the arch -- with the transportation engineer. He
20 explained what they -- what he was going to do.

21 And he explained that their scope was greater than
22 that, that DDOT was asking for. But we engaged him to do
23 what the ANC asked. And in the November meeting, we then
24 delivered that report to the ANC.

25 VICE CHAIR HART: Okay. Do the Board members have

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1 any other questions?

2 MEMBER WHITE: Who's the company you used for the
3 transportation study?

4 MR. JONES: He's here. He can speak to that.

5 MEMBER WHITE: Yes. You are -- yeah. We've
6 chatted before. But I didn't remember.

7 MR. ANDRES: Yes. My name again is Erwin Andres
8 with Gorove/Slade Associates.

9 MEMBER WHITE: Okay. And you're one of the
10 partners on the deal too?

11 MR. ANDRES: Yes. Yes, I am.

12 MEMBER WHITE: Okay.

13 MR. PRESTWOOD: Mr. Vice Chairman, if I could just
14 clarify a couple of things.

15 VICE CHAIR HART: Yes.

16 MR. PRESTWOOD: The Applicant met with the ANC 8A
17 executive session in September 2017. They then appeared at
18 our October public meeting. That date I don't have before
19 me. And they came back for the November 7 meeting for the
20 vote.

21 And the other thing I wanted to clarify was that
22 yes, the transportation study and the -- a list of benefits
23 that the Applicant was prepared to provide to the community
24 for this project was transmitted to both myself and to
25 Commissioner Hawkins on the morning of -- or the afternoon

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1 really, on November 7, 2017. Which was the day of the public
2 meeting for November.

3 And then the last point I wanted to clarify was
4 that so Mr. Haw -- it is correct, Mr. Jones is correct that
5 Mr. Hawkins moved the motion on November 7. However, for
6 December 5, he abstained.

7 VICE CHAIR HART: Okay.

8 MS. MUHAMMAD: Can I --

9 VICE CHAIR HART: I think we've gotten the
10 information that we need at this point. We still have to go
11 through the whole -- the rest of the hearing.

12 So, this is just to decide whether or not this
13 should be -- this should be postponed and moved to a
14 different date. That's what we're kind of having the
15 decision on.

16 MS. MUHAMMAD: All right.

17 VICE CHAIR HART: So, do the Board members have
18 anything to -- I'm going to bring it back to the Board to see
19 if you -- what our discussion is.

20 I think we've heard from the -- from the ANC. And
21 then the Applicant regarding this kind of transportation
22 issue. And actually, we haven't heard from the Applicant
23 regarding the motion to postpone.

24 I mean, I know that you just said that you'd
25 rather -- you want to move forward with it. Do you have any

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1 other thing -- anything else you want to say?

2 MR. JONES: No. We would like for the Board to
3 make a decision, up or down. And we would live with that
4 decision.

5 VICE CHAIR HART: Okay. Thank you.

6 CHAIRPERSON HOOD: I'll be frankly honest, Mr.
7 Chairman, I'm very disappointed. Because I specifically led
8 the charge, I believe, with the support of my colleagues on
9 the Applicant going back and working with the community on
10 some of these issues.

11 And then to come back and still say we need more
12 time and be in the same place. I'm having some problems with
13 that.

14 And that's why I asked, what went on? Nothing?
15 Because, you know, that was some time that I asked for that
16 to be done, so we can work out some of these issues.

17 So we can come back with a decision, whether it
18 be up or down. And then we'll make our decision with the
19 merits of the case.

20 I'm not sure if giving some additional time, I
21 would be inclined -- I've heard the Applicant say, take it
22 up or down. I would be inclined to maybe give -- I wouldn't
23 go back -- wait for the next time Anthony Hood is here.

24 But I would go back to giving them -- because
25 sometimes it takes more than one time to understand what we

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1 want you to go back and do. But it sounds like maybe they
2 understand it this time.

3 But I don't know. I'm not sure. I can do as the
4 Applicant said, vote on it today. Or give them maybe two
5 weeks, the ANC two weeks this time. Because I think we gave
6 them quite a bit of time, which I hadn't been here in a few
7 weeks.

8 So, -- or two weeks to not necessarily have to be
9 able to look at something that I believe they already have.
10 Or they were given maybe a half a day before they had their
11 meeting.

12 Because it would be -- it's always good when the
13 ANC comes back and the community comes back on one accord and
14 make it work. Because I think it's a -- and a situation
15 like that is very beneficial to a community when you can get
16 everybody onboard.

17 Sometimes you can't get everybody onboard. But
18 when you can, I think it's a win/win for all of us. So,
19 that's my comment.

20 VICE CHAIR HART: Thank you Mr. Hood. Ms. White?

21 MEMBER WHITE: Yeah. I don't like, you know, kind
22 of stalling and preventing things from moving forward.

23 But at the same time, I would be more in favor of
24 giving the community maybe a couple more weeks to work
25 quickly with the developer to try to resolve some of the

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1 outstanding issues that they have.

2 Now I don't think the community can necessarily
3 say we're going to try to do what we can to stall the
4 development of this project. Because you have to look at the
5 rules and regulations.

6 But, because it's a very large project, it's high
7 profile. Apparently a significant number of members of the
8 community haven't been able to weigh in on the project,
9 unless it causes a severe financial hardship to the
10 developer, I would be in favor of at least looking at it for
11 the first week in January.

12 VICE CHAIR HART: Mr. Chairman?

13 CHAIRPERSON HILL: So I just had a couple of
14 questions. So for the developer, I mean, as far as like I
15 know that you have been in opposition to the postponement.
16 The ANC had asked for 60 days.

17 If in terms of a postponement, if there was one,
18 what kind of an impact does it have on the project? If it
19 was like, you know, two weeks, 30 days, 60 days, what -- now
20 does it affect the project?

21 MR. JONES: Mr. Chairman, we could live with a
22 couple of weeks. And I'll withdraw my concern about the
23 Board making a decision and if it's reasonable timing.

24 CHAIRPERSON HILL: Okay. So, I'm sorry, I'm going
25 to -- I see their attorney arrived. Mr. Chairman, just give

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1 me one second.

2 And Commissioner, just give me one second.
3 Because I just want to make sure that I'm clear on a couple
4 of things. Because what we're talking about here, I just
5 want to understand.

6 So, the first question, I guess I kind of had was
7 even maybe for either OAG or maybe Chairman Hood could even
8 answer this. As far as the community packages and things
9 like that, is that more kind of like a zoning commission
10 thing like?

11 CHAIRPERSON HOOD: This is a -- and I think I said
12 this previously, this is not a PUD.

13 CHAIRPERSON HILL: Uh-huh.

14 CHAIRPERSON HOOD: That actually is grand. I
15 haven't seen that before. And I'm not taking one side or the
16 other.

17 But actually, I've never seen a PUD come down with
18 what's being requested. I mean, not a PUD. I'm getting
19 mixed up with the PUD.

20 I've never seen an amenities package -- these are
21 from --

22 CHAIRPERSON HILL: Right. I'm just -- so it's not
23 normally something that we see?

24 CHAIRPERSON HOOD: No. It is not. It's unheard
25 of.

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1 CHAIRPERSON HILL: Right. So this is something
2 that would be of benefit to the community. At least as far
3 as that what they did.

4 The -- and the ANC, and either Commissioner
5 Muhammad or Mr. Chairman --

6 MS. MUHAMMAD: Can I speak to this please?
7 Because I wanted too just -- I want the Commission to
8 understand that there's no effort on behalf of ANC 8A to stop
9 this project.

10 What we are trying to do, if we were given all of
11 the information that we needed for the community in advance
12 so that we could review it, and if they had come and did the
13 presentation like they were supposed to, we probably wouldn't
14 even be going through this.

15 But we -- I mean, we're obligated to the community
16 to do a due diligence with these developments in the
17 community. So there is no effort on our part to just try to
18 stop this development.

19 What we're trying to do is represent the community
20 the best to our ability. And when we have all of what we
21 need in front of us, in a timely manner, we can do that.

22 But in this case that did not happen. And all
23 we're asking for is a little more time.

24 As I said, we didn't even know anything about this
25 variance for nonconforming structure. That wasn't included

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1 in the packet that we were given. We found out about that
2 on November 30.

3 So what I'm asking is that we be given additional
4 time, as much as you're able to, so that we can just try to
5 get these issues resolved with the community. And we want
6 to come back on one accord. That's our whole purpose.

7 So, there is no effort on behalf of the ANC to
8 just stop this project. What we're trying to do is just make
9 sure that the community is treated in the manner that they
10 should be.

11 Give us what -- give us the information we need.
12 Let us discuss it. Come and discuss it with us. If you can
13 make adjustments, then do that. You know, that's all we're
14 asking.

15 CHAIRPERSON HILL: Okay. Yeah, Commissioner
16 Muhammad, I -- thanks for clarifying that. That's what --
17 I mean, all that sounds very reasonable.

18 And it's not something that you know, we wouldn't
19 think you guys have the opportunity. When's your next
20 hearing?

21 MS. MUHAMMAD: Our next -- our next public meeting
22 is January 9 because of the holiday.

23 CHAIRPERSON HILL: Okay. So, would the developer
24 be hap -- able to get on that agenda again?

25 MR. PRESTWOOD: Yes. We can make it happen.

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1 CHAIRPERSON HILL: Okay. So then you would have
2 enough opportunity to give the commissioners all the time
3 they need from now until January 9.

4 And then would be able to do a presentation again
5 on January 9. I don't mean to step on your toes here.

6 VICE CHAIR HART: By all means, Mr. Chairman.

7 CHAIRPERSON HILL: So then you would have until
8 January 9 to make a presentation again. And then the ANC can
9 make a vote again, one way or the other?

10 MR. PRESTWOOD: Yes, sir.

11 CHAIRPERSON HILL: Okay. Because as of now, Mr.
12 Chairman, as I've seen, I was a little confused as far as
13 like what the original vote was, was it was four to two,
14 zero. And then the next vote was four to zero to two.

15 So, it seemed like two sat out. Right? Okay.
16 And then two switched.

17 MR. PRESTWOOD: One switched.

18 CHAIRPERSON HILL: One switched. Right. That's
19 okay. I just --

20 MR. PRESTWOOD: No. One switched.

21 CHAIRPERSON HILL: One switched. Okay.

22 MR. PRESTWOOD: One switched. It was in the
23 affirmative.

24 CHAIRPERSON HILL: Okay. Once again, it doesn't
25 matter. Four to zero to two. And then four to two to zero.

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1 It doesn't matter.

2 But what I wanted to clarify now from what the OAG
3 has given us is that you all haven't actually given us any
4 information. You've asked to pull your previous letter.

5 So we don't actually have a letter from you right
6 now. You just pulled the previous letter.

7 MR. PRESTWOOD: That's correct.

8 CHAIRPERSON HILL: Okay. So if you could then
9 have the hearing on the 9th. And then give us something.
10 Right? Okay?

11 And then -- and I know that -- I'd be inter -- and
12 I'm going to turn this back over again. I am --

13 VICE CHAIR HART: Why thank you, Mr. Chairman.

14 CHAIRPERSON HILL: But, I'm actually just asking
15 questions.

16 VICE CHAIR HART: That's fine.

17 CHAIRPERSON HILL: So, --

18 VICE CHAIR HART: I asked you to ask questions.

19 CHAIRPERSON HILL: Okay. Thank you. That I am
20 curious at hearing a little bit more clarity of the Office
21 of Planning in terms of -- I did watch the whole
22 presentation. I read the whole record.

23 But I'd just like to hear a little bit more about,
24 you know, the specifics of the report. And then the other
25 is that there are people here.

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1 And I, you know, depending upon what we do in
2 terms of a postponement -- I mean, this is where I kind of
3 am right now, just real quick.

4 Definitely, you know, that they have a chance to
5 go ahead, the ANC has a chance to get all the information
6 they need. Do another presentation on the 9th. Get another
7 vote on the 9th.

8 And then I don't know if we need a continued
9 hearing or not. Or we could just go to a decision after
10 that. But get whatever we, you know, if we hear from
11 everybody here now, I don't know if we need to hear from
12 everybody again.

13 But then go to a decision or not. And then I know
14 that Chairman Hood is back on the 31st.

15 CHAIRPERSON HOOD: Actually, I'm back on the 17th.
16 I've just been notified.

17 CHAIRPERSON HILL: Okay. So then I would propose
18 the 17th where Chairman Hood is back here again. Because he
19 was here on the first time and this time.

20 And would be able to either, whatever we end up
21 doing in terms of deliberation of the continuance. But
22 that's just kind of my open public meeting discussion
23 thoughts.

24 VICE CHAIR HART: Thank you Mr. Chairman. Much
25 appreciated. Yeah, and it's -- I mean, I've been listening

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1 to all of this.

2 And I think that the concerns that while their
3 general concerns the ANC has raised, about the traffic
4 impacts, they're -- they wanted to have a kind of a further
5 discussion about the traffic impacts.

6 This, you know, case has -- while it is only a few
7 parking spaces that are -- that they're asking for relief
8 from, it still is parking. There is -- it's a related type
9 of thing.

10 And I think that having a -- and I actually think
11 it may be better to have a continued hearing. Because we may
12 actually have questions for the ANC or others.

13 So, I think that postponing the -- accepting the
14 postponement request or approving it, is kind of where I'd
15 be leaning. And scheduling it for when the -- Chairman Hood
16 was back in January would be helpful.

17 So, that's kind of where I am with this. And I
18 don't know if the Office of -- I mean, it just seems -- yeah,
19 I mean, they're going to have to come back again anyway.

20 I mean, I think the testimony issue, it just seems
21 a little bit -- it seems a little bit odd to have the
22 testimony if we're going to be postponing this.

23 So, that's the kind of issue that I have.

24 MEMBER WHITE: Yeah. I mean, my opinion would be
25 to wait until they've had an opportunity to interface with

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1 each other. And perhaps certain things can be resolved.

2 Because if they testify today, then their opinions
3 might be different than what they will be potentially on
4 January 17. But I -- but again, I think it's important for
5 the community to be able to weigh in on this and look at the
6 full record.

7 CHAIRPERSON HOOD: I would agree. I don't think
8 that Commissioner Muhammad's ask is too much.

9 My only problem is I thought we had been down that
10 road when I asked them to do it the last time. That's what
11 I'm having a problem with.

12 So I'm hoping we don't come back with the same
13 result. I think her ask is not -- I don't think it's too
14 much to ask what she's asking for.

15 And I would agree that I think we need to postpone
16 this. Even though it seems like we already had the hearing.

17 But, I think we need to postpone this because that
18 way the community can operate on the information at hand.
19 Instead of operating on what they have right now and
20 apparently they didn't feel like they had time to review it.

21 If I'm misstating something, somebody can correct
22 me. But I'm going by what I've heard.

23 So I think it's better than moving the fashion
24 when everybody has all the same information, we're all
25 operating off the same sheets of music. Or singing off the

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1 same sheets of music.

2 VICE CHAIR HART: And finally I'll add that this
3 has been postponed a couple of times already. And I think
4 that this is -- I think we should -- while I am supportive
5 of having, I guess, a little further conversation about this,
6 I understand that there may be some issues that still are
7 unresolved.

8 Because there are issues about transportation.
9 But there are also issues about -- Chairman Prestwood talked
10 about scale, scope, you know, sufficient materials of the
11 building. And those things are not transportation related.

12 So, yes. So, yes, Ms. Agyei? Thank you. I was
13 --

14 MS. AGYEI: I'm just going to make a factual
15 statement without giving any opinion. I was at the October
16 3 ANC meeting.

17 And the issue is, we didn't even find out what the
18 building was physically going to look like until after our
19 November 15 hearing here with Zoning. So as of November 30,
20 the only picture that we had of how the building was going
21 to look was the 3D diagram that I believe you have.

22 I'm not sure what Exhibit it is. So, it was not
23 until November 8 -- December 8, I'm sorry, that we actually
24 had the full renderings of what the building was going to
25 look like. December.

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1 And they first came to us in October. So it's not
2 a matter of like, why are you all stalling? We didn't even
3 know what the building was going to look like.

4 The only thing that was online in the Zoning, when
5 you go to the Zoning online board website, is just kind of
6 like the technical drawings, or I guess the architectural
7 drawings of the picture.

8 We didn't even have any renderings of what that
9 physical building was going to look like until December.

10 CHAIRPERSON HOOD: I believe the whole case file
11 is uploaded, correct? The whole case, everything we have is
12 on -- the case file.

13 MS. AGYEI: Yeah. They never submitted any
14 renderings to you all until December.

15 CHAIRPERSON HOOD: Okay. But I'm just saying, so
16 from this point going forward it is.

17 MS. AGYEI: So at this point I feel like we --

18 CHAIRPERSON HOOD: You can hit review and you can
19 get the whole case file.

20 MS. AGYEI: Yeah.

21 CHAIRPERSON HOOD: You'll see exactly what we
22 have.

23 MS. AGYEI: Yeah.

24 CHAIRPERSON HOOD: Okay. All right.

25 CHAIRPERSON HILL: I've got a question. So, of

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1 the witnesses that are here, members of the public, there's
2 three of you. So, are you guys going to be -- you can just
3 raise your hand.

4 Are you all -- or I guess I don't know, if you --
5 I guess you have to say yes in the microphone. Are you going
6 to go to the ANC meeting on the 9th?

7 MS. AGYEI: Yes.

8 MS. KENNEDY: Yes.

9 MR. SEMLER: It's not determined. My issues are
10 more city wide on strategic. And there's other reasons why
11 I'm opposed to the project.

12 CHAIRPERSON HILL: Okay. So you don't know if
13 you're going to be at the ANC meeting or not.

14 MR. SEMLER: I'm a Ward Five resident. But a city
15 business owner.

16 CHAIRPERSON HILL: Okay. So you -- all right.
17 So you don't know. And then as far as the -- as far as the
18 coming here on the 17th, you would be able to come on the
19 17th?

20 MS. AGYEI: Yes.

21 CHAIRPERSON HILL: Okay.

22 MS. KENNEDY: Yes.

23 CHAIRPERSON HILL: Okay. You'd be able to come
24 on the 17th?

25 MR. SEMLER: Yeah.

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1 CHAIRPERSON HILL: You need to speak in the
2 microphone.

3 MR. SEMLER: Oh, yes.

4 CHAIRPERSON HILL: Okay.

5 MR. SEMLER: But I'd like to -- will I be able to
6 testify today?

7 CHAIRPERSON HILL: No. There's no test -- we're
8 not taking testimony today. We're just talking about the
9 postponement issue.

10 And so the -- so once again --

11 MR. SEMLER: What I'm raising are issues that will
12 -- may make the postponement in fact -- we might not need it.
13 Because these are issues raised on economic opportunities,
14 moral turpitude --

15 CHAIRPERSON HILL: No. I don't think so.

16 MR. SEMLER: Regarding development.

17 CHAIRPERSON HILL: We're definitely postponing.

18 MR. SEMLER: Well, I put my -- I gave my letter
19 as a record to Secretary Moy. So it should be in the record.

20 CHAIRPERSON HILL: Okay.

21 MR. SEMLER: And then I will be publishing again
22 on something related to moral turpitude, possible corruption,
23 strawman and fraud involving this property. Which should
24 have been raised in the first place rather than this
25 variance.

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1 So, this is on the record. Office of Attorney
2 General may have to look into it. So, I would like to put
3 this -- and this is all on the record. Thank you, sir.

4 CHAIRPERSON HOOD: Mr. Chairman, this is a -- are
5 you representing the Capital Intelligence?

6 MR. SEMLER: Yes. I'm a --

7 CHAIRPERSON HOOD: Okay.

8 MR. SEMLER: And we're in the business of -- we're
9 creating 40 jobs at our office.

10 CHAIRPERSON HOOD: We have -- and this -- sir --

11 VICE CHAIR HART: Sir. Sir, hold on. Hold on.

12 Hold on.

13 CHAIRPERSON HOOD: Now, I'm going --

14 VICE CHAIR HART: Hold on. Okay. So, thank you.

15 CHAIRPERSON HOOD: Okay. All right. Some things
16 are within our jurisdiction, Mr. Chairman. And I -- my quick
17 review of this, this is actually not proper before us.

18 But anyway, so I --

19 MR. SEMLER: But it's in the record, sir.

20 VICE CHAIR HART: Sir, excuse me, you're just --

21 CHAIRPERSON HOOD: It's in the record. That's
22 fine. But I don't want us to get here on the 17th and then
23 we have to go through all that.

24 MR. SEMLER: That's why I just wanted to testify.

25 So we wouldn't have the 17th. Because these issues would be

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1 raised. And the Attorney General's Office could even
2 investigate it.

3 CHAIRPERSON HILL: So -- so, excuse me, sir.
4 Excuse me sir, you're just a member of the public. You get
5 three minutes. You've just taken a minute and a half. Okay?

6 So, just give me a moment here. All right? So,
7 again, on the 9th, you're going to have a meeting on the 9th.
8 The ANC meeting is going to take place on the 9th.

9 Mr. Jones, I guess your group will go present on
10 the 9th. And I would, you know, do your best obviously to
11 come with diagrams, everything like that.

12 The issues that are before us aren't necessarily
13 design issues. We're like more, you know, we are zoning and
14 the standards with which we can approve or deny the variances
15 and the special exceptions, and the parking relief.

16 I mean, the things that they're asking for are not
17 necessarily design issues. I'm just letting you know.

18 So, you guys -- but, you can talk all you like at
19 the ANC meeting and see what you can do with the developer.
20 And I'm sure the developer would very much like to get an ANC
21 positive vote.

22 And if he has to change some materials or do some
23 different things to it, I would think he'd like to get the
24 vote. If the color has to be different or some of the
25 issues, to work with the community.

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1 But again, to finish my questions. I did want to
2 go over the Office of Planning. And if you could just, again
3 since I -- as I said, I did watch the whole hearing. I did
4 read the record.

5 But I'd like to hear again a little bit in terms
6 of your reviewing the standards as to how the Office of
7 Planning is getting to the approval of this. I mean, I
8 understand the whole like, the nonconformity with the first
9 floor.

10 And then if you could just kind of walk me through
11 that. And also for the benefit of those that are here, walk
12 through your analysis.

13 MS. VITALE: Certainly. Good morning Mr. Chair,
14 members of the Board. Elisa Vitale with the Office of
15 Planning.

16 As outlined in the Office of Planning Report that
17 was dated October 27, the Office of Planning recommends
18 approval of the requested relief. The first area of relief
19 is C202.2. That's a variance for an addition to a
20 nonconforming structure.

21 Normally in this zone the MU-4 zone, you can have
22 75 percent lot occupancy. The existing building is at 91
23 percent.

24 So, for the Applicant to make any improvements to
25 the property, to expand it in anyway, they're already over

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1 the maximum permitted lot occupancy. So that's why that
2 variance kicks in.

3 The additional construction that the Applicant is
4 proposing at this property would in fact be below 75 percent.
5 So they're meeting that lot occupancy on the additional
6 floors that they are proposing to construct.

7 We believe the variance test has been met for that
8 addition to a nonconforming structure. And that argument is
9 outlined in our report.

10 With respect to the special exception, we've
11 discussed this. They need relief from the minimum required
12 parking.

13 They're required to provide three spaces. They're
14 proposing to provide zero spaces onsite. The parking test
15 is a special exception.

16 There are a number of criteria that the Board
17 should follow in evaluating that request. We've analyzed
18 those criteria in our report.

19 Again, the existing structure is at 91 percent.
20 So it takes up the majority of the property and does not
21 allow sufficient space to get parking onsite without the
22 Applicant demolishing a portion of the existing structure.

23 So, that kind of is the first criteria. And then
24 other issues that we look at are access to public
25 transportation.

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1 The property is about one mile from the Anacostia
2 Metro Station. It's also served by Metro bus lines that run
3 on Good Hope Road and Minnesota Avenue.

4 In looking at kind of common evaluation metrics
5 for properties, it has a high walk score, a high transit
6 score. The bike score is 53, so that's a bit lower. But,
7 there are -- there is the ability to work to good services
8 and jobs in the neighborhood.

9 I think that those are the key points from the
10 criteria for the parking relief. I know at the last hearing
11 it was requested that the District Department of
12 Transportation kind of weigh in again.

13 The initial DDOT memo indicated support for the
14 requested variance and special exception. The supplemental
15 DDOT report reiterated that recommendation for approval of
16 the requested relief.

17 This concludes my summary. I can answer
18 additional questions. Thanks.

19 CHAIRPERSON HILL: Okay. Thank you. Thank you.
20 Mr. Vice Chair, I'm good with everything. Thank you.

21 VICE CHAIR HART: Thank you, Ms. Vitale and
22 Chairman. So, I'll kind of bring it back to us about -- it
23 sounds like everyone would like to have a -- all the Board
24 members would like to have a postponement for this
25 Application.

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1 It looks like we're looking at the 17th, Mr.
2 Secretary. And do you need for us to say that we are --
3 actually vote on this? Or have you heard enough to --

4 SECRETARY MOY: No. The staff has heard enough.

5 VICE CHAIR HART: Okay.

6 SECRETARY MOY: I mean, it's clear that this can
7 continue to January 17. And it sounds like from what I've
8 heard it's a continued hearing?

9 VICE CHAIR HART: Yeah. I think that it should
10 be. I don't know if anyone else has any objection to that?

11 (No audible response.)

12 VICE CHAIR HART: Okay. So, I think it should be
13 a continued hearing. The one caveat is when we're getting
14 the ANC report. Because if they're meeting on the 9th, the
15 17th is the next week. If I am adding that correctly.

16 SECRETARY MOY: Yeah. It's eight days.

17 VICE CHAIR HART: Well, I just want to make sure
18 that -- no, I just need to make sure that we have a, you
19 know, an ANC report in a, you know, -- if we give them a
20 deadline for the report itself.

21 SECRETARY MOY: Yeah. I would hope that -- well,
22 January 9th is a Tuesday. So perhaps if the ANC can file
23 it's resolution or letter by the end of the week, or the
24 Monday of the following week, which would be January 15.

25 VICE CHAIR HART: And we don't have any issue with

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1 the seven day?

2 SECRETARY MOY: Well, it's a continued hearing on
3 the 17th.

4 VICE CHAIR HART: Yeah.

5 SECRETARY MOY: So, everyone's coming back on the
6 17th.

7 VICE CHAIR HART: Yeah. I just want to make sure
8 that that's not a -- that's not an issue. I just wanted to
9 make sure that wasn't an issue. That's all.

10 Having to waive the seven days. That's -- that's
11 -- I mean. Does the board have anything else they'd like to
12 bring up? Okay.

13 MEMBER WHITE: I think there was an issue about
14 when Martin Luther King holiday was. But --

15 SECRETARY MOY: The 15th.

16 VICE CHAIR HART: I think they should -- I think
17 that the Friday is fine then.

18 MEMBER WHITE: Okay.

19 VICE CHAIR HART: Mr. Secretary, how about the
20 Friday then?

21 SECRETARY MOY: Okay. So, we're looking at the
22 ANC filing by Friday the -- it would be Friday the 12th.

23 VICE CHAIR HART: Mr. Prestwood, does that
24 timeline work for you?

25 MR. PRESTWOOD: We will make it work.

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1 VICE CHAIR HART: Okay. I just want to -- I'm
2 just making -- covering our bases here so we have that.

3 MR. PRESTWOOD: Right. Yeah. I understand.

4 VICE CHAIR HART: Okay.

5 MR. PRESTWOOD: Can I also just ask that rather
6 than waiting until January 9 for the ANC meeting that we
7 encourage the Applicant and the community to meet before
8 then?

9 VICE CHAIR HART: Oh, I'm actually looking -- if
10 you guys want to meet this week, next week, any week before
11 then, it's up to you.

12 MR. PRESTWOOD: Yeah.

13 VICE CHAIR HART: We're just trying to set forward
14 the time line for us. And we're leaving it up to you to fill
15 that time line in to get us -- to have some report filed to
16 us so that we understand what your position is on this, and
17 any additional or remaining concerns that you have for the
18 case.

19 CHAIRPERSON HOOD: But I just want to go on record
20 Chairman Prestwood, that's a very good point. We -- I
21 encourage you -- I think we all encourage that as the Vice
22 Chair just mentioned. Please do so.

23 MR. PRESTWOOD: Okay. Thank you.

24 VICE CHAIR HART: I would concur with that. Thank
25 you very much Mr. Hood.

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1 So, I think with that we will see you all on the
2 17th. And thank you very much for coming.

3 SECRETARY MOY: Mr. Vice Chair, I just --

4 VICE CHAIR HART: Yeah. Hold on for a second.

5 SECRETARY MOY: For clarity on the staff's part.

6 VICE CHAIR HART: Yes.

7 SECRETARY MOY: This is a continued hearing. So
8 the record is open. So, meaning that --

9 VICE CHAIR HART: Yeah.

10 SECRETARY MOY: Filings can still be entered into
11 the record. Okay.

12 VICE CHAIR HART: Thank you. We're going to take
13 a five minute break. Thanks. Actually, maybe a three minute
14 break.

15 (Whereupon, the above-entitled matter went off the
16 record at 11:05 a.m. and resumed at 11:21 a.m.)

17 CHAIRPERSON HILL: All right, Mr. Moy, let's go
18 ahead and get back started. Let's all get back together.
19 And we have some announcements.

20 Let's see, we're going to go a little bit out of
21 order because there's some timing issues. We're going too
22 next hear from Application 199581 as soon as Mr. Moy gets an
23 opportunity to announce it.

24 We're then going to have the Appeal. Which is
25 19632. And then after that we're going to follow in order

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1 again.

2 And yeah. So we'll do that. And it's just a
3 festive day here to have everyone with us. You know, it's
4 our last day before the holiday.

5 And well, the last thing actually, now that I
6 realize it while I'm making announcements, we are going to
7 break for a lunch. Meaning we're going to have lunch for the
8 first time in the whole time I've been here.

9 And it's going to be at -- around 12:30. So
10 wherever we are kind of around 12:30, we're going to break
11 for about like 20 minutes. So, just to let everybody know.

12 Okay. Mr. Moy?

13 SECRETARY MOY: Thank you, Mr. Chair.

14 So again, as the Chair has said, if I can have
15 parties to the table to Application Number 19581 of Latin-
16 American Montessori Bilingual Charter School to the table.

17 This is for a special exception under Subtitle U,
18 Section 205.1(a). This would establish a public charter
19 school in the R-16 Zone. This is at premises 5000 14th
20 Street Northwest, square 2711, lot 802.

21 CHAIRPERSON HILL: Okay. Let's see, if you all
22 could introduce yourselves from my right to left, please?

23 MR. STRAND: Good morning, John Strand, 1501
24 Emerson Street, Northwest.

25 MR. UQDAH: Talib-Din Uqdah, 1373 Jefferson

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1 Street, Northwest.

2 MR. ZAYETS: Good morning. Jerry with Building
3 Hope.

4 MR. KADLECEK: Good morning. Cary Kadlecek with
5 Goulston & Storrs.

6 MS. COTTMAN: Diane Cottman, LAMB.

7 MR. VAN PELT: Good morning. Dan Van Pelt with
8 Gorove/Slade Associates.

9 CHAIRPERSON HILL: Okay. So Mr. Kadlecek, I'll
10 let you kind of get situated there. There were some things
11 we needed from you and talked about at the last hearing.

12 Maybe you can just kind of update us as to where
13 you are with everything?

14 MR. KADLECEK: Yes. We'll do that. We're going
15 to give a very brief presentation. Just running through
16 those seven things that the Board had requested.

17 Just two things I want to hand in. Since our
18 filing on December 6 we've actually been working with CNDI-LA
19 some more. And we've refined our conditions a little more.

20 So I just want to -- I want you to have the latest
21 set of conditions that we have sent to the parties in all
22 positions.

23 CHAIRPERSON HILL: Okay. But that's not in the
24 record currently?

25 MR. KADLECEK: That's not currently in the record.

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1 We just -- we --

2 CHAIRPERSON HILL: Okay. So you need to put it
3 in the record afterwards. And give us the copies now. Okay.

4 MR. KADLECEK: Yeah. We just sent it to them
5 yesterday. So I just wanted to make sure the Board has the
6 latest.

7 CHAIRPERSON HILL: Okay.

8 MR. KADLECEK: And then there's also just a letter
9 that we got from one of the lenders that just goes to the
10 argument about the financing that we had written about.

11 CHAIRPERSON HILL: Okay.

12 MR. KADLECEK: All right. So we're just going to
13 go in order of --

14 CHAIRPERSON HILL: Yeah. Why don't you give me
15 a second. I actually want to see this thing.

16 MR. KADLECEK: Okay.

17 CHAIRPERSON HILL: Okay. So this is the condition
18 packet that you passed out to CNDI-LA. CNDI-LU? CNDI-LA.
19 Yeah.

20 MR. KADLECEK: So, just to give you background,
21 we had a meeting with them on Monday. And we attempted to
22 try and craft another set of conditions as a result of that
23 meeting.

24 So that's what this reflects. So I just wanted
25 you to make sure, this is the latest set of conditions that

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1 the Applicant has agreed to in corresponding with them.

2 CHAIRPERSON HILL: And are you going to read --
3 I thought you were going to walk through them. I'm sorry.

4 MR. KADLECEK: Do you want to go through all them?

5 CHAIRPERSON HILL: Yeah. Please. Go walk through
6 them, yeah. Please.

7 MR. KADLECEK: Well, we're going to start actually
8 with the transportation piece first. And then I think it
9 makes sense to get to that condition last.

10 CHAIRPERSON HILL: Okay. Sure.

11 MR. VAN PELT: Okay. Let me go ahead and I'll
12 walk you through a couple of things. A performance
13 monitoring plan that has been agreed to, or at least the
14 highlights of that, what's been agreed to.

15 And then talk a little bit about mode splits.

16 CHAIRPERSON HILL: Now, I'm sorry and again, it's
17 in the conditions here? Is that what you mean?

18 MR. KADLECEK: No. No, that's in our December 6
19 filing.

20 CHAIRPERSON HILL: Okay.

21 MR. KADLECEK: Which is Exhibit -- sorry, I
22 believe it's Exhibit 121.

23 CHAIRPERSON HILL: It's always bad when you get
24 to the three digits.

25 MR. KADLECEK: Yeah. Yeah, so Exhibit 121 was our

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1 December 6 filing.

2 CHAIRPERSON HILL: Okay.

3 MR. KADLECEK: And that has all the information
4 that the Board had requested. The seven items that the Board
5 had requested an explanation of.

6 CHAIRPERSON HILL: Okay. Great. Thank you.
7 Okay. All right, please continue. I'm sorry.

8 MR. VAN PELT: Okay. No problem. So, in that
9 submission, a performance monitoring plan will include
10 elements such as a student/faculty enrollment numbers, the
11 total entering vehicle counts for the students and faculty
12 during the morning peak hour.

13 Mode splits for students and faculty. Vehicle
14 occupancy counts, queue lengths, and the documentation of the
15 TDM efforts that have been put in place for the prior year
16 at LAMB.

17 The data will be collected at the school for the
18 PMP in order to obtain the necessary information that was
19 identified in the PMP. Those are the items I just described.

20 The data collection will include a combination of
21 manual counts, video counters, and surveys in order to most
22 accurately obtain the necessary information.

23 The video counting equipment will be used for the
24 vehicle counts. As they will provide a more accurate account
25 of that.

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1 But manual counters, actual people, will be used
2 for most of the other data. As it requires having people
3 onsite to make these very specific observations for the PMP.

4 The data will be collected on a typical day once
5 per year. This is consistent with all of the traffic studies
6 that are performed in the District and with PMPs that are
7 implemented at other schools in the District.

8 A typical day as dictated by DDOT and industry
9 standards is represented by a day in the middle of the
10 semester or marking period when traffic patterns have set
11 into a routine. And when the weather is favorable. And when
12 it's unaffected by holidays.

13 A typical day is not meant to represent the worst
14 case scenario conditions. But it's meant to represent an
15 average day. Although multiple days of counts may show
16 slightly different results.

17 Any typical day is considered acceptable to
18 represent average conditions over an extended period of time.
19 And it's what's deemed by DDOT to be appropriate condition
20 for planning and design.

21 We will have DDOT review our data collection
22 regime for the PMP before we begin. DDOT will review then
23 the PMP itself and ensure that the stated conditions are met
24 once we submit it to them.

25 This means that the number of entering vehicle

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1 trips does not exceed the 295 vehicle trips during the
2 morning peak hour. And that queue lengths do not spill over
3 into public space.

4 DDOT will have access to all of the data that's
5 collected for the PMP. And they will ensure that the
6 analysis performed is in line with District and industry
7 standards.

8 And if these conditions are not met, the Applicant
9 will be required to revise the TDM plan and/or pickup/drop
10 off operations plan itself. The PMP was reviewed with DDOT
11 before submitting into the record.

12 And it's our understanding that DDOT is in
13 agreement with the PMP's elements and the methodology. The
14 Applicant will perform an annual PMP starting in the first
15 year of LAMB's operations at the site.

16 The submission of performance monitoring reports
17 will continue until one, a minimum of three years of reports
18 have been submitted, or LAMB increases its enrollment to a
19 maximum of six hundred students, whichever is later.

20 And two, the two latest consecutive years
21 demonstrate that the school is in compliance with the
22 monitoring plan. Based on the projected student enrollment
23 for LAMB these conditions are expected to result in at least
24 a minimum of seven years of reporting.

25 One other thing I want to point out is that DDOT

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1 had requested in their staff report that monitoring begin
2 once the student enrollment had gotten to about 90 percent,
3 or 540 students. We are committing to start it at year one,
4 at the very beginning.

5 So just speaking quickly about mode split
6 projections. The mode split projections that were used in
7 the comprehensive transportation review were based on
8 existing information provided by LAMB.

9 These mode split projections were considered to
10 be conservative as they did not fully take into account how
11 the consolidation of the two existing campuses would impact
12 mode split.

13 So, provided also in the submission is a -- what
14 we could expect expected mode splits to be after
15 consolidation of Kingsbury. We took a little deeper look at
16 the information provided by LAMB to determine a projected
17 mode split that we believe is possible at the new campus.

18 The projected mode split is based on addresses of
19 LAMB families that live in the vicinity of the new location,
20 the adequacy of non-auto accommodations between the schools
21 and family homes, and the number of families with multiple
22 children attending LAMB.

23 And that's shown in the supplemental submission
24 we expect that the auto mode split will be -- will likely be
25 lower. And that those trips would shift over to walking and

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1 biking modes.

2 And I think with that, I think to touch on the
3 transportation I'll pass it over to Diane.

4 MS. COTTMAN: Good morning. I just want to speak
5 briefly about the conditions we expanded under the good
6 neighbor policy.

7 And basically LAMB will work. And it was in the,
8 I think, presentation previously that we will work with CNDI-
9 LA and with the West Educational Campus PTO to make sure that
10 we create a community committee.

11 Nine members, really pretty split down the middle
12 with four LAMB and four community members. So it will be one
13 LAMB administrator, two LAMB PTO members, a LAMB parent who
14 lives in that specific ANC 4C, four community residents,
15 which would include CNDI-LA West, and the ninth member would
16 be the ANC 4C 02 SMD Rep.

17 These meetings would be quarterly in person. And
18 we'd create the calendar meetings at the start of the school
19 year. And make sure that everyone signs off on that.

20 And basically the purpose of those quarterly
21 meetings then would be to work out any concerns. Hopefully
22 to highlight that -- those things that work well, so that we
23 can make sure that we repeat them. And then create any
24 mitigation strategies as needed.

25 And the key to that would be making sure that we

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1 notify the community prior to any large events. And that
2 LAMB and West would also coordinate their calendars so that
3 there are no conflicts there along with different fund-
4 raising opportunities where there was the possibility of some
5 conflicts.

6 And that's sort of in the beginning, hopefully
7 what we would be able to move forward with. Is sharing best
8 practices and not just talking about crossing guards. But,
9 how can we best educate children at both places.

10 Let's see, I explained, make up of committee.
11 Enforcement of conditions. I mean, basically all that we've
12 said in terms of the good neighbor policy, they are
13 enforceable because they're tied to the alternate condition
14 regarding achieving a certificate of occupancy upon growth.

15 MR. ZAYETS: Good morning. Jerry with Building
16 Hope. So, last time we were here you guys asked a little bit
17 of background information on the funding of charter schools.
18 And we provided a little bit of a narrative. I'll just
19 summarize that narrative.

20 So Building Hope, the reason we exist is
21 essentially we bridge the gap between what the facility's
22 allocation is -- the way the facility allocation is funded
23 for the schools, and the capital needed initially to get them
24 into a building.

25 So the way it works is, when a charter school

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1 files for a charter, they get permission to operate the
2 school. And then they have to essentially find financing on
3 their own to be able to obtain a facility.

4 So what Building Hope does, is we step in. We
5 help them secure the financing. And we often guarantee
6 loans. And we sometimes even provide gap funding to cover
7 any short comings of any debt service.

8 So the way it works is unlike a private school
9 that may have endowments or may have the ability to raise
10 tuition, public charter schools get a fixed allowance.
11 Currently in the District of Columbia charter schools receive
12 3,190 dollars per student.

13 So, that is their facility's allocation. So that
14 is separate from the money that they get from the District
15 to run the program, teachers, and just various things to
16 operate the school themselves.

17 So, anything -- any payments that they have to
18 make to cover debt service or rent or utilities outside of
19 that number, essentially directly comes out of the
20 programming budget.

21 So that means if they're spending more on mortgage
22 or rent or utilities, they essentially have to cut staff or
23 change their program in a way where the bill -- where the
24 school functions.

25 So that's the biggest difference between a private

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1 school and charter schools. As far as from a lending
2 perspective, there was a question brought up to me and asked,
3 what's the difference between a buy right project or
4 something that has a BZA component or something that has the
5 alternative condition?

6 The biggest distinction from a lending point of
7 view is that our proposed condition provided that LAMB meets
8 the condition entitles LAMB to a building permit. That is
9 the big difference between a BZA process where to a lender
10 there is subjectivity it, and there's potential risks.

11 So that is the key distinction between what is
12 essentially done by an administrative process through DCRA
13 or the BZA.

14 And then the last part was -- is there were some
15 questions as far as what Building Hopes role and how we're
16 going to work with the transition.

17 So, we will be a co-Applicant on the loan with
18 LAMB essentially during the interim period. Once -- provided
19 this case moves forward, Kingsbury leaves, LAMB will have
20 sufficient enrollment to cover the debt service on their own
21 and take over that particular loan.

22 So that's when we would essentially step out. And
23 any money we would put in the deal would come out. And then
24 we would use those funds to fund other charter schools.

25 So that's the financing summarized.

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1 CHAIRPERSON HILL: Okay. Mr. Kadlecek, I mean,
2 I'm just going to go over to Mr. Uqdah and see what they have
3 to say over there.

4 Do you have anything else you want to tidy up
5 with?

6 MR. KADLECEK: No. I mean, if you --

7 CHAIRPERSON HILL: And then the Office of Planning
8 had -- so, I'm still not clear as to what the Office of
9 Planning is recommending. So, just trying to get it all
10 straight.

11 MR. KADLECEK: Sure. Sure. I just -- if you want
12 us to highlight any of the conditions. Other than all I'll
13 say is what I gave you is -- the reason I put it in a redline
14 form was because this reflects the changes to the conditions
15 that we made since our submission, Exhibit 122.

16 And this is the result of working with CNDI-LA.
17 So I just wanted you to understand that that's -- these are
18 all the changes that we've agreed to in the last, basically,
19 24 hours to augment the conditions even more.

20 CHAIRPERSON HILL: Okay.

21 MR. KADLECEK: But other than that, we don't have
22 anything to add.

23 CHAIRPERSON HILL: We'll come back around to you
24 and see what happens.

25 MR. KADLECEK: Okay.

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1 CHAIRPERSON HILL: Could you please introduce
2 yourself?

3 MS. BARRY: Sure. My name is Maria Barry. I'm
4 the ANC Commissioner for SMD 02 of 4C.

5 CHAIRPERSON HILL: Oh, welcome Commissioner Barry.

6 MS. BARRY: Thank you.

7 CHAIRPERSON HILL: That was great. So, two
8 things. You need to fill out witness cards at some point.
9 And then I don't think you've been sworn in. Correct?

10 MS. BARRY: Correct.

11 CHAIRPERSON HILL: Okay. Mr. Moy is not here.
12 Oh, great. Mr. Moy, if you could -- if anybody has not been
13 sworn in and they're planning on testifying, if you could
14 please stand and take the oath administered by the Secretary
15 to my left.

16 No, no, right here. Just stand there and raise
17 your right hand.

18 SECRETARY MOY: Thank you Mr. Chairman.

19 MS. BARRY: Stand here?

20 SECRETARY MOY: That's fine. Do you solemnly
21 swear or affirm that the testimony you are about to present
22 in this proceeding is the truth, the whole truth, and nothing
23 but the truth?

24 MS. BARRY: I do.

25 SECRETARY MOY: Thank you. You may be seated.

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1 CHAIRPERSON HILL: Chairman Hood, you said I can
2 do that actually?

3 CHAIRPERSON HOOD: I've done it myself.

4 CHAIRPERSON HILL: Oh, really?

5 CHAIRPERSON HOOD: Yes.

6 CHAIRPERSON HILL: I'm going to -- you'd think I
7 would have it memorized by now.

8 CHAIRPERSON HOOD: If he's not here, I'll do it.

9 CHAIRPERSON HILL: Oh, you can do it? I want to
10 do it. You know, the whole truth, and nothing but the truth.

11 SECRETARY MOY: Yeah. That sounds good to me.

12 CHAIRPERSON HILL: I'm going to do that at my
13 family dinners. Okay.

14 Let's see. So Mr. Uqdah, if you would please tell
15 me where we are with this? Or where you guys are.

16 MR. UQDAH: Yes, sir. First I'll start with the
17 Applicant's conditions that were just submitted.

18 We only received those yesterday. And that -- I'm
19 not holding that against the Applicant. Because we only met
20 this past Wednesday in the councilman's office where we
21 agreed to try to work -- I'm sorry, Monday.

22 Yeah, because today is Wednesday. That's how this
23 stuff is running together.

24 We only met in the councilman's office Monday
25 where we began the first process of trying to work through

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1 these conditions. Which were delivered to us yesterday
2 afternoon midday.

3 CHAIRPERSON HILL: Okay. That's all right. So
4 you went to Councilman Todd's office to work together?

5 MR. UQDAH: Yes.

6 CHAIRPERSON HILL: Okay. Great. I'm just going
7 to kind of move through this as best I can.

8 Have you had a chance to look at these? And do
9 you agree with these? Do you have any more comments?

10 MR. UQDAH: I have not -- we would need more time
11 to look at it. I have not personally looked at a single word
12 of them because of the obligations that I've took under in
13 order to make sure that we had our response to the
14 supplemental information into the BZA in a timely manner.

15 CHAIRPERSON HILL: Okay. So you can't say right
16 now whether or not you can agree to these conditions that are
17 in front of us?

18 MR. UQDAH: No, sir. Not the ones that are
19 presented. I can certainly agree to the ones that we
20 presented.

21 But we just haven't had time to review them.

22 CHAIRPERSON HILL: Okay. All right. Mr.
23 Kadlecek, I mean, do you know if there would -- and I now
24 don't know what we're going to do with this.

25 If you know, do you think there is any bumps in

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1 the road that still need to be smoothed out in terms -- I
2 mean, this is a long list of conditions.

3 And so, you know, do you know if there's anything
4 else that you are probably going to have to work through?
5 Or they're just going to need a little bit more time to read
6 through this, and then they would be onboard.

7 MR. KADLECEK: I don't want to speak for them.
8 But what I will say is, we have been trying to move the
9 needle from our side as far as we can.

10 That's why yet again, we've added more conditions.
11 I think now we're at -- if you take the sub conditions, I
12 think this is over 50 conditions.

13 I think that is demonstrative of how much LAMB is
14 willing to be sensitive to this.

15 CHAIRPERSON HILL: I don't disagree. I'm just
16 asking if you think -- so you can't give me an answer if you
17 think that they had a little bit more time to look through
18 it, if there wouldn't be any more concerns.

19 MR. KADLECEK: I don't think that they're going
20 to agree to them. And I think that as much -- the more we've
21 given the more it seems like we've never really gotten the
22 same sort of response in kind.

23 So, I think it's --

24 MR. UQDAH: Mr. Chair, I would disagree --

25 CHAIRPERSON HILL: One at a time.

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1 MR. UQDAH: With Mr. Kadlecek.

2 CHAIRPERSON HILL: Mr. Uqdah, just give me one
3 second.

4 MR. UQDAH: Okay.

5 CHAIRPERSON HILL: I'll give you a chance.

6 MR. KADLECEK: So I think that, you know, I think
7 that a commitment to essentially 50 conditions is a pretty
8 significant commitment.

9 CHAIRPERSON HILL: Okay.

10 MR. KADLECEK: And I'm not sure that LAMB can
11 commit to anymore. I mean, that side --

12 CHAIRPERSON HILL: Okay. I understand your point.
13 And that's fine. And Mr. Kadlecek, honestly, we just got
14 these too.

15 MR. KADLECEK: I understand that. Right.

16 CHAIRPERSON HILL: So, I also don't know what to
17 do at this point. Right?

18 MR. KADLECEK: No. I know.

19 CHAIRPERSON HILL: So --

20 MR. KADLECEK: But I thought it was only fair to
21 let the Board know that --

22 CHAIRPERSON HILL: I appreciate that.

23 MR. KADLECEK: That we have come even further.

24 CHAIRPERSON HILL: I can see that you have done
25 some work.

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1 MR. KADLECEK: Yeah.

2 CHAIRPERSON HILL: And I think you've done a lot
3 of work. And I think that -- and the Commissioner is here
4 from the ANC, who I assume is going to speak in support. And
5 so -- or may not. I don't know.

6 But, okay. So, you need more time to look at
7 these conditions?

8 MR. UQDAH: First, what I wanted to say is this.
9 First of all, there are not 50 conditions. When CNDI-LA
10 submitted its conditions to the BZA and to the Applicant, all
11 we did was took their, I think 28 conditions and detailed
12 them.

13 Where we are right now is in a matter of function.
14 In other words, they may have one line or one sentence where
15 we have two.

16 It's the same condition. We're just putting more
17 detail to it. I'll just give you one example.

18 CHAIRPERSON HILL: No, that's good Mr. Uqdah. I
19 believe you. And I understand.

20 MR. UQDAH: Okay.

21 CHAIRPERSON HILL: What I'm trying too under --
22 you guys had an issue --

23 MR. UQDAH: So we're not -- we're not that far
24 apart. We are actually closer then what we were two weeks
25 ago.

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1 CHAIRPERSON HILL: Okay. So -- so, again, what
2 I understood from -- we've heard -- we took a lot of
3 testimony on this, right? And so -- and you guys were in
4 opposition to it.

5 You got party status. And so, supposedly I mean,
6 the issue that you all have is transportation and congestion.
7 And whether or not what they say is going to happen --

8 MR. UQDAH: Noise.

9 CHAIRPERSON HILL: Is actually going to happen.

10 MR. UQDAH: Design. Lighting.

11 CHAIRPERSON HILL: Noise. Right. Okay.

12 MR. UQDAH: Everything that's associated with a
13 special exception.

14 CHAIRPERSON HILL: I understand.

15 MR. UQDAH: Um-hum.

16 CHAIRPERSON HILL: So -- okay. Does the Board
17 have any questions for anybody right now?

18 (No audible response.)

19 CHAIRPERSON HILL: Okay. I'm going to turn to the
20 Office of Planning. So -- because you had a supplemental
21 report. And can you explain the supplemental report a little
22 bit? Because I was -- because the Applicant was not in, if
23 I'm not mistaken, in support of the condition that was on the
24 supplemental report.

25 I'm not -- if you can just explain the

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1 supplemental report again to us, please.

2 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and
3 Members of the Board. For the record, I'm Maxine Brown-
4 Roberts from Office of Planning. At the November 15th Public
5 Hearing, the Board asked of OP to do two things.

6 One was the condition, I thought it was identified
7 on Page 28 of the Exhibit 114, and I have excerpted exactly
8 what the condition said at that time.

9 And the Board asked to explain what it meant,
10 similar to what the Zone Administrator had done when he was
11 here.

12 And so subsequent to that, I spoke to both the
13 Applicant and CNDI-LA, and we expanded on it a little more
14 just to make it clearer.

15 And in the report, what I also did was to take
16 that condition step by step as to how it would be
17 implemented. And you can see that in Steps 1 through 8.

18 So, that's an explanation of that condition, okay?

19 The second question that was asked of us was to
20 outline what would trigger a Campus Plan for this school.

21 And as I explained under Item Number 2, there are
22 three types of so-called campus plans, which is the Campus
23 Plan that regulates colleges and universities. The second
24 was for Medical Campus Plan, and the third was for private
25 school.

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1 There's nothing in the zoning regulation that
2 talks about a plan for a charter or a public school, and
3 therefore, none of these regulations would apply to them so
4 that was the answer to that, the Campus Plan regulations do
5 not apply to the charter school.

6 CHAIRPERSON HILL: Okay, thank you. Does anybody
7 have any questions for the Office of Planning? Does the
8 Applicant have any questions for the Office of Planning?

9 MR. KADLECEK: No, thank you.

10 CHAIRPERSON HILL: Does party status have any
11 questions for the Office of Planning?

12 MR. UQDAH: I do, yes, just one brief question.

13 Where you put forth the condition as you stated
14 it in your report, that one paragraph, is that the same
15 paragraph that OP anticipated that both the Applicant,
16 CNDI-LA, and the ANC would respond to?

17 MS. BROWN-ROBERTS: Actually, it was just to
18 explain what the condition meant.

19 MR. UQDAH: No, don't misunderstand my question.
20 I see what the condition is after Kingsbury departs.

21 What I have a concern about is that as this matter
22 was moving forward, no one addressed, except for CNDI-LA, the
23 implementation factor. And I'm not sure whether or not

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1 either the Applicant or the ANC is in agreement with that or
2 in disagreement with it.

3 Where they may accept the alternate condition, are
4 they also accepting the implementation? Does that make
5 sense?

6 MS. BROWN-ROBERTS: No.

7 CHAIRPERSON HILL: What's your question, Mr.
8 Uqdah? I'm sorry.

9 MR. UQDAH: There are, in your reporting, you
10 offered --

11 CHAIRPERSON HILL: Office of Planning did.

12 MR. UQDAH: -- in Office of Planning's reporting.

13 CHAIRPERSON HILL: The supplemental or where?

14 MR. UQDAH: No, no, the actual supplemental.

15 MS. BROWN-ROBERTS: Okay.

16 MR. UQDAH: Dated December 13th. You say the
17 following would be the steps taken to implement this
18 condition.

19 Now, the condition is that one paragraph that is
20 at the top of your report. At the Public Hearing, the
21 Applicant submitted the following condition, all right?

22 CHAIRPERSON HILL: Yes.

23 MR. UQDAH: What I'm trying to understand is: if

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1 this condition is accepted, does it also mean that we're
2 accepting the implementation of the condition?

3 MS. BROWN-ROBERTS: Okay.

4 MR. UQDAH: Is that clear enough?

5 MS. BROWN-ROBERTS: Yes, I think I understand it.
6 Okay, so the condition, as shown in I think the second
7 paragraph, which was the one that we had at the Public
8 Hearing, okay?

9 MR. UQDAH: Yes.

10 MS. BROWN-ROBERTS: Subsequent to that, we looked
11 at it and thought that, and I spoke to you also about it, and
12 I was convinced with your argument that it did not include
13 other issues, such as the noise and all the other
14 requirements of the special exemption.

15 And so it was expanded on to include those things.
16 Then the list is just an explanation of how that condition
17 would be implemented.

18 MR. UQDAH: Okay, then that answers my question,
19 but now I have a question to the Board. Is that
20 satisfactory?

21 I mean, does that explanation of how it's going
22 to be implemented, is that just as enforceable as the
23 condition itself?

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1 Because if it's not, then why explain it?

2 CHAIRPERSON HILL: That's okay.

3 MR. UQDAH: I mean, that may seem elementary to
4 you all, but it's important to us.

5 CHAIRPERSON HILL: So, what I understand from your
6 question is that the Office of Planning has explained how
7 that condition would be implemented, and then now you're
8 asking whether that's enough of an explanation for the Board?

9 MR. UQDAH: Not an explanation for the Board, but
10 are those implementation conditions, will that be attached
11 to the alternate condition?

12 MS. BROWN-ROBERTS: No.

13 MR. UQDAH: Well, then, why have them?

14 MS. BROWN-ROBERTS: Here's what I was trying to
15 do.

16 CHAIRPERSON HILL: Okay.

17 MS. BROWN-ROBERTS: The condition is there; this
18 is the recommendation of the Applicant. That's the
19 condition.

20 CHAIRPERSON HILL: Yes. We asked the Office of
21 Planning as to explain how it was going to work out.

22 MS. BROWN-ROBERTS: Right, there was confusion as
23 to how it was going to work.

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1 CHAIRPERSON HILL: Right.

2 MS. BROWN-ROBERTS: So, that's what I tried to do.

3 CHAIRPERSON HILL: I understand. Okay.

4 MS. BROWN-ROBERTS: So, it is not expected that
5 Numbers 1 through 8 would be a part of the conditions that
6 would be --

7 CHAIRPERSON HILL: I understand.

8 MS. BROWN-ROBERTS: If the Board accepts this
9 condition, the explanation portion of it does not expect it
10 to be part of the --

11 CHAIRPERSON HILL: I understand. Okay. So, Mr.
12 Uqdah, we'll just have to see how it goes. It was whether
13 or not the Board think that that's enough for us.

14 MR. UQDAH: We're still on the same page. We're
15 rejecting the condition?

16 CHAIRPERSON HILL: Right. All right, so, okay,
17 does anybody have any more questions for the Office of
18 Planning?

19 Okay, the ANC Commissioner is here. Would you
20 like to speak? I'm kind of curious as to you came down and
21 so you weren't here originally, correct?

22 MS. BARRY: For the first hearing?

23 CHAIRPERSON HILL: Yes.

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1 MS. BARRY: No, but I watched part of it online.
2 I had to start at a new job.

3 CHAIRPERSON HILL: Okay, so you're here to testify
4 for the ANC?

5 MS. BARRY: I didn't know that there was going to
6 be testimony, but I was here just to lend any supporting
7 clarification to our letter of support or whatever, if any
8 other --

9 CHAIRPERSON HILL: So, were you there for the
10 Hearing? Were you a Commissioner at that time?

11 MS. BARRY: For your November Hearing?

12 CHAIRPERSON HILL: No, when you guys were hearing
13 about this case at the LAMB School?

14 MS. BARRY: Yes, I had been on the Commission.
15 Yes.

16 CHAIRPERSON HILL: Okay, I'm sorry, I just got a
17 little confused. Right, so you did hear the case, and again,
18 if you could just clarify, then, the position of the ANC?

19 MS. BARRY: Yes, the ANC has submitted a letter;
20 we passed a resolution in November that was submitted in
21 advance of your first Hearing on the case.

22 And that letter of support looked at the Office
23 of Planning and the Department of Transportation's

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1 recommendations, and we supported that.

2 I think it was by -- I can't recall exactly what
3 the votes were, but it was in support. That was in November.

4 Then, at the November Hearing that the BZA had,
5 I believe on November 15th, you had requested, since the
6 Office of Planning had revised their original statement, that
7 it would be important for the ANC to revisit just that one
8 recommendation from Office of Planning, in terms of the
9 number of students.

10 And that is exactly what we did. The ANC 4C voted
11 in support of that. I submitted the letter and we voted in
12 that. There were seven people at the Meeting and we voted.

13 CHAIRPERSON HILL: It was six to zero to one, it
14 looks like.

15 MS. BARRY: Yes, so there was six people in
16 support and one person who abstained.

17 CHAIRPERSON HILL: Okay, and at that Meeting, were
18 there Members from CNDI-LA that also testified in opposition?

19 MS. BARRY: Yes, since September, October,
20 November, and our December Meeting, this has either been
21 through community comment or, as its own agenda Item, has
22 been on the agenda. We've heard both from supporters from
23 the community as well as representatives from CNDI-LA.

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1 CHAIRPERSON HILL: And so the ANC was satisfied
2 in terms of the concerns that CNDI-LA had brought up. They
3 were satisfied enough to approve the project?

4 MS. BARRY: Yes, almost unanimously.

5 CHAIRPERSON HILL: Okay, thanks. Does anybody
6 have any questions for the Commissioner?

7 All right, Mr. Uqdah and Mr. Strand, I guess at
8 this point, I mean, we had a continued Hearing and there was
9 some information that we wanted.

10 And at this point, where I am, and actually I'm
11 going to ask one more question of the Applicant if I could,
12 but I guess we might ask for a conclusion from you guys, if
13 you want to give one in a moment?

14 But Mr. Kadlecek, what I got from the record, and
15 maybe I'm not correct, is that you were not in agreement with
16 the Office of Planning's condition?

17 MR. KADLECEK: No, that's not correct.

18 We are in agreement with it, and in fact, you'll
19 see in what we submitted to you today, we actually, in
20 deference to CNDI-LA, we added that we would give them more
21 notice about when we were going to apply for a Certificate
22 of Occupancy.

23 It didn't state it previously, so we added that

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1 we would give them at least 30 days' notice. They had
2 expressed --

3 CHAIRPERSON HILL: And where is that in your
4 conditions?

5 VICE CHAIR HART: That is Number 30.

6 CHAIRPERSON HILL: Thanks. The Vice Chair just
7 told me Number 30 from the end.

8 MR. KADLECEK: Yes, it's number 30.

9 CHAIRPERSON HILL: Okay.

10 VICE CHAIR HART: And I'm assuming that the party
11 in opposition, Mr. Uqdah, you have the -- I'm over here. You
12 were looking and I wanted to make sure -- I know it's hard
13 sometimes to know who's talking.

14 But you said you just received this list of
15 conditions yesterday?

16 MR. UQDAH: Yesterday, mid-day yesterday.

17 VICE CHAIR HART: That's fine, but you do have a
18 copy of them? It's just you have not had the chance to
19 review them?

20 MR. UQDAH: That's right.

21 VICE CHAIR HART: That's fine.

22 CHAIRPERSON HILL: Okay, Chair?

23 CHAIRPERSON HOOD: Mr. Kadlecek? Sorry, where did

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1 Condition 30 come from?

2 MR. KADLECEK: Condition 30?

3 CHAIRPERSON HOOD: Yes. Whose idea was that?

4 MR. KADLECEK: So, if you recall, we brought that
5 up at the last Hearing.

6 And the reason that it evolved that way was when
7 we saw that the Office of Planning was recommending that the
8 school return to the BZA when they want to increase their
9 student enrollment once Kingsbury, the other school in the
10 building, leaves, I heard from Building Hope and LAMB that
11 because of the financing, that was a big problem for them.

12 So, then what we thought about was, well, we
13 understand that we have to be accountable in our growth, and
14 so we came up with that condition as a way to be accountable,
15 to have some mechanism that prevents the school from
16 expanding, if they are not complying with the conditions that
17 are otherwise in the order, including the Performance
18 Monitoring Plan.

19 So, we thought it was a good compromise to satisfy
20 what the concerns we heard were, but at the same time, not
21 creating the concern from the lender.

22 CHAIRPERSON HOOD: I'm having you explain the
23 wrong condition, but thank you for the information. I'm

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1 looking at 12.

2 MR. KADLECEK: Oh, 12, okay.

3 CHAIRPERSON HOOD: But thank you, though. I was
4 on the wrong page, but thank you.

5 MR. KADLECEK: 12, okay. So, 12, the Committee,
6 so after the last Hearing, one of the items that the Board
7 had requested was some more explanation about the Committee.
8 In one of the older versions of our conditions, there was a
9 very short statement about forming a Committee.

10 So, we took the Board's request to mean that you
11 wanted more substance to what that Committee would be. And
12 so this was our attempt at providing clarity on what that
13 Committee would be and how it would operate.

14 CHAIRPERSON HOOD: And who did you pattern this
15 after? I'm sure you've looked through the records at the law
16 firm and probably --

17 MR. KADLECEK: We didn't, actually. Actually, the
18 Applicant came up with it first, and then I sort of tweaked
19 it, but they actually came up with the concept on their own.

20 CHAIRPERSON HOOD: Okay, and I'm hoping, I don't
21 know, I believe, Mr. Uqdah, you already knew about the
22 Liaison Committee and all that, right?

23 MR. UQDAH: We know about it now, and in our

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1 response to that submission, we were totally against it
2 because, one, it doesn't work in our favor.

3 Two, it's an odd number which leads me to think
4 that there's going to be some sort of voting authority. And
5 if we're walking into a condition where we're already
6 outnumbered, what's the point?

7 CHAIRPERSON HOOD: Okay, yes, because of the 5-4.

8 MR. UQDAH: Yes.

9 VICE CHAIR HART: Just a little clarification on
10 this, it's 5-4 in your favor because there are -- I'm looking
11 at it and it says four Members are from the ANC or CNDI-LA,
12 and then the ninth Member was -- and maybe I was mistaken in
13 this -- I thought the ninth Member was the ANC's Single
14 Member District Commissioner.

15 I'm not saying that that's -- I'm just saying that
16 it's not the school's --

17 MR. UQDAH: This is a new condition that they have
18 introduced, one. Secondly, I want this Board to keep in mind
19 that the reason CNDI-LA is here is because we're not being
20 represented. We have no --

21 CHAIRPERSON HILL: Mr. Uqdah, come on, I would
22 just say one thing. All right, never mind.

23 CHAIRPERSON HOOD: Let me go back to my original

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1 point. I've seen these work and I've seen them not work, so
2 most of the ones I'm talking about are the ones that work.

3 That's why I want to know who we got the pattern
4 after. I believe that the organization probably have
5 patterned after somebody. I'm sure this is nothing new under
6 the sun.

7 Some of these actually work and some, I've seen
8 them work, actually campus plans in other areas, and I've
9 seen them not work.

10 So, I was just looking at this and I'm hoping that
11 Mr. Uqdah and the party opposition will have a chance to
12 really digest this and understand. Because this could be a
13 very significant tool to making everyone coexist.

14 But I just wanted to find out who did you pattern
15 it after?

16 Because if it was after one of those ones that I
17 know don't work, then I would say let's look at one of the
18 ones that does work, and work with the opposition, depending
19 upon what happens as we move forward.

20 MR. KADLECEK: Yes, and I think it was
21 intentionally not patterned after anything because the idea
22 was to think about how to make it as fair as possible.

23 I mean, to Mr. Hart's point, it really was

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1 intended to be balanced.

2 And four people from the school, four people from
3 the community, and then the ANC person we elected to be on
4 the Committee, because that person would be the neutral
5 party. They're supposed to represent anybody.

6 CHAIRPERSON HOOD: And all of them are voting
7 Members?

8 MR. KADLECEK: I don't think there's voting.

9 CHAIRPERSON HOOD: There's not voting?

10 MR. KADLECEK: I don't think there's supposed to
11 be voting. I mean, the only voting, I think, that occurs is
12 there's a piece of that condition that involves producing a
13 written record of the meeting.

14 And that also helps to the alternative condition,
15 if you will, showing that the school's been in compliance
16 with holding these meetings, that there's a produced written
17 record of the meetings.

18 CHAIRPERSON HOOD: So, how do we get the outcomes?
19 Maybe I'm with Mr. Uqdah, maybe I need to read this a little
20 more and study this, how this is going to going forward.

21 Because if there's no voting mechanism, I don't
22 know. How do we get to the outcomes?

23 MR. ZAYETS: If I may just make a statement? So,

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1 part of what we heard, as I've done plenty of these ANC
2 involvement real estate transactions, is we wanted to
3 demonstrate -- because this is a two-step process.

4 One is this special exception that we're seeking
5 today for occupancy of 300 students.

6 There's a second one, which is very important for
7 the school, and that's the second piece which is going to
8 come three to five years.

9 But the key to that thing, in order for LAMB and
10 us to make that happen, we need to demonstrate to the Zoning
11 Administrator that we are meeting regularly and there are
12 records being produced, and that they're being documented.

13 And we're going to submit these records to the
14 Zoning Administrator only then, once we trigger the second
15 C of O. And until we demonstrate that properly, our
16 Condition Number 30 basically will not permit us to expand
17 to 600 students.

18 So, the intent of all of these other conditions
19 is to basically keep a record of the community involvement,
20 and then cap it at the end with a summary, where we're going
21 to submit all these documents to DCRA and, ultimately, the
22 Zoning Administrator.

23 Then we'll say, okay, you guys have met the

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1 previous 27 conditions, you are now entitled to your C of O
2 and increasing your enrollment. So, that's the intent and
3 that was the whole goal.

4 CHAIRPERSON HOOD: But my point is, and I just
5 read it while you were talking, not that I was ignoring you.

6
7 It says at least six members of the LCC must agree
8 to the report before it's adopted as the official record of
9 the meeting. So, there is a vote, at least the way I read
10 that, that last line.

11 MR. KADLECEK: Yes, that's what I was getting at.
12 I think that was to make sure that everyone is in agreement
13 that that's --

14 CHAIRPERSON HOOD: So, it goes back. So, we do
15 have a voting mechanism?

16 MR. KADLECEK: Yes, but I thought you were asking
17 about voting on policies or procedures or something like
18 that.

19 CHAIRPERSON HOOD: No, no, I'm talking about --
20 so I think you've answered my question. Thank you.

21 MEMBER WHITE: I mean I think that this Committee
22 process could be very, very helpful because it will give
23 everyone access to information.

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1 So, if this isn't successful, it could have a
2 direct impact on your ability to move to the next level to
3 expand your student population.

4 So, I hear your concerns about it, but it does
5 give you a direct entree into conversations that directly
6 impact the neighborhood.

7 MR. UQDAH: The concern that I would have, and
8 I've just been looking this over, is that what we represent
9 is the impacted neighborhood, not just 4C.

10 4C is made up of ten Commissioners, seven of whom
11 primarily represent Petworth, three of whom represent 16th
12 Street Heights, which is the impacted community.

13 To say in this document that there are going to
14 be four Members from ANC 4C, including CNDI-LA, that doesn't
15 give us but perhaps one seat at the table.

16 The other three representatives that are mentioned
17 here could be from Petworth, and that is a concern. I mean,
18 just looking at that one instance would be a concern.

19 And so when it is time to vote, we'll be
20 outnumbered.

21 CHAIRPERSON HILL: Mr. Uqdah, I did want to say
22 something. So, you're not in the ANC where the school is
23 located? I forget that part.

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1 MR. UQDAH: Me personally?

2 CHAIRPERSON HILL: Personally, yes.

3 MR. UQDAH: My building is.

4 CHAIRPERSON HILL: Your building is, okay.

5 MR. UQDAH: That's how I got involved with this.

6 CHAIRPERSON HILL: I guess I was trying to guess.

7 You are represented by the ANC. The ANC did take a vote.

8 There are elected officials that are the ANC. You were a

9 previous Commissioner.

10 MR. UQDAH: Mr. Chair, and I won't insult any of

11 you all's intelligence, I've put all of my responses to the

12 ANC's vote into our submission, and I've been real clear.

13 They are not being honest with you when they say

14 that there was several Hearings in this matter, that they

15 heard from CNDI-LA. They did not.

16 I provided you with email documentation to show

17 that we were rejected twice in making presentations before

18 this ANC.

19 CHAIRPERSON HILL: Okay, all right. Okay, sorry,

20 Mr. Strand?

21 MR. STRAND: Mr. Chairman and Members of the

22 Commission, I just wanted to summarize quickly the point of

23 disagreement comes down to what happens at that point of

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1 escalation, as was described, from 300 up to the full 600?

2 In the original Office of Planning recommendation,
3 that escalation point was a trigger for the Applicant to
4 return to the BZA and demonstrate that they have been in
5 compliance with whatever conditions.

6 And for the reasons that have been described,
7 that's not a viable option for their financing.

8 The issue for the community is if that's -- so
9 then it was changed so that the Applicant returns to the
10 Zoning Administrator and DDOT with a demonstration of
11 compliance with the conditions that are before us, and which
12 none of us have had a chance to thoroughly digest.

13 But as was described, we've had a lot of
14 conversations around the conditions. We are in agreement
15 with a whole bunch of them, as you will see.

16 But the two issues that we still have disagreement
17 on is: what happens at that trigger-point to demonstrate that
18 the goodwill of the Applicant and the adherence to the
19 conditions that we've been discussing are being met?

20 And what happens, as was requested by this Board
21 when we met last month, when you all met last month, of
22 where's the teeth in this if something should go south?

23 What happens if the -- because what we're dealing

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1 with is one day of data collection per year to demonstrate
2 that the traffic is working out. And that gets submitted to
3 a report on a typical day.

4 But those data are collected on the school
5 grounds, and they meet the requirements of the DDOT for other
6 schools, but those other schools are not in an R16 special
7 zoning overlay, which requires a whole bunch of additional
8 protections for a community that has been impacted in the way
9 our community is.

10 And I'm an immediate neighbor of the school and
11 have those concerns that have already been expressed to you.

12 But our real issue is in these reports that get
13 generated quarterly, and I agree with Commissioner White,
14 this could be a very promising mechanism for managing and
15 surfacing issues.

16 But if there are issues that are problematic and
17 they become intractable because there's a lot of traffic
18 pouring out onto Piney Branch Road when they were supposed
19 to be using 14th Street, and we can't get the parents to
20 comply or things still haven't been rectified, what is the
21 teeth when those reports go to the Zoning Administrator?

22 Does the Zoning Administrator have enforcement
23 authority to address these things? We don't know that. We

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1 know you guys do. But the issue is --

2 CHAIRPERSON HILL: The Zoning Administrator has
3 enforcement capabilities.

4 MR. STRAND: So, that's actually I think where
5 we're stuck, is we don't know how these conditions get
6 enforced beyond --

7 CHAIRPERSON HILL: I appreciate that, Mr. Strand.

8 And Mr. Kadlecek, what I don't understand is I
9 thought that this was going to get addressed, as to that was
10 the whole point of all us meeting. Where's the teeth? And
11 you all explained -- and Mr. Jerry?

12 MR. ZAYETS: Zayets, Zayets. Jerry, first name.

13 CHAIRPERSON HILL: You explained the trigger-
14 point, I thought, in terms of that the Zoning Administrator
15 is going to look at whether or not you've met all your
16 conditions. And then he will determine whether or not to
17 grant the next level.

18 MR. ZAYETS: Phase of C of O and next level of
19 occupancy, when the Kingsbury folks leave.

20 CHAIRPERSON HILL: Right, and I guess, just what
21 I'm hearing here is that, and they haven't had a full chance
22 to look at all of these conditions exactly, but they don't
23 think that they're going to have a real opportunity to

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1 participate.

2 Now, whether I believe it's a real opportunity or
3 not, we can read a little bit more into this. But there is
4 something in these conditions now that provide an opportunity
5 for CNDI-LA to participate and give feedback.

6 And also, Mr. Ugdah, you shouldn't be the ones
7 that get to load the vote your way either.

8 It's a fair understanding, and this is the part
9 that I also -- you know, I can't tell if you guys just don't
10 want this, or you're really just really worried about it, you
11 know?

12 So, the teeth, again, is that the Zoning
13 Administrator is going to get to determine whether or not
14 these conditions have been met, before you turn it up to the
15 600, right?

16 And we then maybe just have to look and see
17 whether we think there's actually any teeth in these
18 conditions, I suppose.

19 MR. KADLECEK: Yes, that's right.

20 MR. ZAYETS: Yes, if I may, Mr. Kadlecek, I'll
21 just restate.

22 So, the Zoning Administrator that -- I'm sorry,
23 shall demonstrate to the Zoning Administrator that the

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1 Applicant is in compliance with all other relevant approvals,
2 meaning everything that was set forth initially, they would
3 need to review that we complied with.

4 So, meaning, we're saying that we're going to
5 plant some trees; we'll need to demonstrate, as part of our
6 building permit application when we apply for that C of O,
7 that we in fact did build those trees, put the sound
8 barriers, and met these TDM standards.

9 So, we will need to put a large packet together
10 and submit that as part of our application, and then the DCRA
11 folks will have to basically look at that and make sure we
12 met the BZA conditions.

13 And then, obviously, there's another stipulation
14 in here that says we have to provide notice to the CNDI-LA
15 folks prior to that submission of the application.

16 MR. KADLECEK: Right, so the idea is that CNDI-LA
17 should be allowed to participate in that process. That's why
18 there's a 30-day notice provision.

19 They are given notice before LAMB even applies for
20 that Certificate of Occupancy to expand its count.

21 If they are in disagreement with what the school
22 is doing, that they're not complying with the condition,
23 they're certainly able to tell the Zoning Administrator that

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1 as well.

2 I mean, it's up to him to determine whether he
3 thinks the school's in compliance, but if he thinks the
4 school's not in compliance, then it's fully within his
5 authority under this condition to just say, I'm sorry, you
6 have to go to the BZA because I think you're not in
7 compliance.

8 VICE CHAIR HART: Mr. Kadlecek?

9 MR. KADLECEK: Yes?

10 VICE CHAIR HART: In this Condition 30 that you've
11 outlined, one of the things I think that may be missing is
12 the conditions that you handed to us today, which don't have
13 an Exhibit Number.

14 So, that's why I'm making sure that you understand
15 that. It says, after Kingsbury departs the property, LAMB
16 shall notify CNDI-LA at least 30 days before LAMB applies for
17 a Certificate of Occupancy.

18 But I guess the issue -- and it says some other
19 things as well --- but what I'm reading there is that LAMB
20 shall notify CNDI-LA at least 30 days before the C of O,
21 before you apply for the C of O?

22 MR. KADLECEK: Correct.

23 VICE CHAIR HART: So, I guess the part that I

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1 think may be missing is that it's not just notification of
2 CNDI-LA, it's actually letting them see the information and
3 giving them that 30-day period to be able to review the
4 information, and then provide some comments.

5 Because, then, the ZA is going to say, well, has
6 this been done?

7 It will, I think, give -- if you include not just
8 notification but having the report, that CNDI-LA would then
9 be able to have that information prior to -- because you
10 could kind of say we're going to do this, just inform them
11 with a letter, and then actually have the information in the
12 report to the ZA, to the Zoning Administrator, and give CNDI-
13 LA that report on the same day as you give it to the -- you
14 could do that simultaneously.

15 And that could be a problem.

16 MR. KADLECEK: That's a point -- and maybe we can
17 change it to say that we would give them the full application
18 that we would present.

19 VICE CHAIR HART: Yes, and I think that that may
20 be helpful for Mr. Uqdah.

21 If you receive that, then at least you have the
22 ability to see what is being -- because I think part of this
23 issue is around just the unknown, and there's a lot of

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1 unknowns with this.

2 You don't exactly know what the -- I mean, in this
3 case, we didn't have the exact data, the exact language, for
4 the Commission to know whether or not you'd be supportive or
5 not supportive of them.

6 Now, there are 35 listed here. You may be in
7 support of 33 of them, but you can't say that you are in
8 support of 35 of them because you don't really know what is
9 contained in them.

10 And so it seems as though some of this is kind of
11 nuanced, and because of all of this, I think part of it is
12 I think I need time to kind of look through these conditions
13 before I would be able to decide on this case.

14 And I think the change that I suggested may be
15 helpful, too, as you're kind of going through this process.

16 But I appreciate the information that you've
17 provided, Mr. Uqdah Mr. Kadlecek, about kind of where you
18 are. And it seems like you're close, but there may be some
19 overarching --

20 MR. KADLECEK: And like I said, the latest version
21 that you have before you was our attempt to take the version
22 that CNDI-LA had filed into the record, they had submitted
23 a list of conditions, and this was our attempt to take from

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1 that and merge it with what we had submitted into a form that
2 the school was agreeable to.

3 Now, obviously, the school wasn't going to agree
4 to everything that CNDI-LA had proposed, but it was an
5 attempt to find that middle ground.

6 MR. ZAYETS: Mr. Hart, if I may add one more
7 comment. This is the Co-Applicant.

8 So, as part of the DCRA submission process, there
9 was as requirement that says whenever you're doing work on
10 neighbors' properties, you have to submit full sets of
11 construction drawing certifications.

12 The idea is -- this was derived off of that -- in
13 essence, that you were to provide your neighbor with
14 documentation prior to the submission. And that's actually
15 a requirement as part of the DCRA application.

16 So, the idea is that we would do the same. But
17 in essence, instead of a drawing, there also would be maybe
18 a Dropbox link or a giant packet of files or something else
19 that we would put together and then provide it to CNDI-LA.

20 But it's essentially derived after that same idea
21 that's currently in place.

22 VICE CHAIR HART: No, I understood that. I think
23 it was just around what would be given and what the timing

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1 is.

2 Because the C of O is going to be -- you will
3 submit this information for the C of O, but it's are you
4 giving the letter to CNDI-LA 30 days, or are you giving the
5 full length of everything?

6 And it sounds like Mr. Kadlecek is amenable and
7 maybe you are, too?

8 MR. ZAYETS: We are.

9 Well, the only information that's actually missing
10 is we have to do renovations so we're actually going to be
11 submitting a building permit application as part of the C of
12 O. It's not just the C of O.

13 So, the C of O is going to come in August, but the
14 building application's going to go in in May or April.

15 So, it's not going to be a significant packet
16 because we have to renovate the Kingsbury folks in to fit
17 LAMB. So, I completely understand and that totally makes
18 sense.

19 MR. UQDAH: I think we should --

20 CHAIRPERSON HILL: Give me one second, Mr. Uqdah.

21 So, Mr. Kadlecek, you understand what Vice Chair
22 Hart was speaking to in terms of your Condition Number 30?

23 MR. KADLECEK: Yes, no, that makes sense and I

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1 think we're in agreement with that.

2 CHAIRPERSON HILL: Okay, and if you change that,
3 you could just -- never mind. I was going to say you could
4 highlight it in a certain way, but you understand how you
5 could change that condition?

6 MR. KADLECEK: Yes.

7 CHAIRPERSON HILL: Okay, Mr. Uqdah?

8 MR. UQDAH: I just want to address a couple of
9 things.

10 One is that in our submission in responding to the
11 Applicant, I believe we asked for 90 days.

12 And the reason that we asked for 90 is because of
13 the Zoning Administrator's own testimony at the last Hearing,
14 where he advised us what his authority actually was.

15 And when it got down to the point of whether the
16 condition has been met or not, he says, and then if any
17 citizen or any member of the community lodges a complaint
18 about a particular condition, my office would investigate
19 that.

20 And I just don't know in this instance if 30 days,
21 you know, 30 days' notice to us, is going to be enough time
22 for us to gather this information, this Dropbox file, to look
23 at all the reports, and then be able to go down to the Zoning

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1 Administrator with some cogent arguments, should there be
2 any, and then whether or not he's going to have time to
3 investigate it. And I don't know what that means.

4 Secondly --

5 CHAIRPERSON HILL: Mr. Hart, you had a comment?

6 VICE CHAIR HART: Yes, just the Zoning
7 Administrator's going to have to spend time to actually
8 review the application itself. So, while you have 30 days,
9 30 days is prior to the Zoning Administrator actually getting
10 the documents. And so you have kind of a running start to
11 be able to then make some comments that you may have.

12 They could be general comments, they could have
13 a lot of specificity to them, but making the ZA aware that
14 there are some concerns is something that --

15 CHAIRPERSON HILL: That you would provide to the
16 Zoning Administrator.

17 VICE CHAIR HART: Yes, but you could provide --

18 CHAIRPERSON HILL: You'll have their report 30
19 days before they give it to the Zoning Administrator, so that
20 you'll have a chance to look at those and then provide
21 comments to the Zoning Administrator if you disagree with
22 anything they're about to submit.

23 VICE CHAIR HART: And the ZA's going to have to --

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1 the ZA, Zoning Administrator, is going to have to figure out
2 what the issues are with a particular case before they -- and
3 they're going to kind of go through the conditions which are
4 35 conditions to be able to say, well, have they met this,
5 have they met this?

6 And that process is going to take some time to go
7 through. So, it's not going to be like you only have 30
8 days, it's going to be like you have time.

9 And I don't know what the timing is at DCRA, but
10 there is going to be some time to be able to kind of deal
11 with that.

12 So, I understand the issue that you're bringing
13 up. I think that there's a way to kind of deal with that.
14 It's not an instantaneous kind of approval once it just gets
15 dropped at the --

16 CHAIRPERSON HILL: Mr. Kadlecek -- I'm sorry, Vice
17 Chair Hart -- just so I got that, in your condition, because
18 I don't know if you understood this, 30 days before you
19 submit to the Zoning Administrator, you're going to submit
20 to CNDI-LA?

21 MR. KADLECEK: That's the intent --

22 CHAIRPERSON HILL: Okay, all right.

23 MR. KADLECEK: -- for the reasons that Mr. Hart

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1 explained.

2 CHAIRPERSON HILL: Okay, that's great. And so
3 that will be before we submit the application. Because
4 again, we're submitting a building permit application.

5 CHAIRPERSON HILL: Okay, so that will be in your
6 condition?

7 MR. KADLECEK: The intent was for CNDI-LA to know,
8 before we even go down to DCRA, that it's coming.

9 CHAIRPERSON HILL: Okay. So, all right, I'm going
10 to go back to the Office of Planning real quick, because I
11 thought there was something that you had issue with, with
12 these conditions.

13 Is that not true?

14 MS. BROWN-ROBERTS: No.

15 CHAIRPERSON HILL: Okay. Thank you.

16 MS. BROWN-ROBERTS: I think one thing --

17 CHAIRPERSON HILL: It was the previous report, I'm
18 sorry, that I was thinking of.

19 MS. BROWN-ROBERTS: Yes, I wanted to continue to
20 emphasize in our previous report that we had asked that LAMB
21 submit details of the gymnasium to the BZA for review prior
22 to construction, either as part of that review or as a
23 modification.

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1 CHAIRPERSON HILL: Well, now I'm confused. They
2 haven't submitted -- say that again, please?

3 MS. BROWN-ROBERTS: As part of the application,
4 LAMB is supposed to be doing a gymnasium, a new building.

5 And so we had recommended that, as a condition at
6 that time, that they submit to us or to the BZA, as a
7 modification, details of the plans.

8 It's going to be like it is under review.

9 CHAIRPERSON HILL: Okay, so Mr. Kadlecek, can you
10 add that into the conditions?

11 MR. KADLECEK: It's not something we currently are
12 in agreement with but --

13 CHAIRPERSON HILL: It's the gymnasium.

14 MR. ZAYETS: I understand. Part of it is we don't
15 know when that's going to be financed, but we know it could
16 be in five years or eight years so --

17 MS. BROWN-ROBERTS: It doesn't matter.

18 CHAIRPERSON HILL: We're still going to be here.

19 MR. ZAYETS: I understand.

20 (Simultaneous speaking.)

21 CHAIRPERSON HILL: -- definitely not going to be
22 here, but this place will still be here.

23 (Laughter.)

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1 MR. KADLECEK: Yes, I assume you're going to want
2 another set of conditions anyway.

3 CHAIRPERSON HILL: So, go ahead and redo the
4 conditions, okay? If you can, give -- okay, so what are we
5 going to do?

6 Okay, so, Mr. Uqdah, do you have any -- this is
7 a continued Hearing. I always forget the Office of the
8 Attorney General, whether we have to do it again.

9 We did support an opposition the last time,
10 correct? We just heard from the ANC, so we're done with that
11 portion of the Hearing?

12 MS. NAGELHOUT: It's up to you. I wasn't here
13 last time. You do have to ask for --

14 CHAIRPERSON HILL: All right, okay, I'm just going
15 to do it. I was hoping the answer would be a better lawyer
16 answer, but it wasn't.

17 So, if anyone here wishes to speak in support,
18 does anyone here wish to speak in support? Anyone here wish
19 to speak in opposition? Please come forward.

20 MR. KADLECEK: Sorry, Mr. Hill, if I may?

21 CHAIRPERSON HILL: Sure.

22 MR. KADLECEK: You did go through support and
23 opposition last time.

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1 CHAIRPERSON HILL: I did but now I'm doing it
2 again.

3 CHAIRPERSON HOOD: Mr. Chairman, can I say a word?

4 CHAIRPERSON HILL: Please, go ahead, sir.

5 CHAIRPERSON HOOD: I'm taking really a lot of
6 attention to what Mr. Ugdah said about the liaison vote,
7 being in that situation myself, where I had four ANC
8 Commissioners that lived blocks away, and the most impacted
9 people.

10 So, I'm just going to ask, I'm not going to get
11 into it, but I'm just going to ask that you all re-look at
12 balancing that a little more.

13 I don't want to undo anything the ANC has done but
14 I want you all, the ANC, Mr. Ugdah, and the Applicant,
15 depending upon how this moves forward, let's re-look at how
16 this Liaison Committee is broken out. I'm just going to ask
17 you to do that.

18 And I don't want to undo anything from my
19 frontline electric workers, but I'd just like for us to look
20 at it again.

21 CHAIRPERSON HILL: Okay, so, Mr. Kadlecek, you
22 need to just take a look at it. Chairman Hood is not saying
23 you have to -- he's not trying to undo anything you did, but

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1 just take a look at it.

2 The people wishing to speak in opposition, could
3 you please come forward?

4 SECRETARY MOY: While they're coming to the table,
5 Mr. Chair, just for the record, on November 15th, the Board
6 did take rebuttal and closing from all parties.

7 CHAIRPERSON HILL: Okay. Thank you. It's okay,
8 we're still good.

9 MS. BROWN-ROBERTS: Mr. Chairman?

10 CHAIRPERSON HILL: Yes?

11 MS. BROWN-ROBERTS: I have to leave, I have a
12 flight to catch.

13 CHAIRPERSON HILL: No, I have a flight to catch,
14 too. All right, thank you very much, have a nice holiday.

15 Okay, so I remember seeing you. I'm sorry, now,
16 did you guys come and testify the last time? You didn't
17 testify? Okay.

18 So, we heard testimony, and if it's the same
19 testimony, then you can try to make it a little bit --
20 basically, there's a lot of new stuff that's gone on.

21 The gist that I'm getting or I think the Board is
22 getting is all of the different concerns that have been
23 brought up.

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1 So, I understand you're in opposition. I'm going
2 to go ahead and put three minutes on the clock for each of
3 you because that's what we're supposed to do.

4 And also, just to let you know, what the Office
5 of the Attorney General pointed out was, again, we did do
6 this.

7 So, this is now something that we're just doing
8 because I'm being, what's that thing? Mr. Moy always says
9 it. Abundance of caution, thank you, abundance of caution.

10 So, please, if you could start here to my left,
11 introduce yourself, and you need to push the button on the
12 microphone.

13 MS. DINE: Sure. Amy Dine, and I live at 1500
14 Farragut Street. I'm adjacent to the property.

15 CHAIRPERSON HILL: You can just go ahead and give
16 your testimony right now, that's all right.

17 MS. DINE: Sure.

18 Okay, so I guess my main points are simply that
19 CNDI-LA, I feel, as a group, we're trying to think about how
20 to be welcoming but also be respectful of ourselves and what
21 we bought into as homeowners in an R16 that has an overlay,
22 in a neighborhood that has already been impacted by 35
23 percent of it is non-residential before there was an overlay

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1 to protect the nature of this beautiful neighborhood.

2 So, my main point is there's an overlay for a
3 reason, and because the Board agreed that at a point, enough
4 was enough of the impact of non-residential uses of the
5 property within the overlay.

6 Therefore, my objection to LAMB coming in and
7 expanding up to 600, I feel we're being rather generous to
8 say up to 300.

9 And the reason there's this discussion about teeth
10 is there are some of us who feel very strongly that 600 is
11 not acceptable under any conditions. And I want to make that
12 really, really clear. Let alone expanding beyond it.

13 There is a public school across the street on 14th
14 Street that is expecting to expand to 600 children. That is
15 talking about 1,200 elementary school children.

16 LAMB's population, by definition, serves the City
17 beautifully as I tried to make clear, I feel very strongly,
18 about the wonderful program for the City.

19 But for this neighborhood, that is impacting in
20 not the way it's intended, on a property that was never built
21 to be a school. It was built to be a residential home for
22 elderly people.

23 And living right across the street from it, yes,

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1 these are my personal problems, but that's why we're here and
2 that's why we're citizens and talking about it.

3 It's less than 60 feet from where the playground
4 is operating, it's actually probably more like 40, from my
5 bedroom window and from home office window.

6 So, that's what I'm just saying, is I wanted to
7 make sure that there are zoning overlays for a reason, and
8 there was a consideration.

9 And that's really just what I want to emphasize.
10 Thank you.

11 CHAIRPERSON HILL: Okay, thank you.

12 MS. JOHNSON: Good morning, my name is Kia
13 Johnson. I live at 1406 Emerson Street. I appreciate the
14 opportunity to speak.

15 First, I'd like to say that our ANC has not
16 adequately represented the directly-affected neighbors. We
17 were not properly notified in a timely manner before. We
18 were not given notice of the school coming.

19 Maria Barry, her recommendation does not take into
20 account the people who live directly adjacent to the school.
21 That's why we formed this Committee, to represent our needs,
22 because we did not feel like we were being represented by our
23 ANC.

1 That being said, we are just a small number of all
2 of the people in the neighborhood who have concerns about
3 this. There are many more who have work in other childcare
4 concerns that could not be here. So, this is just the tip
5 of the iceberg.

6 So, having said that, my neighbor, Amy, has said
7 a lot of the things that I wanted to say. But our community
8 has been adversely impacted by a lot of traffic. We have had
9 many accidents.

10 My street, up until we just managed to get our
11 street turned into one-way street, we had 3,600 cars a day
12 coming down our street.

13 This was not another school coming, this is, you
14 know, a tremendous amount of traffic that the Department of
15 Transportation helped us mitigate by turning our street into
16 a one-way street.

17 So, we have serious traffic problems already that
18 need to be taken into consideration without drop-offs of two
19 schools that are increasing their enrollment.

20 So, the noise, I happen to work an overnight
21 shift. I sleep during the day a lot. I have problems
22 sleeping during the day. I do it three months a year.

23 So, these are the type of things that need to be

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1 taken into consideration when you're impacting a community
2 that is already overburdened with churches. If I stood on
3 my front step, I could hit four churches and four schools
4 just from my doorstep.

5 So, keeping that in mind with the number, that we
6 are not against the school coming, we are just trying to keep
7 the enrollment to not 600. 300 we have signed up on.

8 And the school has about 120, 130 students now,
9 so we're thinking about going from 120 students to 300, which
10 is a big increase, and then a couple years down the line,
11 600, with the same across the street.

12 So, I just want you guys to kind of get a picture,
13 and maybe even come and visit the neighborhood so you can see
14 what we're talking about, seeing all the schools and all the
15 traffic that's already there.

16 Thank you.

17 CHAIRPERSON HILL: Okay, thank you. Sir?

18 MR. CLEAVES: I'm Henderson Cleaves. I'm a
19 resident of 1515 Gallatin Street, so it's catty-corner from
20 the property. I just want to reiterate what my neighbors
21 have said here.

22 16th Street Heights is essentially in the
23 commuting corridor from Maryland to downtown. It hosts four

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1 major arterial roads -- 16th Street, 14th Street, 13th
2 Street, and Georgia Avenue.

3 There's a lot of traffic coming through there at
4 peak areas. It's already very dangerous to cross the street
5 on zebra stripes with children. That's going to get worse,
6 right? We're going to add a lot more cars.

7 I think we should bear in mind that if this zoning
8 increase is not approved, the school will not stop
9 functioning, right?

10 There will still be a place for children to go to
11 school tomorrow and everything's going to be fine, right?
12 This doesn't have to happen for this school to function as
13 it is.

14 The new location is not at the center of gravity
15 of the student body as it exists, right?

16 We've heard testimony from LAMB parents whose
17 commutes will be improved by the relocation. We have not
18 heard testimony from the many whose commutes will be
19 worsened, right? Naturally.

20 But perhaps the thing that concerns me the most
21 is the fact that there is a community public school directly
22 across the street from this proposed relocation site.

23 I don't see anybody addressing what the potential

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1 negative impacts on that community school could be from this.
2 And that really worries me a lot because community public
3 schools are glues for communities, right?

4 That's where neighbors go to school together.
5 These kind of charter schools are not that type of
6 institution.

7 So, those are my concerns.

8 CHAIRPERSON HILL: Okay, great, thank you. Does
9 the Board have any questions for the witnesses?

10 Okay. Thank you guys very much.

11 MS. DINE: Thank you for the opportunity.

12 CHAIRPERSON HILL: Okay, you all want to come
13 back? Did we lose Mr. Strand?

14 MEMBER WHITE: Yes.

15 CHAIRPERSON HILL: Oh, okay. All right, well, I
16 am glad we talked to everybody. I mean, again, the concerns
17 that everyone has is continuing to be highlighted with the
18 area here.

19 And, Mr. Uqdah, we've seen you before, but I
20 appreciate and I hope your community also appreciates the
21 time that you're putting in here for this.

22 And I'll let the Board speak however they want,
23 but again, it seems to continue to be this trust issue as to

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1 whether or not before the turnover goes from 300 to 600,
2 everyone's going to feel as though they're satisfied with the
3 capability and the possibility to make that move.

4 And so what I'd like to do now in terms of
5 continuing with this process is give you, Mr. Uqdah, an
6 opportunity again to close with whatever you'd like to.

7 And then Mr. Kadlecek, you'll again have a chance
8 for a rebuttal and closing as well.

9 But I know that what we're going to do probably
10 is ask to have all of the conditions that we've talked about
11 here again gone over with Mr. Uqdah and Mr. Strand to just
12 see if he can get any closer.

13 The one condition that Mr. Vice Chair Hart
14 mentioned in terms of clarification how it would give CNDI-LA
15 a little bit more understanding of how they'll be able to
16 submit information to the Zoning Administrator if they
17 disagree with what you're submitting to the Zoning
18 Administrator, when you do the 300 click increase.

19 So, actually let me think, I might be getting this
20 incorrect in terms of the process, because this one got a
21 little bit confusing for me.

22 So, Mr. Uqdah, do you have any cross in terms of
23 anything that's been said by Mr. Kadlecek?

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1 MR. UQDAH: Mr. Chair, with all due respect to
2 this Board, my preference at this point would be for us to
3 just move into some sort of summation because the Committee
4 has submitted voluminous documents coming from us making our
5 statements about as clear as we could possibly make them.

6 I don't have any cross examination any more than
7 I would submit to this Board that I would be more concerned
8 with those conditions that this Board would agree, as well
9 as the Applicant, that we come together and submit to you all
10 some agreed-upon conditions.

11 And not have you just accept our conditions or
12 just accept their conditions without us having the
13 opportunity to be able to review them.

14 CHAIRPERSON HILL: We're going to give you that
15 opportunity.

16 MR. UQDAH: Okay.

17 CHAIRPERSON HILL: And so, Mr. Kadlecek, do you
18 have anything in terms of cross, rebuttal, or conclusion?

19 MR. KADLECEK: Before I get to that, there's just
20 a process question I guess I just want to understand first.

21 At the conclusion of this Hearing, then, it will
22 just be a matter of us submitting conditions for the Board
23 to consider.

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1 Is that where you were going?

2 CHAIRPERSON HILL: I'm going to see what happens
3 with the rest of the Board, but kind of where I am is that
4 after this Hearing, I would like to see whatever the
5 conditions are that you have now refined -- after giving Mr.
6 Uqdah an opportunity to look at them -- and see if you can't
7 get together, right?

8 If not, whenever you submit your conditions, Mr.
9 Uqdah, you'll have seven days after that date, whatever date
10 we decide on in terms of when we're going to see those
11 conditions, you'll have seven days to respond to any of the
12 submissions.

13 So, if you guys disagree with whatever it is, if
14 you disagree with the conditions or if you want to submit new
15 conditions, that's your opportunity to reply back to the
16 conditions that we're asking for in terms of the
17 clarification.

18 I know you guys just got this today and we just
19 got this today.

20 I think we have gotten a little bit more clarity
21 as to how this might function better with some of the
22 suggestions that have come up here from the Board, and that
23 would be where I am.

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1 And then after this, we just put it on for
2 decision. And so that's where we are.

3 MR. KADLECEK: That's what I was trying to
4 understand. Thank you.

5 CHAIRPERSON HILL: Okay, all right.

6 MR. KADLECEK: I did have a couple of --

7 CHAIRPERSON HILL: I think Mr. Uqdah, you're done,
8 correct?

9 MR. UQDAH: Well, I'm hearing what you're saying
10 but if I could just state this, and someone let me know if
11 I'm on the right track?

12 CHAIRPERSON HILL: Sure, go ahead.

13 MR. UQDAH: When I leave here today, it is my
14 understanding that we are to look at the conditions that were
15 submitted to us yesterday.

16 And should we submit comments to the Applicant as
17 to our response to those conditions?

18 CHAIRPERSON HILL: What I would hope is that you
19 have an opportunity -- and there will be enough time for this
20 to kind of work its way through -- that you would have an
21 opportunity to look at these conditions, make some comment
22 on those conditions, confer with the Applicant again, see if
23 you can agree to whatever issues you have with the

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1 conditions.

2 And then the Applicant would submit whatever those
3 -- the Applicant would eventually get an opportunity to
4 submit whatever conditions they approve, okay?

5 And then you would have seven days to be like, we
6 submitted something that was nothing like this, we don't
7 agree to any of this. And you can talk through it.

8 And then the Board would have a chance to look at
9 both those and make a decision.

10 MR. UQDAH: Here is my concern, and this will be
11 the last statement on these conditions.

12 I have asked several times for everyone involved
13 in this -- the Applicant, the ANC, and the Councilman -- to
14 look at the conditions that CNDI-LA has presented to them and
15 tell us which one of those conditions do you not like.

16 What I'm not happy with is that I'm being asked
17 to consider the Applicant's conditions, but the Applicant is
18 not being asked to consider our conditions. And that seems
19 to be a little imbalanced.

20 That's unfair because we have presented conditions
21 that were based on the Applicant's conditions, but we
22 presented them in detail.

23 So, what is it about those details that the

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1 Applicant and the ANC and the Council representative do not
2 like? That's a simple question.

3 CHAIRPERSON HILL: I mean, Mr. Uqdah, we're not
4 up here to --

5 MR. UQDAH: I don't mean to frustrate you.

6 CHAIRPERSON HILL: I'm just saying, we're not up
7 here to negotiate all the different conditions. It would
8 take even an hour longer than we've been here now, or maybe
9 longer than that.

10 And I'm not trying to discourage you in terms of
11 the conditions that CNDI-LA put forward. It's their
12 application, so they're the ones that are putting the
13 application forward.

14 MR. UQDAH: All right, so that answers that
15 question.

16 CHAIRPERSON HILL: I'm just saying it's their
17 money, it's their application, it's what they are doing.

18 And then the Board gets to determine, based upon
19 the input from the ANC, which we give great weight to, and
20 also the Office of Planning, which we give great weight to,
21 whether or not they meet the standard for us to either
22 approve or deny whatever they're asking for.

23 MR. UQDAH: I can see that point.

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1 CHAIRPERSON HILL: And in this case, they're
2 asking for a special exception to allow this from happening
3 -- I mean allow this to happen.

4 And I don't want you to be confused because I
5 don't want to be confused, in that we're going to go ahead
6 and get some conditions.

7 You're going to have an opportunity to look
8 through everything, you're going to have an opportunity to
9 give your comments to Mr. Kadlecek.

10 Mr. Kadlecek will have an opportunity to talk with
11 CNDI-LA and agree or disagree with whatever you all come up
12 with, and then you're going to submit something to us.

13 And then you will have an opportunity to either
14 agree or not agree with what is submitted, and then we'll
15 have a chance to vote.

16 MR. UQDAH: That's fair.

17 CHAIRPERSON HILL: Okay. Mr. Kadlecek, it's back
18 to you.

19 MR. KADLECEK: Thank you, that actually made it
20 very clear so I appreciate that. I just wanted to end with
21 a very few short, final points.

22 One is, I know it probably goes without being
23 said, but I just wanted to be clear that the school is not

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1 insensitive to what the intent of the R16 zoning overlay is
2 about.

3 I mean, that is why the school has tried as hard
4 as it can to compromise, find middle ground, and be sensitive
5 to the concerns.

6 I don't know any charter school in this city that
7 is willing to agree to 35-some odd conditions. I think that
8 is a demonstration of good faith in the school's interest in
9 trying to find common ground and work together with the
10 community.

11 The other thing that I wanted to point out is
12 there is, in fact, pretty broad support for this school in
13 many aspects. There are over 60-some letters in the record
14 of support for the school.

15 Many of those are residents of the ANC 4C. There
16 is a lot of support for the school in this location, so I
17 just don't want that piece to be lost.

18 And then, finally, what seems to sort of underpin
19 a lot of this concern, I think, is this idea of we don't know
20 what's going to happen in the future, and that's an
21 understandable concern.

22 But I want to remind the Board that LAMB already
23 operates in three different locations. I think if LAMB were

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1 problematic in those locations, that information probably
2 would have come out at some point by now.

3 CNDI-LA has been very thorough in the information
4 they've provided to the Board, and I think the reason that
5 there's been no information about that is because LAMB is a
6 good neighbor.

7 And there is a demonstrated history of LAMB
8 operating in neighborhoods and that they're a good neighbor.

9 So, I think that's another thing to keep in mind
10 when thinking about whether these conditions are workable,
11 because we know that LAMB has a track record of operating on
12 three campuses in three different neighborhoods and being a
13 good neighbor.

14 So, thank you.

15 CHAIRPERSON HILL: Okay, does the Board have
16 anymore questions for anybody?

17 CHAIRPERSON HOOD: I don't want to undo, I'm
18 definitely not going to undo anything that you mentioned, but
19 I just want to put my thoughts out there.

20 I'm still having a problem, and I know this goes
21 way back, I'm still trying to figure out why, and I think I'm
22 sure Mr. Kadlecek's going to tell me it's financial, why
23 they're not coming back to the Board as they do those

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1 increases. I haven't gotten over that yet.

2 I've heard the conversation, I understand a lot
3 of it's financial. And I also understand the Latin Americans
4 among us who are buying charter schools that have excellent
5 reputations across the city. I'm aware of all that.

6 But also, as they move forward with these
7 conditions, my recommendation also would be to add what
8 you've already said, not to mix it up anymore. I've seen the
9 Applicant as well as the parties in opposition, sit down.

10 First of all, see what you agree on. Start from
11 there, and then start trying to craft and work together what
12 you disagree on, and see if you can find tools to put the
13 language the way you can always agree, so when they come back
14 to us, it will make it a lot easier.

15 So, we won't have to sit up here and look at 35
16 conditions or however many there are, 40, 30, whatever it is,
17 and it makes it for us a little easier.

18 Start off with you agree, and then the ones you
19 disagree, and I'm just throwing this out there, the ones
20 where you disagree, see if you can make it so it works for
21 both.

22 That's just where I am on that, so that's my two
23 cents.

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1 CHAIRPERSON HILL: Okay, so all right. So, what
2 I think was the timing, so now, how long -- now, Mr. Moy, I'm
3 going to turn to you a little bit, and maybe I'll ask the
4 Applicant and CNDI-LA.

5 How much time do you think you need, Mr. Uqdah,
6 in terms of reviewing this, and then working with Mr.
7 Kadlecek to kind of determine which conditions you can live
8 with, can't live with?

9 I mean, I do want to start off, and I do think
10 that we would be hopeful that you're trying to get to a place
11 where you feel comfortable if this were to move forward, and
12 that's what I kind of think.

13 And it sounds like there has been a lot of time.

14 If you went all the way to Councilman Todd's
15 office and you all met again a couple times, this is almost
16 turning into a job for you as well, Mr. Uqdah, that you're
17 not getting paid for.

18 And so it sounds like you're a Board Member up
19 here.

20 So, the time that you need, I mean, it can only
21 be like a week, right, to kind of look at those conditions
22 and see what you'll think you have issues with?

23 MR. UQDAH: Rami, I'll let you address that

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1 because my schedule's a little more flexible.

2 MR. RIHANI: I already was sworn in, but my name
3 is Rami Rihani, I live at 1505 Emerson.

4 CHAIRPERSON HILL: Okay, Mr. Rihani, I'm sorry,
5 Vice Chair Hood just pointed out something -- Chairman Hart,
6 sorry. Chairman Hood is back -- Hart, Hood -- Chairman Hood
7 is back here on the 17th again.

8 So, if we work backwards from the 17th. So the
9 17th is a Wednesday. So, if we can get your final stuff, Mr.
10 Kadlecek, by the 9th, okay?

11 So, Mr. Uqdah, if you see by the 9th, after you
12 guys have talked by the 9th, you'll see what Mr. Kadlecek is
13 submitting.

14 And then you have seven days after that to submit
15 something to the Board, if you have any concerns about what
16 Mr. Kadlecek is submitting.

17 Hopefully, the only thing you submit to the Board
18 is that we've come to an agreement, and we believe that
19 they're going to do their best -- not that they're going to
20 do their best -- we have ways in which to feel confident that
21 this is going to work.

22 And so the 9th, Mr. Kadlecek, you'll submit?

23 MR. KADLECEK: Yes, and like we mentioned, they

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1 already have our draft, so we'll just wait for a comment.

2 CHAIRPERSON HILL: Okay, so get comments to them
3 as soon as you can, okay?

4 MR. RIHANI: Excuse me?

5 CHAIRPERSON HILL: Sure, of course.

6 MR. RIHANI: What Vice Chair Hart was saying about
7 Condition 30, are you going to first revise that to what --

8 CHAIRPERSON HILL: Actually, why don't you revise
9 that first, Mr. Kadlecek?

10 MR. KADLECEK: I'll make the two revisions that
11 we talked about today, and then we'll send you that. But
12 otherwise, it will not be any different than what we sent
13 yesterday.

14 CHAIRPERSON HILL: Okay.

15 MR. RIHANI: I think if you do that, and then
16 we'll --

17 CHAIRPERSON HILL: Okay, so, Mr. Kadlecek, that
18 won't take you by this afternoon, right?

19 MR. KADLECEK: We'll do that today.

20 CHAIRPERSON HILL: Okay, so go ahead and flip
21 that, and then you're going to have the conditions with the
22 changes to Condition Number 30 by the end of today.

23 But you can look at all of the other conditions

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1 right now, okay?

2 So, all right, does anybody have anything else?

3 Okay, so, Mr. Moy, we're back here on the 17th for a
4 decision.

5 SECRETARY MOY: Okay, January 17th for a decision.

6 Responses from CNDI-LA and also I believe the ANC,
7 if they wish to, by the 16th of January, and the Applicant
8 to file hopefully an agreed-upon set of conditions by January
9 9th.

10 Right?

11 CHAIRPERSON HILL: Yes, as the ANC, you're a party
12 so you can submit whatever has been -- you are a party to
13 this case. So, the ANC is able to submit anything went
14 through, anything that's been submitted.

15 So, on the 9th, Mr. Kadlecek is going to submit
16 his conditions, and then you can also submit something by the
17 10th, if you like, and I'm looking at the ANC.

18 And you're welcome to speak into the microphone
19 if you have a question.

20 MS. BARRY: I have a clarifying question. Does
21 that have to be based at our ANC Meeting if we have to
22 comment?

23 I'm just confused about what's expected because
24 we've now sent two letters, two --

25 CHAIRPERSON HILL: Sure, there's nothing the ANC

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1 needs to submit. If they want to submit, they can submit by
2 the tenth.

3 MS. BARRY: Okay, and then as a party in this
4 case, I have not been included in the negotiations, which is
5 fine.

6 So, they're just going to be working out because
7 I know some Members have rejected the idea that I've been
8 involved.

9 CHAIRPERSON HILL: No, that's okay.

10 And I apologize, this is just because of the
11 regulations, I was just trying to clarify that the ANC has
12 an opportunity, and Mr. Kadlecsek, as an attorney, can clarify
13 it a little bit better possibly, that you have an opportunity
14 to comment on what it is in the record.

15 So, you don't have to comment; I'm just letting
16 you know that option is there for you.

17 MS. BARRY: All right, thank you.

18 CHAIRPERSON HILL: Okay. Mr. Moy?

19 SECRETARY MOY: No, I think Staff doesn't need
20 anymore.

21 CHAIRPERSON HILL: Okay. Are we all clear? Okay,
22 then, happy holidays and see you on the -- well, or you can
23 watch on TV.

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1 We're going to just, you know, do a decision on
2 the 17th. Okay, that's it.

3 MR. ZAYETS: Thanks, everybody. Thank you.

4 CHAIRPERSON HILL: Mr. Moy, I know we talked about
5 a break, but why don't we go ahead and do the next case, the
6 appeal, and then we'll take a break?

7 So, after this next case, which is 19632, then
8 we're going to take a break. So, we're going to take 20
9 minutes at least, after this is done. Just thought everybody
10 should know.

11 SECRETARY MOY: Okay, that is Appeal Number 19632
12 of AMT-Varnum LLC.

13 This is a decision made on August 23rd, 2017, by
14 the Zoning Administrator, Department of Consumer and
15 Regulatory Affairs, to deny Building Permit B1611940 to
16 construct a new three-story flat.

17 This is in RF-1 Zone at 1523 Varnum Street NW,
18 Square 2698, Lot 46.

19 As the Board will recall, our motion's to
20 intervene by John Stokes under Exhibits 20, 21, and Ms. Leila
21 Joseph under Exhibit 22 and 23. And there were other last-
22 minute filings last night from parties.

23 CHAIRPERSON HILL: Okay, great. There's some

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1 preliminary motions here. Are the interveners here? The
2 interveners are not here, okay.

3 All right, could you please introduce yourselves,
4 from my right to left?

5 MR. TONDRO: Yes, Maximilian Tondro on behalf of
6 the Zoning Administrator and DCRA.

7 MR. SULLIVAN: Martin Sullivan from Sullivan &
8 Barros, on behalf of the Appellant.

9 CHAIRPERSON HILL: All right, so as I understand,
10 the preliminary matter is that there has been a request to
11 postpone. And as I understand it, DCRA is fine with that and
12 the Applicant is fine with that?

13 MR. TONDRO: Yes, Chairman Hill.

14 MR. SULLIVAN: Yes, it was our request.

15 CHAIRPERSON HILL: Okay, and I'm sorry, part of
16 why I was really interested in getting through this now is
17 I had thought the interveners were going to be here.

18 But also, you don't have any issues with the
19 interveners being given intervener status?

20 MR. TONDRO: On behalf of DCRA, we consent. We
21 have no objections.

22 MR. SULLIVAN: And on behalf of the Appellant, we
23 also have no objection.

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1 CHAIRPERSON HILL: Okay, so if the Board is
2 comfortable with this, I would go ahead and grant intervener
3 status to the interveners, as well as grant the postponement.

4 Mr. Sullivan, I didn't see, when were you trying
5 to postpone until?

6 MR. SULLIVAN: Our request was the 10th or the
7 earliest convenient date thereafter.

8 CHAIRPERSON HILL: The tenth. So, I think the
9 17th, Mr. Hood is going to be back here again. Well, Mr.
10 Hood, you already ran in.

11 Okay, so we're going to move it to the 17th, okay?
12 Mr. Moy, is that all right?

13 SECRETARY MOY: Okay, I have it.

14 CHAIRPERSON HILL: All right, and I don't know,
15 if the interveners are watching, I would hope that they could
16 possibly get together and act as one. But I guess we can
17 work that out and see when they get here.

18 But, the interveners, if you are watching, please
19 know what will be asked of you when you come. Be ready to
20 present. Thank you.

21 All right, thank you gentlemen. So now we're
22 going to take a 20-minute break. All right.

23 (Whereupon, the above-entitled matter went off the

1 record at 12:54 p.m. and resumed at 1:27 p.m.)

2 CHAIRPERSON HILL: All right, Mr. Moy, we're ready
3 to get going again? Okay. I think, actually, if we can go
4 back to -- there was a decision case that we put off,
5 correct?

6 SECRETARY MOY: Yes, there was. Okay, the second
7 and last decision-making case is Appeal Number 19573 of
8 Nefertiti Makenta.

9 This is captioned as the decision made on May 26,
10 2017, by the Zoning Administrator, Department of Consumer and
11 Regulatory Affairs, to issue building permit number B1707364,
12 amending Building Permit B1603868 to alter the approved
13 third-floor addition in the RF-1 Zone at premises 3616 11th
14 Street NW, Square 2829, Lot 169.

15 Again, this is a decision-making case and there
16 are preliminary matters to this record.

17 CHAIRPERSON HILL: Okay, great, thank you, Mr.
18 Moy.

19 Is the Board ready to deliberate?

20 MEMBER WHITE: Yes.

21 CHAIRPERSON HILL: Okay, so what was happening
22 here with this particular case again is that we were set for
23 a decision today and the DCRA had put in a request to open

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1 the record.

2 And I can't recall the date in front of me right
3 now but they had requested to open the record to submit some
4 clarification concerning the argument concerning Penthouse.

5 And we opened the record for that, for their
6 comments, and then after that, the parties would have seven
7 days with which to respond to that Exhibit.

8 The Applicant had requested later filing -- I'm
9 sorry, had requested to submit something late because they
10 had missed the seven days, and also had requested for a
11 postponement to the Hearing.

12 So, what I had decided was to go ahead and grant
13 the Applicant time to present to that Exhibit. And that time
14 that we allowed the Applicant was supposed to be yesterday
15 at 5:00 p.m., so that it would give us enough time to look
16 at the information and then still make a decision today.

17 The Applicant missed that deadline and we didn't
18 receive anything from the Applicant until this morning.

19 The Applicant also, in the submission, asked for
20 some motions, one of which was to reopen the record to allow
21 that into the record, and then also to continue to ask for
22 a postponement. And there was some issues about a testimony
23 from an ANC Commissioner.

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1 Again, out of an abundance of caution now, I
2 would, and please, after I'm through, any Board Members speak
3 up in terms of their thoughts on this, I would go ahead and
4 move to grant in part, and deny in part, in terms of the
5 motion.

6 I would be approving to reopen the record to allow
7 the information that the Applicant had submitted into the
8 record.

9 I would not be granting a postponement, although,
10 this is basically what is going to end up happening, but
11 would not be granting a postponement.

12 And based on what information was put forward,
13 there was information that an ANC Commissioner was here at
14 the last Hearing and did not have an opportunity to speak.

15 And to speak to that point, the way that it is
16 supposed to happen in terms of appeals is that we, the Board,
17 say that all parties please come to the table for appeals.

18 The ANC is an automatic party to anything that has
19 taken place, including that appeal, and they should have come
20 forward, and they would have had an opportunity to speak.

21 The fact that the ANC didn't know that and that
22 they thought perhaps that there was going to be an
23 announcement made, the announcement wasn't made, and then the

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1 ANC Commissioner didn't speak.

2 I'm a little surprised that the Applicant would
3 not have pointed out that the ANC Commissioner is here and
4 would like to speak, given the fact that this has been an
5 extremely long case, and the record is extremely full, and
6 this has been litigated for quite some time.

7 I would like to point out again for the record
8 that I left at one portion during the testimony and have
9 reviewed the entire record again, including the testimony
10 that was given after I left. I watched the video and read
11 through the record.

12 So, what I would be putting forth towards the
13 Board is that granting the motion to reopen the record now
14 for limited testimony only from the ANC Commissioner, I
15 guess, Sharon Farmer, and that would be written testimony.

16 And then we would be able to take a look at that
17 written testimony and then the parties would have only seven
18 days, which is the regulations, per the regulations, seven
19 days to respond to that testimony.

20 After that seven-day window is closed, we will not
21 be taking anymore testimony, and the testimony that we would
22 be taking is only that of the written testimony from the ANC
23 Commissioner.

1 This is not to reopen the record or reopen an
2 argument about the appeal. It is just merely for the parties
3 to comment on whatever the ANC Commissioner may or may not
4 submit.

5 I don't know whether they are going to submit
6 something. And then we could set it for a decision date.

7 I would further state that since this has been a
8 very long case and this has been very much litigated in a
9 variety of different ways, and that Chairman Hood is here and
10 has been here for the testimony, I would ask that perhaps,
11 again, everything seems to be loaded up now onto the 17th,
12 and I apologize Mr. Hood, but put this back on for the 17th
13 for decision so that Chairman Hood can speak to the decision.

14 Does the Board have any thoughts on anything I
15 just said?

16 MEMBER WHITE: No, I would agree with you, Mr.
17 Chair, that we allow that period of time for the ANC
18 Commissioner to submit written testimony by -- I missed the
19 date that you said? -- within seven days.

20 So, I think January 17th is a good date for us to
21 have the decision. So, to be cautious, I think I agree with
22 you that we should at least give them opportunity to submit.

23 CHAIRPERSON HOOD: I would concur. Mr. Chairman,

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1 as we move forward, as you all have said, an abundance of
2 caution, and also, proceed with caution.

3 There's been a lot of things that have been added
4 and taken away in this appeal and I think that going forward
5 now, I think that if we allow -- I know your motion is to
6 reopen the record.

7 I definitely agree, reopen the record just for the
8 ANC person and then allow responses within seven days. I
9 think that's the way to do it.

10 And also, I would appreciate us making a decision
11 on the 17th when I return, because I want to look at some
12 more things on this case.

13 Thank you.

14 CHAIRPERSON HILL: Okay, so, Mr. Hart, are you
15 okay?

16 So, Mr. Moy, then, we're going back to the -- we
17 would ask, and if you would, Mr. Moy, please reach out to the
18 Commissioner and let the Commissioner know that we're
19 reopening the record for any written testimony that she might
20 have to give.

21 And we'd like that testimony no later than the 9th
22 of January.

23 Because if we do the Hearing on the 17th, seven

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1 days from that gives you until the 16th for us to get
2 responses.

3 Or is it the 15th?

4 SECRETARY MOY: And that would be January 9th,
5 then, from the ANC, right? Which is a Tuesday?

6 CHAIRPERSON HILL: Yes.

7 SECRETARY MOY: And seven days response would be
8 Tuesday, January 16th?

9 CHAIRPERSON HILL: Yes.

10 SECRETARY MOY: Responses from the parties and a
11 decision on January 17th?

12 CHAIRPERSON HILL: Yes.

13 SECRETARY MOY: Very good.

14 CHAIRPERSON HILL: And so just to be clear again,
15 this is only to reopen the record for written testimony from
16 the ANC Commissioner who, I guess, was here and
17 unfortunately, did not have an opportunity to testify.

18 And so we're going to get written testimony from
19 that, then all parties can submit any responses to that
20 submission by the 16th.

21 And the record is only open for that; we're not
22 taking anything else.

23 SECRETARY MOY: Understood, and Staff will reach

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1 out to that ANC person.

2 CHAIRPERSON HILL: Okay, all right. Does the
3 Board have anything else to add? Okay, all right. Thank
4 you, Mr. Moy.

5 All right, Mr. Moy, if you can call our next
6 Hearing case?

7 SECRETARY MOY: All right, thank you, Mr.
8 Chairman. I believe we're back to the top of the batting
9 order, which is City Corner Market, correct?

10 CHAIRPERSON HILL: Yes.

11 SECRETARY MOY: If so, then if I can have the
12 parties to the table to Application Number 19650 of City
13 Corner Market, Inc.?

14 Captioned and advertised for special exception
15 under the use provisions of Subtitle U, Section 254.

16 This would permit a corner store in the RF-1 Zone
17 at premises 2601 Sherman Avenue NW, Square 2884, Lot 61.

18 CHAIRPERSON HILL: Okay, thank you. Good
19 afternoon, if you could please introduce yourselves, from my
20 right to left? And you need to push the microphone.

21 And did you guys get sworn in earlier?

22 MS. CHAN: Yes.

23 CHAIRPERSON HILL: Did you get sworn in earlier?

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1 MS. CHAN: Yes.

2 CHAIRPERSON HILL: Okay. If you could just
3 introduce yourselves?

4 MS. YOHANNES: Good afternoon, Sidon Yohannes on
5 behalf of the Applicant.

6 MS. CHAN: Hi, good afternoon, I'm the City Corner
7 Market owner. My name is Yin C. Chan.

8 CHAIRPERSON HILL: Your last name is Chen, C-H-E-
9 N?

10 MS. CHAN: C-H-A-N. Thank you.

11 CHAIRPERSON HILL: Is it Ms. Hanas?

12 MS. YOHANNES: Yohannes.

13 CHAIRPERSON HILL: Yohannes, sorry. Okay, so Ms.
14 Yohannes, you're going to be presenting to us?

15 MS. YOHANNES: Yes.

16 CHAIRPERSON HILL: Okay. I don't really have a
17 lot of questions in terms of the overall presentation.

18 If you could go ahead and again just let us know
19 what you're intending to try to do, and then if you could
20 tell us how you're meeting he standards for us to approve the
21 project, in terms of the special exception?

22 I'm going to put ten minutes on the clock, just
23 so I know where we are in terms of the length, Mr. Moy. And

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1 you can begin whenever you like.

2 MS. YOHANNES: Sure. City Corner Market is
3 located at 2601 Sherman Avenue in RF-1 Zone.

4 So, Applicant seeks a special exception under
5 Subtitle U, Section 254.14, to operate a constant constrain
6 corner store for retail use with off-premises sales of beer
7 and wine.

8 Currently, City Corner Market is operating as a
9 corner store or as a retail grocery store and has been doing
10 so since May 1, 2014.

11 The property has been used as a retail grocery
12 store for over 20 years, and even beyond that, before 2010,
13 was selling off-premises beer and wine.

14 Applicant satisfies the special exception
15 requirements of Subtitle U, 254.14. City Corner Market is
16 located at the intersection of Sherman Avenue and Euclid.
17 It's not within 500 feet of any eating establishment or
18 another retail general-use corner store.

19 And Applicant's use will not create noise,
20 traffic, deliveries, or other objectionable conditions, being
21 that that property has been used as a grocery store for over
22 20 years there.

23 And it serves the people in the community,

1 primarily serving nearby residents, and there is no
2 anticipated adverse impacts from traffic or from noise,
3 because nothing really is changing except for the request for
4 off-premises sales of beer and wine.

5 And as you probably can see from the Exhibits that
6 have been submitted, there's been great support from the
7 community and the Applicant.

8 The owner of City Corner Market has been trying
9 to get their license, their ABRA license, their liquor
10 license, for the past couple of years, and the ANC has been,
11 before our firm got involved, really involved in trying to
12 push this forward.

13 Regarding some of the other provisions and
14 requirements of the corner store regulations, the market is
15 on the ground floor and it's less than 1200 feet. The
16 Applicant will have about two to three employees.

17 The proposed hours of operation would be from 9:30
18 a.m. to 9:30 p.m., Sunday through Thursday; Friday and
19 Saturday, 9:30 a.m. to 10:00 p.m. There is no changes
20 regarding any of the signage.

21 The Applicant does not intend to have any outdoor
22 seating or any amplified music of any sort on the outside.

23 And I just want to, I guess, press that this

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1 establishment has just a lot of support and has had support
2 since 2014. You can see the Exhibits, Exhibit 31, 32, 37,
3 42, 43, and Exhibit 48 to 50.

4 We've submitted a petition that is from 2014
5 regarding the liquor license, and that was just to show --
6 because, initially, what ANC did back in 2014 was take a vote
7 for supporting the ABRA application, as well as the
8 anticipated BZA application.

9 No BZA application was submitted at that time, and
10 so they did another vote last month, just for the BZA
11 application that was submitted. And I think also submitted
12 to this Board a letter of support and resolution, signing off
13 and saying that they support this establishment.

14 So, this proposal and this application, and if the
15 Board grants this application, will not adversely affect the
16 neighborhood or the neighboring properties. And we believe
17 that it's in harmony with the intent of the regulations.

18 CHAIRPERSON HILL: Okay, great, thank you.

19 There was a couple of conditions that the Office
20 of Planning had, and if you could just tell me whether or not
21 you're in agreement with them?

22 The hours of operation shall not exceed 9:30 a.m.
23 to 9:30 p.m. on Sunday through Thursday, and 9:30 a.m. to

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1 10:00 p.m. on Friday and Saturday?

2 MS. YOHANNES: Yes.

3 CHAIRPERSON HILL: No more than 15 percent of the
4 ground floor area of the ground floor of the store shall be
5 devoted to the sale of alcoholic beverages including beer and
6 wine to be consumed off-premises?

7 MS. YOHANNES: Yes.

8 CHAIRPERSON HILL: Okay. All right, I'm going to
9 turn to the Office of Planning.

10 MS. THOMAS: Good afternoon, Mr. Chair, Members
11 of the Board. Karen Thomas with the Office of Planning. We
12 reviewed this application. We don't have anything further
13 to add than what's in our report.

14 We accept the fact that this corner store has been
15 in operation for over 20 years, and the Applicant in this
16 case is just requiring special exception relief to provide
17 the sale of beer and wine for off-premise use.

18 CHAIRPERSON HILL: Okay, great, thank you. Does
19 the Board have any questions for the Office of Planning?

20 Does the Applicant have any questions for the
21 Office of Planning?

22 MS. YOHANNES: No.

23 CHAIRPERSON HILL: Okay. Is there anyone here

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1 from the ANC? Is there anyone here who wishes to speak in
2 support? Is there anyone here who wishes to speak in
3 opposition?

4 All right. Is there anything else you would like
5 to add?

6 MS. YOHANNES: No, that's it.

7 CHAIRPERSON HILL: All right, then I'm going to
8 go ahead and close the Hearing. Is the Board ready to
9 deliberate?

10 Okay, after reviewing the record, and then
11 particularly the report from Office of Planning as to how the
12 criteria is being met, as well as the great weight that we
13 give to the ANC 1B, which was in support 11-0-0, including
14 their analysis.

15 I don't really have any issues with the special
16 exception request.

17 Does anyone else have anything to add?

18 MEMBER WHITE: No, I would just say that it
19 appears they've been in business there for a number of years
20 and seems to have been a good neighbor to the community.

21 So, I think they've met the criteria and the
22 record should reflect that they've met the special exception
23 criteria under Subtitle U, 254 for corner-store use.

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1 CHAIRPERSON HILL: Okay, then I'll go ahead and
2 make a motion to approve Application Number 19650 as
3 captioned and read by the Secretary, and ask for a second?

4 CHAIRPERSON HOOD: Second, I'm sorry.

5 CHAIRPERSON HILL: The motion has been made and
6 seconded. All those in favor?

7 (Chorus of ayes.)

8 CHAIRPERSON HILL: All those opposed? The motion
9 passes. Mr. Moy?

10 SECRETARY MOY: Before I read the vote, I'm
11 assuming your motion included the two conditions, correct?

12 CHAIRPERSON HILL: Oh, I'm sorry, thank you, Mr.
13 Moy. Yes, it did include the two conditions.

14 SECRETARY MOY: So, the Staff would record the
15 vote as 4-0-1. This is on the motion of Chairman Hill to
16 approve the application for the relief requested, along with
17 two conditions.

18 Seconding the motion, Mr. Hood; also in support,
19 Ms. White, Vice Chair Hart. We have a Board seat vacant.
20 The motion carries.

21 CHAIRPERSON HILL: A Summary Order, Mr. Moy?

22 SECRETARY MOY: Thank you.

23 CHAIRPERSON HILL: Thank you, thank you so much.

1 MS. YOHANNES: Thank you.

2 SECRETARY MOY: The next case application, I
3 believe -- if I can have parties to the table to Application
4 Number 19656? -- this is of Mark and Cynthia Moyer, captioned
5 and advertised for variances from the floor area, ratio
6 requirements, Subtitle F, Section 302.1, non-conforming
7 structure requirements, Subtitle C, Section 202.2.

8 This would construct a rear attic dormer in an
9 existing one-family dwelling, RA-2 Zone, at premises 2517 Q
10 Street NW, Square 1287, Lot 820.

11 CHAIRPERSON HILL: All right, if you could please
12 introduce yourselves, from my right to left?

13 MR. ROUSE: Michael Rouse, Principal Architect at
14 Michael Patrick Rouse Architecture, PLLC.

15 SECRETARY MOYER: Mark Moyer, owner of the
16 residence 2517 Q Street NW.

17 CHAIRPERSON HILL: All right, Mr. Rouse, I suppose
18 you're going to be presenting to us?

19 MR. ROUSE: Correct.

20 CHAIRPERSON HILL: I've really got to tell you,
21 we have a lot of things going on today and so I don't really
22 have a lot of questions for you. I think it's really pretty
23 straightforward.

1 If you want to go ahead, however, and tell us a
2 little bit about the project and then the how you're meeting
3 the relief for the request.

4 And then I will turn to the Office of Planning to
5 hear their thoughts, which you already know, because it's in
6 the record.

7 But, please, start whenever you like.

8 MR. ROUSE: Sure. My clients, Mark and Cynthia
9 Moyer, owners of the property at 2517 Q Street, want to put
10 on a third-story addition on the roof.

11 This addition would be within the building
12 footprint, it would not increase the lot coverage.

13 However, it does put us over our FAR requirements,
14 so we're seeking a variance relief from that, and also, a
15 variance relief for additions to structures that are
16 currently non-conforming.

17 The FAR, when all is said and done with the dormer
18 at the top, gets us to I believe 1.98.

19 Because our lot is shallow and narrow in size,
20 it's an undersized lot for that area, it's the smallest in
21 the neighboring seven, it is land-locked. Therefore, it has
22 to have its parking space on the property, which serves as
23 a ground-floor garage.

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1 With the dormer, if we were to back out the FAR
2 with the dormer, our lot would still be one of the smallest
3 out of the seven. I believe it would be 1105 if we kind of
4 did it backwards.

5 We feel that granting this variance, there's no
6 detriment to the public good since the dormer is located in
7 the central mass of the building.

8 So, there's no blocking of light and air of the
9 neighbors and we feel that if the variance is granted, it
10 will not substantially impact or impair the intent, purpose,
11 or integrity, again, because of its size.

12 It would be such a small addition.

13 CHAIRPERSON HILL: Okay, all right, thank you.
14 Mr. Moyer, you've been here all day. Things seem to be
15 working well for you,
16 but do you want to say anything?

17 SECRETARY MOYER: No, my wife and I intend to make
18 this our primary residence and, thus, we're trying to add the
19 bedroom.

20 CHAIRPERSON HILL: Okay, I didn't want you to feel
21 cheated since you've been here all day.

22 SECRETARY MOYER: I appreciate it, thank you.

23 CHAIRPERSON HILL: Can we turn to the Office of

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1 Planning, please?

2 MS. ELLIOTT: Good afternoon, I'm Brandice Elliott
3 with the Office of Planning, and we are going to go ahead and
4 stand on the record as recommending approval for the
5 requested FAR variance.

6 I'm happy to answer any questions you might have.

7 CHAIRPERSON HILL: Okay, does the Board have any
8 questions for the Office of Planning?

9 CHAIRPERSON HOOD: Ms. Elliott, I do have a
10 question. Did Chairman Hill get your name right?

11 MS. ELLIOTT: Most of the time. I'm sorry, I
12 can't think of a time when Chairman Hill hasn't gotten my
13 name correct, but we've come a long way.

14 CHAIRPERSON HILL: Okay, I'm being blindsided up
15 here. I mean literally from the left. Okay, other than that
16 question, does the Board have any questions for the Office
17 of Planning?

18 All right, does the Applicant have any questions
19 for the Office of Planning? Okay. Is there anyone here from
20 the ANC?

21 Is there anyone here wishing to speak in support
22 of the application? Is there anyone here that wishes to
23 speak in opposition of the application? All right.

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1 Sir, back to you, do you have anything else you'd
2 like to add?

3 MR. ROUSE: No, not at this time.

4 CHAIRPERSON HILL: Okay, I'm going to close the
5 Hearing. Is the Board ready to deliberate?

6 Okay, well, as I obviously mentioned, we read
7 through the entire record and I think that it's very clear
8 in terms of the explanation that the Office of Planning has
9 provided into how the standard is being met.

10 And so as well as the support of the ANC 2E and
11 how they have come to their determination in how the standard
12 has been met, I don't have any issues with this application.

13 Does the Board have anything else they'd like to
14 add?

15 Okay, then I'm going to go ahead and make a motion
16 to approve Application 19656 as captioned and read by the
17 Secretary, and ask for a second?

18 MEMBER WHITE: Second.

19 CHAIRPERSON HILL: The motion has been made and
20 seconded. All those in favor?

21 (Chorus of aye.)

22 CHAIRPERSON HILL: All those opposed? Motion
23 passed, Mr. Moy.

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1 SECRETARY MOY: Staff would record the vote as 4-
2 0-1. This is on the motion of Chairman Hill to approve the
3 application for the relief requested.

4 Seconding the motion, Ms. White; also in support,
5 Mr. Hood, Vice Chair Hart. We have a Board seat vacant. The
6 motion carries.

7 CHAIRPERSON HILL: All right, great, a Summary
8 Order, Mr. Moy?

9 SECRETARY MOY: Yes, thank you, sir.

10 CHAIRPERSON HILL: Okay, thank you all very much.
11 All right, Mr. Moy.

12 SECRETARY MOY: Okay, if we can have parties to
13 the table to Case Application number 19655? This is Benjamin
14 Flowers, captioned and advertised for special exceptions
15 under the non-conforming structure requirements, Subtitle C,
16 Section 202.2, Subtitle G, 1200, from the lot occupancy
17 requirements of Subtitle G, Section 40441, and from the side
18 yard requirements of Subtitle G, Section 406.2, and under
19 Subtitle G, Section 1201, from the rear yard requirements,
20 and Subtitle G, Section 405.2, to construct a two-story rear
21 addition to an existing one-family dwelling, MU-4 Zone, at
22 premises 508 7th Street SE, Square 903, Lot 23.

23 CHAIRPERSON HILL: Okay, good afternoon. If you

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1 could introduce yourselves, please?

2 MR. FOWLER: Mike Fowler from Fowler Architects.

3 MS. FLOWERS: Mary Miller Flowers from 508.

4 CHAIRPERSON HILL: Okay, great. Were you both
5 sworn in today? Okay, Mr. Fowler, are you going to be
6 presenting to us?

7 Okay, I guess there's a little bit of, or there
8 has been, kind of discussion as to whether or not you need
9 an area variance for this.

10 Are you aware of any of this? You need to speak
11 into the microphone, sorry.

12 MR. FOWLER: Sorry, no.

13 CHAIRPERSON HILL: Okay. I guess some of this has
14 been discussed, that it would be under special exception, and
15 then some would be under an area variance.

16 And I guess I'm a little confused as to the
17 information that I got from the Office of Planning, as well
18 as the information I've gotten from the Office of the
19 Attorney General, as to where we are with this.

20 And so I guess could you clarify again the relief
21 you're requesting?

22 MR. FOWLER: Sure.

23 CHAIRPERSON HILL: Can you speak directly into the

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1 microphone? Sorry.

2 MR. FOWLER: Sure. We are requesting special
3 exceptions from light coverage, rear-yard requirement, and
4 side-yard requirement in non-conforming structures.

5 CHAIRPERSON HILL: All right, Ms. Nagelhout, I'm
6 sorry, if you could help clarify a little bit for me the
7 thoughts on whether it's an area variance?

8 MS. NAGELHOUT: He has asked for three items of
9 relief under G409, which is the provision that applies in the
10 MU Zone. That would be lot occupancy, rear yard, and side
11 yard.

12 But if you see G409.1 says exceptions to the
13 development standards of this Chapter, meaning Chapter 4 in
14 Subtitle G that applies in the MU Zone.

15 And the provision on enlargement of a non-
16 conforming structure is in Subtitle C, so that aspect of this
17 project would require area variance relief because it's not
18 part of the relief mentioned in Subtitle G.

19 CHAIRPERSON HILL: Okay. Does the Office of
20 Planning understand and agree with this?

21 MS. THOMAS: No, I wasn't aware of this at all,
22 and that's not an interpretation that I've ever seen.

23 So, this is not my case, I'm sitting in for Bryan

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1 Golden, who left, so I just assumed it was a special
2 exception, a typical special exception relief addition to
3 single-family dwellings.

4 MS. NAGELHOUT: It's not a typical special
5 exception because it's in the MU Zone, not in one of the R
6 Zones.

7 But if you look under 5201, Subtitle D5201, it
8 lists all the areas of relief you can get under that section.
9 And one of the those provisions is enlargement of a non-
10 conforming structure.

11 But we're not in an R Zone, we're in the MU Zone,
12 and I don't see anything in Subtitle G that says you can get
13 a special exception from something in Subtitle C.

14 I don't see anything in G that says you can waive
15 anything by special exception other than what's listed in
16 Subtitle G.

17 MS. THOMAS: I would have to get some
18 clarification of that from the Zoning Administrator, or get
19 additional time to review this.

20 CHAIRPERSON HILL: Okay, so Ms. Nagelhout, just
21 so I'm clear, again, the variance part is which one, the non-
22 confirming structure?

23 MS. NAGELHOUT: Yes.

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1 CHAIRPERSON HILL: Okay.

2 Okay, so Mr. Fowler, and the reason why this
3 matters, well, there's a lot of reasons why this matters, but
4 if we went ahead forward with this and, in fact, you got
5 approved for special exception, and you really needed a
6 variance, you wouldn't get your permits.

7 So, you'd be back here again anyway, and I know
8 this is frustrating, but I'm trying to make sure that you're
9 getting what you need before we go through all this.

10 So, what I would do is I would postpone this again
11 now to give you an opportunity to speak with the Office of
12 Zoning -- Office of Planning, sorry -- and clarify the
13 discussion that just happened here, as to whether or not you
14 really need a variance.

15 Because it seems as though you need a variance,
16 and if you do, then there's no point in going through this
17 because you're going to get rejected with your permit.

18 And so that's what I would state for the Board.
19 Does the Board have any other thoughts? Okay. So, are you
20 following me?

21 MR. FOWLER: Yes, and I apologize, we don't do a
22 lot of work in the MU Districts. That's why this one kind
23 of slipped through.

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1 I guess my question would be we have support,
2 neighbor support, ANC support, CHRS support, and if we change
3 the application to request the variance, do we need to go
4 through those groups again?

5 Because the project itself --

6 CHAIRPERSON HILL: I'm only smiling because I know
7 that you have to, since you're going from a special exception
8 to a variance, you're going to have to re-post because it's
9 a much higher level of relief.

10 And so I don't know, Mr. Moy, then you would have
11 to go back to the ANC again?

12 SECRETARY MOY: I would defer to OAG on that,
13 although, I have been consulted that I would not need to do
14 the full 40 days.

15 So, that would be in your favor, but you for sure
16 should refile, yes, refile, your burden of proof for the
17 variance standards. Okay, re-post.

18 CHAIRPERSON HILL: So, and Ms. Miller I know that
19 this -- but again, the reason why is that if we went through
20 this and you didn't get it, you wouldn't get your permit.

21 And so Mr. Fowler, I would go ahead and ask you
22 to work with the Office of Planning to see what your next
23 steps are.

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1 In terms of the timing now, you're going to have
2 to re-post and so, perhaps, Mr. Moy, I can just let the
3 Applicant work with you in terms of when to reschedule this?

4 SECRETARY MOY: Yes, well, I can tell you now.
5 In terms of the Board's docket, I think what would
6 accommodate your docket for the month of January for this
7 case would be the 31st.

8 CHAIRPERSON HILL: Okay, but then I guess I just
9 don't know if that means -- so, we can put you on the 31st
10 and if you need to postpone from there, then you can let us
11 know.

12 Meaning if you get in front of the ANC, if you
13 have to post for the 40 days, if there's any issues.
14 otherwise, we'll see you back here on the 31st.

15 MR. FOWLER: Okay, thank you.

16 CHAIRPERSON HILL: Okay, sorry about that. And
17 Mr. Moy?

18 Can you make sure that Ms. White, because she had
19 to leave, is aware of the fact that she'll have to read in
20 for the 31st, or at least what took place today?

21 SECRETARY MOY: Will do, sir.

22 CHAIRPERSON HILL: Thank you. All right, Mr. Moy,
23 whenever you'd like.

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1 SECRETARY MOY: Okay, so the Board is at Case
2 Application Number 19600 of Team Washington, Inc., d/b/a
3 Domino's Pizza, pursuant where the caption advertises for
4 special exception under Subtitle U, Section 513.1C, and
5 pursuant to Subtitle X, Chapter 10.

6 This is for a variance from the use conditions of
7 Subtitle U, Section 513.1C1, which would establish a fast-
8 food and food-delivery establishment in the MU-27 and R-13
9 Zones, at premises 2330 Wisconsin Avenue NW, Square 1300, Lot
10 815.

11 CHAIRPERSON HILL: All right, good afternoon. If
12 you could please introduce yourselves from my right to left?

13 MR. DONNER: Robert Donner with Team Washington.

14 CHAIRPERSON HILL: I'm sorry, can you say your
15 name again, sir?

16 MR. DONNER: Robert Donner.

17 CHAIRPERSON HILL: Donner, thank you.

18 MR. R. ISEN: Richard Isen, Isen Brothers, LLC.

19 MR. M. ISEN: Michael Isen, NAI Michael.

20 MR. VIANI: Mark Viani, Bean, Kinney, & Korman.
21 I'm an attorney for Team Washington.

22 MR. WILLIAMS: And Zach Williams with Bean,
23 Kinney as well.

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1 MS. MARCUS: I'm Phyllis Marcus. I live on 137th
2 Street next to the parking lot. We would be the parking lot
3 for Domino's Pizza.

4 MS. RADULESCU: I am Adriana Radulescu, I live in
5 the neighborhood at 2238 Observatory Place, NW.

6 CHAIRPERSON HILL: Okay, could you give me your
7 last name again?

8 MS. RADULESCU: Radulescu, R-A-D-U-L-E-S-C-U. I
9 submitted for a witness but it was not sworn in.

10 CHAIRPERSON HILL: Okay, I'll swear you in, thank
11 you. But before I do, are you guys here with the Applicant,
12 or are you here in support of opposition?

13 MS. MARCUS: I'm in opposition, I live next-door.

14 CHAIRPERSON HILL: Oh, you both are in opposition?
15 Okay, we'll have a time for you. So, it's not right now.
16 You can just sit on back for now. But I can swear you in,
17 so if you want to stand?

18 MS. MARCUS: I was sworn in already.

19 CHAIRPERSON HILL: You were? Okay, so, Mr. Moy,
20 if you could swear in Ms. Radulescu?

21 SECRETARY MOY: Do you solemnly swear or affirm
22 that the testimony you are about to present in this
23 proceeding is the truth, the whole truth, and nothing but the

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1 truth?

2 MS. RADULESCU: I do.

3 SECRETARY MOY: Thank you.

4 CHAIRPERSON HILL: All right, thank you. We'll
5 get to you guys all later. Mr. Viani, I guess you're going
6 to present?

7 MR. VIANI: Yes, sir.

8 CHAIRPERSON HILL: Okay, so there are some issues
9 in terms of the application. We've obviously read the record
10 and have seen all the different Exhibits in terms of the
11 criteria and what you're trying to do.

12 I suppose you can go ahead and talk a little bit
13 more about the project as well as there are a variety of
14 conditions that the Office of Zoning has submitted if this
15 were to move forward.

16 I suppose the biggest thing that I'd be interested
17 in hearing from you is the report from the Office of
18 Planning, and they're in denial of that currently.

19 And so it is kind of -- a variance standard is a
20 difficult standard to get by and we'll kind of get through
21 their reasonings after we hear your presentation.

22 So, I am going to put 15 minutes up there. Mr.
23 Moy, if you don't mind?

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1 Just so you have enough time to kind of explain
2 what you're trying to do, what your Applicant's trying to do,
3 and how they meet the test for us to approve the special
4 exceptions as well as the variance, and go ahead and speak
5 to the report from the Office of Planning.

6 MR. VIANI: Okay, yes, it's been a long day so I
7 will --

8 CHAIRPERSON HILL: Oh, this one's kind of short.

9 MR. VIANI: Yes, we will --

10 CHAIRPERSON HILL: Just to let you know. Our long
11 day's 8:00 p.m.

12 MR. VIANI: Much respect.

13 I think, you know, looking at the Office of
14 Planning report, I think their concern is mostly on the
15 variance aspect of this, which is dealing with the 25-foot
16 setback from residential zones.

17 So, I'll talk a lot. We've submitted a lot of
18 supporting information about the special exception standards
19 in general, and I'll walk through that as we go through
20 discussing the project.

21 But I think really, the tip of it all focuses on
22 the variance issue, and we'll certainly focus mostly on that.
23 But with that, Zach's got the -- do you want to get the

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1 plans?

2 I guess the first thing's that important to say
3 is what we're talking about here is relocation of the
4 Domino's that's been serving Georgetown since 1987, 1986
5 timeframe. Their property is being redeveloped, all right?

6 They're located down on Prospect Street, further
7 down in Georgetown. They've been there, they have an active
8 customer base, they have 18 employees. They've been there
9 for 30 years.

10 They've been a good member of the community,
11 they've been actively involved in the community, and all
12 we're doing is literally relocating, which I think is
13 probably to a more appropriate location because we'll be
14 actually in a shopping center at this point.

15 But that's what happened. This is not a new
16 store, this is a store relocation.

17 With us, we have Robert Donner, from Team
18 Washington, we also have the property owners. The property
19 itself is Calvert Center.

20 The Calvert Center is, if you're going up
21 Washington, the 2300 block of Washington, right across the
22 street from where right now the shuttered Whole Foods is.

23 It's a small shopping center built in the late

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1 '40s, mid to late '40s, and it has essentially five bays, two
2 of which are consolidated and had been used up to about a
3 year or so ago as the El Salvadorian Consulate.

4 Next to that is the bay that's used by Bruegger's
5 Bagels; next to that is a bay used by U.S. Post Office; and
6 the last is Chipotle, which Chipotle came before a similar
7 special exception back in 2010 before this Board.

8 And prior to that, Chipotle actually replaced a
9 Pizza Hut that had been there previously.

10 The property is about three-quarters of an acre.
11 The property is split-zoned, MU in R-13, and what happens is
12 the R-13 portion of the property is primarily the parking
13 lot, which is the back of the property.

14 The property has been required to get a special
15 exception to continue operating that, and they do that, and
16 right now those are valid for about 15 years. It most
17 recently came by about two years ago and got another special
18 exception for that.

19 There is a history of these types of uses on this
20 property, all right? and that's really what we're trying to
21 do here.

22 Since the El Salvadorian Embassy vacated about a
23 year or so ago, really even before that, when they knew that

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1 the El Salvadorian Embassy wasn't going to -- they would
2 start looking for replacement tenants.

3 And as you're probably aware, it's not a really
4 good time for retail real estate. Actually, the Bruegger's
5 Bagels is closing as well. They closed, yes. So, Bruegger's
6 is pulling out of D.C.

7 So, you'll see on the record we've submitted a
8 list of all the folks that they talked about, and in about
9 a year or so, a little more than a year, of trying to find
10 new tenants and not able to get tenants for this site.

11 They finally got Team Washington because Team
12 Washington was just relocating its store from down the
13 street. They're very lucky to have that case and to have
14 that client.

15 They're only taking half the space that takes up
16 the old El Salvadorian Embassy, and they're actually getting
17 it at a lesser rent. That's just the state of the market.

18 The reason I'm talking about this is to talk to
19 you about the practical difficulties associated with a site
20 like this, a site that is uniquely burdened with this split
21 zoning.

22 When we talk about the variance, the variance is
23 needed because if you look at the standard, the standard is

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1 for this fast-food or food delivery, you have to have no part
2 of the lot on which the use is located shall be within 25
3 feet of a residential zone.

4 Well, if the lot itself is split-zoned, you're by
5 default, incapable of meeting that standard.

6 Now, what else can you go ahead? You can try to
7 continue to find other retail tenants and you can have been
8 trying and trying and trying.

9 No one goes through this process and keeps getting
10 left at the altar and not getting money for this thing,
11 having to pay the notes on their significant financial
12 difficulty.

13 Plus, you have the question of you have a
14 shuttered black out-window frontage there that makes the
15 property not look good. Because combined with all the other
16 retails near it, it provides a detriment to the community and
17 a detriment to the usability of the property along Wisconsin.

18 So, we're finally able to get a user to come in,
19 all right? And more importantly, what's great about this
20 thing, it's a different kind of Domino's. I think if anybody
21 watches the NFL, you've probably seen the ads there.

22 Domino's is changing the format of their stores,
23 all right? It's not just going to be kind of a small little

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1 -- you show up there, there's a little desk and you either
2 pick your food up right at the desk, and they also run
3 delivery services.

4 It's going to be more of a pizzeria thing. It
5 will be a sit-down restaurant, and I'll let Zach talk a
6 little bit, show a little bit of these things.

7 There will be places where people can come up
8 there and the kids can watch their pizzas being made and a
9 little more interactive. And what we're hoping is --

10 CHAIRPERSON HILL: If you want to go ahead and put
11 up the -- Mr. Moy, where's the camera there again? I don't
12 know if you put it right on the easel there. Bring the easel
13 up, just bring the easel up and just move it forward.

14 MR. VIANI: So, the new way to try and get retail
15 to work is try and make it more interactive.

16 In our case, we think that's also going to,
17 frankly, provide a better street frontage and there's some
18 activity there.

19 But people will come up there, they'll order, they
20 will be able to watch their pizzas being made. If you have
21 kids or so, that's always kind of a fun thing.

22 And there's the ability to sit down there as well
23 and eat at a restaurant. Can you show them the one where the

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1 kids can step up and things like that?

2 So, this is our first store like this in D.C.
3 that'll be this way. But we think it's going to be a really
4 good something to enliven the streetscape, enliven the street
5 frontage, contribute to retail activity on this site.

6 You know, also at the time when frankly this thing
7 is now going to be sandwiched between you have a blank space,
8 you're taking half the blank space and the space that was
9 immediately the other side is now closed Bruegger's.

10 This is in light of the practical challenges and
11 the unique circumstances applied to this property from the
12 split zoning, this is what we were able to do to basically
13 come up with the best kind of use we could have there.

14 All right, so let's talk a little bit about the
15 special exception standards. Special exception standards
16 talk, and I'll rely on, we've submitted out Statement of
17 Justification.

18 There's a lot of other criteria in there talking
19 about how impacting Federal facilities and things like that.
20 We are next to the Naval Observatory.

21 I won't get into great detail on that but in terms
22 of harmony with the MU Zone, harmony with the community,
23 harmony with adjoining properties, what we're proposing to

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1 do is a pizzeria.

2 You've had pizzerias that have functioned
3 effectively there before, you've had other fast-food delivery
4 services, and food delivery services that have functioned
5 there well before.

6 You've had the Bruegger's Bagels, you've had a
7 Pizza Hut there, we've got a Chipotle, all right? When the
8 Chipotle came through, this Board approved that back in 2010.

9 For reasons that no one can understand, there was
10 no request for a variance at that time, they just recruited.
11 Although, the same criteria applied. You still had the same
12 split zoning.

13 When you look at the Staff Report, the Staff
14 Report says they -- we met with Staff ahead of time and I
15 appreciate Crystal and them sitting down and talking to us.

16 And I think everybody understood that, ultimately,
17 this is a good use for the property, but the question is,
18 what was the vehicle?

19 We chose special exception and we chose the
20 variance because as we've always understood, following the
21 code, special exceptions are kind of presumptively valid as
22 long as you show you meet the criteria.

23 Variance is a more extraordinary running, and it

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1 should be narrowly tailored to meet the limited conditions
2 to provide effective relief, just to prevent injustice and
3 practical difficulty.

4 Based on that, we said, okay, we're in the MU
5 Zone, we'll get a special exception for this food delivery.

6 But because we are incapable of meeting that
7 standard, that one little standard, that 25-foot setback,
8 because the residential zoning line is actually on our
9 property, we will seek a variance for that thing.

10 And in doing so, we actually went ahead and we
11 took a look at what other cases in the area, other types of
12 uses that have faced a similar situation, other split-zone
13 properties.

14 Just down at the 1800 block, about 4 blocks south
15 of us, is the Paisano's that came through I guess it was last
16 year.

17 2016, yes, that came forward in -- that's Case
18 Number BZA Number 19658 and that was approved on January 12,
19 2016.

20 CHAIRPERSON HILL: Could you repeat that number
21 again?

22 MR. VIANI: Yes, sure, and I can submit all these
23 to the record.

1 Paisano's is BZA Case 19158 and that was January
2 12th of 2016, and that presented the same circumstance, where
3 you could actually fit the store in the MU Zone but you had
4 residentially-zoned property right immediately behind the
5 property. Split zone, same lot.

6 And so looking through Staff's analysis on that,
7 they said, you know, well, this is not going to create a
8 threat to -- there was actually a, I forgot the name of it,
9 rec center right behind it.

10 It's not going to present a threat to the
11 community, it's consistent with the kind of uses we've
12 typically had along Wisconsin Avenue.

13 And therefore, they approved that variance in that
14 case and they approved that special exception.

15 You'll see the same thing with the Noodles &
16 Company case, which is actually about four blocks north, and
17 that's BZA 18328 and that approved in March of 2012.

18 The exact same circumstance, where you have these
19 lots that are extended and they're bi-zoned, they're dual-
20 zoned. And again, they also went ahead and dealt with the
21 variance in that case.

22 CHAIRPERSON HILL: I'm sorry, can you tell me that
23 one? 18328?

1 MR. VIANI: 18328, sir.

2 CHAIRPERSON HILL: Thank you.

3 MR. VIANI: And that's March of 2012, and that's
4 for Noodles & Company.

5 And so there is a history and a pattern, and this
6 seemed to be the best vehicle because we were trying to find
7 the right way to kind of be consistent with how the Districts
8 have traditionally handled these things and frankly, how the
9 community, when you look at the local approval, how the
10 community has locally handled these things in this area.

11 So, that's what we've been trying to do.

12 The property use is going to be -- we are not
13 required for parking because we're so small, not required
14 priority of parking. We're doing the five parking spaces in
15 the back just to provide that.

16 We are keeping the same hours they've always had
17 in the store, from 10:00 a.m. to midnight, Monday through
18 Thursday, and then 10:00 a.m. through 3:00 a.m. Friday,
19 Saturday, and Sunday.

20 The exact same hours, the exact same employees,
21 and the exact same folks that are just down on Prospect that
22 are being moved to the new site.

23 It's the same use, just relocated, and this time,

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1 I would submit, in probably a better location, instead of
2 mid-block on Prospect, which is kind of a quasi-retail
3 residential street. It's going to be in a shopping center.

4 If you take a look in the record, we're aware of
5 some of the concerns expressed by members of the community.
6 More specifically, you'll see there's a petition, 122 people,
7 many anonymous, but there's people who signed up for that.

8 And, you know, I understand where they're coming
9 from. This is their community, this is their home. People
10 want to make sure it's appropriately controlled. They're
11 concerned about traffic, they're concerned about operations,
12 noise, things like that.

13 And this was all addresses when we went through
14 the ANC. Unfortunately, she had to leave at 1:00 p.m. but
15 our single-member District Commissioner, Ms. Blumenthal, was
16 here and she was here to speak on behalf of the ANC.

17 As you'll see, we talked about this at the ANC
18 meeting. The ANC heard the concerns, took them seriously,
19 tried to incorporate those concerns in the approval by the
20 ANC.

21 And we have agreed to all those conditions as a
22 condition of approval, and so we do take it seriously. We're
23 going to have to continue to be good neighbors just as we

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1 were down at Prospect, and we want to be good neighbors here.

2 There are concerns about the rat problems that are
3 all over D.C. You know, well, we have rat problems we try
4 to control at the site down in Prospect. They'll be working
5 to make sure that we don't contribute to rat problems here
6 as well.

7 Trash, there's conditions where we've committed
8 to three times a day as part of the closing, opening, and
9 pre-dinner procedures, to go out there and we don't expect
10 that we're going to be producing a lot of trash on Wisconsin
11 or in the area because that hasn't been our experience.

12 At the other store, we're going out there and
13 policing it. We've got restrictions on the drivers. We'll
14 be using drivers at the back and then after certain hours,
15 drivers will be parking along Wisconsin.

16 We've tried our best to meet the needs of the
17 community. I think the ANC, when they came through it, they
18 did a measured response of this, and they came to a decision
19 to vote in favor of this.

20 This was not just the ANC as a whole. You heard
21 earlier where there were people saying, well, those are
22 Members of the ANC but not our District.

23 This one's a single-member District and this

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1 person was here. Unfortunately, a lot of us are sick, she
2 was feeling ill and had to leave at 1:00 p.m. I've just got
3 over a really bad cold myself.

4 So, that's where we are right now. We do believe
5 that we meet the terms of the special exception.

6 We are harmonious with the needs for the MU
7 District, we are harmonious for the residential district, I
8 think as evidenced by the fact that the special exception for
9 the back half of this site here, residentially zoned, for a
10 parking lot.

11 We'll be using it as a parking lot. There were
12 concerns about vehicles turning out of the parking lot.
13 We've committed to adding a mirror.

14 You're talking about three or four delivery
15 vehicles, no more than the usual kind of activity you'd find
16 from these kind of stores. But we're going to still provide
17 training and we'll provide a mirror for that parking lot.

18 We're trying to take it seriously, we're trying
19 to work in good faith with the community. This use does meet
20 the requirements of the MU Zone; we just can't meet this one
21 variance standard.

22 And so with that, I don't know if there's anything
23 really much more to add.

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1 CHAIRPERSON HILL: Okay, does the Board have
2 questions for the Applicant?

3 VICE CHAIR HART: Just a quick question.

4 Mr. Viani, are the other properties that are along
5 this, you called it where retail establishments are located,
6 are they all within the same split zone?

7 MR. VIANI: Well, there's a lot of properties that
8 are split-zoned. The property immediately adjacent to us is
9 a condominium and I think that has some retail on the first
10 floor but it's a four-story condominium.

11 They're all split-zoned.

12 It's basically if you take a look at, and I don't
13 know if -- we don't have a copy of this. But if you look at
14 the zoning map, they literally just kind of say here's the
15 MU Zone. It just tracks along Wisconsin.

16 And in some cases it will pop out a little bit to
17 where it's not too far to go out of line so you get an entire
18 lot covered.

19 In this case, it just kind of tracks right down
20 there and it just kind of arbitrarily bifurcates the
21 property.

22 VICE CHAIR HART: The reason I was asking was
23 whether or not your property had a similar issue than other

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1 properties that are there.

2 I mean, it's trying to get to the -- we look for
3 things that are -- what is unique about this particular --

4 MR. VIANI: This is unique.

5 VICE CHAIR HART: Just hold on a second. So, if
6 the properties that are adjacent to yours could actually have
7 the same concern, and may be just a few, but it's trying to
8 understand that uniqueness issue.

9 And I'm looking at it, I'm realizing that the
10 zoning is on the back of the OP report. They include a
11 zoning map, which is Exhibit Number 56, that shows where the
12 zoning is located.

13 I think it's the last page.

14 MR. VIANI: Yes. All right, it largely tracks
15 along people's property, where you see the properties
16 immediately to the north of us.

17 There's a commercial property that's slightly
18 split-zoned but really, you have residential properties on
19 the back end on 37th Street.

20 The properties we talked about that received
21 similar relief a) was our property, but b) the Noodles &
22 Company and the Paisano's are to the north and south of us.
23 Those were in properties, if you look at the record, they

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1 clearly reference the fact that those properties were split-
2 zoned too.

3 And you just had this requirement to meet 25 feet
4 but, again, the requirement is -- no part of the lot on which
5 the use is located can be 25 feet. So, it's not a question
6 of -- it's even if the use.

7 In this case, we have a fairly substantial lot.
8 Even if the use is set back 25 feet from where the actual
9 design was, that doesn't meet the standard.

10 The standard is if you're on that lot, no part of
11 that lot can be within 25 feet. Well, that zone's already
12 on there. It precludes it.

13 VICE CHAIR HART: Thank you.

14 CHAIRPERSON HILL: Maybe you mentioned this and
15 I missed it, because I remember in your presentation I saw
16 the Bruegger's to the left and then the Chipotle.

17 And so Chipotle came before us, again, for this
18 same relief?

19 MR. VIANI: Chipotle came before you for a special
20 exception. The same standards were applicable and the same
21 requirement was applicable, and for some reason, there was
22 no request for a variance there.

23 CHAIRPERSON HILL: And you don't remember how long
24 ago this was?

25 MR. VIANI: Yes, actually, we do. That was

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1 November 9th, 2010, and that's Case Number 18137. Hopefully,
2 I didn't get Chipotle in trouble here.

3 VICE CHAIR HART: There's also the zoning reg
4 changes in 2016.

5 MR. VIANI: That's correct.

6 VICE CHAIR HART: That's the only thing that has
7 kind of happened between 2010 and now.

8 And I don't know the specificity of whether or not
9 this particular change would have been captured in there.

10 MR. VIANI: Mr. Hart, that's actually a really
11 good question. I would say for the provisions you're talking
12 about there, essentially, they were recodified.

13 These same standards applied back in 2010. They
14 applied in 2012, they applied in 2016. It's just they never
15 got a variance.

16 And also for the Bruegger's there's no history of
17 a special exception.

18 VICE CHAIR HART: And are you saying that you are
19 absolutely sure that they didn't apply? Or are you saying
20 that it is your interpretation that they didn't?

21 MR. VIANI: We pulled the file on that case and
22 it's a special exception approval. There's no mention of the
23 variance.

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1 VICE CHAIR HART: What I'm trying to get to is
2 there are subtle changes that happened to the zoning that's
3 happened to the zoning regs in that time period, and I don't
4 know if a subtle change has made this more of an issue now
5 than it was back then.

6 And I was trying to gather from you whether or not
7 you were -- and I understand you saying you're looking at the
8 previous documentation to determine that.

9 But I didn't know if there was something you said,
10 okay, well, we know that the language is exactly the same
11 from -- well, the ZR58, the zoning regulation from '58 and
12 the zoning regulations that are 2016.

13 MR. VIANI: Zach, you worked on that aspect of it,
14 and yes, I believe the language is exactly the same. It
15 essentially just got recodified in there.

16 VICE CHAIR HART: Okay, thank you.

17 MR. VIANI: Paisano's got the approval. Before
18 that Chipotle, you actually had a Pizza Hut there. Now, we
19 have no evidence that they ever got a special exception.

20 CHAIRPERSON HILL: And so the Bruegger's, again,
21 you didn't see anything?

22 MR. VIANI: That's correct, sir. : There's no
23 special exception for the Bruegger's.

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1 CHAIRPERSON HILL: Okay. Anybody got anymore
2 questions for the Applicant? All right, I'll go ahead and
3 turn to the Office of Planning.

4 MS. MYERS: Good afternoon, Crystal Myers for the
5 Office of Planning. As you know, the Office of Planning is
6 recommending denial.

7 We feel that the Applicant has not proven that
8 there is an exceptional situation resulting in a practical
9 difficulty in meeting the requirement that the lot be 25 feet
10 away from a residential-zone property in order to do a fast-
11 food and delivery service on the property.

12 Just to remind everyone, the way we look at it is
13 we review the variance test when it comes to that particular
14 criteria in the special exception.

15 And the test is that there be an exceptional
16 situation resulting in a practical difficulty to the owner.
17 So, when we looked at this, I know that it's been mentioned
18 the property has been split-zoned or is split-zoned.

19 That in itself is not what we consider an
20 exceptional situation because, as has been noted, there's
21 quite a few properties out there that have been split-zoned.

22 We're looking at this as more the split zoning has
23 resulted in a practical difficulty to the owner and we did

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1 not feel that a sufficient argument had been made on that
2 particular issue, as well as the other issues the Applicant
3 had mentioned.

4 I know that a little bit later on in the process,
5 the Applicant submitted a letter saying that there's been a
6 difficulty in renting out the property.

7 But it's only been in the market for about a year
8 and we don't feel that a year is sufficient enough time to
9 use that as an argument to support that it is unreasonable.

10 The way we look at it is that that space could
11 still be used for any of the various different uses under the
12 mixed-use zone for MU-27 or I guess even for the residential
13 zone, as well as the special exception uses that it would
14 meet all the criteria for.

15 Now, the Office of Planning has said that if the
16 Board decides to approve the project, we feel that the ANC's
17 conditions should be included with the approval, and we did
18 include in our report that any new lighting should be low-
19 level and downward.

20 And other than that, I just want to note that the
21 Office of Planning had talked about this with the Applicant
22 and we put in our report that because this Applicant does not
23 meet all of the criteria for the special exception, perhaps

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1 it should have come in as a use variance because it doesn't
2 meet the special exception criteria.

3 This was just a suggestion, this isn't something
4 that -- this was self-certified so this isn't something that
5 the Zoning Administrator had said or anything along those
6 lines.

7 But just in looking at this application, we were
8 wondering if it should just be looked at as a use variance
9 rather than having to take it through the different steps of
10 the special exception criteria.

11 And another thing I would note, I know that a
12 couple of past cases have been mentioned.

13 I just want to make note again that we look at
14 every case individually and the arguments presented in those
15 cases, it's reviewed according to the issues in those
16 situations.

17 And so, yes, sometimes a variance is approved, but
18 in this case, we do not feel that the arguments were
19 sufficient to recommend approval of this case.

20 So, with that, we'll stand on the record of the
21 Staff Report.

22 VICE CHAIR HART: Ms. Myers, the question that I
23 had was around the -- and I'm looking at the zoning map that

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1 you had on your Page 6.

2 And what I was really trying to understand is it
3 looks as though the lot that we're looking at actually is on
4 both 37th and Wisconsin. And it doesn't look like a lot of
5 the lots actually border both of the streets and are a split
6 zone.

7 It looks as though most of the lots are either
8 short and they only front on one street, or they are --
9 actually, that's it.

10 This is one of the few lots that actually goes on
11 both streets and it fronts on both Wisconsin and 37th, if I'm
12 reading this correctly.

13 MS. MYERS: We noted that this is I believe the
14 largest lot with this situation. Now, the fact that it
15 touches both Wisconsin Avenue and 37th Street we did not put
16 in the report.

17 But we did note that it is one of the largest, and
18 another thing we did note is that it's the only one zoned R-
19 13 and MU-27.

20 I believe the other one's R3 in MU Zone, however
21 we would still need the argument that that has resulted in
22 a practical difficulty to the Applicant, and that was not
23 there.

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1 We just noted that there are unique things about
2 the lot, we would definitely say that, but the test is that
3 a unique situation results in a practical difficulty.

4 And as has been mentioned in the past, there's
5 been other uses in this particular space, on this lot, that
6 have been okay in the past.

7 And so the variance test is a pretty extensive
8 test and so we would want that argument to be I guess crystal
9 clear that it's difficult to do something else.

10 VICE CHAIR HART: And I appreciate that, and from
11 what I am also hearing from you, it doesn't sound like you
12 are saying, and it sounds like the last statement that you
13 said, which was that there possibly could be arguments to be
14 made, they just haven't presented those arguments in a way
15 in which you can say you agree with them.

16 And I'm not trying to parse words --

17 MS. MYERS: No, no, what I would say is, you know,
18 and I'm not saying anything out of step with what the report
19 says, we note that there are unique situations with this lot,
20 we note that.

21 And I'm assuming out there, there's a variety of
22 different lots of there that you can note unique situations,
23 but the test is that it results in a practical difficulty.

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1 And for that argument, we did not have that
2 argument there.

3 We didn't think split-zoned was enough and, yes,
4 it is large and split-zoned but we've also seen other types
5 of businesses operate in this space that were in compliance.

6 So, why is it this situation you can't?

7 VICE CHAIR HART: But just the one thing, just the
8 one note, I will note that from the Applicant's testimony,
9 they have said that the variance test did not come up, and
10 I don't know why it didn't come up, I'm not going to opine
11 on that, but it didn't come up in the other cases.

12 So, they were only going to be looking at special
13 exceptions, which is a lower standard. And so there may be
14 an approval for those cases and just this particular issue
15 is not prevalent.

16 It's not like somebody said, well, this is a
17 variance and then we're accepting the variance. That wasn't
18 even something that was raised.

19 So, it is an odd thing that those issues about the
20 variance tests were not raised previously but are now being
21 raised. And I'm not saying it's right or wrong, I'm just
22 saying that's where we are.

23 And so the other uses that were here, it seems

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1 like there may have been some -- maybe a lesser standard for
2 them to be at this location.

3 And so right now it's a harder standard to be able
4 to locate here, and I'm not sure if that's just a statement
5 or if there's a question.

6 MS. MYERS: I wouldn't disagree with that.

7 We're looking at what the case is presenting today
8 with the regulations and how we interpret them today, and we
9 agree with the Applicant that a variance is appropriate for
10 that criteria.

11 But seven years ago, it looks like that was not
12 a necessity. So, any project that would apply for a use
13 variance in this particular site would be looked at in the
14 same way.

15 But apparently, seven years ago, there was a
16 different way of reviewing it. So, it's just a matter of
17 2017 review process.

18 VICE CHAIR HART: Thank you.

19 CHAIRPERSON HOOD: And I'd ask Ms. Myers, I
20 wondered, as we went along, did we make a mistake -- and I'm
21 just sitting here thinking all this through -- as we did the
22 ZR'16?

23 We have a lot of things we have to correct. Trust

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1 me, I know all about that.

2 But I'm just curious because I know in times past,
3 if I can recall, and I know that was under the '58
4 regulations, the split zone was an issue. So, I'm trying to
5 figure out what did we do in ZR'16?

6 I'm just trying to get my arms around all this.
7 What did we do, now, to cause this kind of a problem?

8 And I've heard loud and clear, I've heard it
9 enough, where most people are moving out the City and
10 whenever I hear that, I take pause. What are we doing ---
11 the object is not to run anyone out the City.

12 I think the object of the ZR'16, at least the
13 policies behind all that, was to make it easier for people
14 to stay and be able to expand with the space we have.

15 So, I don't know how split-zoning now is not --
16 I'm trying to figure out now why split-zoning is not a
17 factor, I guess that's what I'm trying to get to.

18 And I know some of this probably predates you,
19 some of it probably predates me, but I'm just trying to
20 figure out, because I know we have used that in the past.

21 If you want to respond, that's fine, if not,
22 that's something I have to figure out.

23 MS. MYERS: The only thing I would say is I think

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1 previously, there was an office use, a Consulate use, on the
2 site, and the residential side of the site is a parking lot.
3 And that's got its approvals for special exception.

4 I know that was one of the arguments presented
5 here, and we agree that that parking lot is appropriate as
6 a commercial use.

7 And there's businesses that it's okay to have a
8 business in the mixed-use side and have a parking lot on the
9 residential side.

10 And so that was a solution that the Applicant or
11 the property owner had come up with for the split zoning
12 situation that has been working to a certain extent.

13 But apparently, the Consulate has left and so the
14 new business coming in, that's the one that has this
15 challenge with special exception requirements. It's not
16 quite meeting it.

17 But our argument is that there's other special
18 exception uses and by-right uses that you could still
19 consider, or provide evidence or some sort of arguments that
20 would make us more understanding or weigh out better that
21 these uses, it would not work.

22 And that's where we're just missing here.

23 We're not saying that a pizza location or a pizza

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1 business in this property is a yes or no, we're just saying
2 we need the arguments to support that variance for the 25
3 feet. And that's where we're not quite there yet.

4 CHAIRPERSON HOOD: Okay, so that goes back to Vice
5 Chair Hart's first initial statement about is there something
6 out there that you can help to build to make that argument?
7 I think that's where you were going.

8 I would concur with the Vice Chair on that. So,
9 okay, thank you, Mr. Chairman.

10 CHAIRPERSON HILL: All right, Mr. Viani, do you
11 have any questions for the Office of Planning?

12 MR. VIANI: No. First of all, Ms. Myers, thank
13 you.

14 We did sit down and talk beforehand and we walked
15 through this thing, everything she's saying in terms of the
16 history of the discussions and trying to figure out how do
17 the challenge is correct.

18 Really, what it boiled down to was how we both
19 perceived the issue. We see the property as being uniquely
20 burdened with this split zoning, and the question is what's
21 the practical difficulty in terms of that?

22 And how do you show that you've experienced
23 practical difficulty by application of that split zoning

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1 there, without this variance mechanism or without going
2 through maybe another use variance?

3 But we tried to go the least expansive variance
4 mechanism. You're precluding a whole range of uses that are
5 otherwise permitted in the zone of the MU Zone.

6 But it's not like we went out shopping for pizza
7 places or for fast-food places. And it's not like knowing --
8 she's correct, there was an El Salvadorian Embassy here that
9 took up two of the bays.

10 This is only taking one half of that. They're
11 still going to have part of it vacant. That didn't just
12 vacate with no notice.

13 The property owners, and I have the property
14 owners right here, they can convey the same thing I'm going
15 to say right now, which is people know they're going to be
16 terminating the lease.

17 So, you spend that time beforehand shopping the
18 property, trying to find new tenants, and you'll take
19 anything willing to go there.

20 It just turned out, and the record is, we have two
21 years of trying and trying and trying, whether it be fast-
22 food folks, whether it be office folks, whether it be a range
23 of uses. You don't say, hey, I want to take half my space at

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1 less rent and go through this land-use approval process.

2 You try to get a whole bunch of things, but
3 finally, sometimes, you are just faced with these practical
4 difficulties with the split zoning and it precluding uses,
5 and the softness of the market and the conditions you're in
6 that really kind of put you at a disadvantage to other
7 properties near it.

8 That's where we are and that's how a practical
9 difficulty has impacted us, and that's our practical
10 difficulty. And I think our unique circumstance is the split
11 zoning.

12 CHAIRPERSON HILL: Okay. I'm going to ask you to
13 kind of go over it again in terms of how you're meeting the
14 variance criteria, which I've heard several times today.

15 But one of the items that you've been hanging onto
16 the argument in terms of the practical difficulty is the
17 length of time that it's been vacant. And so that --- we'll
18 get to you in one second. And so that's one of the items that
19 you're speaking of.

20 And what you're now mentioning again is that the
21 previous standard was going to get out -- you had notice, a
22 year's notice, and so you start shopping around. And so it's
23 really like two years you've been kind of looking to take on

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1 a new tenant.

2 Okay, all right, so does anyone have anything for
3 the Applicant before I move on? Okay, all right, great. Is
4 there anyone here from the ANC? Is there anyone here wishing
5 to speak in support?

6 Is there anyone here wishing to speak in
7 opposition? If you guys could come forward?

8 MS. MARCUS: Okay, I guess, can I go? Let me just
9 clarify --

10 CHAIRPERSON HILL: Hold on one second. You need
11 to introduce yourself again.

12 MS. MARCUS: Oh, I'm Phyllis Marcus. I live next-
13 door to the parking lot, the infamous parking lot.

14 CHAIRPERSON HILL: Ms. Marcus?

15 MS. MARCUS: Yeah.

16 CHAIRPERSON HILL: Okay.

17 MS. MARCUS: M-A-R-C-U-S.

18 CHAIRPERSON HILL: Okay, so Ms. Marcus, you're
19 going to have three minutes to present your testimony.

20 MS. MARCUS: Okay.

21 CHAIRPERSON HILL: And so go ahead and begin
22 whenever you like.

23 MS. MARCUS: One, the El Salvadorian Consulate

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1 moved out two or three months ago. That space has not been
2 vacant for a year.

3 Two, Prospect avenue or Prospect Street is
4 commercial, it is not residential. Chipotle is different in
5 the sense they close at 10:00 p.m. and there's no delivery.

6 I can't answer as to Paisano's and the noodle
7 place. Also, the condo has no commercial --

8 CHAIRPERSON HILL: Okay, Ms. Marcus, I'm going to
9 restart your clock to three minutes. Let's hear your
10 testimony first.

11 You were basically just trying to cross-examine
12 what their presentation was and so I'd rather hear your
13 testimony --

14 MS. MARCUS: Oh, my objections? Okay.

15 CHAIRPERSON HILL: Yes, exactly. So, I'm going
16 to put three minutes back on the clock again and you can
17 begin whenever you like.

18 MS. MARCUS: Okay, my objections are as to the
19 hours, the being open until 3:00 a.m. or noon, 12:00
20 midnight, and that's different than Chipotle, which is open
21 until 10:00, it doesn't have delivery. Bruegger's only
22 closed at 3:00 in the afternoon.

23 That increases the chance of crime in the

1 neighborhood by bringing people from outside the neighborhood
2 if you're open until all hours of the night. It also
3 increases the traffic, the noise, and it disrupts the
4 neighborhood.

5 37th Street is a residential street with fairly
6 expensive houses. Having the pizza place, Domino's, would
7 affect the enjoyment and our safety.

8 Also, there's increased traffic from the cars
9 going in and out.

10 And the rodents, the garbage cans are in the back
11 there, not on Wisconsin Avenue. I had to drive to Chipotle
12 Monday, because the rodents at night are so bad, and park
13 near the door.

14 They're running rampant in the parking lot.
15 There's garbage, food containers in the parking lot; it's
16 awful.

17 The rodents have affected one in five townhouses.
18 We had three different exterminators last year in order to
19 get it contained. A fast-food restaurant just increases the
20 rodent activity.

21 And I'll say again that the El Salvadorian
22 Consulate, which is great, moved out two or three months ago.
23 They were an appropriate tenant.

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1 I guess we believe Chipotle is different as I said
2 and this is not a commercial area. I would hardly call it
3 a shopping center.

4 It's a group of like three or four stores,
5 including a post office. So, for those reasons, I am in
6 opposition of Domino's coming in.

7 CHAIRPERSON HILL: Okay, great, thank you. Yes?
8 You've got to state your name again, and again we'll put
9 three minutes on the clock for you.

10 MS. RADULESCU: Thank you. I'm Adriana Radulescu
11 and I live at 2238 Observatory Place NW.

12 CHAIRPERSON HILL: Maybe just lean just a little
13 bit forward into the microphone?

14 MS. RADULESCU: Sure. I lived in Glover Park for
15 20 years and I've seen what was in that so-called shopping
16 center. It was a Blockbuster.

17 When Blockbuster left, there were many years when
18 that property was vacant and then the El Salvadorian
19 Consulate came in. The property was never, and continues not
20 to be, very well maintained.

21 The enclosure for Chipotle was built maybe two,
22 three years ago. It's not that long ago. And that's not an
23 enclosure that missed the requirement. It's not a brick

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1 enclosure, it's a wood enclosure.

2 So, that's a bit of a sidetrack but I'll go back
3 to my points. I provided already a letter in opposition for
4 the record; it's Exhibit 58.

5 And I feel that with the ANC as well, the
6 opposition of the neighborhood to this business. It's
7 not taken seriously into consideration.

8 There was a petition of 122 people, that's a lot
9 of people, plus the other letters that were submitted in
10 opposition to the Board.

11 And I know from my conversations with neighbors
12 that nobody really wants a business there, and the reasons
13 are that the neighborhood is already saturated with fast-
14 food.

15 We have three pizzerias, one of which has an open
16 store so people can see. There's nothing new about how to
17 make pizza.

18 There is a sit-down restaurant that is up the
19 street. Actually, he wanted to give a testimony in honor of
20 that but he had to leave.

21 We feel that it takes away from the local
22 businesses which are not chain in the neighborhood.

23 And the other thing is all the clauses that were

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1 negotiated by the ANC are, to me, from my point of view and
2 many others, they are very generic.

3 It relies on Domino's Pizza's goodwill, and
4 somebody will have to police this all the time. So, that was
5 asked at the ANC meeting.

6 What is the recourse of the neighborhood if
7 Domino's Pizza does not respect those clauses? What do you
8 do? Do you call the police? Do we call the Board? I feel
9 it's very hard to keep them in check.

10 And the other thing, it's traffic and it's not
11 that much traffic that it would generate, but the way the
12 drivers will be behaving. And it happened to me, actually,
13 yesterday.

14 I was crossing Whitehaven, coming from Wisconsin
15 Avenue, a Domino Pizza driver in a car almost ran me over
16 because he did not stop at the pedestrian crossing, but went
17 way ahead from me because, of course, a car moves faster than
18 a pedestrian.

19 And our neighborhood, 37, it's a one-way street.
20 All the other streets go in a zig-zag of one-way streets that
21 are very narrow.

22 In addition to all the Uber and the Lyft, and all
23 these pick-up services and other deliveries that come. I

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1 feel that we don't need another burden with Domino's.

2 And to me, I haven't heard from them anything
3 about serving the neighborhood. They just want a better hub
4 to serve Georgetown University, which is probably their main
5 clientele.

6 Thank you.

7 CHAIRPERSON HILL: Okay, thank you.

8 As far as the conditions from the ANC, if they
9 were approved within the record, then they become conditions
10 within the order, and so then you would submit I think to the
11 Zoning Administrator, who then polices.

12 And you would complain to the Zoning
13 Administrator, and they'll come out and if they're not in
14 compliance, they'll lose their permit.

15 MS. MARCUS: But what does that mean exactly?
16 What happens when you lose your permit?

17 CHAIRPERSON HILL: You can't do business anymore.
18 And I'm sorry, you to have to speak into the microphone, but
19 that's okay.

20 So, all right, does the Board have any questions
21 for the witnesses? Okay, all right, great.

22 Thank you all very much.

23 Okay, I guess one comment, so the property owners,

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1 have you guys owned it since it was the Blockbuster?

2 MR. M. ISEN: We've owned it since --

3 CHAIRPERSON HILL: You have to speak into the
4 microphone, sorry.

5 MR. M. ISEN: We've owned it since the early '70s.

6 CHAIRPERSON HILL: Okay, so I actually know the
7 property, I remember the Blockbuster. I remember videotapes.

8 So, the argument, and I'm just asking a question,
9 you don't have to get too deep into it, so the discussion
10 that it was empty for a long time after the Blockbusters,
11 before the Ecuadorian Embassy, was it empty for a long time?

12 MR. M. ISEN: No, sir.

13 CHAIRPERSON HILL: Okay, how long do you think it
14 was empty?

15 MR. M. ISEN: I'm sorry, I'm not used to a
16 microphone. It was empty for around -- I'm sorry, I'm Mike
17 Isen, I'm his son. I assist with the leasing of the property.

18 CHAIRPERSON HILL: Sure.

19 MR. M. ISEN: So, Blockbuster, if you might
20 indulge me, Blockbuster occupied 6000 square feet, and as
21 retail's gone, stores are getting smaller, soft-goods like
22 Blockbuster became rarer and rarer.

23 Whenever I ask this, I say who here has Amazon

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1 Prime, and I'll ask who has Amazon Prime and who doesn't have
2 it in the room.

3 CHAIRPERSON HILL: Sure, no I got it. So, the gap
4 between the Blockbuster and the Ecuadorian Embassy was around
5 how long?

6 MR. M. ISEN: Well, you have to remember, also the
7 Bruegger's was part of Blockbuster as well. So, we were only
8 able to lease 4000. So, as the center's gotten -- and time's
9 marched on, Blockbuster was at 6000 feet.

10 So, it took about a year and a half to get the
11 Bruegger's in, which was 2000 feet, and it took around a year
12 to get the Consulate in the remaining 4000 feet.

13 CHAIRPERSON HILL: Okay, I appreciate that. And
14 then just to the comment that the Consulate's been out for
15 about three months now?

16 MR. M. ISEN: That's wrong.

17 CHAIRPERSON HILL: The Consulate's been out for
18 a year?

19 MR. M. ISEN: The Consulate moved out first or
20 second week of January in 2016.

21 CHAIRPERSON HILL: Okay, all right.

22 MR. M. ISEN: And by the way, just for the record,
23 we have no existing negotiations of any kind for the space

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1 next-door to it. Domino's is only taking half of the vacancy
2 if this is approved. We have no prospects for the remaining
3 2000 square feet.

4 CHAIRPERSON HILL: Okay, and I understand. I'm
5 sure your attorney has let you know where you are right now
6 with this. It's the variance issue that you're having a hard
7 time getting past, and part of that practical difficulty is
8 the inability to rent the property.

9 And so the Office of Planning disagrees with a
10 year or two years or whatever it is in terms of how long it
11 takes to rent the property. And so that's brought you to
12 this point.

13 MR. M. ISEN: And Bruegger's closing is no vote
14 of confidence in the overall strip. I mean, there's more
15 vacancy in Glover Park and Georgetown than I've certainly
16 ever seen in 21 years.

17 I've never seen vacant store fronts.

18 CHAIRPERSON HILL: Okay, and Mr. Isen, I got you.
19 I mean, the problem with us in terms of the Board is we have
20 the standards that we have to go through.

21 I wish that you didn't have to be here and that
22 you could just go ahead and rent your space.

23 And so but you are here, and so does the Board

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1 have any further questions? I do have one last question for
2 Mr. Viani. Viani?

3 MR. VIANI: Viani.

4 CHAIRPERSON HILL: Viani. But does the Board have
5 anything else? Okay, great.

6 So, Mr. Viani, if you can again, I mean I'm having
7 the hardest time here with the variance, okay? And you knew
8 that was what was going to be the problem, and we've heard
9 the Office of Planning.

10 And can you walk me through again how you're
11 getting to a practical difficulty with -- just walk me
12 through it again?

13 MR. VIANI: All right. You have the --

14 CHAIRPERSON HILL: You have to lean into the
15 microphone.

16 MR. VIANI: You have the unique condition that we
17 have this split-zoning, okay? That without a variance
18 opportunity automatically precludes a range of uses that
19 would otherwise be permitted by special exception under the
20 Zone. All right?

21 That's a practical difficulty right there, and so
22 then, bringing forward the application here, we have for two
23 years been marketing this property, all right?

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1 And also trying and trying and trying and
2 constantly getting nothing sticking, nothing there, and this
3 creates an additional burden.

4 It creates a real, tangible, practical difficulty
5 that isn't suffered by other properties that aren't similarly
6 split-zoned. It's not just a question of being near the
7 residential zone. The residential zone is actually on our
8 lot.

9 So, if you just read a strict meaning of the
10 provision, you can't fit that in there but for this variance.

11 What is the purpose of the variance? The variance
12 is to provide a narrow amount -- the variance is an
13 extraordinary level of relief and providing a narrow amount
14 of relief for a limited circumstances where otherwise, you
15 would have injustice or practical difficulty.

16 Without even trying to market it, you're already
17 experiencing practical difficulty. Then you spend two years
18 trying to actually market it unsuccessfully, only to get your
19 one tenant that you can possibly get in here? And they have
20 to take this thing through this process.

21 I don't know that you get much more of a
22 definition of practical difficulty.

23 We are very sensitive to the community concerns.

1 This thing did go through the ANC processes.

2 This thing went through three meetings with the
3 ANC, and there were concerns about fast-food, there were
4 concerns about restaurants, there were concerns about other
5 types of uses.

6 There were concerns about the El Salvadorian
7 embassy.

8 CHAIRPERSON HILL: Okay, I'm going to stop you.

9 CHAIRPERSON HOOD: Is there anything else that's
10 different or unique, other than the split zoning? Anything
11 else?

12 MR. VIANI: The split zoning, I would say the
13 different, unique about the property. I would say the fact
14 that the property has access on two roads.

15 You're not going to find that with most properties
16 in the area, and it's precluded from full utilization of
17 those resources either way because we have to have this
18 special exception for the parking.

19 And then just the split zoning creates a problem.
20 It's a unique parcel --

21 CHAIRPERSON HOOD: I get the split zoning, I get
22 the split zoning. What I'm trying to do now is search for
23 something else that's unique.

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1 MR. VIANI: Access to both -- the fact that the
2 existing properties pre-date the current application of
3 zoning.

4 CHAIRPERSON HOOD: It pre-dates '58?

5 MR. VIANI: The building was built in the '40s.

6 CHAIRPERSON HOOD: What year in the '40s?

7 MR. R. ISEN: I really don't know. I know we
8 acquired it in the early '70s. I don't really know.

9 CHAIRPERSON HOOD: Okay. And is there anything
10 else?

11 MR. R. ISEN: I'm almost positive it was 1946.
12 It was just after World War II.

13 MR. R. ISEN: Well, one thing, there was a height
14 limitation because of the Vice President's home. So, we
15 can't go up more than --

16 CHAIRPERSON HOOD: So, is your property the only
17 one that can't do that? Your property's the only one, right.

18 MR. R. ISEN: Next-door is a four-story
19 condominium building. That was built before I guess 9/11.
20 And so they were exempt. There's a few properties --

21 CHAIRPERSON HOOD: So, the rest of them can't do
22 it as well, right?

23 MR. R. ISEN: A few properties, yes.

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1 CHAIRPERSON HOOD: So, I'm just trying to find --

2 MR. R. ISEN: How many of them can actually see
3 the Naval Observatory from one of our neighbors on our side
4 of the street. There aren't that many. Calvert, Licker, I
5 guess --

6 CHAIRPERSON HOOD: Let me ask you this. Do you
7 need some time to think about it?

8 MR. VIANI: I think the split zoning creates the
9 unique circumstance but I don't know if it's a practical
10 difficulty. What else is unique about the property?

11 The property was, as we said, constructed
12 predating zoning. The property has access to two roads.

13 These are practical concerns, these are physical
14 challenges when it comes time to trying to sell the
15 opportunity to be a tenant in this property.

16 CHAIRPERSON HOOD: Okay. Anything else?

17 MR. VIANI: I guess I would just kind of refer to
18 the fact that every case has to stand on its own but if you
19 look at the history of how these similarly-situated uses have
20 been treated, this is the vehicle by which we handle them.

21 You get a special exception for the use, and if
22 you're within 25 feet of this zone, it will look towards and
23 see is there going to be an impact to the property or

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1 something like that?

2 And with Paisano's, with Noodles & Company, that's
3 been the case. It wasn't, apparently, reviewed as a concern
4 when it came to Chipotle, but in this site you had --
5 Chipotle replaced a Pizza Hut.

6 You've got a Bruegger's on there. This is a
7 restaurant where we're going to be having people coming,
8 sitting down and eating too.

9 It's not just a delivery thing. And it's not a
10 question of also people -- there was a comment about is this
11 the serving of Georgetown?

12 This has served the same area since 1986 and it
13 served in the other place without any adverse impacts in the
14 community, no crime, no noise, no light violations. It
15 worked very well.

16 CHAIRPERSON HOOD: Okay, thank you.

17 CHAIRPERSON HILL: Thank you, Chairman Hood. A
18 couple of things; I got a little confused during your
19 presentation in the record.

20 The photographs that you had were from the back
21 there. The front of the retail would be on Wisconsin,
22 correct?

23 MR. VIANI: That's correct.

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1 CHAIRPERSON HILL: Okay, and the conditions that
2 were put forth from the ANC, you agreed to all those
3 conditions and there was one, I guess, that the Office of
4 Planning just mentioned in terms of if lighting were
5 installed, it would be downward lighting.

6 Was that in any of the conditions?

7 MR. VIANI: I don't think that was in any of the
8 conditions but I don't think we were proposing any new
9 lighting, other than we did require for signage.

10 And for signs, it would only just be the one sign
11 consistent with their -- that sign may be internally lit but
12 there's no --

13 CHAIRPERSON HILL: But you would not have any
14 opposition to a condition if a lighting were installed it
15 would be downward lighting?

16 MR. VIANI: No objection at all.

17 VICE CHAIR HART: Mr. Viani, in Exhibit 53, which
18 is the letter that I think you -- oh, this is Mr. Isen
19 submitted regarding the -- your attempts to be able to try
20 to market the site. In the second paragraph, the end of the
21 paragraph, you said despite the efforts that you've made all
22 over the past I'll say year, two years, whichever, but you
23 say despite these efforts, numerous potential tenants

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1 rejected the space. Why did they reject the space? What was
2 their rationale?

3 MR. M. ISEN: Every situation is different. For
4 our most recent tenant we had, it was a company called
5 European Wax.

6 It was a 100-unit, 150 chain that provides waxing
7 services and they said it was too close to Georgetown. I'm
8 sorry, to Dupont Circle, where they just opened.

9 They're looking to do fewer stores and they felt
10 that it just didn't meet their requirements. Previous to
11 that, we went fairly far down the road with one of the local
12 banks. It was under a little bit of confidentiality.

13 It was one of the banks, and they really didn't
14 like the fact that from a security standpoint, you have a
15 Wisconsin Avenue entrance for walking and then you also have
16 the back entrance which you also have to maintain for fire
17 code, because it's 100 feet long.

18 So, you have to have rear access as well and they
19 just couldn't make security work there. That was another
20 example.

21 We had a veterinarian office that didn't feel that
22 the neighborhood had dense enough demographics to justify
23 opening up a location there. I'm trying to think what else

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1 has come up.

2 VICE CHAIR HART: And what I'm looking for is
3 understanding if there are issues about the building itself
4 or there are issues about -- I mean, the bank sounds like it
5 was probably the building itself.

6 But there's going to be other decisions that
7 possible potential tenants, I guess, would have to want to
8 move in. And I know that they can range.

9 MR. M. ISEN: No, no, I'll say some of the others
10 that I --

11 VICE CHAIR HART: I was just trying to understand
12 --

13 MR. M. ISEN: No, I understand. I'll give you
14 Bruegger's -- sorry.

15 VICE CHAIR HART: That's okay.

16 MR. M. ISEN: I mean, Bruegger's has been part of
17 the consolidation kind of going on in retail.

18 They were recently acquired by Einstein, which is
19 owned by Caribou. But another reason that people have given
20 me, one of the main ones actually I get from a lot of
21 retailers, is that there's no day-time traffic in Glover
22 Park.

23 That is actually kind of a market condition that

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1 people don't feel there's any real day-time traffic.

2 There's no office in the area. The Consulate
3 probably kept Bruegger's in business for years.

4 They actually ended up moving to Silver Spring on
5 Philadelphia Avenue and I think moved out of the city,
6 notwithstanding the fact that the Consulate's around the
7 corner and we did try to market it to other Consulates.

8 But it's been a variety of reasons. Some of them
9 have been overall economic reasons, some of them have been
10 building-specific reasons.

11 CHAIRPERSON HILL: And how long was the consulate
12 there did you say?

13 MR. M. ISEN: Ten years, and I will say they had
14 a right to terminate after five years and we spent a
15 considerable amount of money to retain them, to prevent them
16 from exercising their option to terminate.

17 And actually, we made them an offer to renew,
18 which was significantly below what they were paying. It was
19 in the neighborhood of 40 percent less, to keep them as a
20 tenant. Because it's costly, it's time-consuming to just
21 split these spaces up.

22 Actually, where Bruegger's was split was
23 relatively easy because the way the space lays out.

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1 But here, there's actually a staircase in the back
2 of this 4000 square feet, which has to maintain access and
3 it's going to be hopefully in Domino's space, but it also
4 creates -- it's expensive to split spaces and bring in
5 utilities, sprinklers, et cetera.

6 Thank you.

7 CHAIRPERSON HILL: Okay, all right, I only have
8 one last thing, I suppose.

9 I know the Chairman was going to speak, from the
10 ANC. I guess they had waited here.

11 And the Chairman was going to speak from the ANC
12 and so they left, right? Is that who it was?

13 MR. VIANI: I think she's the Chairman. She's
14 also the single-member District.

15 CHAIRPERSON HILL: And they voted unanimously for
16 the Domino's regardless of kind of I guess some of the
17 opposition they got from the community.

18 I'm just curious as to what was their
19 justification for it or why did they want it?

20 MR. VIANI: I think their justification was we
21 felt that they met the standard.

22 They felt that they met the concerns that were
23 expressed by the community through the conditions, and there

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1 was concerns generally about what's going on with the retail
2 environment in Glover Park.

3 There was recognition that this is a relocation
4 of a basic -- this is a locally-owned franchise. This is a
5 local business; it employs 18 District residents.

6 This was not a new thing coming in there, so they
7 kind of got past that, but there were concerns about
8 providing retail, lively activity right there, being
9 concerned with what's going on in the area generally towards
10 the retail environment.

11 They felt, I think, some of the concerns raised
12 about safety, access, ramps, things like that, could be
13 addressed through the conditions.

14 Some of the other desires to have a small local
15 artisan business and stuff like that were not realistic in
16 terms of the market.

17 And the reality was there was an opportunity here
18 and they thought that it was a good opportunity to move
19 forward.

20 CHAIRPERSON HILL: Okay. All right, does anybody
21 have anything else? All right. You got your chance to
22 speak, I'm not really sure why you're raising your hand.

23 It's okay, you can come on forward for a second.

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1 You have to speak into the microphone, sorry, and you have
2 to re-introduce yourself.

3 MS. RADULESCU: Adriana Radulescu, I live at 2238
4 Observatory Place NW. I want to address some of the points
5 about the foot traffic and the difficulty of finding tenants,
6 commercial tenants, in Glover Park.

7 There are actually several office buildings in the
8 area. There is a branch of the Chinese Embassy. I mean,
9 they go to Sweet Green, which is a little South of that.

10 There is another big office building, I don't know
11 the address exactly.

12 CHAIRPERSON HILL: Okay, that's okay. I
13 understand what you're getting at but you've had your
14 opportunity to testify. I don't think you're saying anything
15 new in terms of --

16 MS. RADULESCU: What I want to say is this, that
17 the type of business like Domino's, it's what makes no foot
18 traffic.

19 CHAIRPERSON HILL: Right, okay, I understand.

20 MS. RADULESCU: There's nothing attractive about
21 it.

22 CHAIRPERSON HILL: That's not true. I like
23 Domino's, it's okay. Okay, you'd be surprised who's in my

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1 area.

2 (Laughter.)

3 CHAIRPERSON HILL: Exactly, you take my people any
4 time over Domino's. Right, so, okay, let's see. I don't
5 know where I am so I can't decide today, I don't know about
6 you all, and so -- the attorney's just blankly staring at me
7 across the table.

8 I'd be interested in hearing, I guess -- I don't
9 even necessarily need a whole lot, I just need a little time.
10 And so I don't know what the Board Members need, if anything
11 further.

12 I'm having a difficult time with this actually.
13 I don't know if there's anything that the Board Members can
14 help us get to a place.

15 The only thing I suppose that I might ask from the
16 Applicant is even just a summary as to how you're meeting the
17 variance test again.

18 I know it's in the record, I know I can go back
19 through it and all that. You can do a one-pager. It's not
20 anything that's going to be -- I don't even know if I need
21 that.

22 We'll see what happens with the other Board
23 Members here, if they need anything. I don't know.

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1 VICE CHAIR HART: Mr. Chairman, yes, I guess I am
2 somewhat struggling with this, struggling is probably not the
3 right word, but I think that it is, and the questions I was
4 asking were really around, and the I know the Chairman has
5 just asked for it, it's really around the first prong of the
6 variance test.

7 And at the very end, we started, and I think it
8 was Chairman Hood that started asking about some of the other
9 conditions that are going on. And I know we've talked about
10 quite considerably about this, so I'm not really going to go
11 there.

12 But there was a discussion about when this
13 building was built, this building was built before the '58
14 regs, that there is this overlay zone regarding the kind of
15 height aspect.

16 But even though that's not necessarily at issue
17 here, there could be a limitation in terms of how much you
18 could -- if you wanted to rebuild this or if you wanted to
19 build something new to be able to market that, then you'd
20 have to be able to deal with that zoning issue.

21 And if you could also talk a little bit about the
22 connection between the fact that this is one of a few lots
23 that actually connect that front -- I shouldn't say front --

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1 that sit on both Wisconsin and 27th -- 37th, sorry.

2 And I think that that may be helpful to kind of
3 understand that, and if there are any other things that you
4 come up which that connect to that acceptable-situation
5 issue, that's the part that I'm still kind of dealing with.

6 MR. VIANI: We'd be happy to comply.

7 VICE CHAIR HART: I think that the other prongs,
8 I'm kind of okay with but it's this one that I'm still not
9 sure.

10 And the Office of Planning, in their testimony,
11 Ms. Myers said that there wasn't enough information in the
12 record for her to be able to recommend approval of the
13 application.

14 And I was asking whether or not -- well, because
15 there is not enough information, then she can't get to that
16 decision, the approval decision.

17 And so I think that's why we're kind of looking
18 at beefing up the record for that, just so that we have that
19 understanding. But I think that's kind of where I am with
20 it.

21 I'm not saying that Ms. Myers is going to change
22 the recommendation after it, but I think that it sounds as
23 though there needs to be still some additional information

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1 to be able to kind of understand.

2 And I don't know if, Ms. Myers, if you need to be
3 able to weigh in after they provide this information, Mr.
4 Chairman, either, if we want to have that, it may be helpful.

5 CHAIRPERSON HILL: Sure, that would be great.

6 VICE CHAIR HART: But that's just my view.

7 CHAIRPERSON HOOD: Mr. Chairman, I don't have much
8 to add. I agree with you and the Vice Chair.

9 The only thing is about the one page. I think you
10 said you didn't know if we needed it or not? And I think it
11 goes to what the Vice Chair mentioned.

12 We need those bullet points if we can get over
13 that first prong, and that additional information, so the
14 Office of Planning can review and see if we can get there.
15 And then we can deal with everything else accordingly.

16 So, let's see if we can get that lift. And I'm
17 not pro or con, I'm not going against it.

18 I've also heard what the opposition has said as
19 well, but I always like to at least get the Office of
20 Planning and its support behind -- I mean, I don't vote
21 whether they support it or not, but I think that we can do
22 a little more work to get us all there in that first prong.

23 So, I don't have anything else to add.

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1 VICE CHAIR HART: One last thing, there was one
2 piece of testimony that one of the opposition members made,
3 and that was around the hours of operation. And I didn't see
4 the hours of operation; I don't know if we had that?

5 Okay, that's what I thought. The hours were about
6 where you're parking, when the delivery cars could park in
7 the back or in the front.

8 MR. VIANI: Just 10:30 in the morning and then the
9 afternoon, they go to Wisconsin.

10 VICE CHAIR HART: And I just didn't know if there
11 was any discussion that you've had with the community, and
12 maybe it's just I missed it, but the community about hours
13 of operation.

14 MR. VIANI: All that was part of -- there were
15 three ANC meetings on this, and so all that was dealing with
16 -- these were all discussed. Hours of operation, vehicle
17 traffic, noise, smell, trash, all that was discussed.

18 CHAIRPERSON HILL: But, I'm sorry, it's just the
19 hours of operation of the parking lot, correct?

20 MR. VIANI: Well, there's two.

21 For the ANC, it was just the hours of operation
22 of the parking lot, but we've also in the record talked about
23 the hours that we would be proposing to operate, which are

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1 the standard hours they're currently operating in the store
2 right now.

3 And that's in the record.

4 VICE CHAIR HART: Which Exhibit is that again?
5 Because I missed that.

6 MR. VIANI: It should be in our Statement of
7 Justification. I know that it's 10:00 a.m. to 2:00 p.m.,
8 Sunday through Thursday, 10:00 a.m. to 3:00 p.m. -- 2:00 a.m.
9 sorry.

10 10:00 a.m. to 2:00 a.m., Sunday through Thursday;
11 10:00 a.m. to 3:00 a.m., Friday, Saturday, Sunday. Which is
12 the current hours that they operate.

13 VICE CHAIR HART: Okay, thank you.

14 CHAIRPERSON HILL: And actually, now that Vice
15 Chair Hart mentioned this in terms of the conditions, the
16 Office of Zoning has mentioned that the conditions need to
17 be rewritten so that it's the Applicant rather than Domino's.
18 Because if it's not Domino's, then it's just going to be the
19 Applicant. So, if you wouldn't mind providing the conditions
20 that have been listed from the ANC and then just replacing
21 Domino's with the Applicant.

22 And then also add that seventh condition,
23 concerning if lighting were installed, it would be downward

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1 lighting.

2 MR. VIANI: Will do.

3 CHAIRPERSON HILL: And so do you understand
4 everything in terms of --

5 MR. VIANI: What we're looking to do is come back
6 and provide you more information to reach a decision on the
7 variance, whether we're met the standard or not.

8 I believe we understand the specific sub-points
9 you've gone on to talk about. We also want to come into with
10 revised conditions that remove references from Domino's and
11 change it to Applicant.

12 In addition to that, add in the condition from OP
13 about downward lighting, which we're happy to do.

14 And we can get that to you pretty quickly, with
15 the understanding that we would CC OP and let OP then further
16 provide additional feedback based on our additional
17 submission.

18 CHAIRPERSON HILL: Okay, so I'm now going to put
19 this on for decision, and I was going to put it on decision
20 because you've been here all day now and I'm going to tag
21 Chairman Hood again for the 17th so he can hear and actually
22 deliberate with us.

23 Because it is something that's going to need a

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1 little bit more deliberation I think than just a write-in.

2 So, if Chairman Hood, you're back here on the 17th
3 for the decision on the 17th, and then the Office of
4 Planning, we'd like any kind of feedback that they might be
5 able to give.

6 I'm just trying to back up some dates here. When
7 would you be able to give this to us?

8 MR. VIANI: I think given the impact of the
9 holiday, we could probably do it by the first week in January
10 or right on the 31st.

11 CHAIRPERSON HILL: Okay. I'm just trying to
12 figure out the Office of Planning.

13 We don't need anything until everybody has to has
14 their seven days, in terms of I guess just parties.

15 So, if we could have whatever the Office of
16 Planning might submit supplementarily by the 9th of January?
17 And you'll get us your stuff by the 5th?

18 VICE CHAIR HART: Mr. Chairman, I was just asking
19 if we could get it by the 5th, then the Office of Planning
20 could give us a report by the 12th.

21 And so we're not actually having to wait until the
22 16th to actually get it.

23 MR. VIANI: We will make sure we get it in by the

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1 5th.

2 CHAIRPERSON HILL: Okay, and that's right, now I'm
3 going to go back to the seven days again.

4 Ms. Nagelhout, again, if the Office of Planning
5 submits a report, then parties, which would be these people,
6 I mean the Applicant, as well as the ANC, have seven days to
7 respond. Correct?

8 I'm sorry, your mic's not on Ms. Nagelhout.

9 MS. NAGELHOUT: I'm not sure that applies to OP,
10 rather than submissions from parties.

11 CHAIRPERSON HILL: So, OP can submit whenever they
12 submit and then the seven-day rule doesn't apply?

13 MS. NAGELHOUT: I think that's correct.

14 CHAIRPERSON HILL: Okay, well, we'll go with that
15 for now. So, then, right, so you're asking for -- say that
16 again.

17 VICE CHAIR HART: It's just a suggestion so that
18 the Applicant submits their information by January 5th and
19 then OP can respond to that by the 12th, just giving them a
20 week to be able to do that.

21 And then we have the case on the 17th.

22 CHAIRPERSON HILL: Mr. Moy, is that good?

23 SECRETARY MOY: That's good with me.

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1 CHAIRPERSON HILL: Okay, do you understand?

2 MR. VIANI: No later than the 5th.

3 CHAIRPERSON HILL: All right, anything else?

4 I'm going to close the hearing and we're just
5 going to have a decision on the 17th, and we're going to take
6 a quick two-minute break, and happy holidays, you all.

7 MR. VIANI: Thank you guys very much. Thank you.

8 (Whereupon, the above-entitled matter went off the
9 record at 3:21 p.m. and resumed at 3:35 p.m.)

10 CHAIRPERSON HILL: All right, Mr. Moy, you can go
11 ahead and call it whenever you like.

12 SECRETARY MOY: Thank you, Mr. Chairman.

13 So, the Board is back in session. It's 3:37 and
14 that would be Case Application Number 19630 of Goirand --
15 Elodie Goirand, I hope I -- I try my best -- and Andreas
16 Xenophontos.

17 This is captioned advertised for a special
18 exception on your Subtitle D, Section 5201 from the lot
19 occupancy requirement Subtitle D, Section 804.1.

20 This would permit an existing rear garage R-15
21 Zone at premises 4540 Lowell Street, Northwest, Square 1608,
22 Lot 68.

23 Mr. Chair, there are two party status requests.

24 CHAIRPERSON HILL: Okay, let's have the Applicant
25 first come to the table.

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1 MR. XENOPHONTOS: Good afternoon.

2 CHAIRPERSON HILL: Good afternoon.

3 MR. XENOPHONTOS: My name is Andreas Xenophontos
4 and I am the spouse of the owner of the property, my wife.

5 CHAIRPERSON HILL: Okay, Mr. Xenophontos?

6 MR. XENOPHONTOS: Very good, yes.

7 CHAIRPERSON HILL: Thank you.

8 Okay, all right, well, first all, thank you for
9 being here. Thanks everybody for waiting this long.

10 This is going -- Mr. Xenophontos, this is going
11 to take us a little while to kind of work out because there's
12 a bunch issues on here that I'm not terribly sure we're going
13 to be moving forward in this particular way today.

14 So, there are two party status individuals that
15 are looking to be included as members of party status. And,
16 then, there's a whole type of rights that comes forward with
17 that.

18 What I'm kind of struggling with, and I guess this
19 is what the Board is still kind of struggling with is, the
20 reports that we've gotten from the Office of Planning and
21 their interpretation and also whether or not the Board
22 believes that you really should be here for an area variance
23 and not a special exception.

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1 So, two things, like are you -- like, I don't know
2 whether you have had counsel before or you're just
3 representing yourself?

4 MR. XENOPHONTOS: That's correct.

5 CHAIRPERSON HILL: Okay.

6 So, do you know the -- have you read the Office
7 of Planning's report?

8 MR. XENOPHONTOS: I have.

9 CHAIRPERSON HILL: Okay.

10 And, they are in agreement, or not they're in
11 agreement, they have given us a report that doesn't really
12 have any recommendation to the special exception because they
13 believe this should be an area variance. Okay?

14 And, the -- is what I understand, even the Zoning
15 Administrator believes this should be an area variance.

16 And so, if -- even if were to go, and I'll kind
17 of let the Board members also chime in, but I want to be
18 clear on this, even if we, the Board, thought that this might
19 be heard as a special exception, and then hear the special
20 exception, and given the information in the record, which is
21 pretty heavily against you right now, if we were able to get
22 to the point where we thought that it was a special exception
23 and approve the special exception, when you go to your
24 permitting, the Zoning Administrator would say, no, you need
25 an area variance. So, you wouldn't get your permit.

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1 MR. XENOPHONTOS: But, I don't need a permit. The
2 garage is already there. What I'm trying to keep is the
3 garage.

4 CHAIRPERSON HILL: Well --

5 MR. XENOPHONTOS: Actually, the roof of the
6 garage.

7 CHAIRPERSON HILL: I understand.

8 So, maybe then the Zoning Administrator is saying
9 that you're not supposed to have the roof of the garage,
10 right?

11 MR. XENOPHONTOS: That's correct.

12 CHAIRPERSON HILL: Okay.

13 MR. XENOPHONTOS: In order to meet the lot --

14 CHAIRPERSON HILL: Right.

15 MR. XENOPHONTOS: -- occupancy requirement --

16 CHAIRPERSON HILL: Right.

17 MR. XENOPHONTOS: -- that was high as long as I
18 remove the garage roof --

19 CHAIRPERSON HILL: I don't know if removing the
20 garage roof puts you in compliance and, by right, then, you
21 know, then that's great, then you should go ahead and do that
22 if I were you.

23 MR. XENOPHONTOS: No, he said that --

24 CHAIRPERSON HILL: So, I don't know -- that's --
25 that would -- the reason -- the point at hand, what I'm

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1 trying to figure out and trying to get you to understand is
2 that, the Office of Planning, via their report, is not making
3 a recommendation that this is a special exception.

4 They are, in fact, making a recommendation that
5 this is an area variance. So, we wouldn't even be able to
6 argue as -- we wouldn't be able to hear the case as to
7 whether it's a special exception or not.

8 And, even if we did, when you went to go get, you
9 know, the -- when you went to get the decision as to whether
10 you needed to tear down something or not, they would say,
11 you're not here with the correct -- sorry, ruling. You need
12 an area variance. Okay?

13 And so, I'm just trying -- and you'll feel free
14 to explain. So, really, the two things that I see is, and
15 I'm going to ask the Office of Planning kind of their
16 thoughts, as well as I will ask the Board their thoughts and
17 I'll give you an opportunity to comment about what I'm
18 saying.

19 But, your options would be to, at this point, if
20 they Board's with me, which I think they kind of are, then
21 we think you need an area variance. Okay?

22 And, if you need an area variance, then we can't
23 hear this now. So, we'd either dismiss this, okay, because
24 you're not here for the right variance or, and I'd have to
25 even look with the Office of OAG or you could reapply as an

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1 area variance and then you'd have to go through the
2 placarding and everything that needs to take place in order
3 to do an area variance.

4 So, we'd be putting you off for a couple months
5 to go through that process.

6 You would then go through that process again with
7 the Office of Planning and the ANC and then you would be back
8 before us.

9 MR. XENOPHONTOS: May I respond to that?

10 CHAIRPERSON HILL: Certainly.

11 MR. XENOPHONTOS: Initially, I applied for an area
12 variance, that's what I did. And then, I received from this
13 office, and this is the documentation which I give you now
14 today, telling me that I don't need to apply for variance,
15 I can apply for a special exception because my lot occupancy
16 is at a 50 percent and it's an R-20 or in the R Zone covers
17 by that.

18 So, that's why we changed it from an area variance
19 to a special exception.

20 CHAIRPERSON HILL: Okay, give me one second, give
21 me one second, give me one second.

22 MR. XENOPHONTOS: Of course I have given to you
23 right now this.

24 VICE CHAIR HART: Was that the information that
25 you just passed to us?

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1 MR. XENOPHONTOS: Yes, the documents from Ms.
2 Allison Myers.

3 VICE CHAIR HART: Give us a second.

4 MR. XENOPHONTOS: Which they are very kind helping
5 me to go through this process because I'm not an attorney,
6 et cetera.

7 And please take a look at the second page.

8 CHAIRPERSON HILL: All right, while we're doing
9 this, I'm trying to figure out what this is. And so, the
10 Board -- well, let -- I don't want to go too far out of
11 order, I'm just trying to understand, I don't want to waste
12 your time or our time here if you have to be here for
13 something else, right?

14 And so, and you're already, unfortunately been the
15 last person here and --

16 MR. XENOPHONTOS: And also, this is our second
17 time at the BZA for this same permit, for the same property
18 and it's not done. This is our second time here.

19 The first time, we spent \$35,000 in legal fees to
20 come here.

21 CHAIRPERSON HILL: No, that's okay.

22 When were you here? Oh, believe me, I know all
23 about the fees, so, you know.

24 MR. XENOPHONTOS: Yes, so --

25 CHAIRPERSON HILL: So, last time you were here was

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1 when?

2 MR. XENOPHONTOS: In, I have to see now, in 1983
3 -- 2013.

4 CHAIRPERSON HILL: Okay, that's the 2014 things
5 that were going on, right.

6 And, again, that brings up another question which
7 is that, you know, you had in 2014 said that you were at 30
8 percent and now you're at 34 percent. So, the question was,
9 what happened between now and then?

10 And so, I'm just trying to tell you there's a
11 couple of little things that you might be arguing about
12 later. I'm just not sure if you're going to be arguing about
13 it right now.

14 MR. XENOPHONTOS: If you want me to, I can tell
15 you, it's very simple.

16 CHAIRPERSON HILL: Okay.

17 MR. XENOPHONTOS: If you see one of the
18 documentation I have supplied and you have it in front of
19 you, it's a test wall done in 2012 by the DCRA.

20 A test wall, what does it mean? They come over,
21 they make sure the lot occupancy is correct because whatever
22 you say you're going to build, you have done the foundation.
23 You have the forms, they approve that.

24 Then, I got a letter from the DCRA's Zoning
25 Administrator telling me, it's at your disposal also, telling

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1 me that I passed lot occupancy, building height and FAR.

2 Then, we thought we're clear, erroneously. I
3 don't doubt that we are about, and I understand that the
4 garage exceeds the lot occupancy of 30 percent.

5 So, when they're giving us a test wall, they
6 approved it.

7 Second, they give us a letter saying we are clear
8 of the lot occupancy. We think we're good. And then, we're
9 living in the house for two years, living in the house and
10 they come after two years and they tell us, guess what,
11 you're exceeding lot occupancy so you have to demolish your
12 garage roof.

13 So, this is case that goes for five years. So,
14 we'd like to have it to bring it to an end. The last time
15 I came here, every single person in the neighborhood within
16 200 meters -- feet, most of them, they are in favor of us,
17 and you have that recommendation also.

18 Except one person was against us. Now there are
19 many more, of course, that are sitting behind me. But, guess
20 what? Why are they, you know, I don't want to blame the DCRA
21 for everything. I am not, I am not here to do that. They
22 are doing their work, they are overworked. We are a lot of
23 us asking them things.

24 But, guess what? Their mistakes cost us dearly,
25 my family. You know, we have three law suits. I mean, we

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1 have to sell everything, we have to finish the house because
2 the Zoning Administrator, the first time, he ruled on us that
3 because we removed the rotten wall that we raised the
4 building, even though we lived in the house. We have water,
5 electricity, we have a garage.

6 CHAIRPERSON HILL: I understand, I understand.
7 I get it, okay.

8 MR. XENOPHONTOS: And, we make good money -- I'm
9 almost finished my home.

10 CHAIRPERSON HILL: Sure.

11 MR. XENOPHONTOS: Okay? And, you know, if, you
12 know --

13 So, the problem -- and then, he based his decision
14 on the rule who doesn't exist in any book. The 48-inches
15 rule.

16 So, he brought us here, we spent \$35,000 in legal
17 fees, \$32,000 in legal fees because we had no other option.

18 So, if you're telling -- if we say we object to
19 that, we have to the court system, our house will be there
20 unfinished. So, we have no option. We came here and we got
21 a variance.

22 But, guess what? They ruled on us on something
23 that's not exist in any book and it's part of your package.
24 The rule of the -- the famous rule of the 48 inches.

25 If somebody can be kind enough to show us in which

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1 book, in which --

2 CHAIRPERSON HILL: Mr. Xenophontos, I do have to
3 stop you. You said you were just about finished.

4 MR. XENOPHONTOS: Okay.

5 CHAIRPERSON HILL: So, that's okay.

6 And so, just to let you know, you're talking about
7 a lot of different things as we get into the cases. Okay?
8 So now, I'm just going to go back to the first one which is
9 whether or not you're here for the right thing and whether
10 or not we should even continue with this. Okay?

11 So, I'm actually going to go to the Office of
12 Planning just to provide a little bit of clarity because, at
13 this point, again, what I understand is that you're not
14 giving us any kind of analysis because you don't believe this
15 should be a special exception but an area variance.

16 And, if you could help to clarify that and specify
17 as to why that is, that would help the Board as to whether
18 or not we should be here or we should come back again for an
19 area variance.

20 MR. MORDFIN: Good afternoon, I'm Stephen Mordfin.

21 And, the Office of Planning reviewed not only this
22 application, but the previous one, BZA 18659 and the order
23 that came with that case.

24 In that application, the Applicant had applied for
25 variances to front and side yard setback from the Wesley

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1 Heights overlay district. And, the reason they needed to
2 apply for that was because there had been a front porch
3 attached to the previous house that the Applicant had
4 intended to retain and then build a new house attached to
5 that.

6 They demolished the structure with the exception
7 of that front porch.

8 Then, their structural engineer, the Applicant's
9 structural engineer determined that the structure was
10 decayed, it was rotting and it had to be removed.

11 And, once that happened, the Zoning Administrator
12 determined that the entire structure had been removed and so
13 it was going to be a new structure. And so, the Applicant
14 could no longer apply to build onto his previous structure,
15 even though it was just a front porch because there was
16 nothing left and it was a new structure.

17 So, he had to get front and side yard relief
18 because those were not conforming to the Wesley Heights
19 overlay district.

20 And, in that order from what the Board approved
21 several years ago, the -- I pull this quote from the order,
22 the Applicant's project was initially considered an addition
23 to the original dwelling.

24 However, because of the degree of demolition
25 ultimately undertaken by the Applicant, the nature of the

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1 development changed such that the project was considered new
2 construction.

3 So, if this is new construction, then the
4 Applicant is not entitled to get special exception relief for
5 the size of it. Not for an addition to it, but for the
6 construction of it because it's brand new and the 5201 which
7 allows you to get a special exception allows you to build on
8 to an existing principle structure which this is not, it's
9 a new principle structure or build onto or construct a new
10 accessory structure.

11 There is an accessory structure, but that's not
12 the subject of this for increasing the lot occupancy. It's
13 preexisting, it was preexisting in the previous Applicant and
14 I believe it's also preexisting 1958.

15 So, that's the reason why we believe that this
16 then has to be a variance because it doesn't meet the
17 requirements to be a special exception.

18 MR. XENOPHONTOS: May I add to this?

19 CHAIRPERSON HILL: Just one second.

20 So, but the building is already there?

21 MR. MORDFIN: The building is now there, yes.

22 CHAIRPERSON HILL: Yes. And so, how did he get
23 the permits to build the building?

24 MR. MORDFIN: Well, in the previous application,
25 he did submit site plans. Indicated on that, it also said

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1 over the area where the existing garage is, it said garage
2 to be demolished.

3 So, that was part of the way the Applicant made
4 the lot occupancy work was because of the size of the
5 dwelling, he couldn't keep the entire accessory structure,
6 so he proposed to remove the garage so that the lot would be
7 in conformance.

8 CHAIRPERSON HILL: Okay. So, then, again, what
9 the Applicant would need to do is come back before us for an
10 area variance to make the argument?

11 MR. MORDFIN: Yes.

12 CHAIRPERSON HILL: Okay. Does the Board have any
13 questions of the Office of Planning?

14 (No response)

15 CHAIRPERSON HILL: And I apologize, so, it's been
16 a long day --

17 MR. XENOPHONTOS: You can -- I'm Andreas.

18 CHAIRPERSON HILL: Mr. Xenophontos?

19 MR. XENOPHONTOS: Yes.

20 CHAIRPERSON HILL: You wanted to say something?

21 MR. XENOPHONTOS: Yes. First of all, the garage
22 was an existing building before 1960. That's the case.

23 Second, we have no doubt and we don't dispute the
24 fact that originally, we put the garage to be demolished to
25 meet the lot occupancy percent of the Wesley Heights overlay.

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1 However, when the structure -- when the test wall
2 was conducted by the DCRA and approved and filed, and then
3 we received this notification that we're in compliance with
4 everything, we simply erroneously thought we can keep the
5 garage and we've had it there for two or three years until
6 the neighbors start complaining why the garage is still up
7 there?

8 So, they come after us. You know, we finished the
9 construction. We've lived in the house happily for two years
10 and now they're coming and telling us, oh, you're above the
11 lot occupancy.

12 So, we're not going to blame them, so we are
13 trying to get an exception, a variance just to solve the
14 problem.

15 We've been dealing with this for four years. So,
16 we've had not one day of peace. We don't know what's going
17 to be next.

18 CHAIRPERSON HILL: Okay, I --

19 MR. XENOPHONTOS: We don't know.

20 CHAIRPERSON HILL: Okay. Well, I think that, I
21 mean, unfortunately, and I'm sorry you had to wait here this
22 whole time, but I think you have to come back for an area
23 variance.

24 I mean, I don't think that this is something that
25 we're going to be able to hear today.

1 MR. XENOPHONTOS: I agree and --

2 CHAIRPERSON HILL: And so, with -- I'm going to
3 look to, again, I guess OAG in terms of like, if an Applicant
4 changes from a special exception to a variance, they then --
5 how does the whole -- or I'm looking at Mr. Moy then, how
6 does the whole posting work and how can they get as quickly
7 back here as possible?

8 SECRETARY MOY: Given the rules, it's a 40-day
9 posting and it's a re-advertising.

10 CHAIRPERSON HILL: Okay.

11 SECRETARY MOY: For the variance, so that takes
12 us into January.

13 CHAIRPERSON HILL: Okay.

14 SECRETARY MOY: The end of January.

15 CHAIRPERSON HILL: Okay.

16 And then, you would go back before the ANC for a
17 variance or you wouldn't have to?

18 SECRETARY MOY: I would think so, if he'd made a
19 presentation with the ANC for the special exception --

20 CHAIRPERSON HILL: Right.

21 SECRETARY MOY: -- the ANC doesn't know that it's
22 for a variance and --

23 CHAIRPERSON HILL: I mean, or he wouldn't have
24 anything? I mean, right now he has --

25 SECRETARY MOY: Yes, he wouldn't have anything,

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1 yes.

2 CHAIRPERSON HILL: -- a denial. So, okay.

3 So, what we're going to then is we're trying to
4 make this as quickly as possible for you as well. And so,
5 you're going to have to re-post, re-file as an area variance.
6 I would suggest again going back before the ANC and seeing
7 if you can make your case and argument to get them to approve
8 the area variance.

9 Work with the Office of Planning in terms of the
10 area variance relief and then you'd be back before us again.
11 And, at that time, we could hear and also take the party
12 status.

13 So, when the application comes back, then we would
14 go ahead and, again, you would just apply again for party
15 status for that -- give me one second -- for that -- I mean,
16 y'all can come up in a second because you've been here all
17 day, but like we're not going to hear this now, and so
18 there's no reason to give you party status on something we're
19 not going to hear.

20 And so, they're going to have to re-post for an
21 area variance and he's going to come back for an area
22 variance. So, at that time, you would go ahead and just,
23 again, file for party status as the area variance.

24 You know, you guys are immediate next door
25 neighbors, so usually the Board, you know, I can't say for

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1 sure, but the Board allows -- seeks okay, anyway.

2 Actually, the party status people could you come
3 forward just for a minute? You can just sit over there to
4 your left if you'd like.

5 If you could please just -- I thought there was
6 just two of you, but that's okay -- so, if you could please
7 just introduce yourselves for the record.

8 MR. BAKER: My name is Peter Baker.

9 CHAIRPERSON HILL: Baker? Okay.

10 MR. BAKER: Baker. I reside at 4546 Lowell Street
11 with my wife, Sally, who's here.

12 CHAIRPERSON HILL: Okay, great.

13 MR. BAKER: And --

14 CHAIRPERSON HILL: Okay, that's okay, I just --
15 that's okay.

16 Sir?

17 MR. WEISSMAN: My name is Steve Weissman. I live
18 at 4536 Lowell Street next door.

19 CHAIRPERSON HILL: Okay, okay.

20 And you, ma'am?

21 MS. GREEN: My name is Sandy Green and I live at
22 3115 Foxhall Road, which is also next door, but just around
23 the corner.

24 CHAIRPERSON HILL: Okay. But, I thought there was
25 only two party status requests.

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1 MR. BAKER: Sandy had registered in opposition --

2 CHAIRPERSON HILL: Okay, okay.

3 MR. BAKER: -- but not as a party status.

4 CHAIRPERSON HILL: Okay, all right.

5 MS. GREEN: I didn't know the different, I
6 apologize.

7 CHAIRPERSON HILL: That's all right.

8 So, what I -- you see what's happening and so,
9 what I'd like you to do is just -- we're going to find out
10 a date here for when we can put this back on the calendar and
11 so you can go ahead and apply for party status.

12 Well, I guess they don't have to even reapply.

13 SECRETARY MOY: They still have -- it's still a
14 live request.

15 CHAIRPERSON HILL: So, we could do this now?

16 SECRETARY MOY: Yes, okay, fine.

17 CHAIRPERSON HILL: So, yes?

18 MR. XENOPHONTOS: I -- well, I have an objection
19 for them being party status.

20 CHAIRPERSON HILL: Okay.

21 MR. XENOPHONTOS: They missed the deadline.

22 CHAIRPERSON HILL: That's --

23 MR. XENOPHONTOS: They had three years to go after
24 me and they missed the most important deadline. If this was
25 so important --

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1 CHAIRPERSON HILL: Okay, give me one second, I'm
2 sorry.

3 MR. XENOPHONTOS: Yes.

4 CHAIRPERSON HILL: I don't remember seeing
5 anything, Ms. Nagelhout, about a deadline being missed.

6 MR. XENOPHONTOS: Yes, two weeks.

7 CHAIRPERSON HILL: Excuse me.

8 MS. NAGELHOUT: Well, the party status -- the
9 deadline for party status is based on the hearing date in
10 this application. So, so long as they filed, I think it's
11 14 days before the hearing date --

12 CHAIRPERSON HILL: Right.

13 MS. NAGELHOUT: -- I think these two requests --
14 two of the requests that were filed into the record are
15 timely.

16 CHAIRPERSON HILL: Okay, all right.

17 So, then you two gentlemen, we're going to go
18 ahead and give you party status. Okay? And, the reason
19 being is your immediate next door neighbors. Okay?

20 And, what I'd ask, if you could, when you come
21 back, if you could work together and present as one if --

22 MR. WEISSMAN: We don't have the same identical
23 concerns.

24 CHAIRPERSON HILL: They're not the same concerns?

25 MR. WEISSMAN: We have overlapping, but they're

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1 not identical.

2 CHAIRPERSON HILL: Not identical?

3 MR. BAKER: We have a shared driveway.

4 MR. WEISSMAN: I share a common driveway with Mr.
5 Xenophontos --

6 CHAIRPERSON HILL: Okay.

7 MR. WEISSMAN: -- which means that the presence
8 or absence --

9 CHAIRPERSON HILL: Okay, that's okay.

10 MR. WEISSMAN: -- of that garage has consequences
11 for me and no one else.

12 CHAIRPERSON HILL: I got you, that's fine. I was
13 just trying to -- I was just hoping that they were all the
14 same and we could all do one.

15 So, what happens with party status is then you all
16 will get the same time as the Applicant. Okay?

17 MR. WEISSMAN: I understand.

18 CHAIRPERSON HILL: So, okay, great. So then, you
19 know in the cross --

20 MR. WEISSMAN: I have one big problem. I know for
21 certain that I will be gone out of town the first two weeks
22 of February.

23 CHAIRPERSON HILL: Okay. So, we'll see where we
24 can put this. Okay? I think it will take the Applicant a
25 little bit of time regardless of how this works out.

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1 So, okay, well, thank you all very much.

2 MR. WEISSMAN: And, you're putting the entire
3 community through this process again because it has to go
4 before the ANC as well.

5 CHAIRPERSON HILL: Yes.

6 MR. WEISSMAN: Okay, you understand --

7 CHAIRPERSON HILL: Oh, I understand it all. I got
8 you, yes. If I could wave my wand and just, you know, do it
9 one way or the other. But, I mean, this is our process. And
10 so, it needs to come back for an area variance.

11 MR. WEISSMAN: And, he states that he was ill
12 advised by --

13 CHAIRPERSON HILL: Okay, I'm just saying, I don't
14 want -- let's -- we're going to have all our time to go
15 through -- and I appreciate you guys staying here. I'm just
16 -- if I knew that this was going to go this way earlier, I
17 could have saved y'all a lot of time. But, I didn't realize
18 this was going to happen until now. So, this is where we
19 are.

20 Mr. Moy, so in order to get back here for an area
21 variance, what dates do you think would be good or possible?

22 SECRETARY MOY: I think any dates after January
23 including January 31st and afterwards.

24 CHAIRPERSON HILL: Okay.

25 SECRETARY MOY: So, January 31st, of course, is

1 the last day in January.

2 MR. WEISSMAN: My problem is I won't be here.

3 CHAIRPERSON HILL: Okay, give us a second, you
4 said the first two of February is what you said?

5 MR. WEISSMAN: That's correct.

6 CHAIRPERSON HILL: So, what week of February will
7 you be back?

8 MR. WEISSMAN: Let me look on my iPhone, I can
9 figure it out. I apologize.

10 CHAIRPERSON HILL: That's all right.

11 MR. XENOPHONTOS: And, Mr. Chairman, I will --
12 should I ask now?

13 CHAIRPERSON HILL: Certainly, go ahead.

14 MR. XENOPHONTOS: You know, I'm going to need to
15 be get -- to find an attorney at this time because I was
16 thinking this is something very simple and I can do it by
17 myself.

18 But the area variance I think is a much difficult
19 -- and, you know, so we are going to need time to --

20 CHAIRPERSON HILL: Okay.

21 MR. XENOPHONTOS: -- get an attorney.

22 CHAIRPERSON HILL: You can -- that's all right,
23 I'll give you more -- I want you to have your best
24 opportunity and I'm glad that you know that this is a high
25 bar, right?

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1 MR. XENOPHONTOS: Of course.

2 CHAIRPERSON HILL: And so, would you like more
3 time?

4 MR. XENOPHONTOS: Well, I need time enough, first
5 of all, it's going to be very costly for us to find an
6 attorney and retain him.

7 Second, after we're through all of this process
8 again, one more time, so we need time to put ourselves
9 together.

10 Third, you know, I mean, I was, you know, I've
11 been hoping that I can solve this now, but, of course, I
12 cannot so I have to wait.

13 Now, another thing, I was threatened actually just
14 outside in the hall by an attorney of the DCRA that if we
15 don't demolish your garage, I'm going to be putting you fine
16 \$4,000 every day. I mean, he came to my face --

17 CHAIRPERSON HILL: Okay, give me one second. I
18 appreciate it --.

19 (Simultaneous speaking)

20 CHAIRPERSON HILL: I find that very -- I don't
21 even want to get into that. But so --

22 MR. XENOPHONTOS: I have rights.

23 CHAIRPERSON HILL: So, I'll -- well, sir, we all
24 have rights, we're here to talk about our rights, right?
25 And, I think you have a pretty good in what I'm trying to say

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1 to you that this won't work for you right now. So, you might
2 as well forget that. Right?

3 And so, your next opportunity is exactly to get
4 legal counsel, to go talk to your legal counsel and talk
5 about an area variance and then go through that process.

6 You can have as much time as you'd like. Would
7 you like more time? You tell me what -- I'll tell you what,
8 for now, why don't we say the end of February?

9 MR. XENOPHONTOS: That will be ample time to put
10 a final assessment --

11 CHAIRPERSON HILL: Okay.

12 MR. XENOPHONTOS: I'm not objecting to any of
13 this, I want to do right for the first thing. And, that's
14 what I did the first time.

15 CHAIRPERSON HILL: Yes, I don't -- and I
16 understand, I understand. I guess we have read a lot of the
17 case and I think there are a lot of questions that we have.
18 But, I understand nobody wants to be here. Okay?

19 And so, you know, so go ahead, the end of
20 February, Mr. Moy.

21 SECRETARY MOY: Mr. Chair, you should know we --
22 the Board already has -- is already entertaining an appeal
23 case on the 28th.

24 CHAIRPERSON HILL: Of February?

25 SECRETARY MOY: Oh, this is -- okay, forget what

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1 I just said, this is fine, the 28th will work.

2 CHAIRPERSON HILL: Okay, the 28th of February.
3 Okay, great.

4 So, we'll see you back here on the 28th of
5 February. You now have two party status people, so you have
6 to make sure that you notify them, okay, about anything that
7 goes on. And, we'll see you on the 28th.

8 MR. XENOPHONTOS: May I ask a question?

9 CHAIRPERSON HILL: Certainly.

10 MR. XENOPHONTOS: Because I don't want to go and
11 be wrong. So, what does it mean, how does the DCRA is
12 notified by this? They're going to start penalizing \$4,000
13 a week -- a day as he said outside? So, how do they -- the
14 DCRA put a stop into this?

15 CHAIRPERSON HILL: Okay, that's an interesting
16 question. I actually don't know.

17 MR. XENOPHONTOS: I mean, and how do I reapply
18 today or I have to be 30 days before or I have a limitation
19 when to reapply?

20 CHAIRPERSON HILL: Okay, hold on one second.

21 So, the Office of Zoning across the hall, although
22 they're probably closed, well no, they still might be open,
23 could possibly help you with the process in terms of what you
24 need to do. Okay?

25 I would, you know, find a lawyer, but they will

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1 be able to tell you the process in terms of placarding this
2 and the 40 days that are necessary to notify everyone.
3 Right?

4 As far as the question on penalties, I actually
5 don't know. Do you know? Does anybody know?

6 MR. WEISSMAN: Can I say something or am I not
7 allowed to talk?

8 CHAIRPERSON HILL: Just one second, I'm just
9 asking the one -- I'm trying to get the one question.

10 Can you guys -- okay, y'all got to give me second,
11 right. I'm sorry, sir.

12 Mr. Mordfin?

13 MR. MORDFIN: Yes, my understanding, although
14 somebody would have to confirm it is that if the Applicant
15 is in process of obtaining a relief that DCRA is not going
16 to issue fines until a decision is made. And then, at that
17 point, whatever the appropriate action would be taken.

18 CHAIRPERSON HILL: Okay, all right.

19 MR. WEISSMAN: This has already appeared before
20 a judge in a hearing for the earlier fines.

21 CHAIRPERSON HILL: Okay, I'm just trying to -- the
22 gentleman asked a question, that's what I understand the
23 answer to be. So, we're going to be back here again and we're
24 accommodating you in terms of the time you're not going to
25 be here.

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1 And so, the 28th, you said, of February, Mr. Moy?

2 SECRETARY MOY: Yes, sir.

3 CHAIRPERSON HILL: Okay, all right.

4 Is there any more questions to that?

5 MR. XENOPHONTOS: Yes.

6 CHAIRPERSON HILL: Okay. Someone has a question
7 from -- no, I'm sorry, so, I guess you're with the person
8 with the party status? So, if you could come on -- you have
9 to go -- you have to come here to the microphone. And, did
10 you get sworn in earlier?

11 Okay, you have to state your name. You can sit
12 down for a second because I have to -- it's a webcast. State
13 your name please and ask your question.

14 MS. BAKER: Sally Baker, 4546 Lowell Street.

15 A simple question, if you could clarify what the
16 40-day process is?

17 CHAIRPERSON HILL: Sure, the 40 days is for
18 posting, correct, Mr. Moy?

19 SECRETARY MOY: That's correct.

20 CHAIRPERSON HILL: The placard out in front of the
21 house, the side, yes, public notice.

22 MS. BAKER: And, it should be there for the full
23 40 days prior to the hearing date would be when the clock --
24 you start back -- counting back from the hearing date?

25 SECRETARY MOY: Well, the regulations state that

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1 the posting of the sign should be there 15 days prior to the
2 hearing date. But, since -- which applies to the first
3 scheduled notice of the hearing which is today. So, I'm
4 assuming the sign is still up, correct?

5 So, he may, although it's silent on the rules as
6 to writing the new scheduled hearing date, I usually tell
7 Applicants that there's no harm in doing that with the new
8 hearing date.

9 MS. BAKER: So, it's --

10 SECRETARY MOY: Keep the sign up.

11 MS. BAKER: Okay, and I'm sorry, I'm not clear.
12 Is it 15 or 40 days, though, 15 is what I thought I heard you
13 say?

14 SECRETARY MOY: For the actual posting of the
15 signage.

16 MS. BAKER: Okay, so the 40 days is something
17 different?

18 SECRETARY MOY: Yes. That's the number of days
19 for public notice --

20 MS. BAKER: Okay, okay, different than the posting
21 of the sign?

22 SECRETARY MOY: -- for the variance, yes.

23 MS. BAKER: Thank you.

24 CHAIRPERSON HILL: Okay. That's all right, I
25 learn something new again. I always forget myself.

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1 Okay, yes, sir? That's okay.

2 MR. XENOPHONTOS: Yes, I'm sorry taking your time.

3 CHAIRPERSON HILL: You don't have to.

4 MR. XENOPHONTOS: I need to put it together.

5 CHAIRPERSON HILL: I want you to understand.

6 Sure.

7 MR. XENOPHONTOS: So that I understand, I mean,
8 as long -- how far ahead from the February 28th I have to
9 reapply, 30 days, 40 days? So, do I have to go tomorrow, you
10 know, like Christmas time to apply, reapply or shall we have
11 a little time?

12 CHAIRPERSON HILL: OAG do you have some --

13 MS. NAGELHOUT: It could be considered an
14 amendment of the existing application, so he should check
15 with OZ to see what kind of paperwork, there should be a new
16 self-certification form.

17 And then, it's not a brand new case with a new
18 case number, it's new filings in this case.

19 SECRETARY MOY: What I would do, sir, is after
20 this, because the office is still open until 5:00 since
21 you're already here, I would stop by.

22 MR. XENOPHONTOS: In the offices where --

23 CHAIRPERSON HILL: Just directly across the hall.

24 MR. XENOPHONTOS: Where Ms. Myers is?

25 CHAIRPERSON HILL: Yes, exactly, yes. That's

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1 okay.

2 MR. XENOPHONTOS: Well, I --

3 CHAIRPERSON HILL: No, that's perfect.

4 MR. XENOPHONTOS: It's my second visit.

5 CHAIRPERSON HILL: So, okay. Yes, no, that's
6 good.

7 All right, okay. So, then, go across the hall,
8 they'll help you get straightened out and we'll see you back
9 here on the 28th of February.

10 MR. XENOPHONTOS: Unless if I find another
11 solution with the DCRA.

12 CHAIRPERSON HILL: Sure.

13 MR. XENOPHONTOS: And, put this to bed.

14 CHAIRPERSON HILL: Oh.

15 MR. XENOPHONTOS: Because I'm absolutely sick of
16 this.

17 CHAIRPERSON HILL: Right, right, okay. All right,
18 happy holidays.

19 MR. XENOPHONTOS: Happy holidays and thanks for
20 hearing us.

21 CHAIRPERSON HILL: Thank you, bye. I'm sorry,
22 hold on. So, Mr. Moy, is there anything else before the
23 Board?

24 SECRETARY MOY: There's nothing from the staff,
25 sir.

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1 CHAIRPERSON HILL: All right, okay.

2 We stand adjourned.

3 (Whereupon, the above-entitled matter went off the
4 record at 4:08 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 12-20-17

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

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