

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 28, 2018

+ + + + +

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., Carlton Hart, Vice Chairperson,
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

CARLTON HART, Vice Chairperson (NCPC)
LORNA JOHN, Member

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice Chairperson
MICHAEL TURNBULL, Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

CRYSTAL MYERS
KAREN THOMAS
ELISE VITALE

The transcript constitutes the minutes from
the Public Hearing held on February 28, 2018.

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

9:40 a.m.

1
2
3 BZA VICE CHAIR HART: Okay, the hearing will
4 please come to order. Good morning, ladies and gentlemen.
5 We are located in the Jerrily R. Kress Memorial Hearing
6 Room at 441 4th Street Northwest. This is the February
7 28th, 2018 public hearing with the Board of Zoning
8 Adjustment of the District of Columbia. My name is
9 Carlton Hart, Vice Chairperson. Joining me today is Lorna
10 John, Board Member, and representing the Zoning Commission
11 is Robert Miller for the decision case and Michael
12 Turnbull for the public hearing cases.

13 Copies of today's hearing agenda are available
14 to you and are located in the wall bin near the door.
15 Please be advised that this proceeding is being recorded
16 by a court reporter and is also webcast live.
17 Accordingly, we must ask you to refrain from any
18 disruptive noises or actions in the hearing room.

19 When presenting information to the Board,
20 please turn on and speak into the microphone, first
21 stating your name and home address. When you are finished
22 speaking, please turn on your microphone, excuse me,
23 please turn your microphone off so that your microphone is
24 no longer picking up sound or background noise.

25 All persons planning to testify either in favor

1 or in opposition must have raised your hand and been sworn
2 in by the secretary. Also, each witness must fill out two
3 witness cards. These cards are located in the table near
4 the door on the witness tables to my left, I'm sorry, in
5 front of me and to my left.

6 Upon coming forward to speak to the Board,
7 please give both cards to the reporter sitting at the
8 table to my right. If you wish to file written testimony
9 or additional supporting documents today, please submit
10 one original and twelve copies to the secretary for
11 distribution. If you do not have the requisite number of
12 copies, you can reproduce copies on an office printer in
13 the Office of Zoning located across the hall.

14 The order of procedure for special exceptions
15 and variances pursuant to Subtitle Y409 is located at the
16 table in the rear to my left. And the order procedures
17 for appeals applications pursuant to Subtitle to Y507 is
18 also at the back of the room on the same table.

19 The record should be closed at the conclusion
20 of each case except for any materials specifically
21 requested by the Board. The Board and staff will specify
22 at the end of the hearing exactly what is expected and the
23 date when the persons must submit the evidence to the
24 Office of Zoning. After the record is closed, no other
25 information shall be accepted by the Board.

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1 The District of Columbia Administrative
2 Procedure Act requires that the public hearing on each
3 case be held in the open before the public. Pursuant to
4 Subtitles 405B and 406 of that Act, the Board may,
5 consistent with its rules of procedures and the Act, enter
6 into a closed meeting on the case for purposes of seeking
7 legal counsel on a case pursuant to DC Official Code
8 Subtitle 2-575B4 and/or deliberating on a case pursuant to
9 DC Official Code Subtitle 2-575B13, but only after
10 providing the necessary public notice and, in the case of
11 an emergency closed meeting, after taking a roll call
12 vote.

13 The decision of the Board in these contested
14 cases must be based exclusively on the public record. To
15 avoid any appearance on the contrary, the Board requests
16 that persons present not engage the members of the Board
17 in conversation.

18 Please turn off all beepers and cell phones at
19 this time so as to not disrupt these proceedings.
20 Preliminary matters are those which relate to whether a
21 case will or should be heard today, such as request for
22 postponement, continuance, or withdrawal, or whether
23 proper and adequate of the hearing has been given. If you
24 are not prepared to go forward with a case today or if you
25 believe the Board shall not proceed, now is the time to

1 raise such a manner, excuse me, such a matter.

2 Mr. Secretary, do you have any preliminary
3 matters?

4 SECRETARY MOY: Good morning, Mr. Vice Chair,
5 Members of the Board. I do very briefly regarding the
6 cases on today's docket. We have four cases that have
7 been postponed and rescheduled. The first is Application
8 Number 19687 of the DC Jewish Community Center rescheduled
9 to March 21st, 2018. 19630 of Elodi Goirand and Adreas
10 Xenophontos rescheduled to April 25th, 2018. Appeal
11 Number 19613 of B, that's B as in bravo, Monroe Ventures,
12 LLC rescheduled to May 2nd, 2018. And also rescheduled to
13 May 2nd, 2018 is the Application Number 19614 of B Monroe
14 Ventures, LLC.

15 The only other items I have for the Board is
16 that there are two case applications scheduled for hearing
17 today where the Applicants are requesting to postpone and
18 reschedule. Those cases are Application Numbers 19644 of
19 Meenakshi, M-E-E-N-A-K-S-H-I, Kankaani, and Application
20 Number 19684 of C&S Development, LLC. That's it Mr. Vice
21 Chair.

22 BZA VICE CHAIR HART: And I guess we'll take
23 those last two cases, we'll take those up as we move
24 forward.

25 SECRETARY MOY: Yes, I would hope that maybe

1 earlier or after the decision case.

2 BZA VICE CHAIR HART: We can do that after the
3 decision case, that's fine. Okay, all individuals wishing
4 to testify today, please rise to take the oath. Mr.
5 Secretary, can you administer the oath?

6 SECRETARY MOY: Good Morning.

7 (Witnesses sworn.)

8 BZA VICE CHAIR HART: Thank you, Mr. Moy. If
9 we could start the first hearing case, excuse me, decision
10 case.

11 SECRETARY MOY: Yes, thank you. I believe
12 that's Application Number 19666 of Caryn Schenewerk as
13 amended for special exceptions under Subtitle E, Section
14 5201 from the accessory building lot occupancy provisions
15 of Subtitle E, Section 5003.1 from the accessory building
16 rear yard requirement Subtitle E, Section 5004.1 and
17 pursuant to 11 DCMR, Subtitle X, Chapter 10 for variances
18 from the use provisions of Subtitle U, Section 301.1(c)(b)
19 and the alley width requirements of Subtitle U, Section
20 301.1(c)(d)(3).

21 This would construct a second floor edition to
22 an existing carriage house in the RF-1 Zone at 1209 Park
23 Road Northwest, Square 2839, Lot 119. And participating
24 on this decision is the Chairman, the Vice Chair, Ms.
25 White and Mr. Robert Miller.

1 BZA VICE CHAIR HART: Thank you, Mr. Moy. So I
2 think I'm ready to deliberate on this. And I understand
3 that, Mr. Miller, you're participating with me on this.
4 Ms. John is not participating in this case and we do have
5 absentee ballots, correct Mr. Moy?

6 SECRETARY MOY: Yes, we do.

7 BZA VICE CHAIR HART: Okay. So, for this case
8 I can start. Mr. Miller, I reviewed the record, I thought
9 it was a fairly full record. I understand that the
10 Applicant needed to make some changes to what they were
11 requesting. We asked that at the last hearing that we
12 had, and they've made those changes, and they've actually
13 done the posting for those changes of relief.

14 And after all of that, after hearing the
15 testimony, I would find that I could agree with the Office
16 of Planning's Report which recommended approval for the
17 application and the ANC 1A Report, which also voted to
18 approve the application by a vote of seven to zero to
19 zero.

20 The Office of Planning report, of course, very
21 succinctly lays out how the Applicant met the criteria for
22 the relief requested. And I'm not going to go through all
23 of it, but I think that the one piece that I needed to
24 understand a little bit more was around the variance
25 relief, and that was to allow the use as well as the

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1 dwelling unit access requirement. And the issue with the
2 access part of it was that the alley was, well it was 15
3 feet at the wide where the structure was, it was only ten
4 feet wide at the entrance and that necessitated the
5 variance.

6 So, in particular, the OP Report stated that
7 the exceptional situation, one of the three prongs
8 resulting in a practical difficulty, was at the alley
9 which is, as I said, 15 feet wide at the subject area, but
10 narrows down to ten feet at 13th and 11th Streets. This
11 resulted in a practical difficulty, I'm reading from the
12 actual report itself. This is results in a practical
13 difficulty to the Applicant in that the alley could not be
14 widened in any realistic way, which would therefore limit
15 their ability to use their property. The OP
16 Report also included two conditions. One of those was
17 requiring sprinklers and the other was requiring the
18 Applicant to request that the fire and EMS Department, or
19 FEMS, review the project with regard to FEMS access to the
20 project during and in accordance with the building permit
21 review process.

22 I kind of saw the sprinkler issue as something
23 that would be determined during the permitting process. I
24 didn't really see the need to include it as a condition
25 ourselves. I think it's more of a building code issue as

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1 opposed to something that we should be conditioning to our
2 approval.

3 The FEMS seems a similar issue to me as the
4 sprinkler issue in that I think that it's something that
5 should be handled in the building permitting process. But
6 I'd like to hear from you, Mr. Miller, to understand your
7 thoughts on that. And I'll just kind of note that I
8 earlier said the ANC voted twice, actually, to unanimously
9 support this project in Exhibits 42 and 56. And they had
10 over ten letters of support for the project as well.

11 So, again, I could support the project. I felt
12 they met the criteria. And just one little question
13 around that condition, whether or not we should condition
14 them to have to go to FEMS. But, you know, your thoughts
15 would be helpful.

16 ZC VICE CHAIR MILLER: Thank you, Mr. Vice
17 Chairman. I concur with your analysis and that of the
18 Applicant and OP that the standards for relief, both the
19 special exceptions relief and the variance relief have
20 been met in this case to allow the second floor addition
21 to the existing carriage house.

22 I also agree that both of those issues would be
23 addressed through the building permit process. I guess I
24 don't see any harm with maybe noting that in the summary
25 order, maybe not requiring them to request. It will have

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1 to be reviewed when they go for their building permit and
2 fire and EMS will either sign off or not sign off. They
3 take that risk.

4 But I think they probably will, from what I
5 understand from previous cases like this that they
6 probably would sign off that they have the access. But I
7 think we could note it in the summary order that that
8 issue would be addressed as well as the sprinklers in the
9 building permit review process.

10 BZA VICE CHAIR HART: Okay, thank you very
11 much. I think that's a good idea. I think we will
12 request that OAG when they're working through this summary
13 order to just include that as notes for, and not actually
14 have them either as conditions. I don't have a problem
15 with that.

16 So with that I would like to make a motion to
17 approve Application 19666 of Caryn Schenewerk and just
18 with the notes, not as a condition, but just noting the
19 issues about sprinklers and the FEMS access. So with that
20 I'll make a motion, any seconds?

21 ZC VICE CHAIR MILLER: I would second it,
22 that's why I'm here today.

23 BZA VICE CHAIR HART: The motion has been made
24 and seconded. All those in favor say aye.

25 (Chorus of aye.)

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1 BZA VICE CHAIR HART: Any opposed?

2 (No audible response.)

3 SECRETARY MOY: Mr. Vice Chair, before I can
4 final the vote, as you mentioned, we do have two absentee
5 votes. The first absentee vote is from Ms. Lesyllee White
6 and her vote is to approve the application for the relief
7 being requested. Also we have an absentee vote from
8 Chairman Hill and, likewise, his vote is to approve the
9 application.

10 So that would give a final vote of four to zero
11 to one, this is on the motion of Vice Chair Hart to
12 approve the application for the relief. Second the motion
13 Mr. Robert Miller and, of course, also support Chairman
14 Hill and Ms. White. Motion carries.

15 BZA VICE CHAIR HART: Thank you. Summary
16 order, please.

17 SECRETARY MOY: Yes, thank you.

18 BZA VICE CHAIR HART: Thank you. Thank you,
19 Mr. Miller, for coming in.

20 ZC VICE CHAIR MILLER: Thank you.

21 BZA VICE CHAIR HART: Have a good morning.
22 We'll take a minute recess to switch out our zoning
23 commission members.

24 (Whereupon, the above-entitled matter went off
25 the record at 9:55 a.m. and resumed at 9:56 a.m.)

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1 BZA VICE CHAIR HART: The next case, Mr. Moy?

2 SECRETARY MOY: Yes, Mr. Vice Chair, we also
3 have scheduled, there was a second case for postponement,
4 let me just read that into the record for the transcript.
5 And this was also for decision making. This case
6 Application Number 19672 of Milton Halem, H-A-L-E-M, for
7 special exception under Subtitle D, Section 5201 from the
8 rare edition requirements of Subtitle D, Section 1206.4 to
9 construct a third story and rare edition to an existing
10 one family dwelling, R-20 Zone, 3608 S Street Northwest,
11 Square 1305, Lot 47.

12 And participating is Chairman Hill, Vice Chair
13 Hart, Ms. White and Mr. Peter Shapiro.

14 BZA VICE CHAIR HART: And I think this case is
15 one that we will push, actually, to next week, I guess
16 we'll continue this until next week. And this is really
17 because we just didn't have a quorum to be able to do
18 that. So, it is what it is. I think we'll definitely
19 have a decision on it next week and that's it. So I think
20 you can call the first hearing case.

21 SECRETARY MOY: Yes, thank you Mr. Chair. So
22 again, the Board is going to delay its decision to next
23 Wednesday, which is March the 7th. Okay.

24 Yes, remind me to mention that again. Okay,
25 Mr. Vice Chair, I did mention earlier in my preliminary

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1 that there are two applications where the Applicant is
2 requesting postponement. Staff would suggest that we
3 address those first as they may be in the audience. This
4 is Application Number 19644 of Kankani and also
5 Application Number 19684 of C&S Development, LLC.

6 BZA VICE CHAIR HART: And we have a motion
7 actually to postpone for the 19644, correct?

8 SECRETARY MOY: Yes, we do. With that filing,
9 Mr. Vice Chair, the Applicant had requested the
10 postponement. And that's in the case records under
11 Exhibit Number 36, dated February the 26th, which was
12 Monday, which is the reason why in the motion's practice
13 that the Chair wasn't able to address this until today's
14 hearing.

15 BZA VICE CHAIR HART: Okay, is the Applicant
16 here for 19644?

17 (No audible response.)

18 BZA VICE CHAIR HART: I see no one coming to
19 the dais. Were they aware that they needed to be here?

20 SECRETARY MOY: Yes, they were aware. Maybe
21 they're late.

22 BZA VICE CHAIR HART: Why don't we wait to do
23 this after, later on in the hearing?

24 SECRETARY MOY: Okay.

25 BZA VICE CHAIR HART: So we'll just continue

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1 this until, if we get to the end of the hearing and
2 they're still not here, then we'll figure out what --

3 SECRETARY MOY: We'll address it at that time.

4 BZA VICE CHAIR HART: Yes, we'll address it at
5 that time.

6 SECRETARY MOY: Sounds good.

7 BZA VICE CHAIR HART: So the next case is?

8 SECRETARY MOY: Application Number 19684 of C&S
9 Development, LLC. And that request is a filing under
10 Exhibit 37, Mr. Vice Chair, and that letter's dated
11 February 22nd, which means the seven day response period
12 would be tomorrow, the 29th I believe, if my math is
13 correct.

14 BZA VICE CHAIR HART: Thank you, Mr. Moy.
15 Looks like we have Mr. Sullivan here for the case. Good
16 morning.

17 MR. SULLIVAN: Yes, thank you, Mr. Chair, good
18 morning. Marty Sullivan on behalf of the Applicant.

19 BZA VICE CHAIR HART: So you submitted a
20 request for a postponement for the case?

21 MR. SULLIVAN: Yes, sir. We have several
22 different factors working towards postponement here. One
23 is we've had some, a bit of a struggle getting on the ANC
24 agenda. We were actually on the agenda at one point and
25 then when my client got to the meeting, they told them

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1 that they shouldn't have been on the agenda. And so it
2 got kicked back.

3 They've now had two preliminary meetings with
4 the ANC Single Member District Commissioner and a local
5 community group. Apparently, we're still not on the
6 agenda, but we hope to be on the agenda for March 20th.
7 So we would like a postponement to the 28th.

8 We're also trying to work through a couple
9 interpretation issues on the front yard set-back and the
10 side yard requirement, both of which are currently
11 undergoing some changes with the Zoning Commission.

12 BZA VICE CHAIR HART: And have you also worked
13 at all with Office of Planning, because they're --

14 MR. SULLIVAN: Yes.

15 BZA VICE CHAIR HART: -- they're in denial,
16 right? Their recommendation is for denial, not that they
17 are in denial.

18 MR. SULLIVAN: Yes, and that's another reason
19 we could use more time, because we need to address their
20 concerns before we get back here.

21 BZA VICE CHAIR HART: Okay. And so you're
22 looking at, you said the 28th?

23 MR. SULLIVAN: I believe that is the date.

24 BZA VICE CHAIR HART: I'm just reading it from
25 here.

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1 MR. SULLIVAN: I think that's the date that we
2 were told would work. So the 28th or the next available
3 date thereafter.

4 BZA VICE CHAIR HART: Okay. So my fellow Board
5 Members, I think it's, actually I'm not even sure if
6 either of you are actually on this one with me. Mr. Moy,
7 is it possible to put this on the 28th or a date after
8 that?

9 SECRETARY MOY: Mr. Chair, in considering Mr.
10 Sullivan's request, we could do that. I'm thinking ahead
11 too because on the Kankani case, they were looking for a
12 date at the end of March also. For the Boards docket, I
13 might be better for the Board to split these two
14 applications on different dates, because we have appeals
15 on each of those two hearing dates. So it's the Board's
16 choice which is which, which would mean that the other
17 case would go to the other date. In other words, being
18 that C&S, if C&S is rescheduled to March 28th, then I
19 would suggest rescheduling Kankani to April the 11th.

20 BZA VICE CHAIR HART: Okay. Well I want to
21 kind of just deal with C&S right now. I understand what
22 you said, I appreciate the information. I just don't want
23 to figure out when we're going to do the 19644 case
24 because they're not here right now and I think we need to
25 hear from them before deciding when to move their case

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1 until.

2 SECRETARY MOY: On that note, the staff kind of
3 reminded me that the Applicant has a back injury so she's
4 not here. But unless our counselor tells me differently,
5 I think the Board may stipulate to move forward to make a
6 decision on that request to postpone. But we'll address
7 that when we call the case again.

8 BZA VICE CHAIR HART: That's fine. Actually we
9 can call the case after this one if what you just said --
10 well anyhow, let's deal with this case. So 19648, I don't
11 have an issue with moving this to postponing this to March
12 28th. It sounds like the Applicant, Mr. Sullivan, you
13 said that actually the date is in your request. And I
14 think we can do that. Thank you, Mr. Sullivan.

15 So moving back to 19644, the Kankani case, you
16 said that the OP Staff just noted that the Applicant is
17 kind of incapacitated so they would likely not be here.

18 SECRETARY MOY: Not be here. And if you could
19 quiz the audience whether or not there's any parties here
20 on that case, then that may help you to decide whether to
21 make a decision on the request to reschedule.

22 BZA VICE CHAIR HART: I mean, I don't think
23 anybody came in that was new, but I'll ask again if anyone
24 here is in here for the 19644, the Applicant or someone
25 representing them for the Kankani case.

1 (No audible response.)

2 BZA VICE CHAIR HART: Okay.

3 SECRETARY MOY: So what's before the Board then
4 is to take action on the request to postpone and then
5 schedule a date.

6 BZA VICE CHAIR HART: Okay. And because they
7 made the request, and I'm asking the Office of Attorney
8 General, because they made the request within the week and
9 they're not actually here, do we have a problem with that?
10 Are there any issues with that procedurally?

11 MS. LOVICK: No, I think you can go ahead and
12 proceed. We have something in the record to indicate why
13 there is the need for the delay. But yes, you're correct
14 that it was an untimely request.

15 BZA VICE CHAIR HART: Okay. So, Mr. Moy, we're
16 looking at a date in April?

17 SECRETARY MOY: Yes, I would suggest April
18 11th.

19 BZA VICE CHAIR HART: And I don't have an issue
20 with that, so I think we can move that hearing to that
21 date.

22 SECRETARY MOY: Very good, done.

23 BZA VICE CHAIR HART: So, okay. So moving
24 right along. We are moving on to our next hearing case.

25 SECRETARY MOY: Okay. And, Mr. Vice Chair, I'm

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1 referring to the public hearing agenda. So the next case
2 application should be Application Number 19686 of Trang
3 Nguyen. This is a caption advertised for a use variance
4 from the Use Restrictions of Subtitle U, Section 301.1.
5 This would permit a retail establishment on the ground
6 floor of a residential flat in a RF-1 Zone. This is at
7 premises 201 New York Avenue Northwest, Square 555, Lot
8 159.

9 BZA VICE CHAIR HART: Thank you, Mr. Moy. Good
10 morning, everyone. If you could introduce yourselves from
11 my right to left. Yes, I'm sorry, you have to push,
12 there's a button, just push the button once then and let
13 it go, the mic is on.

14 MR. DELMUNDO: Thank you, Vice Chair. Paul
15 Delmundo, spouse of Trang Nguyen and business partner.

16 MS. NGUYEN: And I'm Trang Nguyen, I'm the
17 owner of the building.

18 BZA VICE CHAIR HART: I'm sorry Mr., what's
19 your last name?

20 MR. DELMUNDO: Delmundo.

21 BZA VICE CHAIR HART: Delmundo?

22 MR. DELMUNDO: Yes.

23 BZA VICE CHAIR HART: Thank you. Yes, sir.

24 MR. SPOUSE: Douglas Spouse, the consultant to
25 Ms. Nguyen.

1 BZA VICE CHAIR HART: Okay. And who's going to
2 present? Is it you Ms. Nguyen?

3 MS. NGUYEN: Yes, it is.

4 BZA VICE CHAIR HART: Okay. Or Ms. Nguyen, are
5 you going to present to us?

6 MS. NGUYEN: Yes.

7 BZA VICE CHAIR HART: Okay, that's fine.

8 MS. NGUYEN: I'm sorry. Yes, yes.

9 BZA VICE CHAIR HART: That's okay. And if you
10 guys could turn your mic off, not you because you'll be
11 talking, but thank you, Mr. Foster. You can proceed with
12 telling us about the project. I do have a couple of
13 questions.

14 One is around I'm not exactly sure what the --
15 I understand that you want to put a use in the first
16 floor, but I don't know what actually, and I know it's a
17 retail use, but I don't know beyond that, I don't know
18 what that is. It seems a little bit ambiguous and I think
19 if you could give us a little bit information on that.

20 The Office of Planning has provided some
21 information about some conditions that they thought would
22 be necessary or that we should include and I just needed
23 to get a little bit more information from you all. Let's
24 see. And if you could also talk about one of the issues
25 that you raised, this is a variance request, one of the

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1 issues that you raised was around, you said that it was
2 costly.

3 And when I read it, it sounded like there were;
4 the response that you gave was that it was costly as in
5 hundreds of thousands of dollars to do this. And if you
6 could kind of explain that a little bit to convert it from
7 a retail use to a residential use, because that was what
8 was being discussed at the time.

9 This is why you have to have this variance
10 because you can't use it for anything else. If you could
11 give a little bit more information about that, I'd greatly
12 appreciate it. And that's it, thank you.

13 MS. NGUYEN: Yes, yes, good morning. First of
14 all I would like to tell you a little bit about the
15 property, where it's located. It's located at 207 New
16 York Avenue Northwest, Washington, DC 20001. Right now
17 it's currently at the residential; it has first floor and
18 two level additional. And we do have the tenants in there
19 and the first floor is still vacant.

20 So, right now for the first floor we are
21 planning to do the deli shop. And it's just a very simple
22 deli shop serving breakfast and lunch. It's open from 6
23 a.m. to 7 p.m. and we don't have any, like, big cooking or
24 anything. It's just very simple, bagel sandwiches and
25 rolling. It's like, kind of Vietnamese style.

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1 So nothing is really big major cooking anything
2 happen in there. And also we will, the max that we going
3 to have, the capacity of people in there is going to be
4 about, like, 12 seats and two worker in there is the max.

5 BZA VICE CHAIR HART: How many workers?

6 MS. NGUYEN: Two people, two workers. And the
7 sit is capacity for is 12 seats in the whole area.
8 That's, actually that's the maximum that we can have in
9 that building, I mean the first floor. And right now we
10 have the Stencil Trash Service to do, to pick up the trash
11 and that's the company we're going to use for the future.
12 And we also have the camera, securities camera in front of
13 the building and we are planning to have in the back too.
14 So in the back and the front to have more security.

15 So that's just about we're proposing to do for
16 the first floor that we going to have. Talking about
17 changing that first floor from right now residential into
18 the commercial use, that's what we actually requesting for
19 is actually what we would like to have, because when we
20 bought this place was as the first floor was a commercial
21 use.

22 It was laundromat from a long time ago. So
23 that's why, you know, why we already have a plan for that.
24 And then we already have a -- we didn't know it when we
25 got, everything in C/O was the residential.

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1 The plan right here already set for commercial,
2 we cannot, if we now move it back to the residential, it's
3 a lot of cost do to that. It cost a lot of money, a lot
4 of time consuming, a lot of construction going on in that
5 neighbor, because we just follow what we got from the old
6 seller.

7 Yes, so that's what we would like to proceed
8 with this plan, the original plan and we will actually
9 will request for relief for the commercial mixed use
10 building.

11 BZA VICE CHAIR HART: And so you did not, and I
12 understand that you may have gotten the plan from someone
13 else, but plans can change. So, you know, those are not
14 written in stone, they're just plans. And I understand
15 that there was previous use that was a laundromat.

16 MS. NGUYEN: A laundromat, yes.

17 BZA VICE CHAIR HART: But the Certificate of
18 Occupancy, the C of O, now you said is a residential?

19 MS. NGUYEN: It's actually currently when we
20 get the C/O is a residential.

21 BZA VICE CHAIR HART: For the entire building?

22 MS. NGUYEN: For entire building.

23 BZA VICE CHAIR HART: Okay, and so when you
24 were saying that you could not transform that first floor,
25 can you talk about the cost? Did you do any analysis on

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1 the cost or was it just that you just made that assumption
2 that it was going to cost a great deal of money? And
3 either of you can answer, that's fine.

4 MR. DELMUNDO: Yes, we just did a back of the
5 hand calculation, you know, the first floor is just not in
6 a state where someone can move in. It was really built
7 for a commercial use. So back of the hand we estimated it
8 would cost a lot, a hundred thousand dollars just to
9 reconvert it. We didn't actually do any studies, that's
10 just something that we, you know, came up with.

11 BZA VICE CHAIR HART: And did you actually buy
12 the property and do the renovations, because this was a
13 one story building at one point that someone, and I don't
14 know if it was actually you all, built two other levels on
15 and those are residential levels on the second and third
16 floor. And so the first floor, did you all do all of that
17 construction yourselves? Not yourselves, but did you have
18 somebody to do that?

19 MS. NGUYEN: Yes, we have our people, partner
20 with people to do the construction. That's why we have,
21 you can go ahead.

22 MR. DELMUNDO: Yes, we had a construction
23 company do the, set two levels above the first floor.

24 BZA VICE CHAIR HART: And when you had them do
25 that, what did you understand about the -- did you know at

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1 that point that the use was a residential use for that
2 building that you purchased? What was your understanding
3 around that building when it was a one story building?

4 MR. DELMUNDO: Yes, so let me preface that
5 with, you know, we're first time business owners. So
6 we're obviously making some mistakes here. We did know,
7 technically, that it was a residential use. That being
8 said we were a little bit more confident because the plans
9 had said that there was a laundromat in there. So we
10 didn't think that getting a C/O for a mixed use would be
11 that difficult. So that's the story there.

12 BZA VICE CHAIR HART: Okay, thank you. You can
13 continue.

14 MS. NGUYEN: Yes, so that's why when we bought
15 this place we have no idea about, you know, it's going to
16 be residential or commercial. We just think about
17 commercial, because when we pay a tax it say commercial.
18 When we go to pay the property tax, it say commercial.

19 So, that the C/O say oh, why you got this, you
20 know, residential. So, that's why right now we have it
21 set for the commercial and mixed use that we just follow
22 the original plan. Like he say, we can change, but this
23 is perfect. When we look at this we say wow, this is
24 exactly what want. So, that's why we bought this and we
25 just follow the plan.

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1 BZA VICE CHAIR HART: And could you talk a
2 little bit about, you understand that the zoning
3 regulations are requiring, you're seeking a variance from
4 the zoning regulations. Do you understand what that
5 means?

6 MS. NGUYEN: The vary of use.

7 BZA VICE CHAIR HART: Well it means that you
8 are outside of what the actual zoning regulations allow.
9 In some cases when property owners come in to us, they are
10 seeking a special exception, which means that the zoning
11 regulations allow this, but they allow it under these
12 conditions that you can do this.

13 For the variances that's a much higher bar.
14 It's a much more difficult thing to do. You have to prove
15 basically three prongs. And those prongs you've listed
16 here, I'm assuming this, what you've handed out to us was
17 something that you've provided.

18 MS. NGUYEN: Yes, yes.

19 BZA VICE CHAIR HART: That the property
20 affected was affected by an exceptional situation or
21 condition, strict application would result in a practical
22 difficulty to the property owner and then no substantial
23 detriment to the public good or a substantial impairment
24 or intent purpose and integrity of the zone plan.

25 Those are fairly high stringent things, and I

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1 don't know if you have enough information here for us to
2 be able to understand how that you're meeting these. And
3 I'll hear from the rest of the Board Members, if they
4 concur or think that you all are providing us with
5 sufficient information. But if you could kind of step
6 through each one of those, I'd appreciate it.

7 MS. NGUYEN: Would you like to?

8 MR. DELMUNDO: Yes. So, I think my wife has
9 gone through the general scope of the project. If there
10 are any questions beyond it being a Vietnamese deli with
11 14 people total, you know, we'd be happy to take them. As
12 for point two, an explanation of how the project meets the
13 requirements for a use variance, what is contained in your
14 burden of proof statement.

15 So, I mean, the exceptional situation here is
16 quite frankly we have built the property to be a
17 commercial property on our understanding that the plans
18 allowed it. Now that it's been built, remodeling it to a
19 residential property will, you know, incur a substantial
20 amount for us.

21 So given that there are other commercial
22 properties literally within walking distance, we don't
23 think that this would be a significant burden to the
24 community. And basically strict application would result
25 in a practical difficulty to the property, that's

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1 essentially what I had just said.

2 As for the last point, a substantial detriment
3 to the public good nor substantial impairment of to the
4 intent. As I had eluded earlier, there's a CrossFit
5 parkour gym next door, there's a Chinese takeout as well.
6 We think that our restaurant will be significantly
7 different that it won't affect the businesses, they're in
8 different categories. And, you know, we don't think that
9 it will significantly bring in a lot of traffic. You
10 know, 14 people is not significant to make a difference
11 especially since we won't have our own parking, so most of
12 the traffic will be walking. So we don't think that
13 people will significantly impact the public good in that
14 regard.

15 MEMBER JOHN: Mr. Vice Chair, I have a question
16 of the Applicant. So when you were doing the renovation,
17 were you required to do any excavation in order to make
18 the first floor suitable for residential use? Would you
19 have had to do any excavation of the floor to get the
20 proper height or did you have the proper height already?

21 MR. SPOUSE: There was no excavation done on
22 the property at all. There was no need for it because it
23 was always stayed the same. And I can attest to it
24 because I grew up in that neighborhood. I grew up a 408
25 Rigg Street, and all my life I saw that laundromat. My

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1 mom used to go to that laundromat, and it was no
2 excavation that was required for what they needed to do.

3 MEMBER JOHN: Okay, thank you.

4 BZA VICE CHAIR HART: Mr. Turnbull, any
5 questions?

6 MEMBER TURNBULL: So you bought this building
7 in 2016, roughly? You renovated, you added the two
8 floors?

9 MS. NGUYEN: Yes.

10 MEMBER TURNBULL: In 2016?

11 MS. NGUYEN: Yes.

12 MEMBER TURNBULL: And you prepped the upper two
13 floors as rental apartments.

14 MS. NGUYEN: Yes.

15 MEMBER TURNBULL: But you never did anything to
16 the first floor. I think as the Chair pointed out, the
17 variance, and I got to ask Office of Planning. Changing
18 from an RF use to this mixed use, you'd be the only use in
19 that block, which would be MU-4 is I guess is what your
20 MU. And I guess what's confusing is that's usually for a
21 retail corner store prepared, but this really isn't a
22 corner building. It's really three lots in.

23 MS. THOMAS: Yes. Good morning, Mr. Chair,
24 Members of the Board. Karen Thomas with the Office of
25 Planning. I think as layman say using the words mixed use

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1 and interchangeably in the wrong context. This block of
2 New York Avenue has always been commercial, particularly
3 within those about five properties. And they were one
4 story commercial uses since they were developed as such.
5 All within the RF-1 Zone and at that time when we had
6 those types of development, they were small commercial
7 uses within the RF. This is in Mount Vernon Historic
8 District; I'd like to point that out as well.

9 MEMBER TURNBULL: It's in the historic?

10 MS. THOMAS: Yes.

11 MEMBER TURNBULL: So did this go before HPRB?

12 MS. THOMAS: I couldn't find anywhere that it
13 did go to HPRB and perhaps the Applicant can answer that.
14 But I didn't find anywhere that it did.

15 MEMBER TURNBULL: Okay.

16 MS. THOMAS: But -- go ahead.

17 BZA VICE CHAIR HART: The question was just
18 whether or not your project went before the Historic
19 Preservation and Review Board, which is a district agency
20 because this is in a historic district.

21 MS. NGUYEN: You mean the review approval from
22 the PRB?

23 BZA VICE CHAIR HART: There is a separate board
24 that meets that is the Historic Preservation Review Board.
25 It's not the Office of Planning, it's not DCRA, it's

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1 actually a group that meets, actually they meet in this
2 room, to look at any impacts to historic resources,
3 buildings or sites.

4 MR. SPOUSE: Let me answer that for you. I did
5 not facilitate the building permit for the renovations of
6 the second and third floor. That was done by somebody
7 else. My instinct is is that I was not aware of the fact
8 that it was a historical, designated as a historical area.
9 I did not know that myself, personally.

10 However, if it was a historical, then it
11 probably had a historical review, I'm not sure whether or
12 not when the renovations was occurred and when they got
13 the building permit that HPRB did review those plans and
14 that they stamped those plans. And if they did stamp
15 them, I think that they should be on here.

16 MS. NGUYEN: It have a stamp on this plan.

17 MR. SPOUSE: So if that was the case they did
18 not necessarily go thought CFA, but they did have to go
19 through HPRB. So there should be a stamp on those plans
20 for a review from HPRB.

21 BZA VICE CHAIR HART: Okay, why don't you look
22 for that, but we we'll actually I wanted to turn to the
23 Office of Planning for their report so we can kind of get
24 through all of that part of it. Unless the Board Members
25 had any other question?

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1 SECRETARY MOY: No, that's fine.

2 BZA VICE CHAIR HART: Okay. Good morning.

3 MS. THOMAS: Yes, good morning again. Karen
4 Thomas with the Office of Planning. This was a
5 particularly, you know, issue for us with respect to
6 looking at what the Applicant ended up with in terms of
7 two floors of residential above, what was a long standing
8 commercial use within the RF-1. So a consultant with the
9 Zoning Administrator, they couldn't give it a C of O for a
10 corner store because it wouldn't satisfy one of the
11 criteria where you couldn't have two residential units.
12 So there's that issue. So it couldn't come under a corner
13 store and it wouldn't meet all the other locational
14 requirements, which only two of those could be waived.

15 That said, given what the Applicant wanted to
16 do, as a prepared food shop and a deli use, that's what
17 the Zoning Administrator prescribed the use under. And in
18 this case it would require a variance because it's not
19 permitted in the RF Zone. So there's that and what we had
20 to look at was well could this continue, could it be
21 residential?

22 So we had to prove that out, could it be
23 residential? Well you couldn't get a unit, you could but
24 there would still be a variance situation because the lot
25 size is about 1400 square feet. So they wouldn't meet the

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1 900 square feet rule to put a residential unit down there.

2 So again, so residential unit couldn't go under
3 there. Any other residential use which would be permitted
4 with the RF would be like daycare use, which we don't
5 think it would satisfy the area requirements that are
6 issued by the Board, OSSE, for such a use because it was
7 too small. It's too small and they have specific area
8 requirements. Sorry. So there's that and they couldn't
9 be a school and so we had to cancel out or negate all the
10 other uses that it couldn't be that was permitted within
11 the RF.

12 So here we are with the variance relief to
13 permit the prepared food shop. And then looking at that
14 we looked at the historical uses on that block and we
15 thought that, notwithstanding, you had two residential
16 uses on the end anchoring about five or four longstanding
17 commercial structures and uses.

18 So with that we were encouraged that, you know,
19 there would be an issue there, an exceptional situation
20 that would warrant a creation of, not a practical
21 difficulty, but create a hardship on the Applicant to use
22 the property as a residential use, which is what the RF is
23 looking for.

24 So within that vein, we looked at the past
25 uses, the existing use and the past use. Existing uses

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1 that are around and the past use, which was a low density
2 commercial use. And a prepared food shop in this instance
3 is a low density commercial use. So looking at it that
4 way, we had decided that it wouldn't be a detriment to the
5 public good and it shouldn't have an impact on the zoning
6 regulations. And that's the way we looked at it.

7 BZA VICE CHAIR HART: Thank you.

8 MS. THOMAS: Thank you.

9 BZA VICE CHAIR HART: I just have one question
10 and that was around, you said it couldn't be a medical
11 use. Was there a size issue?

12 MS. THOMAS: Well not so much size issue, it
13 would be a use variance as well, medical office use. I
14 don't think it could have been a medical use.

15 BZA VICE CHAIR HART: Okay. Do the Board
16 Members have any other questions for OP?

17 MEMBER TURNBULL: Ms. Thomas, the 900 square
18 feet, so you're saying the upper two floors meet the 900
19 square foot? How are you saying that the 900 square feet
20 --

21 MS. THOMAS: No, it's a flat. It's a flat
22 which is permitted in the RF. The zoning and --

23 MEMBER TURNBULL: But you're saying the first
24 floor would not meet the 900 square foot?

25 MS. THOMAS: To include another residential use

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1 would become three --

2 MEMBER TURNBULL: Oh, okay, okay.

3 MS. THOMAS: -- separate uses and it does not
4 have 2700, the minimum 2700 square foot for the lot.

5 MEMBER TURNBULL: But are you actually saying
6 that we're changing this one lot to an MU?

7 MS. THOMAS: No, we're not changing the lot.

8 MEMBER TURNBULL: You're not changing, you're
9 not re-zoning?

10 MS. THOMAS: No, we're not re-zoning. We can't
11 do that here.

12 MEMBER TURNBULL: I was going to say, I didn't
13 --

14 MS. THOMAS: No, we can't do that here.

15 MEMBER TURNBULL: I was misunderstanding what
16 you were getting at.

17 MS. THOMAS: Yes, that's what I was saying that
18 I think the Applicant is misusing the term mixed use.

19 MEMBER TURNBULL: Oh, okay. I mean, in one way
20 I'm not totally troubled because New York Avenue, I mean
21 it's not what you commonly think of as a residential,
22 intense residential street. I mean it's more getting to
23 be, it's more commercial. There are residences on it.

24 MS. THOMAS: If you also look at the
25 residential uses, the residential buildings and row houses

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1 that are on New York Avenue, they are raised off of New
2 York. They're built --

3 MEMBER TURNBULL: And this is right off the
4 street.

5 MS. THOMAS: And this would be right on the
6 street.

7 MEMBER TURNBULL: And I notice that the
8 photograph shows a couple of other commercial units next
9 door to them down, okay.

10 MS. THOMAS: Yes, as it was historically built
11 for about a hundred or more years.

12 MEMBER TURNBULL: But do you know, I mean,
13 there's nothing in the record from HPRB, have you seen
14 anything?

15 MS. THOMAS: No, I haven't seen anything.

16 MEMBER TURNBULL: Is this like a --

17 MS. THOMAS: Maybe they tell me it was a non-
18 contributing structure on that.

19 MEMBER TURNBULL: Yes, okay.

20 MS. THOMAS: I can't speak to it.

21 MEMBER TURNBULL: Yes, thank you.

22 BZA VICE CHAIR HART: Ms. Thomas, I did have
23 another question. With regard to the number of people,
24 the number of employees, can you just describe a little
25 bit how you got to there? I mean, I know that's what the

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1 Applicant asked for, but is there any other, is that based
2 on anything else?

3 MS. THOMAS: Not really. It's not written in
4 the zoning regulations or anything, but that's what the
5 Applicant requested. And I believe that it will just be
6 both of them who would be running the operation.

7 BZA VICE CHAIR HART: And what about another
8 use that was similar to this? I mean the limiting of the
9 employees, in talking to the Office of Attorney General,
10 we are understanding that we need to have some substantial
11 evidence on the record that says that two employees is and
12 should be the maximum number for this reason. And I don't
13 really have a reason to do that and I was trying to get
14 that from you. And if you don't have one, that's fine, I
15 just, I just wanted to --

16 MS. THOMAS: I really don't have one. I assume
17 it's the nature of the business given it as a prepared
18 food shop with just being sandwich making and without any
19 amounts of cooking.

20 BZA VICE CHAIR HART: But if they have two
21 employees and want to have a third person come in to do
22 something part time, they would have to come back for a --

23 MS. THOMAS: Yes. I would assume so.

24 BZA VICE CHAIR HART: I mean, that just seems a
25 little bit --

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1 MS. THOMAS: Onerous.

2 BZA VICE CHAIR HART: Well you know, how do you
3 regulate that as a -- that's the question.

4 (Simultaneous speaking.)

5 MS. THOMAS: I don't see --

6 MEMBER TURNBULL: As a practical matter.

7 BZA VICE CHAIR HART: Yes. That's kind of the
8 one part that I was having an issue.

9 MEMBER TURNBULL: I mean from what I'm reading,
10 it sounds like if you have two employees, and I think they
11 were talking there would be no more than 12 people. So
12 was there an occupancy limit of 14 for this space? I
13 don't know.

14 MS. NGUYEN: Yes.

15 MS. THOMAS: I am going on the Applicant's --

16 MEMBER TURNBULL: Right, but the Applicant --

17 MS. NGUYEN: I don't know if DCRA, there's some
18 code issue that you can only have, with respect to the
19 size of the place. How many people you could have. Yes.

20 MEMBER TURNBULL: All right, we can ask the
21 Applicant.

22 BZA VICE CHAIR HART: I don't have any further
23 questions. Thank you, Ms. Thomas. Just because we just
24 had that one question, do you have a maximum number of
25 people that you're not allowed to go over for your

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1 Certificate of Occupancy.

2 MS. NGUYEN: Yes, we don't have any, like,
3 actual number from any regulation or anything; we just
4 don't want to go over max because according to my partner
5 resource it say that with a small space we cannot have
6 more than 14 people in that.

7 BZA VICE CHAIR HART: Who was telling you that?

8 MS. NGUYEN: I have a partner dealing with me,
9 so he did the research. I believe it's from DCRA, or I
10 don't know where, they just give me that number. And they
11 just follow that number; they don't want to go over the
12 max.

13 BZA VICE CHAIR HART: Okay. Okay, thank you.
14 Any other questions for the Applicant?

15 MEMBER TURNBULL: No, but I think what the
16 Chair is also getting at is that you're asking for only
17 two employees, which will be a limiting factor to your
18 operation. And again, if that's tied to occupancy that's
19 one thing, but if it's not it might not be critical to, I
20 mean, if you have a third person who needs to come in, I
21 think it's just a question whether is that really a
22 relevant issue to put in the order that there be a maximum
23 of just two employees.

24 BZA VICE CHAIR HART: So I think we'll tackle
25 that as we have our discussion. So, let's see. Is anyone

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1 from the ANC here for the case?

2 (No audible response.)

3 BZA VICE CHAIR HART: Anyone here in support of
4 the Application?

5 (No audible response.)

6 BZA VICE CHAIR HART: Anyone here in opposition
7 to the Application?

8 (No audible response.)

9 BZA VICE CHAIR HART: Okay. We have to go
10 through this because we want to know, this is a public
11 hearing so we're trying to understand if, you know, any
12 other viewpoints. So, I don't think we have any other
13 questions. Do you have any other statements that you'd
14 like to make, just in conclusion?

15 MR. DELMUNDO: Yes, so in regards to the number
16 of employees, I don't think we did any scientific research
17 or we're following any regulations specifically saying
18 that we can only have two employees. I think that's just
19 a number that we estimate we will have, but I don't think
20 we should, you know, necessarily stick to. In the future
21 our business might necessitate a part time worker or a
22 third person. So I hope that doesn't preclude us from
23 doing that.

24 BZA VICE CHAIR HART: Well, and if we put it in
25 the order, it would preclude you from doing that. I mean,

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1 you would have to come back to us to be able to get a
2 third or fourth person if you needed that, even if they
3 were temporary. And that's what I was trying to really
4 get to is how do we look at this and what is the maximum
5 two based on. And having it because it may have been
6 there already, that just seems a little bit tenuous to
7 just base it on that.

8 So, and you are aware of the conditions that
9 the Office of Planning stated in their report? You have
10 read through the Office of Planning Report?

11 MS. NGUYEN: Yes.

12 BZA VICE CHAIR HART: They've provided a number
13 of conditions. The hours of operation limited to Monday
14 through Saturday, 6:00 a.m. to 7:00 p.m.?

15 MS. NGUYEN: Yes.

16 BZA VICE CHAIR HART: With a maximum of two
17 persons, that's part of their conditions. Trash will be
18 stored within the building; rodent and pest control
19 measures shall be implemented. Loading delivery shall
20 take place in the rear, and liquor will not be sold on the
21 premises.

22 MS. NGUYEN: Yes.

23 BZA VICE CHAIR HART: And they've noted that
24 you've agreed to all of these. And I'm just reading them
25 so that we're aware of what conditions were out there.

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1 And so I think we can close the hearing because I think
2 we've had the sufficient information from you all. And I
3 don't know if the Board is ready to deliberate on this.

4 (Simultaneous speaking.)

5 BZA VICE CHAIR HART: Okay. So it seems like
6 we will close the hearing. And the Board is ready to
7 deliberate. Would either of you like to begin?

8 MEMBER TURNBULL: Thank you, Mr. Chair. For
9 the most part I really --- I'm not opposed to granting
10 relief to have the shop on the first floor, since it's
11 always been a shop. And as Ms. Thomas says, it's really
12 the --- the access is directly off the street, just like
13 all the other little shops along New York Avenue there.

14 The building next to it is an apartment. It
15 looks like a two-flat next-door to it. It's a brick, very
16 nice brick which looks like it could be a contributing
17 structure, that that residence could be. Whether this is,
18 I'm not sure.

19 As I say, I'm not really opposed to granting
20 the relief because of the use and where it is. I guess
21 the only sticking point that I have, and I'm not --- is
22 whether HPRB should have looked at it or if there should
23 be something in the record or not that would satisfy it.
24 I mean, I'm not sure.

25 I mean, it looks like the buildings to the left

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1 of where it is do not look like they are contributing
2 factors to the historic area. How this is relating to the
3 apartment building, I'm not sure. So that would be my
4 only question, is the relationship that might exist.

5 BZA VICE CHAIR HART: And I think that that's -
6 -- it's an interesting point. I think that, because the
7 building's actually already constructed, we're not going
8 to really get much it.

9 MEMBER TURNBULL: Yeah, I know. I guess the
10 other thing, it's already done.

11 BZA VICE CHAIR HART: Yeah, so it's --- we're
12 really just looking at the use of it.

13 MEMBER TURNBULL: Yeah, yeah.

14 BZA VICE CHAIR HART: And the use variance.
15 And, well, I think it is an interesting point. I'm just
16 not sure if we can opine on that aspect. I think the
17 horse has left the barn in that case.

18 But I also --- I appreciate the Applicant for
19 providing their testimony. I also appreciate the Office
20 of Planning report kind of going through the --- stepping
21 through the exceptional situation resulting in a hardship,
22 no substantial detriment to the public good, and then no
23 substantial harm to the zoning regulations, the three
24 prongs for the variance test. And I would agree with
25 their analysis.

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1 I did have a few questions. I think you, Ms.
2 Thomas, you provided sufficient information for me for
3 those. With regard to the conditions I'm, I think, just a
4 little bit hesitant about the number, the maximum number
5 of staff that we should be imposing on this. That just
6 seems a little bit --- since we don't really any way of
7 determining what that number should be and how that would
8 be connected to the actual relief itself.

9 And the DCRA will actually let the Applicant
10 know what the maximum occupancy of the building is, just
11 total occupancy. I think that that is something that we
12 should not be opining on ourselves, but that should be
13 something that's in the DCRA and the Certificate of
14 Occupancy that they would get in the future for this
15 development center.

16 With regard to the other conditions, I think
17 that the only one that I would change would be just a
18 little bit of a change for the first condition, which is
19 that the hours of operation shall not exceed 6:00 a.m. to
20 7:00 p.m., Monday through Saturday, and just leave it at
21 that, and the fourth one, which would be liquor shall not
22 be sold on the premises.

23 But other than that, I think we should take out
24 the maximum number of staff, because I don't think we have
25 enough information to be able to decide that, and that the

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1 C of O will dictate how many people total will be --- the
2 occupancy of the site.

3 Ms. John?

4 MEMBER JOHN: Thank you, Mr. Vice Chair. I too
5 agree that the Applicant has met the test for the
6 variance, particularly because of the fact that there's
7 been a non-residential use in that property since at least
8 1948. And the Office of Planning report and the testimony
9 laid out very clearly why a matter of right use would not
10 be practical at that location and, additionally, the cost
11 of building out that basement, sorry, the ground floor to
12 make it suitable for residential use.

13 So based on the testimony of the Office of
14 Planning, and the report of the Office of Planning as
15 well, the fact that there is no ANC opposition, and
16 particularly because of the nature of that block really of
17 four commercial type buildings, similar to the ground
18 floor of that building, I think that the requirements for
19 the variances have been met.

20 I concur that during the process of getting the
21 occupancy permit, there would be some limitation on the
22 number of occupants in the building. And that can be
23 worked out later. So I would vote in favor of granting
24 the application, granting relief.

25 BZA VICE CHAIR HART: Thank you. Let's see,

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1 the last thing I'll note is that the ANC 6E report, which
2 is Exhibit 38, they actually voted six in favor, zero
3 opposed, zero abstention. I'm just noting that they voted
4 to approve the application or voted to support the
5 application. And I think that that's a good thing.

6 And I think hearing from my colleagues on the
7 Board, I would make a motion to approve Application 19686
8 of Trang Nguyen and with the conditions that the hours of
9 operation shall not exceed 6:00 a.m. to 7:00 p.m., Monday
10 through Saturday, that trash shall be stored within the
11 building, rodent and pest control measures shall be
12 implemented, that a loading delivery shall take place in
13 the rear, and that liquor shall not be sold on the
14 premises. And do I have a second?

15 MEMBER JOHN: I second this.

16 BZA VICE CHAIR HART: All those in favor say
17 aye?

18 (Chorus of aye.)

19 BZA VICE CHAIR HART: Any opposed?

20 (No audible response.)

21 BZA VICE CHAIR HART: The motion is carried,
22 Mr. Moy.

23 SECRETARY MOY: Staff would record the vote as
24 three, to zero, to two. And it is on the motion of Vice
25 Chair Hart to approve the application for the variance

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1 relief and also as to the conditions as modified by the
2 Vice Chair in his motion, second motion of Ms. John. Also
3 in support, Mr. Michael Turnbull. We have no other Board
4 members participating today. The motion carries.

5 BZA VICE CHAIR HART: Summary order, Mr. May --
6 - Mr. Moy, excuse me. Didn't mean to call you Mr. May.

7 SECRETARY MOY: Off by one letter, we'll just -
8 --

9 BZA VICE CHAIR HART: I know.

10 SECRETARY MOY: Well, we're both soccer fans so
11 works for me.

12 BZA VICE CHAIR HART: And thank you all.

13 MS. NGUYEN: Thank you so very much.

14 BZA VICE CHAIR HART: You're welcome, have a
15 good day.

16 MR. SPOUSE: Further clarification. There is a
17 stamp at HPRB.

18 BZA VICE CHAIR HART: Oh, excellent. Good to
19 know. So they did look at it.

20 MS. NGUYEN: Well, ANC didn't look at this.

21 BZA VICE CHAIR HART: Well, we have the ANC
22 report on there. So that's great. Thank you.

23 MS. NGUYEN: Thank you so much.

24 BZA VICE CHAIR HART: I'll ask my fellow Board
25 members would you like to take a little break or are you -

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1 -- keep on moving. Let's keep on moving. Mr. Moy, the
2 next case please.

3 SECRETARY MOY: Thank you. If we can have
4 parties to the table to Case Application Number 19688 of
5 Frederick and Pamela Scott, caption, advertised for a
6 special exception under the residential conversion
7 provisions of Subtitle U, Section 320.2, and pursuant to
8 Subtitle X, Chapter 10, for a variance from the access
9 requirement Subtitle U, Section 301.1(c)(4) to convert an
10 existing carriage house to a third one-family dwelling,
11 RF-1 zone, 433 M Street, N.W. (Square 513, Lot 57).

12 BZA VICE CHAIR HART: Thank you, Mr. Moy.
13 Welcome, if you could please introduce yourselves.

14 MR. SULLIVAN: Thank you, Mr. Chair, and
15 members of the Board. My name is Marty Sullivan with the
16 law firm of Sullivan and Barros, here on behalf of the
17 Applicant.

18 MS. WILSON: Good morning, Alexandra Wilson
19 from Sullivan and Barros on behalf of the Applicant.

20 MR. SCOTT: Good morning, Frederick Scott, 433
21 M Street, N.W., the Applicant.

22 BZA VICE CHAIR HART: Thank you very much. Mr.
23 Sullivan, I'm assuming you're going to be presenting to us
24 this morning? Ms. Wilson?

25 MS. WILSON: Yes, I will be presenting. I'm

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1 the attorney for --

2 BZA VICE CHAIR HART: Well, I apologize for
3 that, Ms. Wilson.

4 MS. WILSON: Good morning, Vice Chair Hart, and
5 members of the Board. I'm here on behalf of the owners of
6 433 M Street, Frederick and Pamela Scott, requesting
7 special exception relief in order to convert a rear
8 carriage house to a third unit and for an area variance
9 from the requirement that an accessory structure be
10 connected to a street by an alley that is at least 15 feet
11 in width.

12 The carriage house and the principal structure
13 were both constructed in 1910. The current principal
14 structure has two units, and the carriage house is
15 configured and actually occupied for a third unit. The
16 Scott's purchased the property in 2009. When they
17 purchased the property, someone was living in the carriage
18 house. Accordingly, the Applicant believed the unit was
19 legal.

20 It wasn't until recently they investigated the
21 situation and realized that it might not be legal. At
22 which point, they met with us and decided to go forward
23 with BZA relief to make the existing situation legal.

24 These are photos of the existing carriage house
25 as viewed from the rear yard of the principal structure.

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1 The application meets the general special exception
2 requirements, it will not adversely affect the row homes
3 to the east, and west, north, or south, as the Applicant
4 is not proposing to change the status quo.

5 The first area of relief we are requesting is a
6 special exception for the illegal conversion pursuant to U
7 320.2. The application meets the requirements, and many
8 of the requirements do not apply as the Applicant is not
9 proposing to construct an addition or alter the building.

10 The existing structures are less than 35 feet
11 in height. The Applicant is only proposing to have three
12 units total, so IZ does not apply. There is an existing
13 residential building on the property, there is a minimum
14 of 900 square feet per unit, as the property has 2,808
15 square feet. Requirements E through H relate to additions
16 and accordingly do not apply as the Applicant is not
17 constructing any addition.

18 Similarly, Requirement 320.2(I), the light,
19 air, and privacy test, is safely met as the Applicant is
20 not proposing to expand any use or construct any addition
21 but requests relief only to make the current use legal.

22 The second area of relief we are requesting is
23 area variance relief from U 301.1(c)(4)(c). A dwelling
24 unit and accessory building is permitted by right in the
25 RF-1 zone, subject to certain conditions under U 301.1©.

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1 The first three requirements listed on the site
2 are safely met. The fourth requirement is that permanent
3 access shall be provided by one of three ways. One of
4 those ways is that the building have access through an
5 improved alley no less than 15 feet in width and within a
6 distance of 300 feet from a public street.

7 As you can see from this surveyor's map, the
8 building sits on an alley that is 15 feet wide. However,
9 the alley connecting that alley and the property to Ridge
10 Street is only ten feet wide. Accordingly, we need relief
11 from this requirement.

12 The application meets the variance test. The
13 property is faced with an exceptional situation, and a
14 strict application of the zoning regulations would result
15 in a practical difficulty for the Applicant.

16 The buildings were constructed prior to the
17 zoning regulations. The carriage house has been used as a
18 residence since before the Applicant purchased the
19 property and is currently configured as a residence. It
20 is impossible to widen the alley to meet the matter of
21 right zoning regulations.

22 Because of these factors, the strict
23 application of the zoning regulations would severely limit
24 the Applicant's ability to use the property in the way it
25 has existed for at least 10-plus years.

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1 The requested relief will not cause a
2 substantial detriment to the public good or harm the
3 zoning regulations. The Applicant is not proposing a
4 change of use. There will be no additional impact to
5 adjacent properties. The ANC unanimously supported the
6 application, and OP has recommended approval.

7 And now I want to talk about our outreach to
8 FEMS. Both the Office of Planning and the ANC conditioned
9 their support on FEMS approval. I've attempted to get in
10 contact with FEMS with some success. Primarily, I've
11 communicated with Chief Tony Falwell via email. As a
12 follow-up to the email, he sent it to the Office of
13 Planning.

14 As of today, we have been unable to get
15 something in writing indicating whether FEMS would be
16 supportive of the project. However, it is my
17 understanding that FEMS will eventually have to sign off
18 on the application and use during the inspection and
19 permitting stage.

20 Based on that, and the fact that we don't know
21 when we would be able to have FEMS submit something to the
22 record, I would respectfully request that, if the Board
23 does approve the application, it add this as a condition
24 in the order rather than waiting for FEMS to submit
25 something at this stage. And that concludes my

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1 presentation. We are available for any questions, as is
2 the Applicant.

3 BZA VICE CHAIR HART: Thank you very much, Ms.
4 Wilson. Do the Board members have any questions for the
5 Applicant?

6 MEMBER TURNBULL: Mr. Chair, I just have two.
7 Well, OP had three points in their report. One of them
8 you already talked about which was the FEMS. The other
9 point on Page 1 of the report talks about completing Form
10 135 which demonstrates that the building's conformed to
11 the height, lot occupancy, rear yard, side yard
12 development standards. I don't know if you've done that,
13 but OP was --- the third thing was that the survey did not
14 show the location of the principal and accessory buildings
15 on the lot. So the survey is just a blank, empty lot. So
16 I don't know if you want to talk to both those?

17 MR. SULLIVAN: Yes. The building's been there
18 since 1910, so historically it was there. And we haven't
19 made any changes to it. And the Applicant can talk about
20 it. He's been trying to find plans for this and hasn't
21 been able to yet. I think he's eventually --- we're going
22 to have to get a building permit.

23 To get a C of O requires a building permit.
24 And DCRA will say, even if you're not making any changes
25 you have to do a building permit application so that we

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1 can review it under current rules. And then they make
2 them have changes to the building, whether a sprinkler or
3 whatever it might be. And that's where the FEMS approval
4 comes in. So we are going to have to get as-built plans.
5 We just didn't think that it was necessary at this point.

6 MEMBER TURNBULL: Okay.

7 MR. SULLIVAN: But I know we're going to have
8 to do that.

9 MEMBER TURNBULL: What about Form 135? What's
10 ---

11 MR. SULLIVAN: I think that's maybe what Mr.
12 Talley is referring to is then filling out the specific
13 area zoning elements on Form 135, which would be pursuant
14 to those plans, whether it's lot occupancy and height of
15 the structure.

16 MEMBER TURNBULL: Okay. All right, thank you.

17 BZA VICE CHAIR HART: Ms. John, any questions?

18 MEMBER JOHN: Well, I was wondering, Mr.
19 Sullivan, whether the structure would also meet the side
20 yard requirements. I saw a walkway. Was that between the
21 accessory structure and the main building?

22 MR. SULLIVAN: I'm not aware of that. Well,
23 we're not making any changes, so if it was, and it there
24 before 1958, it would just remain as an existing legally
25 non-forming situation.

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1 BZA VICE CHAIR HART: And this is a --

2 MEMBER JOHN: Okay, thank you.

3 BZA VICE CHAIR HART: -- self-certified
4 application too, correct?

5 MR. SULLIVAN: Yes.

6 BZA VICE CHAIR HART: So I think we can move to
7 the Office of --- I don't think we have any other
8 questions. We can move to Office of Planning, Ms. Vitale,
9 welcome?

10 MS. VITALE: Good morning, Mr. Chair, and
11 members of the Board, Elisa Vitale with the Office of
12 Planning. The Office of Planning will rest on the record
13 in support of the requested special exception and variance
14 relief. Again, we would recommend that that approval be
15 subject to the Applicant providing input from FEMS prior
16 to the Board's approval. This concludes my report, and
17 I'm happy to answer any questions. Thank you.

18 BZA VICE CHAIR HART: Any questions for the
19 Office of Planning?

20 MEMBER TURNBULL: That's really your major
21 concern, right, is access, FEMS access?

22 MS. VITALE: Sure. When the Zoning Commission
23 considered this expanded permission to allow a residential
24 use in an accessory building that had access from an
25 alley, we specified a 24 foot wide alley as kind of the

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1 base requirement.

2 We also included the ability to do a narrower
3 alley provided that it was 15 feet in width and then
4 within 300 feet of a street so that a fire truck could
5 have access and then be able to pull a hose. So we just
6 want to confirm that FEMS is comfortable with the
7 residential use in this instance.

8 It is a 15 foot wide alley, as the Applicant
9 indicated, adjacent to the structure but does narrow down
10 to ten feet as it provides access to Ridge Street. It's
11 certainly within 300 feet of Ridge Street. In the Office
12 of Planning Communications with FEMS, they'd asked about
13 hydrant locations. There are hydrants on Ridge Street
14 that are approximate to the accessory building. We were
15 just hoping that we could get, you know, final sign-off
16 from FEMS. And we haven't seen that yet.

17 MEMBER TURNBULL: Since it has, Mr. Sullivan,
18 these are existing structures, the Board's not going to
19 have to wait until we actually get drawings, or as far as
20 what you're concerned for the building height, and
21 everything else, since they are existing.

22 MS. VITALE: Certainly, and as the Applicant
23 indicated, if they have to pull a building permit at DCRA,
24 if there were any issues that were identified as part of
25 that building permit review, they would be flagged at that

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1 time. And the Applicant would have to address those then.

2 MEMBER TURNBULL: Right, okay.

3 BZA VICE CHAIR HART: Any other questions for
4 the Office of Planning?

5 (No audible response.)

6 BZA VICE CHAIR HART: Mr. Sullivan, do you have
7 any questions for the Office of Planning?

8 MR. SULLIVAN: No, thank you.

9 BZA VICE CHAIR HART: So I will --- I don't
10 think we have any other questions for the Applicant at
11 this point. Let's ask if anyone from the ANC is here for
12 this case, anyone in support of the case, anyone wanting
13 to testify in opposition to the case? No hands are going
14 up, so I'm just --- but we have to go through the steps.

15 So I guess we can bring it back to the Board.
16 Do you have any follow-up questions for the Applicant?
17 And Mr. Sullivan, Ms. Wilson, would you like to make a
18 conclusion statement?

19 MR. SULLIVAN: Just further on the FEMS thing,
20 this is something we've struggled with in the several
21 alley cases we've done since the new regulations. And I'm
22 assuming that they just prefer to have their --- keep with
23 their protocol, have an application in front of them, I
24 guess.

25 Because we've tried really hard. Every time we

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1 do one of these cases we try harder and harder to actually
2 get something in writing back from them. I think this is
3 the closest we got, because there were emails at least.
4 So I don't know if we can get anything prior to the
5 building permit stage or not.

6 BZA VICE CHAIR HART: Thank you. And with
7 that, I would close the hearing. Is the Board ready to
8 deliberate? I can start.

9 After reviewing the record and listening to the
10 testimony from the Applicant, as well as reviewing the
11 Office of Planning report, I believe that the Applicant
12 has demonstrated how they would meet the three prongs of
13 the variance test as well as the relief criteria for the
14 special exception and would be in support of the
15 application.

16 With regard to the FEMS concern, and I said
17 this a little earlier in another case, I feel that the
18 FEMS issue can be described maybe in the order that the --
19 - in the BZA order for the case. But I just don't see the
20 necessity of including it as a condition in that this is
21 part of the process anyway and that it just seems a little
22 redundant to me.

23 Again, I would like to hear from my fellow
24 Board members to see what your thoughts are on it. But
25 again, I would be in support of the case.

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1 MEMBER TURNBULL: I would agree with you. I'm
2 in support of approving this case. ANC 6A did submit, at
3 Exhibit 33, their approval. The vote was six to zero
4 opposed with no abstentions. I guess my only --- maybe
5 FEMS is always a thing that you hedge on because of the
6 life safety aspects involved with the ten foot alley in
7 that.

8 I would still like to see something referenced
9 in the order of an attempt, at least, to try to reach out
10 and get something, just to be on the safe side from the
11 standpoint of the Board's acquiescing and going ahead with
12 this; just from the standpoint of we've done our duty of
13 going through this. And I think as the Office of
14 Planning, I think the Office of Planning is also
15 concerned.

16 I would just like to see some reference to
17 something about an attempt to try to get it. I know it may
18 be difficult, but I think on the life safety standpoint of
19 adding another dwelling into a unit, to an alley unit like
20 that, I think is worthwhile pursuing.

21 BZA VICE CHAIR HART: Ms. John?

22 MEMBER JOHN: Mr. Vice Chair, I would suggest
23 that perhaps we could require the FEMS statement before
24 the occupant receives the C of O. Would that work for
25 everyone?

1 MEMBER TURNBULL: Yes. Mr. Sullivan, I know,
2 is cringing that they may not get it. But if that's the -
3 -- I would prefer that myself.

4 MR. SULLIVAN: I think we need to get something
5 from them --

6 MEMBER TURNBULL: In order to what?

7 MR. SULLIVAN: -- in order to get that.

8 MEMBER TURNBULL: Yeah, okay.

9 MR. SULLIVAN: So that would be logical.

10 BZA VICE CHAIR HART: And so the actual
11 condition would be that the Applicant --- I mean, the
12 condition that they have is prior to the --- well, based
13 on the private/public hearing, but the Applicant must
14 obtain a written statement from FEMS that would have
15 adequate access to the accessory building and dwelling
16 unit. Given that the alley is less than 15 feet in width,
17 you're saying that that's the language that you would want
18 to keep.

19 MEMBER JOHN: So let me look at it again.

20 BZA VICE CHAIR HART: Well, maybe it's ---

21 MEMBER JOHN: I'd say provided that the
22 Applicant obtains a statement from FEMS prior to issuance
23 of a C of O.

24 BZA VICE CHAIR HART: Okay, okay.

25 MR. SULLIVAN: If I might, Mr. Chair, would an

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1 approval on a building permit application from the fire
2 discipline satisfy that condition? Or would we need to do
3 something a little more?

4 BZA VICE CHAIR HART: Say that again?

5 MR. SULLIVAN: On the building permit
6 application, the disciplines that approve it, FEMS is one
7 of those.

8 BZA VICE CHAIR HART: Yes.

9 MR. SULLIVAN: And I'm wondering if an
10 approval, a formal approval on that building permit
11 application would suffice as a written statement.

12 BZA VICE CHAIR HART: Because you've already
13 gotten an approval from everything included in that.

14 MR. SULLIVAN: Yes. Well, if they approve it,
15 they may say, well, what do you need a statement for?
16 We've already approved it. So that might be a struggle.
17 Or it may be just some evidence of their review and
18 approval. I know we have to get that. I just don't know
19 in exactly what form it'll ---

20 MEMBER TURNBULL: Okay. Well, I think OAG can
21 wordsmith that then.

22 BZA VICE CHAIR HART: I was just looking at how
23 we may have done it, how we look at this in a previous
24 case, actually earlier this morning.

25 MEMBER JOHN: Mr. Vice Chair, I think the

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1 important thing is the approval, not necessarily how --

2 BZA VICE CHAIR HART: Yes.

3 MEMBER JOHN: -- in what form it's received.

4 And that would be my suggestion.

5 BZA VICE CHAIR HART: Okay. So does Mr. Moy or
6 the OAG, do you have any --- do you understand where
7 they're going with this? Do I need to be more specific?

8 MS. NAGELHOUT: I do. Well, are you accepting
9 the Applicant's proposal that an indication on the plans
10 would be sufficient from the fire review?

11 BZA VICE CHAIR HART: I think so. I think that
12 that would be --- because that would mean that they would
13 have actually have to have reviewed and approved it if
14 they have that.

15 MS. NAGELHOUT: Right. So if you want a
16 condition, we could write it so that they could provide
17 either, you know, an indication of approval of the plan or
18 a statement.

19 BZA VICE CHAIR HART: Yes. That'll be fine.
20 Thank you. Okay. So with that, I would make a motion to
21 approve Application 19688 of Frederick and Pamela Scott on
22 the conditions that we've discussed regarding FEMS, having
23 that information prior to the issuance of the C of O. And
24 whatever that is, we'll figure that out. And thank you
25 very much.

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1 MEMBER TURNBULL: I would second that.

2 BZA VICE CHAIR HART: Thank you. I didn't
3 actually close the hearing, so this is still new to me.
4 So I forget to do things. So I will close the hearing.
5 And now that we've actually started doing our
6 deliberation, I will continue with it.

7 So I will make a motion. The motion is to
8 approve the Application 19688 of Frederick and Pamela
9 Scott with the condition regarding FEMS that we have
10 described and that OAG understands. Do I hear a second?

11 MEMBER TURNBULL: I will continue with the
12 second.

13 BZA VICE CHAIR HART: Having made a motion and
14 hearing a second, all those in favor of the motion say
15 aye?

16 (Chorus of aye.)

17 BZA VICE CHAIR HART: Any opposed?

18 (No audible response.)

19 BZA VICE CHAIR HART: Looks like the ayes have
20 it.

21 SECRETARY MOY: Thank you, Mr. Vice Chair. For
22 the record, before I do the vote on it, you did close the
23 hearing?

24 BZA VICE CHAIR HART: Yes.

25 SECRETARY MOY: Thanks. Well, that's okay, you

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1 can do it twice. So staff would record the vote as three
2 to zero to two. This is on the motion of Vice Chair Hart
3 to approve the application for the relief requested with
4 the one condition as cited, second to the motion, Mr.
5 Michael Turnbull, also in support, Ms. Lorna John. We
6 have two members not participating. Motion carries.

7 BZA VICE CHAIR HART: Summary order, Mr. Moy?

8 SECRETARY MOY: Thank you.

9 BZA VICE CHAIR HART: Thank you all very much.
10 Have a good day. So it looks like we have our last case,
11 Mr. Moy, is that correct?

12 SECRETARY MOY: Yes, that's correct.

13 BZA VICE CHAIR HART: You may call the last
14 case.

15 SECRETARY MOY: I would call to the table
16 parties to Application Number 19694 of 5104 MacArthur,
17 LLC, caption, advertised for a special exception, relief
18 under Subtitle C, Section 703. This is for the minimum
19 parking requirements of Subtitle C, Section 701.5. This
20 would convert the existing commercial building to a child
21 development center, MU 3 zone. This is at 5104 MacArthur
22 Boulevard, N.W. (Square 1418, Lot 43).

23 BZA VICE CHAIR HART: Thank you, Mr. Moy. We
24 have a little bit of change but, ha, ha, ha, Mr. Sullivan,
25 you've been here a lot this morning. If you could each

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1 introduce yourselves.

2 MR. SULLIVAN: Thank you, Mr. Chair, happy to
3 be here for the last hearing of the day --

4 BZA VICE CHAIR HART: Thank you.

5 MR. SULLIVAN: -- which I think is before the
6 first hearing was last week. So Marty Sullivan on behalf
7 of the Applicant.

8 MS. WILSON: Alexandra Wilson on behalf of the
9 Applicant.

10 MS. GUSTAFSON: Heather Gustafson, the
11 Applicant.

12 BZA VICE CHAIR HART: I'm not going to assume
13 this time.

14 MR. SULLIVAN: I'm going to handle the
15 presentation.

16 BZA VICE CHAIR HART: Mr. Sullivan, you are
17 going to --

18 MR. SULLIVAN: Thank you.

19 BZA VICE CHAIR HART: -- give the presentation.
20 You may proceed when you're ready.

21 MR. SULLIVAN: Thank you, Mr. Chair, and
22 members of the Board. The Applicant is proposing to use
23 5104 MacArthur Boulevard -- it's a one-story former retail
24 site -- as the site of a day-care center. And the
25 proposed child development center use is actually

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1 permitted as a matter of right.

2 This was one of the zones that got caught up in
3 a change in the zoning regulations that unintentionally
4 took matter of right use to, arguably, not matter of right
5 and somewhat limited use. But that was corrected or is in
6 the process of being corrected. And the Zoning Commission
7 voted on a proposed rulemaking about two weeks ago on that
8 to reinstate the matter of right child development center
9 use for this location.

10 So under Subtitle C, 701.5, daytime care use is
11 required to provide 0.5 spaces per 1,000 square feet with
12 a minimum of one space. So for the building which is
13 2,800 square feet, that leads to a requirement of two
14 parking spaces. And the parking requirement for child
15 development centers was changed under the 2016 zoning
16 regulations too. It's now based on square footage rather
17 than staff numbers. So that won't change regardless of
18 what the Applicant ends up having as a staff number.

19 Excuse me. So accordingly, we are requesting
20 special exception relief pursuant to Subtitle C, Section
21 703, from the parking requirements of Subtitle C, Section
22 701.5.

23 A note about the matter of right use. If there
24 were two parking spaces here, they would most likely have
25 been used by staff or would be used by staff. So the

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1 pickup and drop-off of children in the actual operation of
2 the matter of right daycare center will be unaffected by
3 the relief. Essentially, what the relief is going to
4 cause is that there will be two cars, two staff that,
5 other than being able to park at the site, will have to
6 park somewhere in the surrounding area.

7 But the Applicant is here, and she can talk a
8 bit more of the operation of the pickup and drop-off too,
9 for your information on that. But I'd like to go through
10 the requirements first for the special exception for the
11 parking. And then Heather's going to have a few words to
12 say.

13 So the application meets the requirements of
14 Subtitle C 703 due to the physical constraints of the
15 property. The required parking spaces cannot be provided
16 either on the lot or within 600 feet of the lot. This is
17 an interior lot with no alley access. And the rear of the
18 property abuts other properties not an alley. So there's
19 no way to provide any parking here.

20 The property does not have access to an open
21 public alley, is landlocked, and the reduction in the
22 required number of parking spaces is only for the amount
23 that the Applicant is physically unable to provide.

24 The Applicant has provided a transportation
25 demand management plan. There are some questions, I

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1 think, about some of the things that DDOT has proposed and
2 what the Applicant will propose. But they're generally in
3 agreement on the type. There may be some difference on
4 the degree of what should be provided for the two parking
5 space relief.

6 The ANC has voted unanimously to support the
7 application. And the Office of Planning has recommended
8 approval. And there's numerous letters of support of the
9 application in the record. And DDOT is also in support.

10 Regarding DDOT's conditions, I think I'll turn
11 it over to Heather to talk about the operation. And then
12 I can talk about DDOT's conditions and our response to
13 those.

14 BZA VICE CHAIR HART: Thank you.

15 MS. GUSTAFSON: Okay, sure. So my name is
16 Heather Gustafson. I've met all of you before, because I
17 currently operate a pre-school in my home through a
18 special use exception located about two blocks, two to
19 three blocks away from this site. So I have significant
20 experience running a child serving program in a
21 residential setting which, as you can imagine, is very
22 much organized around a successful traffic management plan
23 and all other considerations that would be necessary for
24 the happiness of my dear neighbors.

25 I've been running that pre-school for five

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1 years. Our community does not have any infant-serving
2 facilities of any sort. There is no daycare; there is no
3 toddler center within close proximity to our neighborhood.

4 The interesting piece of testimony that I can
5 offer today is that I posted the orange sign a few days
6 ago in the window of my intended facility. My business
7 has not done any advertising or made any public
8 announcement of the hoped for infant and toddler center
9 that we hope to open in this location.

10 However, I already have, in the space of a
11 little under seven or so days, I already have 11
12 applications for the center from neighborhood residents,
13 all of whom live within a few blocks of the intended
14 facility and who would be walking to the facility in
15 order to drop off their children. These are families who
16 also have older children, in most cases at the Key
17 Elementary School which is very close by.

18 Most of you may be aware of the crisis in the
19 District of Columbia in regard to daycare and toddler
20 care. The District is presently only able to meet about
21 50 percent of the demand for this essential service. And
22 I have been trying for about three years now to open a
23 center like this in the Palisades. It's been quite
24 difficult. There's a very limited amount of available
25 real estate.

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1 This particular facility became vacant, after
2 having been a pet store for quite a number of years, a few
3 months ago. It's in a really wonderful location to serve
4 this use. And it will really provide a very badly needed
5 service to the community.

6 So I'm happy to answer any questions that the
7 members of the Board may have about our plans. But I do
8 feel strongly, having had great help from Marty and from
9 our ANC Commissioner, and other members of the community,
10 that this is the best possible site for this badly needed
11 resource for the community.

12 BZA VICE CHAIR HART: I do have one question,
13 Ms. Gustafson. With regard to the --- just understanding
14 the pickup and drop-off kind of concerns that DDOT raised,
15 how do you, I mean I think at one point you said that you
16 would require that --- oh, yes, "Remainder will be
17 required to park legally and walk-in their children." How
18 do you, I mean, how do you make sure that they do that?

19 MS. GUSTAFSON: So this location is on a mixed
20 use strip, essentially. As mentioned here there are
21 several restaurants, and storefronts, a post office, the
22 bank, the Starbucks, and so on, along this strip. So
23 people are already parking legally in order to utilize
24 these community services in this area.

25 And my institution will be no different. If

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1 somebody wants to go to the post office, they have to park
2 legally in order to do so. If somebody wants to visit the
3 very busy veterinarian a few doors down, they need to park
4 and bring and their pet to the door. They don't have a
5 pickup and drop-off line.

6 So there are some examples in our community of
7 schools that do have a car pool line. The best example of
8 that is down closer to Foxhall where the River School is
9 located. And it does have a pickup and drop-off line.
10 Daycares do not need to have, and frankly never have a
11 pickup and drop-off car pool line.

12 It's not part of the operational plan for a
13 daycare due to the age of the children. Parents are
14 required to bring their child into the center personally,
15 update the staff on, you know, illness, issues, et cetera.
16 You cannot take an infant, really, out of a car and hope
17 that all will be communicated.

18 So I think there's a misunderstanding between
19 schools which typically all the children arrive within,
20 you know, roughly a half an hour time period. I'm sure
21 most of you have children, so you can, you know, you're
22 experiencing that or can remember it and must depart at
23 the same time.

24 A daycare naturally staggers itself so the
25 parents, -- the facilities' intended hours of operation

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1 are from around 7:00 in the morning until 6:00 p.m. And
2 not everybody goes to work at 7:00 a.m. Not everybody
3 gets home at 6:00 p.m. So the lovely thing about this
4 intended use is that the arrivals and drop-offs will
5 naturally stagger themselves. But the parents must park
6 or walk. And the great thing about my orange sign
7 experiment is I'm already getting so many applications
8 from within just a couple of blocks.

9 So I'm also extremely fierce about enforcing my
10 traffic management plan. As I mentioned, I operate a pre-
11 school for 24 children out of my home in a purpose-built,
12 beautiful classroom on a totally residential street
13 directly across the street from Key Elementary School
14 which was built for about 400 students, and now has about
15 650 students. So as you can imagine, the traffic is very
16 intense on my residential street.

17 And if a parent ever disobeys the traffic
18 management plan in my present pre-school, they hear about
19 it from me instantly. And they know that they will be
20 dismissed from my program if they break those rules. And
21 that's related to my specific current facility. The same
22 will be true for this daycare.

23 This community needs daycare so badly that, God
24 forbid, a parent should break that traffic management plan
25 and cause the community to lose this service, right? So

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1 they will hear from me, and they will be told in no, you
2 know, uncertain terms that if they break the rules, which
3 will be clearly expressed upon enrollment, they will be
4 dismissed.

5 And I think that's an important thing to note
6 here, because their bad behavior could cause -- many
7 families are desperate for this kind of resource -- you
8 know, to lose
9 the opportunity to have it. So that's my pledge to you.
10 I really, truly understand these issues.

11 And I'm very eager to make sure that the use --
12 - the other intended tenants -- for example, I'm very good
13 friends with the landlord in this case -- the two other
14 tenants competing for the space were a liquor store, which
15 our community does not need, we have several already. For
16 obvious reasons, that would not really be a great service
17 to the community. And then the other party was a karate
18 club for children. That would be great, but the karate
19 club would actually bring a lot more significant traffic
20 into the location multiple times per day than a daycare
21 center.

22 So I'm really hoping that we can, you know,
23 bring something good to bear here. And I think I have the
24 experience necessary to enforce the traffic situation.
25 There is also plenty of available parking, public parking,

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1 along MacArthur Boulevard. And similarly, on Arizona
2 Avenue there's a whole street of parking that doesn't
3 require the, you know, the sort of two-hour limitation
4 which, again, wouldn't be applicable here, because people
5 would be dropping off en route to and from work. So I
6 think there's ample parking during the times of day that
7 we will be seeing the parents coming and going.

8 BZA VICE CHAIR HART: That was a very thorough
9 explanation. And I appreciate it. I would really, really
10 tell folks if they don't adhere to this, I think you're
11 going to go after them. So I they'll be wise to adhere to
12 that. Do the other Board members have any questions for
13 the Applicant or Mr. Sullivan?

14 MEMBER TURNBULL: I just have a couple.
15 There'll be 44 children as the goal?

16 MS. GUSTAFSON: The square footage per child is
17 determined by the Office of the State Superintendent of
18 Education which is generally around 35 to 45 square feet
19 of unencumbered program space, depending on the age of the
20 child. So my space technically will allow for up to 44
21 children. My intention is to operate below that level.
22 But for the purpose of zoning, I think it's important in
23 any business to seek the maximum possible so that you have
24 the opportunity to kind of float up and down a little bit
25 within that.

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1 MEMBER TURNBULL: And I see your total staff of
2 11 at the upper end, I guess?

3 MS. GUSTAFSON: At the upper end, if we utilize
4 the space to the maximum capacity, again, which I frankly
5 don't intend to. But if we did, it would be 11 staff,
6 because the staff student ratio is one to four.

7 MEMBER TURNBULL: And they need to park
8 somewhere, or do they take Metro, or live nearby?

9 MS. GUSTAFSON: So that's a great question.
10 The majority of my current staff at my present facility,
11 granted at my current facility I only have three staff, so
12 it's not as big of an operation. My current staff, who
13 are at my current facility, one has a car, the other two
14 do not. It is the truth within education, pre-school,
15 daycare especially, if the staff members are living within
16 the District that, generally speaking, most people who
17 don't own cars nowadays are taking public transit. And in
18 most cases, they're actually taking UberPool, or Lyft pool
19 to get to work which is quite interesting development.

20 Palisades is not on the Metro, so the public
21 transit is fine but not great. So we are willing and open
22 to figuring out more methods to ensure staff parking
23 spaces if that is the pushback from the Board. There is a
24 significant amount of un-zoned parking available within a
25 few blocks of the facility.

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1 MEMBER TURNBULL: Okay. There is one caveat
2 that ANC listed which was going back to Department of
3 Transportation. I think they said that at no time will
4 the staff of the child development center park in the
5 unsecured Palisades Recreation Center parking lot. So you
6 have no concern about adding that into the order then.

7 MS. GUSTAFSON: I do, I have no concern about
8 that at all. The Palisades Recreation Center is
9 completely packed with every kind of imaginable child
10 sporting activity. It would absolutely be inappropriate
11 for my staff members to park there.

12 They most likely would park on Arizona Avenue
13 or Garfield. These are two local streets that have large
14 sections of un-zoned parking that are never full. So that
15 would probably be the best location for any staff cars
16 that might come to my facility.

17 MEMBER TURNBULL: Well, I was just thinking
18 about your comment about the other facility that was
19 looking to go in there which is the karate. I mean,
20 that's a facility where parents usually stay too and
21 watch. So there's a lot more traffic generated from that,
22 people staying and watching their kids do that. So thank
23 you.

24 MS. GUSTAFSON: Thank you.

25 BZA VICE CHAIR HART: Ms. John? You don't have

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1 to, I just was curious if you had any questions.

2 MEMBER JOHN: No, Mr. Vice Chair.

3 BZA VICE CHAIR HART: Okay. I think we'll move
4 to the Office of Planning.

5 MS. MYERS: Hello, Crystal Myers for the Office
6 of Planning. The Office of Planning is recommending
7 approval of this case. But we don't typically approve in
8 cases like this when a zoning text amendment is required
9 for the big use that is in the case.

10 The parking relief is for a use that hasn't
11 been approved as a matter of right yet. Currently in this
12 zone, only five children is permitted by rights. But the
13 Zoning Commission has recently, I believe it was February
14 8th, the Zoning Commission took proposed action to approve
15 text amendment 17-20, or the case number is 17-20, to
16 change this to allow for no maximum in missed use zones.
17 But at this point, no final action has been taken yet. So
18 the case is pending.

19 But in a case like this, where there's a
20 critical need for this type of use in the District, and
21 because of the advanced state of the Commission's review,
22 OP is not opposed to the BZA case moving forward at this
23 time, subject to the condition that we've added, which is
24 that, "No C of O for this use being issued prior to the
25 issuance of the Zoning Commission order for Case 17-20

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1 which would allow for the use at this level of intensity
2 proposed.

3 "Should the Commission not approve text
4 amendments which would allow for this use, the Applicant
5 for this BZA case would be required to adjust the program
6 to be consistent with the regulations or return BZA for
7 appropriate additional relief."

8 So with this condition included, we are
9 comfortable recommending approval of this case and stand
10 on the record of the staff report.

11 BZA VICE CHAIR HART: So, Ms. Myers, I'm trying
12 to work my head around the first condition. So can you go
13 over that one again? Because I'm trying to understand how
14 -- the Applicant is before us right now for a special
15 exception for this case. They are looking for a certain
16 number of, you know, of staff and students, they are, of
17 course, before the zoning Case 17-20 has been approved.
18 But if you could just step through that just again.

19 Because I want to make sure. I've got to understand that.

20 MS. MYERS: Sure. So we're saying that, and
21 the condition goes as this, "No C of O for this use being
22 issued prior to the issuance of the Zoning Commission
23 order for Case 17-20 which would allow the use at the
24 level of intensity proposed.

25 "Should the Commission not approve text

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1 amendments which would allow this use, the Applicant for
2 this BZA case would be required to adjust the program to
3 be consistent with the regulations or return to the BZA
4 for appropriate additional relief."

5 At this time, the case is pending. So we want
6 sort of allow for any sort of changes that may be
7 necessary, because of the case being --- when the case is
8 decided on, to be factored into this case as well. So we
9 just wanted to leave a little bit of flexibility in case
10 something were to be decided on in the zoning case that
11 would impact this case.

12 BZA VICE CHAIR HART: Okay. Do the Board
13 members have any other questions for the Office of
14 Planning? Okay.

15 MEMBER TURNBULL: Speaking for the Zoning, I
16 believe we took proposed action on that on February 8th.

17 BZA VICE CHAIR HART: Yes.

18 MS. MYERS: My understanding is that you did
19 take proposed action.

20 MEMBER TURNBULL: I thought that's what we did.
21 So I think, and my feeling is final actions are
22 formalities, I think. But I shouldn't say that. I'm
23 pretty confident that we're going to be going ahead with
24 this.

25 BZA VICE CHAIR HART: Mr. Sullivan, do you have

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1 any questions for the Office of Planning?

2 MR. SULLIVAN: No, thank you.

3 BZA VICE CHAIR HART: Ms. John?

4 MEMBER JOHN: So a point of clarification. I
5 don't know if my Board members can help. We would need
6 the relief for the parking space regardless of the five
7 person limit or the 44 person limit?

8 BZA VICE CHAIR HART: My understanding is that
9 the relief is contingent on the size of the site. So it's
10 regardless of the number of people, but it is the size.

11 MEMBER JOHN: There would be two --- you would
12 need relief for two parking spaces either way?

13 BZA VICE CHAIR HART: And I'm looking at
14 application making sure.

15 MR. SULLIVAN: Yes.

16 BZA VICE CHAIR HART: They're nodding so ---

17 MR. SULLIVAN: And essentially, I mean, this is
18 the ultimate self-certified application where we're
19 anticipating that the Zoning Commission will --- The
20 reason why I said arguably at the beginning of this,
21 because there's actually language still in the zoning
22 regulations that, by referral, make this matter of right
23 unlimited. And that's what it was in the 1958
24 regulations.

25 But then additional language came in that put

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1 some confusion there, because you're limited to five, and
2 that's what's just being struck and was voted on in the
3 proposed rulemaking. So that Condition Number 1 we'd have
4 to comply with anyway.

5 MEMBER JOHN: So Mr. Vice Chair, just to throw
6 this out, so would it make sense to, if we were to approve
7 the request for relief, that we condition any increase in
8 approval of the language, so we're not now granting a
9 request based on a regulation that's not been finalized.
10 We don't have a regulation in front of us that would allow
11 an increase to 44 as a matter of right.

12 BZA VICE CHAIR HART: But we're not reviewing -
13 --

14 MEMBER JOHN: So if we were to ---

15 BZA VICE CHAIR HART: But we're not --- we are
16 really looking at just the parking itself. That's what
17 they're asking for.

18 MEMBER JOHN: Right.

19 MR. SULLIVAN: Right, and that's based on the
20 square footage which won't change.

21 BZA VICE CHAIR HART: Okay. So let's move to
22 the ANC. Welcome. Yes, thank you very much. How are you
23 this morning?

24 MS. GATES: Well, I'm better. I have had the
25 flu.

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1 BZA VICE CHAIR HART: Oh, oh.

2 MS. GATES: I'm not contagious. I'm not
3 contagious. But it was a horrible experience, worse --
4 (Simultaneous speaking.)

5 BZA VICE CHAIR HART: Well, I'm sorry to hear
6 that, glad that you're feeling better.

7 MS. GATES: I am Alma Gates, representing ANC
8 3D and the single-member District Commissioner for 3D-05
9 which includes the subject site. At its February 7th,
10 2018, meeting, ANC 3D voted nine, zero, zero, to approve,
11 with conditions, the special exception application for
12 5104 MacArthur, LLC.

13 The ANC's letter is in the file at Exhibit 55
14 and includes five conditions of approval. While ANC 3D is
15 in agreement that it is impossible for the Applicant to
16 provide the required off-street parking spaces, the
17 Commission is sensitive to the current level of activity
18 on this block-face of MacArthur Boulevard, including a
19 condominium, and an apartment building, the Brazilian
20 Naval Attache, a US post office, restaurants, additional
21 commercial activities, and the abutting low density
22 residential areas. ANC 3D is also sensitive to the fact
23 the proposed use will likely introduce new stresses on the
24 immediate area.

25 MacArthur Boulevard, the location of the

1 proposed child development center, is a divided, four-
2 lane, major thoroughfare which transects the community.
3 The Boulevard is one of two main entry points into and out
4 of the city in terms of commuter traffic and the location
5 of several mixed-use zones which support the needs of the
6 community.

7 It is also the route for the D6 Metro bus. And
8 one of the stops is located proximate to the front of the
9 proposed site. This is a good thing. I'm not going to
10 sit here and tell you the D6 is the most reliable bus line
11 in the city, because it is not. But it is one of the
12 major carriers for employees of Georgetown and Sibley
13 Hospitals. So buses run about every 30 minutes.

14 Is the D6 bus going to be the main source of
15 transportation for the 11 staff members of the child
16 development center? Probably not. And for that reason,
17 ANC 3D proposed that there be a DDOT approved TDM plan
18 prior to the BZA approval of Application 19694.

19 Our concern is parking and traffic related to
20 the child development center, not bicycle racks. The very
21 brief TDM found at Exhibit Number 51 really offers little
22 in the way of assurance to the community. A \$20 pre-
23 loaded Metro card is about a week's fare, and there's no
24 explanation offered for the proposed consumer benefit
25 savings plan in the DDOT report or elsewhere in the file.

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1 With regard to the parking changes suggested by
2 DDOT, it is not going to sit well with current businesses
3 if any changes are made to parking on MacArthur Boulevard
4 to accommodate the child development center pickup and
5 drop-off.

6 And I just want to enter here that we are not
7 opposed to this at all. But we have businesses that are
8 used to running a certain way; we have residents who are
9 used to parking, et cetera. And there are residential
10 uses on this block-face. So that's important. The child
11 development center should not become an inconvenience to
12 those residents and establishments which currently occupy
13 space along this block-face of MacArthur Boulevard.

14 ANC asks that the five proffered conditions in
15 its letter of February 8th be incorporated into BZA Order
16 19694. Also, the Commission asks that the BZA limit the
17 term of the special exception to a period of five years.
18 And again, within that five years, we heard Ms. Gustafson
19 talk about parents being dismissed if they don't abide by
20 parking, et cetera. So that's the kind of report we're
21 looking for from her, to see how well this is really
22 operating. The proffered conditions were accepted by the
23 Applicant at the February 7th, 2018, ANC meeting.

24 In closing, ANC 3D asks that its findings be
25 given the great weight to which they are entitled under DC

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1 law. I'm available to answer any questions the BZA may
2 have. Thank you.

3 BZA VICE CHAIR HART: Thank you, Commissioner
4 Gates. Do the Board members have any questions for the
5 Commissioner?

6 (No audible response.)

7 BZA VICE CHAIR HART: No?

8 MEMBER JOHN: I have one question.

9 BZA VICE CHAIR HART: Sure.

10 MEMBER JOHN: So I don't remember what was the
11 previous use. What was the previous use?

12 MS. GATES: It was a pet food store.

13 MEMBER JOHN: A pet food store. And I imagine
14 that that was a lot of traffic all through the day for,
15 you know, folks ---

16 MS. GATES: I don't think it was as much as you
17 might imagine. Obviously, it went out of business.

18 MEMBER JOHN: Well, at one point there must
19 have --- well, that's possibly true. And so the Applicant
20 is only asking for relief for two parking spaces.

21 MS. GATES: Correct. But we did also hear the
22 Applicant say there are parking places on Arizona Avenue
23 and Garfield Street. Garfield Street is a residential
24 street. And as we have more and more of these commercial
25 uses coming into the neighborhood, we find more and more

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1 commercial parking on residential streets which, I mean,
2 parking is parking. But people don't always like to have
3 that going on in front of their homes.

4 BZA VICE CHAIR HART: Thank you, Ms. John. I
5 did have a question on the, not the five-year, there was
6 another one that was --

7 (Simultaneous speaking.)

8 MEMBER TURNBULL: One bicycle space.

9 BZA VICE CHAIR HART: Well, I think it was the
10 five-year one. And I think you were just saying that
11 you'd like to have just ability to see what has gone on in
12 that five-year period.

13 MEMBER JOHN: This is Number 5, Mr. Vice Chair.
14 The special exception ---

15 BZA VICE CHAIR HART: Oh, yes.

16 MEMBER JOHN: -- will cease to exist with a
17 change of the use of the property as the child development
18 center.

19 MS. GATES: No, I think Mr. Hart is asking
20 about Number 2.

21 BZA VICE CHAIR HART: It was Number 2. But, I
22 mean, Number 5 I understand. Number 2 was, you know, and
23 I think you were really looking at the issue of what
24 happens over a period of time to be able to look back at
25 that, at that period, which I think I understand. I think

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1 I don't have any other questions, however. Thank you.

2 MEMBER TURNBULL: Yes, I think the language
3 you're talking about that for five years will cease to
4 exhibit, I think there's a standard language that says if
5 Ms. Gustafson goes away, it's not going to remain a child
6 development center. The use expires with her leaving. I
7 mean, she may be back in five years and saying I want to
8 renew further, you know. And if she's been successful,
9 maybe she'll get ten years, how knows.

10 MS. GATES: Correct, right. And that was our
11 intent.

12 MEMBER TURNBULL: Yes. But that's pretty
13 standard. We've done that before. And we've done that
14 with her other school as well.

15 MEMBER TURNBULL: Yes, yes.

16 BZA VICE CHAIR HART: Okay. Let's see, do we
17 have --- thank you very much. Do we have anyone that is
18 in support of the application?

19 (No audible response.)

20 BZA VICE CHAIR HART: Anyone here wanting to
21 testify in opposition to the application?

22 (No audible response.)

23 BZA VICE CHAIR HART: No one's raising their
24 hands again. So that will bring us back to you, Mr.
25 Sullivan. Do you have any final thoughts that you'd like

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1 to provide?

2 MR. SULLIVAN: I would, just one thing I'd like
3 Ms. Gustafson to talk about how your parking times for
4 your clients would coordinate with the restaurant use and
5 their parking times on that block, restaurant uses.

6 MS. GUSTAFSON: Sure. And I've thought a lot
7 about this. I live less than two blocks from the
8 location. And I actually work on MacArthur Boulevard
9 adjacent to this space. So I'm there every day, all day
10 long. So I have a pretty good opportunity to observe
11 parking. And I frequent the restaurants, so I know what
12 that's like as well.

13 And the restaurants are the primary driver of
14 parking on the block where this facility is located. Some
15 of them do some lunch programming but very little.
16 Frankly, mostly the traffic comes in the evening when the
17 restaurants open up around 6:00 p.m. or slightly later.

18 So I do think that, short of another restaurant
19 moving into this space, which could provide even more
20 difficulty with parking, which could happen, that the
21 coordination between the daycare times and the restaurant
22 heavy parking times is reasonably beneficial.

23 You know, there's very little traffic in the
24 very early morning along --- well, people are heading into
25 work, but the traffic spaces are being vacated. The

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1 parents coming to drop-off may quickly fill those spots,
2 and drop their child off, and then continue to work. And
3 then my business will be complete by the time the
4 restaurants start up. So that's one of my observations.

5 MR. SULLIVAN: And DDOT has suggested a
6 condition to furnish and install a U rack to accommodate
7 families who bike to the site. Do you have a response to
8 that?

9 MS. GUSTAFSON: I actually do have a response
10 to that. The children in the facility are too young to
11 ride in a bike trailer. You typically can't put a child
12 younger than the age of three, in most cases, in a bike
13 trailer that would follow a bike or certainly a bike seat.
14 So I don't think that a U rack would be very helpful to
15 the families in almost any case that I can imagine.

16 The building itself is an L-shaped building.
17 It's quite an unusual structure. And there's a small
18 courtyard adjacent to where my child development center
19 will be where staff would be very easily able to park
20 their bikes. It's an unused courtyard that the landlord
21 has given me full permission to use for staff member
22 bikes. But I really can't imagine a family coming with
23 their child and their bike in this use.

24 MS. GATES: Mr. Hart, I'd like to add, please,
25 that this location for a bike rack is really

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1 inappropriate. The sidewalk is too narrow, and there is a
2 bus stop there. So it really isn't practical.

3 BZA VICE CHAIR HART: I appreciate the personal
4 experience on understanding what that area is like and the
5 desire not to have one could be --- the desire to make one
6 may be kind of a let's just put them up anywhere. But
7 looking at a case by case basis, it makes it a little
8 difficult sometimes because of the sidewalk condition,
9 whether or not there are bus stops that are available.
10 Because that further constrains the site. So I can fully
11 understand that. I do appreciate the input though.

12 MS. GUSTAFSON: I also think if we put a bike
13 rack in this location, other people who are not affiliated
14 with the daycare would be the ones likely to use it, so
15 kids and other families. So I think I'd far rather
16 accommodate staff members who may bike which I think is a
17 lovely idea in my private agreement with the landlord
18 where there's plenty of space off-street.

19 BZA VICE CHAIR HART: Thank you. Mr. Sullivan,
20 anything else?

21 MR. SULLIVAN: Thank you. We have nothing
22 further. Thank you.

23 BZA VICE CHAIR HART: Any other questions from
24 any of the Board members?

25 MEMBER TURNBULL: I think the bike officer of

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1 the Zoning Commission, Mr. May, would go along with that
2 also. I think he would agree.

3 BZA VICE CHAIR HART: You're speaking for the
4 Zoning Commission a lot today.

5 MEMBER TURNBULL: Yeah, well, try to.

6 BZA VICE CHAIR HART: Okay. So I will close
7 the hearing and bring it back to the Board for
8 deliberation. Is the Board ready to deliberate? Okay.
9 I'll start.

10 I appreciate the information that we've heard
11 today regarding the testimony that we've heard today,
12 regarding the Application that's before us which is really
13 for a special exception for parking requirements.

14 We've talked about a lot of other things that
15 are kind of somewhat connected to that. And it's helpful
16 to hear that. I do appreciate the Office of Planning
17 report and the items that they've described on how the
18 Applicant has met the applicable criteria.

19 With regard to the, I guess, with regard to the
20 conditions, I'd like to hear from the Board to see what
21 your opinion is on the conditions from OP, from the ANC,
22 and from DDOT.

23 The way I kind of see it, it seems as though
24 the first condition from the Office of Planning is a
25 little bit strange. I mean, I understand it, I think that

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1 what I was looking at is the application would have to ---
2 the Applicant, if we approve this, they'd have to get
3 their C of O. And they would only be able to get the C of
4 O that is for the number of people that are --- number of
5 students that are allowed under the current zoning. So
6 it's not like we're allowing them to do something outside
7 of that.

8 And so that's why I was kind of a little bit
9 confused as to why we would condition this to a zoning
10 case, a Zoning Commission case. I think the Zoning
11 Commission case may just allow them to have more students,
12 but that just seems a little bit -- it seems a little bit
13 odd to me to include that in with this.

14 With regard to the ANC conditions, I was fine
15 with them, because I think that the Applicant is already
16 fine with them. I think some of them are a little bit ---
17 I'm not sure if I would necessarily put that in, think
18 about that as a condition myself. But I understand that
19 the ANC is looking for certain information and looking for
20 certain conditions as part of their approval, which I
21 understand, and I understand that we carry the ANC report,
22 you know, we carry that with great weight. We use that.

23 And then with regard to the DDOT report, I am
24 fine with the, I guess, the third condition. But that's
25 something that the Applicant is kind of already doing as

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1 part of their TDM. So I'm not sure if we necessarily need
2 to have that as a condition itself.

3 The first two conditions for the Applicant to
4 provide a pickup and drop-off plan for DDOT review, I
5 think the Applicant has described that they're really not
6 --- usually with a pickup and drop-off, you are picking up
7 in that your child is coming out to the, you know, to the
8 car. And then they're just getting in. These children
9 are too young to be able to do that.

10 So you're really going to have to park, either
11 carry or walk with your child to the site. And so it just
12 seems like they would just use a regular parking space as
13 they would be coming to the site. So I didn't think that
14 was necessary.

15 And then I'm fine with not having the U rack
16 condition. So any thoughts from my fellow Board members?

17 MEMBER JOHN: Mr. Vice Chair, I should be
18 saying Mr. Chairman, right?

19 BZA VICE CHAIR HART: Either one.

20 MEMBER JOHN: I don't have a lot to add to what
21 you said. I believe the Applicant has demonstrated
22 compliance with the standard for the parking exception for
23 two spaces.

24 My view of this is that we should grant the
25 application based on the current status of the regulations

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1 and what the regulations allow. And so I'm prepared to
2 vote for approval for relief for two parking spaces. And
3 if the regulations change, you know, then the Applicant
4 can just go ahead and increase their number of students
5 based on what the Certificate of Occupancy would allow or
6 any other regulatory requirement might allow.

7 As to the conditions, I agree with you
8 concerning the first and second condition of the ANC 3D
9 report. I'm not so sure about the timeframe for future
10 special exceptions and why we need to include that
11 particular part of the condition. And I'm not sure how
12 you enforce Number 4, because if it's part of the order,
13 it has to be something we can enforce, the Board can
14 enforce. And I'm not sure how we do that. So I would
15 vote in not including condition Number 4.

16 BZA VICE CHAIR HART: And that's the condition
17 that at no time will staff of the child development center
18 park in the unsecured Palisades Recreation parking lot.
19 And I understand that. I mean, we're not the ones that
20 are enforcing it. It would be the DCRA. But you're
21 right, it is ---

22 MEMBER JOHN: Right, well ---

23 BZA VICE CHAIR HART: -- it is going to be very
24 difficult to be able to do that.

25 MEMBER JOHN: But if it's a part of the order,

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1 I would think.

2 So as to the DDOT conditions, I think the
3 Applicant has made a pretty good showing concerning how
4 parents would be dropping off infants and toddlers at
5 different times of the day, actually morning and evening
6 on a staggered basis. And so I found that testimony
7 credible. And so for that reason, I don't believe the
8 bike rack would be appropriate. That's Condition Number
9 2. And if the Applicant is fine with Condition Number 3,
10 I have no objection to it. That's the reimbursement for
11 the commuters.

12 BZA VICE CHAIR HART: Thank you, Ms. John. Mr.
13 Turnbull, do you have anything to add?

14 MEMBER TURNBULL: I really don't. I think you
15 both have touched on all of the issues. And I think with
16 Ms. Gates being here and talking about it, I have no
17 problem going forward with this. And as the Office of
18 Planning talked about, you know, not saying what the final
19 action will be on the Zoning Commission, but the proposed
20 action was five, zero, to zero. So I have no problem
21 going forward with this.

22 BZA VICE CHAIR HART: So I'll make a motion to
23 approve Application 19694 of 510 MacArthur, LLC, and with
24 the conditions. And I guess we're just going to be using
25 the ANC conditions and the last DDOT condition. Because

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1 the OP conditions, we didn't think that they needed to add
2 them in here. And I want to make sure I'm correct on
3 that.

4 So the conditions that we have now are that the
5 Applicant will furnish a DDOT approved TDM plan. Oh,
6 actually we don't need that one, because they've already
7 provided that. So the conditions would be that the
8 special exception would be granted for a period of five
9 years to enable ANC 3D to determine the effectiveness of
10 the TDM plan and then striking the rest of that.

11 On an annual basis, the Applicant will furnish
12 both DDOT and ANC 3D with any complaints received
13 regarding the effectiveness of the TDM plan. And the last
14 one, actually I don't think we need to do this one either.
15 The special exception will cease to exist with a change of
16 use of the property. I mean, that would be the case
17 anyway. So I want to make sure --- yes. OAG, especially
18 the ANC 3D condition regarding the special exception will
19 cease to exist with a change of use of the property. That
20 would happen anyway. We don't need to bring --- we don't
21 need to make that a statement.

22 MS. NAGELHOUT: I'm not sure about that. I
23 know the 016 has rules about expiration to the special
24 exception. But, I mean, OP might know. I'll have to look
25 at that.

1 BZA VICE CHAIR HART: Any thoughts on that?

2 No?

3 MS. GATES: Doesn't the special exception run
4 with the land, not with the owner?

5 MEMBER TURNBULL: That's a good question --

6 BZA VICE CHAIR HART: Yes. I'm honestly not
7 sure. And I think that's what we're trying to ---

8 MR. SULLIVAN: It does. But I don't think
9 that's what the condition's addressing. I think they're
10 just saying what is the reality. If you abandon your use,
11 then your special exception goes away. And if it's a ---
12 if you abandon a legally non-conforming use, then there's
13 a three year safe harbor period. But that doesn't apply,
14 I don't believe, with special exceptions. I think once
15 it's gone, it's going to stop. And it's gone, unless you
16 can show that you intended to just delay it for a year, or
17 take a year off, and you didn't actually abandon it. But
18 the rule is if you abandon it, it's gone.

19 BZA VICE CHAIR HART: Yes.

20 MR. SULLIVAN: And that's a different argument
21 than the ---

22 BZA VICE CHAIR HART: Well, actually what
23 guidance would we need for OAG -- thank you, Mr. Sullivan
24 and Commissioner Gates --- OAG, what --- Ms. Nagelhout,
25 what guidance would you like to get from us regarding that

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1 last one, the special acceptance will cease to exist. Do
2 you want us to ---

3 MEMBER TURNBULL: It could be an option to
4 leave it in unless you find that it definitely goes away
5 if the owner is no longer doing it.

6 BZA VICE CHAIR HART: Yes.

7 MEMBER TURNBULL: That's an option.

8 MS. NAGELHOUT: Yes. If you look at Subtitle
9 Y, Section 706, "If a special exception use is
10 established, the use will expire only if an expiration
11 date is specified in the order," which you are talking
12 about doing here.

13 BZA VICE CHAIR HART: Yes.

14 MS. NAGELHOUT: "If special exception use is
15 discontinued for any reason for a period of three or more
16 years and then a C of O is issued for a different use," so
17 I think it would happen automatically if a new use
18 occupied the space.

19 BZA VICE CHAIR HART: Okay. Well, using that,
20 I think then we cannot have that recommendation. We are
21 actually giving this special exception a five-year
22 timeframe as it is. So there is some limit to this
23 special exception itself. So I think I'm comfortable with
24 that.

25 And then from DDOT, the last one is that the

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1 Applicant offer paid transit passes or reimbursements for
2 bicycle commuters of not less than \$20 per employee per
3 month. So those are the conditions that I would include.
4 And then I wanted to see if I could get a second from one
5 the Board members.

6 MEMBER JOHN: I'll second that, Mr. Chair.

7 BZA VICE CHAIR HART: All those in favor of the
8 motion say aye.

9 (Chorus of aye.)

10 BZA VICE CHAIR HART: Any opposed?

11 (No audible response.)

12 BZA VICE CHAIR HART: Looks like the ayes have
13 it, Mr. Moy, if you could follow all of that.

14 SECRETARY MOY: Yes, I have it in my notes.
15 It's on the transcript. Staff would record the vote as
16 five, to zero, to zero. This is on the motion of Vice
17 Chair Hart to approve the application along with the
18 conditions as has been ---

19 BZA VICE CHAIR HART: I don't think it's five.
20 I didn't ---

21 (Simultaneous speaking.)

22 BZA VICE CHAIR HART: You just added other
23 people in here.

24 SECRETARY MOY: I was thinking three, but my
25 mouth said five.

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1 (Laughter.)

2 SECRETARY MOY: All right, three, to zero, to
3 two. This is on the motion of Vice Chair Hart to approve
4 the application for the ruling that's being requested
5 along with the conditions as modified. Seconding the
6 motion, Ms. Lorna John, also in support, Mr. Michael
7 Turnbull, two other members not participating today.
8 Motion carries.

9 BZA VICE CHAIR HART: Summary order please.

10 SECRETARY MOY: Thank you.

11 BZA VICE CHAIR HART: Thank you all very much.
12 And have a --- we got done in the morning, so have a great
13 rest of the morning, or I should say rest of the day.
14 Thank you.

15 (Whereupon, the above-entitled matter went off
16 the record at 12:01 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: 02-28-18

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.



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