

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 30, 2009

+ + + + +

The Regular Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Marc D. Loud, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson  
SHANE L. DETTMAN, Vice Chairperson  
(NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner  
(OAC)  
PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist  
JOHN NYARKU, Zoning Specialist

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Board of Zoning Adjustment  
District of Columbia  
CASE NO. Transcript  
EXHIBIT NO.null

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN  
PAUL GOLDSTEIN  
ARLOVA JACKSON

The transcript constitutes the minutes from the Public Hearing held on June 30, 2009.

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## TABLE OF CONTENTS

Opening - Chairperson Loud.....	4
Preliminary Matters.....	9
Application Number 17878.....	10
Application Number 17948.....	11
Applicant.....	30
Office of Planning.....	39
ANC Report.....	43
Applicant's Closing Statement.....	44
Vote for Approval.....	51
Application Number 17941.....	54
Applicant.....	56
Office of Planning.....	104
ANC Report.....	128
Parties or Persons in Support.....	129
Applicant's Closing Statement.....	136
Opening - Chairperson Loud.....	148
Preliminary Matters.....	153
Appeal Number 17939 .....	154
Application Number 17917.....	154
Application Number 17940.....	162
Applicant.....	163
Office of Planning.....	165
ANC Report.....	167
Applicant's Closing Statement.....	168
Vote for Approval.....	171
Closing - Chairperson Loud.....	172

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

2 9:51 a.m.

3 CHAIRPERSON LOUD: Good morning,  
4 everyone. Welcome to the June the 30th, thank  
5 you, Mr. Dettman, Public Hearing Schedule of  
6 the Board of Zoning Adjustment.

7 We have one preliminary matter.  
8 There is on this morning's calendar a public  
9 meeting -- Special Public Meeting for the Baby  
10 Land Development Case, Number 17867. The  
11 Board is going to continue that case to the  
12 1:00 p.m. session this afternoon when we'll be  
13 joined by the third voting member on that  
14 case. So, this morning, we'll go straight  
15 into the hearing calendar.

16 MR. MOY: Yes, sir, Mr. Chairman.  
17 Also, I'd like to add to that that the staff  
18 has notified parties to that application. So,  
19 they are also aware that the Special Public  
20 Meeting has been moved to 1:00 p.m.

21 CHAIRPERSON LOUD: Thank you, Mr.  
22 Moy.

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1 In that case, then officially, this  
2 hearing will come to order. This is as I said  
3 the June 30 Public Hearing of the Board of  
4 Zoning Adjustment of the District of Columbia.

5 My name is Marc Loud, Chairperson.

6 Joining me today are Vice Chair Shane Dettman  
7 to my right representing the National Capital  
8 Planning Commission. Mr. Michael Turnbull  
9 representing the Zoning Commission. To my far  
10 left, Ms. Beverley Bailey, Zoning Specialist  
11 here in the Office of Zoning. Ms. Lori Monroe  
12 from the Office of the Attorney General. Mr.  
13 Clifford Moy who's Secretary to the BZA and I  
14 think to my far right, Ms. Arlova Jackson  
15 who's a bit eager to get up here this morning  
16 representing the Office of Planning.

17 Copies of today's hearing agenda  
18 are available to you and are located to my  
19 left in the wall bin near the door.

20 Please be advised that this  
21 proceeding is being recorded by a court  
22 reporter and also webcast live. Accordingly,

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1 we must ask you to refrain from any disruptive  
2 noises or actions in the hearing room.

3           When presenting information to the  
4 Board, please turn on and speak into the  
5 microphone first stating your name and home  
6 address. When you are finished speaking,  
7 please turn your microphone off so that your  
8 microphone is no longer picking up sound or  
9 background noise.

10           All persons planning to testify  
11 either in favor or in opposition are to fill  
12 out two witness cards. These cards are  
13 located to my left on the table near the door  
14 and on the witness tables. Upon coming  
15 forward to speak to the Board please give both  
16 cards to the reporter sitting to my right.

17           The order of procedure for special  
18 exceptions and variances is as follows:  
19 First, statement and witnesses of the  
20 applicant; government reports including the  
21 Office of Planning, the Department of Public  
22 Works, et cetera; the report of the Advisory

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1 Neighborhood Commission; parties or persons in  
2 support; parties or persons in opposition; and  
3 then finally closing remarks by the applicant.

4 Pursuant to Sections 3117.4 and  
5 3117.5, the following time constraints will be  
6 maintained. The applicant, appellant, persons  
7 or parties except an ANC in support including  
8 witnesses 60 minutes collectively. Appellees,  
9 persons and parties except an ANC in  
10 opposition including witnesses 60 minutes  
11 collectively and individuals three minutes.

12 These time restraints do not  
13 include cross examination and/or questions  
14 from the Board. Cross examination of  
15 witnesses is permitted by the applicant or  
16 parties.

17 The ANC within which the property  
18 is located is automatically a party in a  
19 special exception or variance case.

20 Nothing prohibits the Board from  
21 placing reasonable restrictions on cross  
22 examination including time limits and

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1 limitations on the scope of cross examination,  
2 relevance, redundancy, et cetera.

3 The record will be closed at the  
4 conclusion of each case except for any  
5 material specifically requested by the Board.

6 The Board and the staff will specify at the  
7 end of the hearing exactly what is expected  
8 and the date when the persons must submit the  
9 evidence to the Office of Zoning.

10 After the record is closed, no  
11 other information will be accepted by the  
12 Board.

13 The Sunshine Act requires that the  
14 public hearing on each case be held in the  
15 open before the public. The Board may  
16 consistent with its rules of procedure and the  
17 Sunshine Act enter executive session during or  
18 after the public hearing on a case for  
19 purposes of reviewing the record or  
20 deliberating on the case.

21 The decision of the Board in these  
22 contested cases must be based exclusively on

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1 the public record. To avoid any appearance to  
2 the contrary, the Board requests that persons  
3 present not engage the members of the Board in  
4 conversation.

5 Please turn off all beepers and  
6 cell phones at this time so as not to disrupt  
7 these proceedings.

8 The Board will now consider any  
9 preliminary matters. Preliminary matters are  
10 those which relate to whether a case will or  
11 should be heard today such as a request for  
12 postponement, continuance or withdrawal or  
13 whether proper and adequate notice of the  
14 hearing has been given.

15 If you are not prepared to go  
16 forward with the case today or if you believe  
17 that the Board should not proceed, now is the  
18 time to raise such a matter.

19 Does the staff have any preliminary  
20 matters?

21 MS. BAILEY: Mr. Chairman, good  
22 morning. To Members of the Board and to

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1 everyone, good morning as well.

2 The preliminary matter, Mr.  
3 Chairman, that I have has to do with  
4 Application 17878. That's the application of  
5 Jeffrey Cohen. That application, Mr.  
6 Chairman, was withdrawn.

7 CHAIRPERSON LOUD: Good morning  
8 again, Ms. Bailey, and thank you.

9 Then let's proceed with the agenda  
10 for this morning. Would all individuals  
11 wishing to testify this morning please rise to  
12 take the oath that Ms. Bailey will administer  
13 to you?

14 MS. BAILEY: Please raise your  
15 right hand?

16 Do you solemnly swear or affirm  
17 that the testimony that you'll be giving this  
18 morning will be the truth, the whole truth and  
19 nothing but the truth? Thank you.

20 Ready, Mr. Chairman?

21 CHAIRPERSON LOUD: Yes.

22 MS. BAILEY: The first case of the

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1 morning is Application 17948. It's the  
2 Application of the Government of the District  
3 of Columbia pursuant to 11 DCMR Section 3103.2  
4 for a variance from the off-street parking  
5 requirements under Subsection 2101.1 to  
6 establish a community youth services center in  
7 the former Merritt public school. The  
8 property -- well, the property is located at  
9 premises 5002 Hayes Street, N.E., Square 5178,  
10 Lots 800, 805, 27, 28, 49, 48, 50 and 51.

11 And there are two matters, Mr.  
12 Chairman, that I would like to bring to your  
13 attention concerning this application.

14 One of which, it appears as if the  
15 property is split zoned. It's zoned R-5-A/R-2  
16 and then secondly, Mr. Chairman, it appears as  
17 if relief may be needed from the community  
18 service center use and that would be an  
19 additional special exception relief in  
20 addition to what I read about parking.

21 CHAIRPERSON LOUD: Thank you, Ms.  
22 Bailey. Are the parties here? In that case,

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1 can you please step forward and take your seat  
2 at the table and why don't you introduce  
3 yourselves for the record?

4 Also, if the ANC is here, you're  
5 automatically a party and you can step forward  
6 as well.

7 MR. HARGROVE: Good morning. My  
8 name is Agyei Hargrove. I represent the  
9 Office of Property Management. I am the  
10 project manager for the renovation of the  
11 Merritt School Project.

12 CHAIRPERSON LOUD: Good morning.

13 MR. COOK: Good morning. I'm  
14 Alexander Cook from Bowie-Gridley Architects.  
15 We are the architect for the project.

16 CHAIRPERSON LOUD: Good morning to  
17 both of you.

18 Mr. Hargrove, I'm just curious.  
19 Are you an attorney?

20 MR. HARGROVE: No, sir, I'm just  
21 the project manager.

22 CHAIRPERSON LOUD: Project manager.

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1 MR. HARGROVE: Yes, sir.

2 CHAIRPERSON LOUD: You don't have  
3 to say just. That's an important job. If you  
4 were a lawyer, you could say I'm just a  
5 lawyer.

6 Are there -- are your clients here?  
7 The government agencies that you represent?

8 MR. HARGROVE: No, they're not  
9 here.

10 CHAIRPERSON LOUD: They're not in  
11 the audience this morning.

12 CHAIRPERSON LOUD: Okay. I think  
13 before we get started a couple of things.

14 We reviewed the record and it's a  
15 fairly full record, but upon our review of the  
16 record, and I think Ms. Bailey kind of  
17 mentioned some of what we're going to lead  
18 into before you get started, is that you filed  
19 your application on March 24th of '09 and  
20 about three days later on March 27th of '09, a  
21 Zoning Commission Order which is 08-18 went  
22 into effect and it deals with allowing reuse

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1 of former public school buildings in  
2 residential zones for uses that are approved  
3 by the Zoning Commission and several of the  
4 uses that were approved as matter of right  
5 uses by Zoning Commission Order 08-18 would  
6 include the administrative use by a government  
7 agency.

8 That seems to comport with your  
9 application as well as the community service  
10 use and they've provided a new definition for  
11 community service use which would seem to  
12 parallel the, what is it, Life Pieces -- Life  
13 Pieces to Masterpieces private nonprofit use  
14 that would go into the building.

15 So, that, I'm sorry, five uses were  
16 deemed matter of right and those -- within  
17 those five are the uses that you would propose  
18 so we thing.

19 And then there were three  
20 categories of special exceptions and we're not  
21 certain if one of your uses may fall into that  
22 category, but I think we're saying that at the

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1     outset because it changes the nature of the  
2     relief that you would be seeking from us.  
3     Some of what you have proposed as a special  
4     exception would actually be matter of right  
5     and you would not need that relief from us.

6             In addition to that, it articulates  
7     what the parking requirement would be for both  
8     your matter of right uses and potentially your  
9     special exception uses. So, that the case you  
10    would be making this morning would be a much  
11    reduced case where you would essentially be  
12    making a case for the parking relief, the  
13    variance case which your pleadings may -- but  
14    also, there would be some -- you know, we need  
15    to get some evidence on the record regarding  
16    whether one of your proposed uses would be  
17    matter of right or would be special exception  
18    and that in my mind would be the Department of  
19    Youth Rehabilitation Services. Just to get a  
20    better idea of whether that's an  
21    administrative office or some other category  
22    of animal.

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1           Now, with respect to the parking  
2 piece, I'm going to defer to Mr. Dettman so he  
3 can try to articulate and explain what we  
4 would be looking at.

5           Because if we're able to get some  
6 of that information on the record today, we  
7 might be in a position to deliberate today and  
8 if you're able to get that to us either  
9 through starting to do the calculations now or  
10 having an assistant make a phone call for you  
11 to try to get some of that information. You  
12 may have it already. We want to be able to  
13 position you to get to work on that early so  
14 that we would not have to delay deliberations.

15           So, let me defer to Mr. Dettman on  
16 the parking piece and then perhaps we can open  
17 up and see if you have any questions or Office  
18 of Planning or other -- or Mr. Turnbull wants  
19 to weigh in.

20           VICE CHAIRMAN DETTMAN: Thank you,  
21 Mr. Chairman and good morning.

22           As you say, the Zoning Order that

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1 you referred to, Mr. Chairman, Zoning Order  
2 08-18, not only amended the regulations to  
3 allow particular uses of former public school  
4 buildings as a matter of right, but in  
5 addition, it also amended the off-street  
6 parking requirement schedule which is our  
7 Chapter 21 in our Zoning Regulations and so,  
8 as you address some of the questions that the  
9 Chairman posed to you, if we are able to fit  
10 these uses into this new regulation, we're  
11 going to have to apply a particular  
12 calculation that uses the gross floor area of  
13 the uses to determine your parking  
14 requirement.

15           And so, specifically what we'll  
16 need to know is with respect to the Life  
17 Pieces to Masterpieces, what is the gross  
18 floor area of the total -- I think it's just  
19 over 82,000 of the entire building. Of the  
20 82,000, how much each particular use is taken  
21 up so that we can calculate an accurate  
22 parking requirement?

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1 MR. COOK: We actually have that  
2 information available with us.

3 The Life Pieces to Masterpieces,  
4 their current allocation is a total of 5,091  
5 square feet.

6 We had calculated at the time of  
7 the application a parking requirement for the  
8 building as being 138.

9 When the order came out that  
10 changed it, we did a recalculation. That  
11 indicated based on the new requirements that  
12 we would fall under Order 8-18 that we ended  
13 up with a 134 spaces being our total  
14 requirement.

15 VICE CHAIRMAN DETTMAN: What was  
16 the calculation that you used for that?

17 MR. COOK: All right. For what we  
18 -- what we used was for a general office  
19 building in a C-1, C-2-A, C-3-A which the  
20 requirement for that is in excess of 2,000  
21 square feet one per each additional 600 square  
22 feet of gross floor area and some other area.

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1                   So, we came up with -- from that,  
2 we came up with 82,528 minus 2,000 comes out  
3 to 80,528 which is 134.2, sir.

4                   VICE CHAIRMAN DETTMAN: Okay.

5                   MR. COOK: So, the request for the  
6 area variance is that we're providing 15  
7 percent of the required parking as opposed to  
8 14 percent which was noted in the original  
9 application.

10                  CHAIRPERSON LOUD: Let me just  
11 piggyback and ask a follow-up question. Well,  
12 really I think you answered it, but just so  
13 I'm clear that I'm following it.

14                  The zone that you drew your parking  
15 requirements for was this -- what did you say?  
16 The C-2. Which zone district?

17                  MR. COOK: Yes, because the way --  
18 what we were basing that on is that the  
19 requirements would be based on -- it will be  
20 those that apply in the most restrictive  
21 zoning district in which the use is otherwise  
22 first permitted as a matter of right.

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1                   So, that's -- it was our  
2 interpretation of being first permitted as a  
3 matter of right was the C-1.

4                   CHAIRPERSON LOUD:     I'm going to  
5 turn for one moment to Ms. Monroe from the  
6 Office of the Attorney General just to put  
7 some -- weigh in.

8                   MS. MONROE:     That's I think okay.  
9 In the C-R, it's allowed.     An office is  
10 allowed.     It doesn't say administrative office  
11 or anything else, but an office is allowed.  
12 Which is technically, I guess, a more  
13 restrictive zone than C-1, but the parking  
14 requirement in C-1 is more restrictive than C-  
15 R interestingly enough.     Because the C-R would  
16 you give you -- you'd only need like 40 spaces  
17 or something like that, but the C-1, you need  
18 100.

19                   So, depends on how you want to read  
20 that.

21                   CHAIRPERSON LOUD:     Well, the  
22 language says the most restrictive zone not

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1 the zone with the most restrictive parking.

2 MS. MONROE: That's right. I mean  
3 -- because I think -- you see, it's the last  
4 -- offices are allowed in C-R.

5 I don't know if it -- you still  
6 need a parking variance one way or the other.

7 CHAIRPERSON LOUD: Need a variance.

8 MS. MONROE: Just depends on how  
9 much of a variance. So, I don't know if  
10 that --

11 CHAIRPERSON LOUD: Would be a  
12 difference between -- I think we did some  
13 preliminary calculations of maybe, what, about  
14 60. We did some preliminary calculations  
15 which would have you needing a variance for  
16 about a total of 45 and you've got 20. So,  
17 you would really need a variance for 25 versus  
18 your calculations of 134. So, you'd need a  
19 variance for 111. Something like that?

20 MS. MONROE: Fourteen.

21 CHAIRPERSON LOUD: A hundred and  
22 fourteen. So, we're just trying to make sure

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1 that we apply -- particularly since this is  
2 the first case that we're going to be  
3 administering the new text revisions invited  
4 by 08-18, what to make sure that we have the  
5 proper --

6 MS. MONROE: And that, I guess,  
7 depends on the interpretation of that -- the  
8 most restrictive zone district in which it was  
9 first allowed as a matter of right and that  
10 office is allowed as a matter of right in a C-  
11 R, but it's also allowed in a C-1. I guess if  
12 you consider C-R more restrictive, you take  
13 that number.

14 It's your interpretation, I think,  
15 of that reg.

16 CHAIRPERSON LOUD: Okay. Okay.  
17 No, I understand that. But, just in terms of  
18 your thoughts on that, do you have any  
19 thoughts on that? Do you want to put on the  
20 record as to which -- and we understand that,  
21 you know, we'll make the final decision.

22 MS. MONROE: Not really. It's what

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1 you said. I mean you look at the language and  
2 take it from that -- from there.

3 Either way it's a parking variance.  
4 Either way the advertising is fine and the  
5 only difference is the amount of variance, the  
6 magnitude of the variance and that you just  
7 have to look at independently.

8 No, I don't have any special  
9 thoughts which way it should go.

10 CHAIRPERSON LOUD: Okay.

11 MS. MONROE: I'm not going to.

12 CHAIRPERSON LOUD: Then why don't  
13 we do this? We've got a couple of further  
14 housekeeping sort of matters to get to before  
15 we get into your actual case.

16 One of which is I want to open a  
17 dialogue up to Board Members regarding the  
18 correct zone district to apply for the parking  
19 question and then we need to come back and I  
20 believe in order for any of this to apply to  
21 the case you're going to present to us this  
22 morning, you'd have to amend your application.

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1 I think you can do that right here on the  
2 record this morning.

3 So, once you do that, we can  
4 proceed under the revised text.

5 VICE CHAIRMAN DETTMAN: Mr.  
6 Chairman, I think -- the way I read the new  
7 language in 08-18 the parking requirement  
8 language is it goes to the use and not the  
9 more restrictive parking requirement, but it  
10 goes to the use.

11 When I saw that, it took me to 2514  
12 which is a section of the regs that doesn't  
13 apply to this case, but just for guidance,  
14 2514.3 says for the purposes of interpreting  
15 this section, the zone districts established  
16 in this title are listed in the following  
17 groups in decreasing use restrictions.

18 So, I always look to that when I'm  
19 looking at -- for more or less restrictions  
20 and the waterfront zone is to the most  
21 restrictive in our zoning regulations and so,  
22 if you were to look at it from that angle

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1 being waterfront, the most restrictive use  
2 district in the regs, that would take us to  
3 the requirement where in excess of 2,000  
4 square feet one parking space for each 1800  
5 square feet of office space.

6 So, at the end of the day again,  
7 you still have the use variance, but it drives  
8 down the required number of parking spaces and  
9 lessens the magnitude of the variance.

10 CHAIRPERSON LOUD: Mr. Turnbull,  
11 did you have any additional thoughts on this  
12 discussion?

13 COMMISSIONER TURNBULL: No, I think  
14 Mr. Dettman's brought up a good point and I  
15 would concur with it.

16 CHAIRPERSON LOUD: All right. So,  
17 then we're going to move forward with the  
18 governing legal interpretation for us being  
19 that the more restrictive zone district would  
20 be the -- we're talking the C-R or waterfront  
21 and, therefore, the parking variance that you  
22 need will be less.

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1           The test is still the same, but the  
2 actual number will end up being less and I  
3 don't think -- for your purposes, it doesn't  
4 change your presentation that you were going  
5 to make.

6           Secondly, we do need you to just  
7 formally go on the record and revised your  
8 application. Just amend your application so  
9 that you're now seeking relief just for the  
10 uses that are not matter of right and the  
11 parking.

12           And you can just say some very pro  
13 forma type words that you amend your  
14 application.

15           MR. HARGROVE: I'm sorry. We would  
16 like to amend our application for the parking  
17 variance. Our new calculation will be based  
18 off of the C-R zone and we are requesting  
19 relief for -- I guess before I request relief  
20 for the use that's not a matter of right, can  
21 I asked the question or is this an opportunity  
22 for me to clarify the DYRS --

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1 CHAIRPERSON LOUD: Yes.

2 MR. HARGROVE: -- use in the  
3 facility?

4 CHAIRPERSON LOUD: Exactly.

5 MR. HARGROVE: As it --

6 CHAIRPERSON LOUD: It may end up  
7 being matter of right.

8 MR. HARGROVE: Okay.

9 CHAIRPERSON LOUD: So.

10 MR. HARGROVE: As it's been  
11 presented to us, DYRS, this is an  
12 administrative function of the agency and  
13 we're providing a case management organization  
14 for the Ward 7 youth. This is --  
15 additionally, they have the Lead Entity  
16 Service Coalition which will have space in the  
17 facility as well and my understanding in  
18 reading the text amendment 08-18, these  
19 administrative services would be allowed.

20 But, there seems to have been some  
21 question regarding their use and I wanted to,  
22 I guess, determine what those questions were.

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1 CHAIRPERSON LOUD: Okay. First of  
2 all, I think you did a very good job of doing  
3 that. I think as we now get into your case,  
4 Board Members may have questions for yo  
5 regarding either uses with that specific Youth  
6 Rehab Services. That's what you're talking  
7 about. Right? Or there may be some questions  
8 about some of the other uses that were in the  
9 application.

10 I personally don't have any  
11 questions about any of the other uses. It  
12 would just be the one Youth Rehab Services  
13 piece.

14 So, as we move forward and you make  
15 your case, then we'll open it up to Board  
16 Members to let you know where their questions  
17 are.

18 And with respect the parking  
19 requirement, we've done some preliminary  
20 calculations and it looks like the variance  
21 relief would be for 50. The total required  
22 spaces would be 50. Correct? So, the

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1 variance relief would be for 30. Okay.

2 Board Members, any questions for  
3 the Applicant.

4 Okay. So, why don't we turn back  
5 to you officially. Sorry to take you through  
6 all of that and then you can go through your  
7 case and your test for variance relief --  
8 making the case for variance relief.

9 And again, since the -- I do  
10 believe -- Board Members can weigh in if I'm  
11 misstating. I do believe that based on the  
12 record before us we think that the Child  
13 Family Services Office of Youth Development,  
14 the Child Family Services Youth Transition  
15 Center, DC DOES Office of Youth Programs and  
16 the Life Pieces to Masterpieces uses are  
17 matter of right just based on the record  
18 before us.

19 You may want to focus on the Youth  
20 Rehab Services and just give us enough  
21 testimony to establish that that is matter of  
22 right also and then go into your test for how

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1 you make the variance test.

2 MR. HARGROVE: Thank you, Mr.  
3 Chairman.

4 The Merritt School as we've  
5 discussed will house the CFSA YTC, I'm sorry,  
6 Child and Family Services Youth Transition  
7 Center, the Child and Family Services Office  
8 of Youth Development, the Life Piece to  
9 Masterpieces as a nonprofit and the DOES  
10 Office of Youth Development.

11 The DYRS Case Management Division  
12 which is currently located on H Street, N.W.  
13 is the Ward 7 division. They specifically  
14 target youth in Ward 7.

15 The Lead Entity Service Coalition  
16 is a citywide activity with heavy  
17 concentration in Ward 7.

18 The functions of these agencies as  
19 it has been presented to us is that they will  
20 provide administrative services. They will  
21 provide access to GED training, life training,  
22 independent living, referrals for health care

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1 and general -- I can't think of the word. To  
2 insure that the youth that have -- that the  
3 youth that are participating in the  
4 organization have opportunities and that's how  
5 it's been presented to us.

6 It's our understanding that that  
7 falls in line with the 08-18 text amendment.

8 Additionally, we are requesting a  
9 variance for the parking which currently we  
10 have 20 spaces on the site. Currently we have  
11 requested parking -- I'm going to ask Mr. Cook  
12 to help me with some numbers here.

13 MR. COOK: The total requirement  
14 was for 50 parking spaces. Therefore, we will  
15 be requesting a variance for 30 spaces.

16 MS. BAILEY: Excuse me. If you  
17 have boards that you want to put on the easel,  
18 please feel free to do so.

19 MR. HARGROVE: In our beginning  
20 stages of the program, the effort that we went  
21 through for the facility, the agency's  
22 requested parking that I think it was -- they

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1 have a total FTE count of 85 for full-time  
2 employees and of that, I think we were  
3 providing --

4 MR. COOK: No, the total FTE count  
5 was higher. It was 93.

6 MR. HARGROVE: Okay.

7 MR. COOK: The 85 was the number of  
8 parking spaces that were -- the total number  
9 of parking spaces requested by --

10 MR. HARGROVE: Okay.

11 MR. COOK: And that includes  
12 government-owned vehicles.

13 MR. HARGROVE: One of the  
14 approaches that we took was that because we  
15 have -- Hayes Street currently is not in front  
16 of any residential facilities. It really  
17 services the school itself and we have more  
18 than enough capacity to make -- to park on  
19 that street and to serve the 85 uses along  
20 with the 20 uses that exist on the site.

21 Mr. Cooks' going to walk through  
22 the drawings.

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1 CHAIRPERSON LOUD: Okay. If I may  
2 and this may be a segue for what you were  
3 getting ready to do, right now, you're making  
4 the variance test. Showing that the property  
5 is unique in some way. That there's a  
6 practical difficulty caused by its uniqueness.  
7 Mr. Hargrove just spoke to whether or not  
8 there would be substantial detriment to the  
9 public good by talking about these, I think,  
10 65 spaces that are on Hayes Street.

11 So, because the nature of your  
12 relief kind of changed as a result of what we  
13 did earlier this morning, you actually have a  
14 lesser showing to make and if you find ways to  
15 pigeonhole your testimony into the standard  
16 for the variance test, you will be meeting all  
17 of the requirements that we'll have of you.  
18 Then Board Members can ask questions and we  
19 can still sort of keep the proceeding flowing  
20 in a timely fashion.

21 So, don't feel obligated to say  
22 everything that you may have said if it were

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1 going to be the case that we changed it from  
2 being earlier.

3 So, I think you spoke to the third  
4 prong of the variance test and leaving the  
5 first two prongs of the variance test in need  
6 of some testimony.

7 Now, the Office of Planning will  
8 give testimony after yours and they've also  
9 pulled together some testimony in their view  
10 in support of the variance test as well.

11 So, but that's what we're looking  
12 at right now. Is the variance test. You  
13 spoke to the Youth Rehab Services piece and  
14 how you think that's a matter of right and I  
15 think if Board Members have questions about  
16 that, they'll ask you during our opportunity  
17 to ask questions.

18 MR. COOK: Thank you. So, the  
19 building is on Hayes Street and it is on a  
20 split right of way.

21 Currently, the area of this that is  
22 available for regular on-street parking is not

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1 used and it is large enough to accommodate far  
2 in excess of the amount of parking that we  
3 would be required to have.

4 We have -- we are providing 20 off-  
5 street parking spaces on the west side of the  
6 site.

7 On the east side of the site, there  
8 is a large green space. This space is a  
9 recreation space it has been determined to be  
10 desirable to the community for their use as an  
11 open green space because there are no other  
12 parks that are on this side of Nannie Helen  
13 Burroughs Boulevard that are within walking  
14 distance of this facility. So, it's desired  
15 by the community to make that -- to have that  
16 space available as a community space.

17 If we were required to provide the  
18 full requirement for off-street parking, that  
19 is our only available space to put parking.  
20 So, that would be lost to the community  
21 because it would have to be paved over.

22 And an attempt to convert that into

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1 a parking area would pose a hardship to the  
2 owner because the site from Hayes Street  
3 towards Hunt Place changes in elevation close  
4 to 60 feet. There is currently along the east  
5 side of the property on Hayes Street a  
6 retaining wall. There is another set of  
7 retaining walls along the north side of the  
8 property. Those retaining walls are  
9 constructed for pedestrian traffic. They are  
10 not applicable for vehicular traffic. So,  
11 they would have to be completely redone and  
12 designed for vehicular traffic which would  
13 make putting any type of substantial parking  
14 on the site extremely expensive.

15 And that is the only available area  
16 that we could put additional on-street parking  
17 on the site because of the location and the  
18 size of the existing building.

19 Currently, there are public  
20 transportation facilities there or there are  
21 bus stops along Nannie Helen Burroughs  
22 Boulevard which is one block to the south of

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1 the site and it is 600 feet from the nearest  
2 bus stop to the front door of the facility.

3 The bus line that runs along Nannie  
4 Helen Burroughs Boulevard also goes to the  
5 Minnesota Avenue Metro Station. So, there is  
6 ample public transportation available in the  
7 area.

8 The parking that we are -- the  
9 allowance for on-street parking that we're  
10 requesting can be fulfilled without actually  
11 parking in front of any other properties in  
12 the neighborhood. So, we would not be in  
13 anyway impacting the neighbors in terms of  
14 parking additional cars in and around the  
15 site. Okay.

16 CHAIRPERSON LOUD: Thank you, Mr.  
17 Cook. Thank you, Mr. Hargrove.

18 Unless you had something further to  
19 add, I'll open it up to the Board to see if  
20 there are any questions.

21 COMMISSIONER TURNBULL: Is there  
22 only one entrance right now used on the

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1 existing parking lot?

2 It looked like -- on the picture  
3 you submitted, it looks like the -- what was  
4 it? An exit or an entrance into the alley is  
5 now got Jersey barriers in front of it.

6 MR. HARGROVE: That is correct.  
7 Currently, that alley is not used for travel.

8 It's really overgrown. So, there is only the  
9 one entrance into the parking lot at this --  
10 at this moment.

11 COMMISSIONER TURNBULL: Right next  
12 to the school. All right. Yes.

13 MR. HARGROVE: Right next to the  
14 school.

15 COMMISSIONER TURNBULL: Okay.  
16 Thank you.

17 CHAIRPERSON LOUD: Thank you, Mr.  
18 Turnbull.

19 Now, we're turn to the Office of  
20 Planning. Good morning again, Ms. Jackson.

21 MS. JACKSON: Good morning. Good  
22 morning, Chair, Fellow Members of the Board.

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1           For the record, my name is Arlova  
2 Jackson and I'm a Development Review  
3 Specialist with the D.C. Office of Planning.

4           The Office of Planning recommends  
5 approval of the parking variance to allow the  
6 convergence of the former Merritt Middle  
7 School building for reuse as a community use  
8 and agency offices.

9           Initially, our report addressed a  
10 request for community service use, but based  
11 on the testimony provided and additional  
12 information about the applicability of the  
13 recent text amendment found in Order 08-18,  
14 it's apparent that that's not needed anymore.

15          So, I'll just talk about the parking  
16 variance.

17          We find the Applicant meets the  
18 standards for the off-street parking variance.

19          The site is a large irregular shaped lot  
20 that's currently improved with a school  
21 building, parking lot and playing fields. The  
22 lot has several grade changes and slopes upward

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1 to the north and east where the unimproved  
2 parts of the site are located at its highest  
3 elevation.

4 Use of this area to provide  
5 additional off-street parking would required a  
6 significant regrading and paving to allow  
7 access for cars and would be financially  
8 prohibitive to the Applicant.

9 Hayes Street in this location is a  
10 wide boulevard with ample off-street parking  
11 to serve the proposed use. The Applicant has  
12 estimated that use given the number of  
13 employees would require approximately 85  
14 parking spaces which could be provided via the  
15 existing lot and street parking in front of  
16 the building.

17 If the Applicant were required to  
18 locate all of the off-street parking on-site,  
19 it would result in a significant reduction in  
20 green space and play areas available for the  
21 proposed use and the community.

22 Additionally, Metro bus routes

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1 service Nannie Helen Burroughs an arterial  
2 street one block south of the site and Sheriff  
3 Road located two blocks north of the site.

4 Finally, the use will operate  
5 largely during normal business hours which  
6 should not conflict with parking needs of the  
7 residential areas nearby.

8 Overall the requested use meets the  
9 standards. Let's see. Properties affected by  
10 a set of exceptional circumstances that would  
11 make the provision of the additional 30 spaces  
12 on-site very difficult. The adjacent streets  
13 meet the needs of the proposed staff and the  
14 proposal will put to use a vacant building  
15 bringing youth services to the community and  
16 allowing several District youth-focused  
17 agencies to work together sharing space and  
18 resources.

19 So, the Office of Planning  
20 recommends approval of the requested area  
21 variance and we'll take any questions you have  
22 at this time.

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1 CHAIRPERSON LOUD: Thank you, Ms.  
2 Jackson.

3 Board Members, are there any  
4 questions for the Office of Planning?

5 COMMISSIONER TURNBULL: I just had  
6 a question. It's not really a programmatic  
7 question, but on the site, there's this  
8 baseball field. Does that remain as a field  
9 -- a baseball field for local youth to play?

10 MR. HARGROVE: The field, it's not  
11 a baseball field specifically.

12 COMMISSIONER TURNBULL: Okay.

13 MR. HARGROVE: It's an open grass  
14 field and two of the agencies have expressed a  
15 need for their programs to have use for that  
16 as well as we met with the ANC and they have  
17 also expressed an interest in using the field  
18 as it is.

19 COMMISSIONER TURNBULL: I see  
20 they've got lights on it so you can use it  
21 into the evening, too.

22 MR. HARGROVE: Yes, and we plan to

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1 maintain the lighting.

2 COMMISSIONER TURNBULL: Okay.

3 Thank you.

4 CHAIRPERSON LOUD: Thank you, Mr.  
5 Turnbull.

6 Are there any questions from the  
7 Applicant for the Office of Planning?

8 MR. HARGROVE: No.

9 CHAIRPERSON LOUD: Then we'll turn  
10 now to -- typically, we would turn to the ANC  
11 for their testimony.

12 They are not here. If the ANC is  
13 here, if you could step forward and I don't  
14 believe they're here, but they did submit a  
15 report. It's our Exhibit 21. It's from ANC-  
16 7C and it indicates that they did meet and  
17 that they voted approval of the application.  
18 They had notice and they had a quorum.

19 They don't specifically -- I recall  
20 they don't specifically say what the final  
21 vote was, but I do think that they meet our  
22 Section 3115 requirements for a great weight

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1 report.

2 They indicate that this would be in  
3 the best interest of the residents that live  
4 in the immediate circumference of Merritt  
5 Middle School -- what is now the Merritt  
6 Middle School.

7 Go on to say a quorum was  
8 established by the commissioners and it names  
9 the commissioners and that the residents were  
10 provided with ample notice of the meeting.

11 So, I think that their report is  
12 accepted by us and see if the Board Members  
13 have any issues or questions regarding that.

14 Okay. Then moving right along,  
15 what we would do now is if there are any  
16 persons or parties, really persons, that are  
17 in support that are in the audience now would  
18 be the time to come up and you would be given  
19 three minutes to say what you have to say.

20 And seeing none, if there are  
21 persons in opposition in the audience, now  
22 would be the time to come up and you would get

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1 an opportunity to speak against the project.

2 Seeing none, then we would now turn  
3 back to the Applicant, Mr. Hargrove, for any  
4 closing remarks you have.

5 MR. HARGROVE: Thank you. I would  
6 like to thank you for the opportunity to  
7 present our case and I just want to reiterate  
8 that this is a project that I believe will  
9 bring a great opportunity to the community and  
10 thank you very much.

11 CHAIRPERSON LOUD: Thank you, Mr.  
12 Hargrove.

13 I think what we'll do now is get a  
14 sense from the Board if we want to deliberate  
15 this morning or if we feel like that there's  
16 something outstanding that we need to get back  
17 on and schedule it for a decision date.

18 As for me, I think the record is  
19 pretty full and I think I'm prepared to move  
20 forward with the deliberation and in fact,  
21 could start us off if Board Members would  
22 prefer.

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1 All right. The Applicant's project  
2 is a project that falls under our new revised  
3 text rule. I think they're invited to 201.1  
4 and I think part of it is at 222, but  
5 nonetheless, it's Zoning Commission Order 08-  
6 18.

7 And under the revised text  
8 amendment, former public schools are allowed  
9 to be reused as a matter of right for  
10 government administrative offices and for what  
11 was defined in the text amendment as a  
12 community service use I believe. Yes,  
13 community service use and that's a not-for-  
14 profit use established primarily to benefit  
15 and serve the population of the community in  
16 which it is located and based on the testimony  
17 that I heard this morning based on the Office  
18 of Planning report, it appeared to me anyway  
19 that the several uses identified in the  
20 report, in OP's report, as well as the  
21 testimony are all government administrative  
22 offices.

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1 I had one question going into the  
2 hearing about whether the Youth Rehab Services  
3 use would be administrative offices and Mr.  
4 Hargrove's testimony that these are employees  
5 who are servicing young people and it's an  
6 office set up and these are government  
7 employees who are working there, so on and so  
8 forth persuaded me that this is an  
9 administrative office as well. So, that was  
10 the only question I had about whether any of  
11 these uses would fall outside of the matter of  
12 right provisions.

13 Being persuaded that they come  
14 within the rubric of the matter of right uses,  
15 I think the question turned to the variance  
16 test and whether they could meet the variance  
17 test for the parking that would be needed.

18 We did some preliminary reviews up  
19 here and came up with a number of 50 required  
20 parking spaces based on the different uses.  
21 The testimony being that the Life Pieces to  
22 Masterpieces took up about 5,091 square feet

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1 and the balance, I guess, would be the  
2 government uses and so, the site yields 20  
3 spaces, already required spaces. So, you  
4 really need the variance for 30 spaces.

5 There was testimony from the Office  
6 of Planning that the site is irregularly  
7 shaped. Testimony from Mr. Cook that it  
8 slopes toward the north. Further testimony  
9 from Ms. Jackson that the exceptional  
10 circumstances included both the shape and the  
11 sloping of the of the lot and that's in her  
12 report as well.

13 In terms of practical difficulty,  
14 Mr. Cook testified -- Mr. Cook and Ms. Jackson  
15 basically testified that it would be very  
16 expensive to regrade the site citing the  
17 slope. Mr. Cook saying that it was 60 foot  
18 change, I think, in elevation causing the  
19 hardship to the Applicant to regrade and the  
20 need to completely redesign the retaining wall  
21 currently on the site so that it could support  
22 vehicular use.

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1           With respect to whether there's  
2 substantial detriment to the public good, we  
3 have the ANC report that's in full support of  
4 it. Reference being made by OP and the  
5 Applicant to the availability I think 65 off-  
6 street parking spaces on Hayes Street that are  
7 under-utilized and then the availability of  
8 bus lines adjacent to the site as well as bus  
9 lines that connect directly to the Nannie  
10 Helen Metro Rail Station close by.

11           And further testimony from the  
12 Office of Planning that there would be no  
13 impairment to the Zone Plan, Regs or Map. In  
14 fact, it would be a wonderful way to synergize  
15 different government uses and restore a  
16 usefulness to a currently vacant site.

17           So, I think they met the test for  
18 the variance. I think that I would -- I'll  
19 support the application and I'll open it up to  
20 colleagues.

21           COMMISSIONER TURNBULL: Mr. Chair,  
22 I would concur with your analysis of this

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1 project and I think it's a -- as you said  
2 before, I think -- representing the Zoning  
3 Commission, I think it's an excellent use that  
4 was well intended and I think it works very  
5 well with the next regulation.

6 And especially, I'm just going back  
7 and looking -- in looking at Life Pieces which  
8 with the new definition given in there  
9 community service use or not-for-profit use  
10 established primarily to benefit and serve the  
11 population of the community in which it is  
12 located, I think this fulfills that goal, you  
13 know, exceedingly well.

14 So, I totally back your analysis of  
15 it and I would be in favor of the voting on  
16 this.

17 VICE CHAIRMAN DETTMAN: Thank you,  
18 Mr. Turnbull.

19 In that case, then I'd like to move  
20 approval of Application Number 17948 request  
21 for special exception and an area variance at  
22 5002 Hayes Street, N.E. as amended by the

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1 Applicant this morning for relief under the  
2 revised text 08-18 for variance relief to the  
3 parking requirements.

4 COMMISSIONER TURNBULL: Second.

5 CHAIRPERSON LOUD: Thank you. The  
6 motion's been made and seconded. Is there any  
7 further deliberation?

8 Hearing none, all those in favor  
9 say aye.

10 (Ayes.)

11 CHAIRPERSON LOUD: All those  
12 opposed? Are there any abstentions?

13 Ms. Bailey, can you read back the  
14 vote please?

15 MS. BAILEY: Surely, Mr. Chairman.  
16 The vote is recorded as 3-0-2 to grant the  
17 application as amended. Mr. Loud made the  
18 motion. Mr. Turnbull seconded. Mr. Dettman  
19 supported the motion. Two Board Members are  
20 not sitting at this time.

21 CHAIRPERSON LOUD: I do believe  
22 that this would be a summary order --

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1 MS. BAILEY: Summary order.

2 CHAIRPERSON LOUD: -- the ANC was  
3 in support.

4 MS. BAILEY: Thank you, sir.

5 CHAIRPERSON LOUD: All right.  
6 Sorry for the delay and since it's going to be  
7 a summary order and there won't be a lot of  
8 elaboration on it, I think it's important to  
9 note a couple of things and I'm going to just  
10 defer to Mr. Dettman to briefly talk about  
11 that.

12 VICE CHAIRMAN DETTMAN: Thank you,  
13 Mr. Chairman.

14 I was just wondering like you say  
15 since this is going to be a summary order  
16 whether it be worth having a footnote in the  
17 order that kind of explains to the ZA how the  
18 Board got to deciding that the proposed uses  
19 are matter of right under the new text  
20 amendment.

21 Just trying to prevent, you know,  
22 them being kicked back for whatever reason to

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1 the BZA.

2 CHAIRPERSON LOUD: Yes, I like that  
3 idea a lot because it is the first case that  
4 we've heard under this new revised text and  
5 it's just a matter of, you know, maybe adding  
6 a paragraph or two to the summary format form  
7 sort of -- you know, sort of preset form. So,  
8 I think it would make a lot of sense to do  
9 that.

10 Thank you, Mr. Dettman.

11 If there anything further on this  
12 case?

13 MS. BAILEY: No, Mr. Chairman.

14 CHAIRPERSON LOUD: All right.  
15 Thank you and hopefully, you'll have your  
16 order within a couple of days or so and we can  
17 go to the next case. I guess you can call the  
18 next case.

19 MS. BAILEY: Mr. Chairman, can I  
20 just take one second to shift gears here?

21 CHAIRPERSON LOUD: Yes, please.

22 MS. BAILEY: The next case is

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1 Application 17941. It's the application of  
2 1332 Vermont Avenue Partnership and it's  
3 pursuant to 11 DCMR Section 3103.2 for a  
4 variance from the floor area ratio  
5 requirements under Section 402, a variance  
6 from the lot occupancy requirements under  
7 Section 403, a variance from the rear yard  
8 requirements under Section 404, a variance  
9 from the court requirements under Section 406  
10 and a variance from the nonconforming  
11 structure provisions under Subsection 2001.3  
12 to allow additions including an enclosed  
13 parking structure to an existing five-unit  
14 apartment house. The property is zoned R-5-B.

15 It's located at premises 1332 Vermont Avenue,  
16 N.W., Square 242, Lot 89.

17 CHAIRPERSON LOUD: Thank you, Ms.  
18 Bailey and good morning to the Applicants. I  
19 believe the Applicants have taken a seat at  
20 the table.

21 Is the ANC here? Okay. They're  
22 not here. If they were here, I would call

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1 them up. They're automatically a party.

2 And once you get yourselves  
3 situated, why don't you state your names and  
4 -- is it name and address or just the name for  
5 the record? Why don't you just state your  
6 name for the record?

7 And if anybody's going to be an  
8 expert this morning, sort of let us know at  
9 the outset so we can get them qualified.

10 MS. PRINCE: Allison Prince with  
11 Pillsbury Winthrop here on behalf of the  
12 Applicant Bernie Robinson, the resident of the  
13 building that is at issue today.

14 And we do have as an expert witness  
15 -- proposed as an expert witness Gil  
16 Entzminger. He has an extensive résumé that  
17 accompanied our prehearing submission at Tab F  
18 I believe if you want to take a quick look at  
19 it. He has many years of experience in  
20 Washington at HOK and working for John  
21 Blackburn as well. He now resides in  
22 Blacksburg, Virginia where he operates his own

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1 firm.

2 CHAIRPERSON LOUD: Thank you and  
3 the other -- did you introduce the other  
4 person who's at the table?

5 MS. PRINCE: No, but I will.

6 CHAIRPERSON LOUD: Okay.

7 MS. PRINCE: Josh McCullough to my  
8 right is with Gil's firm. Then we have Gil  
9 Entzminger and Bernie Robinson the Applicant.

10 I think we're ready to begin if you  
11 are.

12 CHAIRPERSON LOUD: Good morning.  
13 Good morning again and feel free to get  
14 started.

15 MS. PRINCE: Good morning. As I  
16 said earlier, I'm Allison Prince with the law  
17 firm of Pillsbury Winthrop and I represent Mr.  
18 Bernie Robinson the owner of the property at  
19 1332 Vermont Avenue.

20 We're here this morning seeking  
21 variance relief for an additional to an  
22 historic apartment house located in Logan

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1 Circle. Mr. Robinson has been the owner and  
2 resident of the property for over 30 years.

3 As our architect will testify,  
4 there are several shortcomings associated with  
5 the property from an access, green space and  
6 safety perspective.

7 Mr. Robinson is proposing a one  
8 story addition that will address each of these  
9 shortcomings while at the same time make way  
10 for returning the interior of the building to  
11 its original grandeur.

12 We are seeking relief for a one-  
13 story garage addition combined with an  
14 enclosed stairway that will provide secure  
15 parking access to the property, internal  
16 access between the ground and first floors and  
17 a rooftop recreation space that will enhance  
18 the property and enliven the alley.

19 The existing building is a  
20 nonconforming structure. As such, this  
21 project requires FAR, lot occupancy, rear yard  
22 and court relief as well as relief from the

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1 nonconforming structure provisions of the  
2 Zoning Regulations.

3 As you know, in order to satisfy  
4 the area variance burden, we need to  
5 demonstrate that the project satisfies a  
6 three-prong test. First, the property must be  
7 affected by an exceptional or extraordinary  
8 situation or condition. Second, the strict  
9 application of the Zoning Regulations must  
10 result in a practical difficulty on the  
11 Applicant and third, the granting of the  
12 variance must not cause substantial detriment  
13 to the public good or substantially impair the  
14 intent, purpose or integrity of the Zone Plan.

15 I believe that our submissions as  
16 well as our testimony today will demonstrate  
17 that this project satisfies the variance  
18 standard.

19 At the outset, I must note that the  
20 Board established that the property is unique  
21 when Mr. Robinson filed an secured approval of  
22 a very similar application 30 years ago for a

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1 slightly larger addition to the rear of the  
2 house.

3           Specifically, this lot is located  
4 in an unusually shaped square with an  
5 unusually shaped alley system. The alley cuts  
6 the real lot at an angle creating a uniquely  
7 sized lot. This is significant because the  
8 existing building extends further into the  
9 real yard than the neighboring properties  
10 creating a unique relationship between the  
11 building and the rear lot line.

12           Another unique feature is that the  
13 building formerly had an even more extensive  
14 footprint. It had an internal stairway in a  
15 portion of the rear of the building that has  
16 been demolished. It also had a garage  
17 structure that was demolished.

18           Mr. Robinson is now attempting to  
19 return both of these features to the property.

20           The building is also interesting in  
21 that the only access to the main building from  
22 the parking area is through the narrow

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1 courtyard or the front door. This presents a  
2 number of security concerns for the Applicant  
3 who has seen several waves of crime during his  
4 30 years at the site including a murder just  
5 last year.

6 The structure also has internal  
7 access issues. The two floors of Mr.  
8 Robinson's unit don't have private access.  
9 The only access between the two floors is a  
10 staircase accessible by all residents of the  
11 building.

12 Mr. Robinson and the architect will  
13 elaborate more on how the unique features of  
14 the property results in practical difficulties  
15 in complying with the regulations.

16 As for the third prong of the  
17 variance test, I think that the ANC support  
18 and the abundant number of letters of support  
19 from immediately affected property owners  
20 speak for themselves. Given the widespread  
21 community support for the project, I think you  
22 would be hard pressed to argue that this

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1 project will result in a detriment to  
2 neighboring property owners. Rather, it is a  
3 strong positive for the neighboring  
4 properties.

5 I disagree with the Office of  
6 Planning's assessment that the proposal  
7 undermines the Zoning Regulations for the R-5-  
8 B Zone District. On the contrary, I think  
9 this proposal is in keeping with the intent of  
10 the regulations. The addition creates two and  
11 a half times the amount of green space on the  
12 property that currently exists and it does so  
13 while respecting the light and air available  
14 to neighboring properties.

15 As you know, preserving the light  
16 and air associated with neighboring properties  
17 is a hallmark of the Zoning Regulations. The  
18 very first objective listed in Section 101 of  
19 the regulations is the provision of light and  
20 air.

21 Consistent with this objective, the  
22 regulations repeatedly make distinctions among

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1 certain types of additions. For example,  
2 under the definition of building area, an  
3 addition that does not extend above the level  
4 of the main floor of the main building does  
5 not count against lot occupancy. Similarly,  
6 in commercial districts, the rear yard is not  
7 required below horizontal plane of 20 feet.  
8 The regulations recognize that one-story  
9 additions do not have the same effect as  
10 taller additions.

11 As we will show today, this one-  
12 story addition which is just a few steps above  
13 the main level of the house will not  
14 negatively affect neighboring properties, but  
15 will bring a multitude of benefits to the  
16 property owner as well as the neighbors.

17 There is a tremendous amount of  
18 legal precedent for the unique characteristics  
19 and the practical difficulties that plague  
20 this property and they were set forth in  
21 detail in the prehearing statement.

22 I would like to bring up one

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1 specific case that this Board decided just  
2 last year involving a home at 1515 Vermont  
3 Avenue. In many respects, that case was  
4 almost identical and it involved a property  
5 only two blocks away. It was a nonconforming  
6 structure and the owner wanted to add a one-  
7 story garage and deck connected to the house.

8 The owner needed lot occupancy, FAR and rear  
9 yard relief.

10 The extent of the variances there  
11 were much greater than in our case. The deck  
12 would increase lot occupancy to 97 percent and  
13 the FAR to 2.4. Whereas, our addition  
14 increases lot occupancy to only 83 percent and  
15 FAR to 2.

16 Nonetheless, the Board agreed with  
17 the applicant that there was a practical  
18 difficulty in not having recreation space and  
19 that a one-story garage did not detrimentally  
20 affect the Zoning Regulations or the  
21 neighboring properties. The Board voted  
22 unanimously in favor of the application.

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1                   We are asking for the same relief  
2 here and we believe we have a stronger case in  
3 this instance because our property is more  
4 unique and there are more clear practical  
5 difficulties as the architects will describe.

6                   With that, I would like to  
7 introduce the property owner and long-time  
8 resident Bernie Robinson.

9                   MR. ROBINSON:        Good morning,  
10 gentlemen.    Little nervous.    Oops.    Good  
11 morning.

12                   I grew up on a farm in upstate New  
13 York.    So, that thrust will probably come out  
14 later when I'm talking about my garden.

15                   We purchased the building in 1978.  
16                   We intended to renovate it and occupy part of  
17 it and rent other portions of it.

18                   We had a design done by Darrel  
19 Rippeteau, an architect who's still active in  
20 the District of Columbia and we went through  
21 the BZA approval to get the prerequisite  
22 approvals to tear down the old garage and to

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1 install a new garage.

2 At that time, the fall of 1978, the  
3 prime interest rate was released for financial  
4 contract reasons or inflation and the  
5 construction loan that we had available at  
6 prime plus 2 percent would have been a 23  
7 percent loan. So, we decided not to go ahead  
8 with the major renovation of the property.

9 We did do partial renovation of the  
10 upper floors modernizing the kitchens and  
11 occupied those units with tenants and I occupy  
12 the first-floor level cosmetically  
13 refurbished.

14 We move in. The building was  
15 occupied. At that time, Logan Circle was a  
16 neighborhood in transition. You could step  
17 over syringes at the sidewalk to get to the  
18 curb. Elmer Brooks, our next-door neighbor,  
19 was charged with shooting a prostitute in the  
20 rear end with his son's slingshot and it was  
21 exciting times and we -- we went through that.

22 The area has remarkably improved.

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1 In the interim, I've established my own real  
2 estate management company. We manage  
3 buildings such as 2101 Connecticut, 2029  
4 Connecticut, Valley Vista up on Belmont Road,  
5 the Mindowd on 20th Street and in the occasion  
6 or the process of working with those  
7 buildings, we've done a lot of historic  
8 restoration and renovation especially the  
9 facades and exteriors to maintain an improve  
10 those properties.

11 I was fortunate enough to meet Gil,  
12 an architect who was working with John  
13 Blackburn at the time who worked with us on  
14 several of those projects.

15 We also manage the Concord  
16 Condominium on New Hampshire Avenue which  
17 suffers from storm sewer backups into the  
18 basement occasionally because of the overage  
19 of rain runoff into the city sewer system.

20 So, I had gotten much more  
21 sensitive to various historic issues.  
22 Fortunately, I referred to Gil to Petersburg

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1 where they were providing houses for historic  
2 renovations and he and his wife bought one of  
3 those. Ended being featured on the cover of  
4 Southern Living Magazine and I still respect  
5 his judgment enough to retain him to work on  
6 this project with me.

7 I got married two years ago and  
8 that provided additional impetus to have a  
9 better living space.

10 The new design that Gil has come up  
11 with is immensely more sensitive to the  
12 historic fabric of the building both exterior  
13 and interior. On the exterior, he noted the  
14 access-way seeming to turn to the right behind  
15 the building. We did a little bit of an  
16 architectural dig and discovered, in fact,  
17 that the opening or alleyway actually did go  
18 behind the building and Gil has restored that  
19 footprint of the building with the enclosure  
20 of that access-way.

21 The garage is smaller than it was  
22 intended or was designed in 1979 to provide

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1 for this definition of the back of the  
2 building with the addition and instead of a  
3 kind of heavy structural element which  
4 contained a stairway and enclosed an oil tank,  
5 it's now an open space providing air and light  
6 into our living space -- proposed living  
7 space.

8 The oil tank has been done away  
9 with and a cistern will be installed on the  
10 property. I mentioned earlier the storm sewer  
11 backups and I'm sensitive to the runoff of the  
12 city and the consequences that causes and this  
13 will also provide a source of water for the  
14 garden that I grow in the backyard.

15 The neighborhood certainly has  
16 immensely improved and progressed in the 30  
17 years that I've lived in the building. We do  
18 have the Bethune Council House down the street  
19 which is not national historic property. The  
20 church is on the end of the street. The  
21 restaurants, of course, have come back on 14th  
22 Street.

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1                   Unfortunately, that poses a little  
2 bit of a difficulty.       The fast food  
3 restaurants, people tend to want to use the  
4 alley for dining functions.   Buy the food at  
5 Popeyes and then eat in the alley and along  
6 the alley.   So, we're getting a little bit of  
7 a resurgence of kind of transient activity in  
8 the alley.

9                   Allison mentioned the murder last  
10 summer and that was right behind our house and  
11 rather disconcerting.

12                   And the unique aspects of the  
13 properties on that block I think are well  
14 known.   The Barrel House Liquor Store on the  
15 corner has been there and been a great citizen  
16 for the community.   The ANC fully endorsed its  
17 renewal of its licenses recently.   So, we've  
18 had a very nice community developing there.

19                   We have a lot of neighborhood  
20 support.   Grafton Biglow, our neighbor across  
21 the alley, is there this morning to speak in  
22 support of a garage.   He was a pioneer in that

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1 area. Basically built a sweat equity house  
2 that he had gotten through the District of  
3 Columbia program for restoration of that  
4 historic area.

5 As Allison mentioned, the neighbors  
6 are enthusiastically supporting of this. We  
7 have letters from all the adjacent neighbors  
8 and other neighbors in the area.

9 Connie Maffin was the original real  
10 estate agent that sold us the house 30 years  
11 ago and we were fortunate enough that she  
12 signed our letter before she passed away  
13 earlier this year.

14 The Logan Circle Historic Committee  
15 raised some questions about the proposal as  
16 did the CDC. As a consequence, instead of  
17 having a screened-in porch on the deck, we've  
18 deleted that. I'm a little envious of my  
19 neighbors who have their screened-in porches  
20 across the way, but we can certainly forego a  
21 screened-in porch to have a deck.

22 They also ask that we modify the

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1 parapet of the garage to have a more  
2 interesting architectural feature or  
3 appearance so that it wouldn't be a monolithic  
4 type of construction there and I think Gil has  
5 been very sensitive to the nature of the alley  
6 especially on the southern end where it is  
7 completely closed in or virtually closed in  
8 the length of the alley and it should  
9 significantly help the aesthetics and improve  
10 the appearance of the alley in this area.

11 We also obtained ANC approval and I  
12 can honestly say my recollection of the  
13 approval process for the variance 30 years ago  
14 was certainly a lot more simple than this  
15 process has been, but times change.

16 That's it for my comments. I'll be  
17 happy to answer questions.

18 Gil will present the technical  
19 aspects of the ratios and percentages, et  
20 cetera.

21 CHAIRPERSON LOUD: Thank you, Mr.  
22 Robinson. Yes.

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1 MS. PRINCE: May we turn the lights  
2 down?

3 CHAIRPERSON LOUD: Yes, please.  
4 Board Members, do you have any questions so  
5 far?

6 Okay. Why don't we qualify your  
7 expert before he starts? I saw his profile in  
8 our submission.

9 I don't have any questions. I  
10 don't know if the Board Members had any  
11 questions. I don't think that there are any.

12 Has he testified before BZA before,  
13 Ms. Prince?

14 MR. ENTZMINGER: No, sir.

15 CHAIRPERSON LOUD: Okay. But,  
16 just based on the fact that the Board does not  
17 have any questions about your profile and your  
18 extensive list and history in your profession,  
19 the Board's going to go ahead and qualify you  
20 as an expert and give your testimony the  
21 weight that would be given to an expert.

22 MR. ENTZMINGER: Thank you.

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1                   Again, my name is Gil Entzminger.  
2                   My firm is Enteros Design Architects in  
3                   Petersburg, Virginia and as Bernie, I've work  
4                   in D.C. over a number of years being licensed  
5                   here in 1996 and meeting Bernie there shortly  
6                   afterwards and working with him on several  
7                   restoration projects in the city including  
8                   2029 Connecticut Avenue and Valley Vista  
9                   Condominiums.

10                   So, I was honored with Bernie and  
11                   Marge asked me to work with them on the  
12                   renovation of their home at 1332 Vermont  
13                   Avenue.

14                   I'd like to walk through our slides  
15                   if I may and if I could have the wireless  
16                   mike, I'll walk.

17                   Okay. Thank you.

18                   The first slide that I'd like to  
19                   present in this presentation shows the overall  
20                   aerial view and context of the site and the  
21                   community around Logan Circle and the house.

22                   You can see in the circular area

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1 with the star in the middle of it is the house  
2 at 1332 Vermont Avenue. The house is located  
3 along an alley at the rear of the property  
4 which angles in relationship to Vermont Avenue  
5 so that the width of the or the depth of the  
6 lots as they travel to the north diminish.  
7 The lots on the southern end of the alley are  
8 much deeper and provide much more open space,  
9 much more room for development of those lots.

10 The lot that we're working on is  
11 substantially shallower than the other lots.  
12 Yet, the size of the house is actually larger  
13 than most of the other houses on the block.  
14 So, you can see the depth of this house and  
15 the existing original kitchen dependency  
16 that's original to the house, it's not an  
17 addition, is actually fairly deep and deeper  
18 in relationship to many of the other houses.

19 There is no outward external  
20 dependency on the back of the property.  
21 Whereas other properties do, this house does  
22 not.

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1           So, again, the house is located in  
2 the R-5-B district. It was built in 1888. It  
3 is an historic home. It contributes to the  
4 historic district.

5           The house is four stories plus a  
6 cellar. A 2,632 square foot lot area and  
7 4,750 square foot house.

8           Also, just to mention that the  
9 dwelling currently has five dwelling units,  
10 five apartments in it. That has been the case  
11 since I believe around 1960 perhaps earlier  
12 and it will continue to have five apartments,  
13 five dwelling units in the house. No increase  
14 in occupancy of the building as a result of  
15 this proposed project.

16           To further elaborate on the context  
17 that we're working in and to look further into  
18 the alley that we propose to put an addition  
19 on, these are images and photos showing you  
20 similar properties along the alley. As you  
21 can see, the mass and density of that alley is  
22 fairly great. Many of the properties have

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1 zero lot line. Their property walls are on  
2 the alley and others have walls or gates that  
3 front that alley, but it seems to be a fairly  
4 consistent precedent on the alley to have  
5 either a rear dependency or a wall abutting  
6 along the alley.

7 Our proposed design I think will be  
8 in keeping and complement structures more like  
9 this that offer an appealing addition with  
10 brick and masonry construction and a more  
11 refined look than some of the other properties  
12 on the street

13 Security and visibility is  
14 definitely a major concern as Bernie  
15 mentioned. Currently, the alley is basically  
16 unsupervised and un-monitored. There's no  
17 visibility for most of the properties on the  
18 alley and transient activity does occur there  
19 and crime does occur there. So, just by the  
20 nature of the alley, we feel like we have to  
21 do something for them to address the security  
22 concerns for their own safety.

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1                   This is a direct shot of the rear  
2 of the property currently as it exists today.

3                   You can see the parking area here is a  
4 combination of concrete and gravel. It's  
5 currently 100 percent impervious area and we  
6 would like to correct that situation to some  
7 extent.

8                   You can see the rear of the house.

9                   This opening is actually a window. It is not  
10 a door. There was some confusion on that and  
11 that is actually a window not a door.

12                   On the back of this house, there is  
13 no access from the first floor, from the  
14 ground floor, main floor of this building.  
15 There is no access to the rear of the  
16 property. We also feel like that gives it a  
17 unique feature that we need to deal with and  
18 it also is a practical difficulty.

19                   To point out the areaway that  
20 Bernie mentioned, this is a shot that shows an  
21 existing wall that comes out from the rear of  
22 the property that was an enclosure around an

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1 enclosed space at one point in time that was  
2 part of the areaway to the basement of the  
3 building. You can see some painted surfaces  
4 here that would have been original interior  
5 space at some point in time. There's a ledge  
6 here that might have supported a roof line and  
7 there are wood nailers and construction that  
8 would have been interior to the building at  
9 some point in time. Those are built into the  
10 masonry. So, they're likely to have been  
11 possibly original to the building.

12 You can also see the wood fence  
13 here currently that is providing minimal  
14 amount of security to the occupants of the  
15 building. Inadequate security. That fence is  
16 easily scaled and once someone is inside the  
17 property, they're hidden and could do whatever  
18 they like to whoever might be in there.

19 It also essentially closes the  
20 court. There is a narrow court on the side of  
21 the building which I'll have a better photo of  
22 in a minute, but that essentially closes that

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1 court from the exterior.

2 Another shot of the rear of the  
3 building and what I'd like to point out here  
4 is the mass and height of the building in  
5 relationship to the alley. What you can't  
6 really see in this image is that the four-  
7 story portion of the building along Vermont  
8 Avenue is actually taller than the rear  
9 portion of the building. The building steps  
10 down in mass as it approaches the back of the  
11 lot. This is a three-story portion.

12 The configuration of the rear  
13 facade of this is as I mentioned before  
14 somewhat unique in the block with this  
15 extension of the original rear dependency on  
16 the building. That also steps down to the  
17 level of the ground floor, first floor of the  
18 house and then our proposed deck would step  
19 down again. So, we're kind of stepping the  
20 mass down as we approach the alley in an  
21 effort to work with the overall mass of the  
22 block and mass of the community and also

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1 preserve light and air on the block.

2 This is a closer image, a closer  
3 view of that areaway that we mentioned  
4 previously. You can see in the middle image  
5 the walkway that leads down currently to the  
6 unoccupied basement of the house. That  
7 areaway turns the corner around the corner of  
8 the house into this area.

9 You can see this brick wall where  
10 the brick at one point in time extended on.  
11 We excavated the length of that wall and  
12 discovered a foundation wall that continued  
13 beyond. You can see the interior where there  
14 was interior structure at one point in time  
15 that covered -- provided some roof over that  
16 enclosure.

17 Also, to point out, we have the  
18 1957 base map. We did some research on the  
19 property. Also, we also have looked into the  
20 1919 base map. Both of those maps show the  
21 footprint of the building continuing straight  
22 and the width incorporating this original

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1 areaway wall. That full width was part of the  
2 original footprint of the building when both  
3 of those maps were drawn.

4 This image shows the width of the  
5 current court. The court is currently 8 feet  
6 4 inches wide. It's a nonconforming court as  
7 it exists today and provides almost no green  
8 space for the property. It is shaded by the  
9 adjacent properties and gets almost no light,  
10 air or gives no opportunity for outdoor  
11 enjoyment by the residents. So, we really  
12 want to make sure we improve that situation.

13 Oh, yes, also on the base map is  
14 the footprint of an earlier garage that was on  
15 the property. You can see. It may be  
16 difficult to see from where you are, but at  
17 the center of that red dot is an X where there  
18 was an earlier garage on the property. That  
19 garage exists where we want to build the new  
20 garage or existed where we want to build the  
21 new garage and also, did close the court when  
22 it was built there originally.

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1                   This image shows the existing  
2 first-floor plan or I mean, sorry, cellar plan  
3 of the house. The existing FAR for the  
4 property is 1.8 with 64 percent lot coverage.

5                   The cellar or basement of the property is  
6 more or less in its original configuration and  
7 existing walls of the original house.

8                   You can see in this image the  
9 parking spaces on the rear of the property.  
10 Existing as they are today.

11                   In yellow here is the footprint of  
12 the house which does include that areaway that  
13 we would proposed to enclose.

14                   Red line indicates the red fence or  
15 the red line indicates the wood fence which  
16 essentially closes that court and we do not  
17 really intend to change any of those existing  
18 conditions as a part of our proposal.

19                   The courtyard, again, would remain  
20 8 feet 4 inches wide.

21                   This is an image of the existing  
22 first floor plan of the house. What I'd like

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1 to point out in this image is that the house  
2 is a very grand house and the interior of the  
3 first floor is also very grand or has the  
4 potential to be very grand interior space. We  
5 want to restore that and maintain that in the  
6 design.

7 The existing entryway from Vermont  
8 Avenue is used by residents of the building as  
9 they come home in the evenings or leave for  
10 work.

11 We have the side hall here with the  
12 stair leading up to the upstairs tenant  
13 apartments and then this floor would be  
14 occupied by Bernie and Marge as their primary  
15 residence.

16 We have two parlors on the front of  
17 the house, a grand dining room in the middle  
18 of the building and the original kitchen  
19 dependency which will be updated and  
20 modernized for a new kitchen for the  
21 occupants.

22 What I really want to point out

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1 here is that this hallway on the front of the  
2 house is a significant distance from the rear  
3 of the property. To try to attempt to have  
4 any connection from here to here would be  
5 nearly impossible and would take too much  
6 space away from the proposed apartment use and  
7 would be impractical to do so.

8 This plan shows the proposed cellar  
9 plan. We would propose to enclose the rear  
10 parking area. Keep the footprint of the  
11 parking area as it exists today. Not increase  
12 or decrease that. Actually, we would decrease  
13 it by the depth of this enclosure for the  
14 stair, but essentially just enclose that area  
15 for security and safety.

16 As Bernie and Marge come home in  
17 the evening, they can enter that and go  
18 through this doorway into the stairway that  
19 will connect them to their apartment. That  
20 would provide access to the rear of the  
21 property that they can -- that is practically  
22 difficult at this point to achieve.

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1           There is no access to the rear of  
2 the property from their first floor. So, they  
3 could go up the stair to the existing kitchen  
4 of the house or down to their master bedroom  
5 suite.

6           As you can see in this plan, the  
7 green area, the court remains the same. It  
8 does not change. Tenants still have access to  
9 that court. That court is not for the  
10 exclusive use of Bernie and Marge. Tenants  
11 can come to that court either by means of  
12 passing through the garage which will be  
13 common space for the apartment. They will  
14 still have access through there and, in fact,  
15 they will need to maintain a path of egress  
16 through that garage for the tenants and  
17 tenants would also have access through a  
18 common part of the basement traveling through  
19 to access that court area as well.

20           This is the first-floor plan of the  
21 house. You can see in the footprint of the  
22 original house we've preserved and restored

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1 the character of that home. We feel like  
2 that's very important to respect the grand  
3 character and preserve the historic nature of  
4 this home and to cut up or to chop up the  
5 interior with any other type of connections we  
6 fill would be potentially an insult to the  
7 character of the house and would remove too  
8 much space and make the house less usable for  
9 the occupants.

10 We feel that this design approach  
11 is consistent with the Secretary of the  
12 Interior's standards for rehabilitation of  
13 historic properties and is appropriate to the  
14 building.

15 We've provided the least impact on  
16 the home by enclosing that existing areaway  
17 which was circulation and access to the  
18 property, had been enclosed at some point in  
19 time in the past possibly originally and we  
20 would restore that condition with the  
21 enclosure of the new stair hall which will  
22 bring in much needed natural light and

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1 ventilation into the kitchen space of the  
2 building.

3           You can see in this image that the  
4 parking deck or the parking area is covered by  
5 a deck. Bernie is an avid gardener. Has many  
6 tomato plants that he's trying to grow  
7 currently. The plan would be for that deck to  
8 be covered with potted plants and green space,  
9 perhaps some flowering trees in planters and  
10 to really create an area that would be  
11 enjoyable. To actually take a space that's  
12 currently paved area, impervious area and make  
13 it into green space.

14           We're keeping cars off the street  
15 by maintaining that parking area. We're  
16 keeping cars off the street of Vermont Avenue  
17 and making that space available for other  
18 citizens of the city to use.

19           I believe by covering that parking  
20 with the deck and creating a green space,  
21 we're actually taking the appropriate and  
22 correct environmental approach for the

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1 building, too. We're reducing the heat island  
2 affect by doing so.

3 The plan will incorporate a cistern  
4 that will collect the water from the court and  
5 from the deck and pipe it to a cistern for  
6 reuse in irrigation for the property. So, all  
7 of the storm water that currently runs off  
8 from that parking area will be collected and  
9 used on site.

10 I'm trying to think if I've missed  
11 anything.

12 The other aspects of the deck that  
13 we feel is a real benefit to the community is  
14 that we'll create social space for the  
15 neighbors and for the residents to use.  
16 Bernie and Marge are very social people and  
17 like to entertain and so, this will give them  
18 the opportunity to do so.

19 It will also promote security and  
20 safety of the alley. The parapet wall  
21 surrounding the deck is only 3 feet tall. So,  
22 if someone sits on that deck or stands on that

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1 deck, they will see the alley and the idea is  
2 that that will be used very often and would  
3 also -- would actually increase safety and  
4 security not only for Bernie and Marge, but  
5 for the entire community.

6 This is a shot of the rear of the  
7 property, the existing rear of the house and  
8 you can see it's in need of repair and we feel  
9 like this project will improve the appearance  
10 -- the overall appearance of the alley with  
11 the new addition and the proposed wall.

12 The construction of this wall will  
13 be as I mentioned brick and masonry with a  
14 wood in-fill. That brick would be consistent  
15 in color and feel and texture with the other  
16 facades that are already built on the wall and  
17 the line of that wall built out to the  
18 property line again is an already established  
19 precedent on the alley.

20 The addition of the new stair  
21 enclosure is barely visible from the alley.  
22 It would not impede anyone else's fresh air or

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1 light that they might have on the alley or  
2 neighboring properties.

3 And again, this is the overall  
4 aerial view of the project site where you can  
5 see the line of other properties extending  
6 down the alley. Our project will extend that  
7 line with the construction of the new deck and  
8 you can see how it creates a very large open  
9 space. So, rather than having existing on-  
10 grade parking that is essentially unusable  
11 outdoor space, we're actually increasing the  
12 outdoor space for the project by 268 percent  
13 over what is there and usable currently.

14 The court condition essentially  
15 doesn't change. It has been an enclosed court  
16 in the past. It currently has a fence which  
17 practically makes it an enclosed court. So,  
18 we're not changing that condition and we  
19 really don't feel that we're diminishing any  
20 natural light or air from any other  
21 properties.

22 And this is the last image and this

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1 shows a rendering of what the enclosure would  
2 look like as one stands in the court. We  
3 really feel like we can take this opportunity  
4 to create a useful enclosed court that can be  
5 used for the residents of the building, make  
6 an attractive space, provide light, fresh air  
7 and ventilation into the house for Bernie and  
8 Marge and provide security and safety.

9 So, the reasons to approve this  
10 project are that we've resolved the practical  
11 difficulties of lack of access, security and  
12 green space. We have done a project or an  
13 addition that has the least impact on the  
14 historic structure. We're preserving the  
15 historic integrity of properties in the city,  
16 in the District of Columbia by doing so.

17 Meets the intent of zoning to  
18 control density, preserve open space, light  
19 and air and the project presents no detriment  
20 to the residents or neighborhoods of the  
21 community and actually, we feel that it is a  
22 great benefit to the residents and neighbors

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1 of the community because it provides social  
2 outdoor spaces. It provides outdoor space  
3 that's not currently there. It also  
4 provide safety and security for the entire  
5 community by providing a space that someone  
6 could actually live in and enjoy outdoors and  
7 also supervise and monitor activities that  
8 occur on the alley.

9 So, I believe that describes the  
10 design and I'll end my presentation.

11 CHAIRPERSON LOUD: Thank you, Mr.  
12 Entzminger, and I hope I'm pronouncing that  
13 correctly and Ms. Bailey's going to cut the  
14 light on.

15 Was that your final witness?

16 MS. PRINCE: That is our final  
17 witness.

18 CHAIRPERSON LOUD: Okay.

19 MS. PRINCE: Yes.

20 CHAIRPERSON LOUD: Thank you. I  
21 tell you what why don't we see if Board  
22 Members have any questions for any of your

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1 witnesses.

2 COMMISSIONER TURNBULL: Mr. Chair,  
3 thank you.

4 My first question talking about the  
5 uniqueness and I don't think you've proved  
6 your -- the first prong. Why the angle -- why  
7 the angled alley is unique. How does that --  
8 we have angled alleys all over D.C. We have  
9 properties exactly like this one. We have  
10 properties that have a smaller backyard than  
11 the current Applicant's got. How is that  
12 unique? How does that make this property  
13 unique?

14 MR. ENTZMINGER: Well, I think that  
15 the angle in relationship to the adjacent  
16 property and other properties in this area  
17 does make it unique in that the diminished lot  
18 size in relationship to the overall size of  
19 the building and the angle and the  
20 configuration of the lot is unique. I don't  
21 know that any other particular property has  
22 those exact conditions in the city.

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1                   COMMISSIONER TURNBULL:       Well, I  
2 think there's some houses right next door that  
3 look very similar or even worse. I don't --

4                   MS. PRINCE:    May I say something?

5                   COMMISSIONER TURNBULL:    Sure.

6                   MS. PRINCE:    We looked at this  
7 property very, very thoroughly in connection  
8 with this variance application. We spent a  
9 tremendous amount of time really examining it  
10 and at the end of the day aside from the fact  
11 that the Board previously found the property  
12 to unique, what I found particularly  
13 compelling was not the angle alone. I agree  
14 with you completely. There are angled alleys  
15 all over the city.

16                   It was the confluence of factors.  
17 The Gilmartin case speaks of the confluence of  
18 factors. It was the combination of the angle  
19 of the alley and the configuration of the  
20 original footprint of the building. That's  
21 what created the real pinch condition that  
22 impaired our ability to address the

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1 shortcomings associated with the property.

2 Had that rear dependency not  
3 existed, that piece that comes all the way  
4 back, had that not been there, we could have  
5 easily accommodated the challenges associated  
6 with the property. We could have provided  
7 enclosed parking. We could have addressed  
8 security.

9 COMMISSIONER TURNBULL: But, you're  
10 not required to provide parking.

11 MS. PRINCE: It's not legally  
12 required, but it's already provided.

13 COMMISSIONER TURNBULL: Right.

14 MS. PRINCE: But, it's that  
15 condition that exists relative to the  
16 footprint of the house as it relates to the  
17 alley not the alley alone. Because I agree,  
18 there are many other buildings that front on  
19 that angled alley and it diminishes the size  
20 of the lot, but our footprint extends farther  
21 back than any of those other buildings and  
22 that I believe is the compelling unique

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1 factor. One of the compelling unique factors.

2 I think also the fact that  
3 historically this property had the very  
4 features that we're seeking to reincorporate  
5 make it pretty unusual. The fact that there  
6 was a connecting piece associated with the  
7 building that we've documented that we're  
8 putting back and the fact that there was a  
9 garage enclosure that we're putting back and I  
10 don't think -- I don't think it's very common  
11 to be able to say that we're putting back a  
12 rear connecting stairway piece that was part  
13 of the original structure.

14 COMMISSIONER TURNBULL: All right.

15 I'll stop for now. I have some other  
16 questions, but I'll let other Board Members  
17 feed in on this.

18 CHAIRPERSON LOUD: Okay. I have  
19 two quick questions. I think sort of  
20 unrelated to Mr. Turnbull's line of  
21 questioning and it just helps me to get a  
22 bigger picture of understanding what's going

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1 on.

2 In terms of the garage that's going  
3 to be placed on the alley, is there a reason  
4 why the rule that requires a setback from the  
5 center line of the alley would not apply in  
6 this case?

7 MS. PRINCE: This is an addition to  
8 the existing building. It's not a separate  
9 detached garage. There may be confusion over  
10 that because there was a reference to a  
11 detached garage --

12 CHAIRPERSON LOUD: Um-hum.

13 MS. PRINCE: -- in the OP report,  
14 but this is an actual addition.

15 CHAIRPERSON LOUD: Okay. And then  
16 with respect to there not being any rear  
17 access at all for the units that are on the  
18 ground and first floor, are those currently  
19 one unit? The ground and first floor. Okay.  
20 They're currently separate units, but you  
21 want to make it into --

22 MR. ENTZMINGER: No, sir.

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1 CHAIRPERSON LOUD: Okay.

2 MR. ENTZMINGER: The ground floor  
3 is a unit. The basement is currently  
4 unoccupied.

5 CHAIRPERSON LOUD: Okay.

6 MR. ENTZMINGER: It's not been  
7 renovated as an apartment.

8 CHAIRPERSON LOUD: And so --

9 MR. ENTZMINGER: But, it will be  
10 combined with the first floor to make one  
11 unit.

12 CHAIRPERSON LOUD: Is there rear  
13 access from what you're calling the ground  
14 floor?

15 MR. ENTZMINGER: The cellar, there  
16 is access to the rear of the property from the  
17 cellar.

18 CHAIRPERSON LOUD: Okay. Okay.  
19 Thank you.

20 Mr. Turnbull, did you reflect  
21 further on any questions?

22 COMMISSIONER TURNBULL: I have a

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1 question about this deck. This deck is not an  
2 open deck?

3 MR. ENTZMINGER: No, sir, the  
4 intention would be to waterproof the underside  
5 of that deck, collect the water and bring it  
6 to a cistern and then create green space on  
7 top of the deck through planters.

8 COMMISSIONER TURNBULL: It's not a  
9 true green space. I mean it's -- you're  
10 putting planters on it. There's not like a  
11 lawn or a grass area on top of this thing.

12 MR. ENTZMINGER: No, sir, for  
13 maintenance reasons, we would pot and plant in  
14 planters and make it easier to maintain not  
15 only the roof and the architectural components  
16 of the property, but also the planting as  
17 well.

18 COMMISSIONER TURNBULL: I think as  
19 the Chair stated that we're talking about the  
20 access to the back. There is no access now.  
21 I mean you could create access through the  
22 basement now for all residents.

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1 MR. ENTZMINGER: There is access  
2 through the basement now.

3 COMMISSIONER TURNBULL: I mean you  
4 haven't had it for 30-plus years.

5 MR. ENTZMINGER: No, there is  
6 access.

7 COMMISSIONER TURNBULL: People get  
8 to the back by going through the basement.

9 MR. ROBINSON: Right. But, they  
10 have to go through a public stair at the front  
11 of the building and our purpose is to not go  
12 through the public space, but to have it --  
13 access within our space while maintaining the  
14 public access for the other residents.

15 MR. ENTZMINGER: The access relates  
16 to not only the intended use for the property  
17 as their, you know, primary residence, long-  
18 term residents for 30 years, but to make it so  
19 that they can actually bring a bag of  
20 groceries into their kitchen directly is one  
21 issue.

22 But, also the security impact as

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1 well. Currently, entering that garage space  
2 brings them into a secure area. They can exit  
3 their vehicle and go into a secured enclosed  
4 stair and go into their apartment and there is  
5 great concern by Bernie and Marge for their  
6 safety. A year ago, someone was killed  
7 right --

8 COMMISSIONER TURNBULL: But, only  
9 three occupants can do that. There are three  
10 cars in the garage. So, only two occupants.  
11 They got to come in through the front door  
12 or --

13 MR. ROBINSON: Many of the  
14 occupants walk or bicycle and use the front of  
15 the building for those purposes. We have  
16 seven residents in the building presently and  
17 we have six bicyclists in the building.

18 The parking is limited, but it has  
19 generally exceeded the needs for the residents  
20 in the building.

21 COMMISSIONER TURNBULL: Then I'm  
22 not sure why you go on talking about access

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1 bringing groceries in through the back. It  
2 doesn't seem like it wants to follow the logic  
3 of why you want to do this.

4 MR. ROBINSON: Right now, if we try  
5 to go from our parking area into the living  
6 space, we have to go all the way through the  
7 basement up through a public space and then  
8 back into our living space.

9 COMMISSIONER TURNBULL: You do as  
10 the owner?

11 MR. ROBINSON: In back of the  
12 building. That's right. With this enclosure  
13 of the previous footprint, we would just come  
14 from the garage in through the stairway to the  
15 kitchen area.

16 COMMISSIONER TURNBULL: I have more  
17 questions for the Office of Planning.

18 VICE CHAIRMAN DETTMAN: Mr.  
19 Entzminger, actually, if you just go forward  
20 one slide, I'm going to talk to -- it's not  
21 the one, but I'll do my best here. That's the  
22 one.

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1 I'm just considering, you know,  
2 what you would be able to do under a special  
3 exception rather than a variance under Section  
4 223 regs.

5 MS. PRINCE: Excuse me. This is an  
6 apartment house use. So, 223 is not  
7 available.

8 VICE CHAIRMAN DETTMAN: That's  
9 right. I have no questions. Thank you, Ms.  
10 Prince.

11 CHAIRPERSON LOUD: Thank you, Mr.  
12 Dettman, Mr. Turnbull. Thank you, Ms. Prince.

13 What we will do now, it makes  
14 perfect sense, is to go to the Office of  
15 Planning for their testimony based on their  
16 report which is our Exhibit 24.

17 Good morning.

18 MR. COCHRAN: Good morning, Mr.  
19 Chair, Members of the Board.

20 OP has to recommend that the Board  
21 deny the requested variances. The Applicant  
22 has certainly made a good case for why perhaps

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1 the structure should pass muster with the  
2 Historic Preservation Review Board, but the  
3 BZA and the HPRB are different entities and  
4 this is also not a design review panel.

5 We feel that the Applicant simply  
6 does not meet the tests that the Zoning  
7 Regulations impose for uniqueness or  
8 exceptional conditions or practical difficulty  
9 and we're even more concerned that while the  
10 structure may not cause substantial harm to  
11 its adjacent neighbors, it does cause  
12 substantial harm to the Zoning Regulations  
13 particularly Section 2001.3 which has the aim  
14 of bringing buildings into conformance with  
15 the Zoning Regulations. Nonconforming  
16 structures into conformance with the Zoning  
17 Regulations.

18 This structure is already as the  
19 Applicant has demonstrated well in excess of  
20 its current allowances on lot occupancy and  
21 this property was rezoned in Case 97-1 from R-  
22 5-D to R-5-B. Expanding the structure this

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1 way goes contrary even to that rezoning which  
2 was put in place to help preserve the pattern  
3 in Dupont Circle.

4 The Applicant has also as one of  
5 its uniqueness tests stated that the building  
6 is larger than the other buildings on the  
7 block. To us, this seems to make the very  
8 case that we're suggesting. That the building  
9 is already larger than the other buildings in  
10 the block.

11 Section 2001.3 would then say, it  
12 seems to us, stay at that size. Don't  
13 increase it even further. Don't make the  
14 unusual size of it even larger.

15 That's a quick summary, but let me  
16 go back into some more details in the report.

17 The Applicant for uniqueness makes  
18 several allegations. That there's the prior  
19 BZA history on the case. Well, that case was  
20 30 years ago. Unfortunately, the Applicant  
21 did not submit the plans from that previous  
22 case and we simply don't have those records

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1 readily available.

2 We do know that the Applicant had a  
3 garage at that point. From the information  
4 the Applicant presented today, it appears  
5 where that X is that the garage was not as  
6 wide as what the Applicant is proposing. That  
7 may not be the case, but that's what appeared  
8 from the Applicant's drawings today. That it  
9 would have been only on the south side of what  
10 is at this point the rear yard not covering  
11 the entire width. Again, that's based on the  
12 drawings not necessarily on what I know from  
13 30 years ago.

14 The Applicant has also talked the  
15 archaeological digs and there being a previous  
16 addition in the back. If you look at the  
17 brick pattern and some of what the Applicant  
18 shows and the fact that there was a window not  
19 a door there, it appears that that addition  
20 would have been only one-story high. What the  
21 Applicant is proposing is a two-story  
22 addition. So, it does seem that the Applicant

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1 is proposing to make the building even larger  
2 than it was originally when it was larger than  
3 it is now.

4 As far as the dimensions of the  
5 lot, they're not unique. There are at least  
6 20 other lots in the square that are less deep  
7 than the Applicant's. They also have a  
8 similar angle to the rear.

9 As a Member of the Board has  
10 already stated, the Applicant is not required  
11 to provide parking nor are they necessarily  
12 entitled to provide parking. This is an  
13 historic structure. They don't have to  
14 provide it.

15 As it is, they have three parking  
16 spaces now. As you can see, if they're going  
17 to have legal parking spaces, they would  
18 actually be cutting down the numbers of  
19 parking spaces that they're informally  
20 providing now because the lot could  
21 accommodate only two legal spaces.

22 Lack of access, again, the Board

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1 has already started to address this. There is  
2 access to the backyard. Despite what the  
3 application has stated, not all Applicants  
4 have to go around the block and through the  
5 alley to get to the back yard. There is  
6 already access to it from the existing  
7 building.

8 With respect to the proposed  
9 redesign of the building, the Applicant hasn't  
10 demonstrated that they would not be able to  
11 fit a staircase in to the two-floor unit so  
12 that they could then have their own private  
13 access to the back yard. Perhaps it isn't  
14 possible, but the Applicant has not  
15 demonstrated that it isn't possible. That's  
16 quite a large apartment.

17 On the lack of security, the  
18 Applicant himself, the owner of the building,  
19 has testified to how much better Logan Circle  
20 has gotten over the last 20 years. There are  
21 certainly other properties that have addressed  
22 their security concerns by putting up roll-up

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1 garages that can be -- that are 10-feet high.

2 Certainly not to easy to climb over. The  
3 Applicant could also put sidewalls, but that  
4 would not increase the Applicant's lot  
5 occupancy the way that this does from it's  
6 already over lot occupancy of 64 percent to 83  
7 percent.

8 When it comes to lack of green  
9 space, again, the Board has already talked  
10 about is this really green space. It's a nice  
11 deck. It's one that I would certainly enjoy  
12 using, but it has planters. Yes, some of the  
13 water would be recirculated to the garden area  
14 in the existing areaway, but again, to talk  
15 about this as necessarily building -- being  
16 green space that would provide more permeable  
17 surface, et cetera, no, that's not necessarily  
18 the case.

19 And as far as again, uniqueness,  
20 the negative impacts from the mixed-use  
21 district, well, this certainly isn't unique.  
22 One of the advantages of living in Logan

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1 Circle is that you are in a mixed-use  
2 district. Presumably, that's one of the  
3 reasons that you chose to be there. It's not  
4 particular to this property.

5 For practical difficulty, well, any  
6 addition would require relief. It is very  
7 difficult for OP to accept that the Zoning  
8 Regulations themselves contribute to their  
9 being a practical difficulty.

10 As far as the Applicant not being  
11 able to enjoy the property without relief,  
12 well, the Applicant has not demonstrated that  
13 all of this addition is necessary to the  
14 Applicants being able to enjoy their property.

15 Perhaps they wouldn't be able to enjoy it  
16 exactly in the way that they would like to,  
17 but they haven't demonstrated that there's  
18 going to be -- that it would not be a usable  
19 and enjoyable space.

20 I even notice that in one of the  
21 Applicant's -- I think it was the last slide,  
22 they showed sunlight appearing in the side

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1 court. That same side court that the  
2 Applicant has already said -- if you want to  
3 flip to your last slide, the Applicant has  
4 already said that they can't use it because  
5 there is no sunlight there, but there you can  
6 see how nicely that plot of ground would be  
7 lit. I don't know which is really the case.

8 There also seems to be another  
9 slight difference in interpretation on  
10 existing conditions. If you could show the  
11 slide that shows the back of the proposed  
12 garage. I think you already passed it.

13 Now, if you look at that, to me at  
14 least, maybe there is depth in there. I don't  
15 see the shadow line, but it's looking like the  
16 building to the south has a three-story  
17 addition that comes all the way back to the  
18 alley or maybe just a few feet back. You can  
19 see a slight change there.

20 In fact, it doesn't. There's a  
21 one-story dependency back there. You don't  
22 have that other building coming quite so close

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1 to the alley, but again, that may just be a  
2 case of the rendering and my mis-perception.

3 Yes, it does definitely have a rear  
4 extension. It just doesn't appear to be quite  
5 as close to the alley as that seems at least  
6 to me to show.

7 The Applicant would be faced with  
8 increased inconvenience if the relief were not  
9 granted. Again, the Applicant hasn't  
10 demonstrated that the existing common stairway  
11 couldn't be used by the other four apartments  
12 in the building nor has the Applicant yet  
13 demonstrated that the Applicant wouldn't be  
14 able to get back to the parking area.

15 And the requested relief being  
16 relatively minor, the lot coverage would be  
17 expanded by 19 percent to 138 percent of what  
18 is permitted and the rear yard which is now 2  
19 percent shallower than what is required would  
20 actually require 93.3 percent variance. These  
21 don't seem like minor variances to OP.

22 Finally, we look at the substantial

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1 detriment to the health, welfare and the  
2 Zoning Regulations. OP has no illusion that  
3 this property would have a negative impact on  
4 the neighbors to the north and to the south.

5 We are concerned about the impact  
6 on the Zoning Regulations of property that was  
7 down zoned about ten years ago. A block that  
8 was down zoned ten years ago and the whole  
9 trend towards expanding the building that  
10 Section 2001.3 clearly says shouldn't be  
11 expanded as an existing nonconforming  
12 structure. So, we do feel that the  
13 Applicant's -- that your granting the  
14 requested variances would have a substantial  
15 harm on the Zoning Regulations.

16 Given that we do not believe that  
17 the Applicant has demonstrated either  
18 exceptional conditions or practical  
19 difficulty, we feel that it would be very  
20 unfortunate if you did grant the requested  
21 variances and therefore, we recommend that you  
22 deny the request.

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1 CHAIRPERSON LOUD: Thank you, Mr.  
2 Cochran.

3 Board Members, are there any  
4 questions for the Office of Planning?

5 COMMISSIONER TURNBULL: Yes, Mr.  
6 Chair.

7 Mr. Cochran, once again, an  
8 excellent analysis of this -- I guess what I  
9 would consider kind of a difficult case in a  
10 way. It's kind of a conundrum. There's part  
11 of this project that I think are interesting  
12 to it, but I think you made a comment about  
13 it's almost like look what I could do if I  
14 didn't have to worry about the Zoning Regs.  
15 Here's what I could make out of this project.

16 And which is a little troubling  
17 because I could apply that to any other lot on  
18 this block. They could make the same case and  
19 the other situation could basically come back  
20 and do the same thing.

21 And it does trouble me that we're  
22 getting to 138 percent. I think that --

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1 really built over site. There's -- other than  
2 this inside courtyard, there's really no open  
3 space. This is getting to be totally built  
4 up.

5 So, I share your concerns that this  
6 project has not met the three prongs. That  
7 there are -- what we didn't see was some kind  
8 of a design or an approach that would show  
9 something done within the existing structure  
10 proper as a stair -- connecting the stair if  
11 they wanted to make a two-story unit for the  
12 owner and so, I am troubled.

13 And I think your analysis -- I  
14 concur with your analysis. I think there's a  
15 -- it's an interesting project. I think -- I  
16 can certainly see some of the aspects which  
17 they're trying to do, but I really don't think  
18 they've met the three prongs that would  
19 justify us doing anything like this and it  
20 does concern me that I could see the whole  
21 block going this way. Which would, again from  
22 the standpoint of the zone, would be something

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1 which we tried to stop and preserve when it  
2 was changed.

3 So, I share your concerns on this  
4 project. Thank you.

5 CHAIRPERSON LOUD: Thank you, Mr.  
6 Turnbull. Mr. Dettman, did you have any  
7 follow-up questions?

8 Okay. Just sort of a reminder in  
9 terms of where we are, it's about -- in this  
10 sense, it's about 11:40 and we're set to break  
11 at 12:00 noon, but if the parties are so  
12 willing and we extend beyond 12:00, I think --  
13 and the Board Members are willing, I see heads  
14 shake, that we'd be willing to go into the  
15 lunch period to conclude the case this  
16 morning.

17 Secondly, just to remind that OP's  
18 report is an excellent report, but it's OP's  
19 report and we've not -- there hasn't been a  
20 cross of that report yet and I don't know if  
21 Ms. Prince is going to do that. She certainly  
22 has the opportunity to do that. Which would

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1 make the record fuller one way or the other  
2 with respect to the points brought out in Mr.  
3 Cochran's testimony.

4 I don't have any questions for OP.

5 So, Ms. Prince, if you have a cross, this  
6 would be the time to do it.

7 MS. PRINCE: I do have a few  
8 questions for Mr. Cochran.

9 Steve, can you explain your  
10 determination that this property is not unique  
11 when compared to numerous other variance  
12 applications that have been granted and found  
13 to be unique such as 1515 Vermont Avenue?

14 MR. COCHRAN: When I'm looking at  
15 uniqueness, I'm looking at uniqueness within  
16 that square, within that triangle, whatever  
17 you want to call it. Uniqueness with respect  
18 to its neighbors.

19 I don't see its uniqueness. There  
20 are even smaller lots on this square.

21 MS. PRINCE: You don't find it  
22 unique that this building, the dependency

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1 protrudes farther into the rear yard than any  
2 other property nearby?

3 MR. COCHRAN: If I were to agree  
4 that this extended farther, I would be taking  
5 your word. I have not gone through and  
6 measured everyone. It does seem to extend  
7 farther than most.

8 MS. PRINCE: Are you aware --

9 MR. COCHRAN: But, let me just  
10 finish on that. That's not taking into  
11 account the properties that already have  
12 garages.

13 MS. PRINCE: All right. Correct.  
14 Are you aware that in numerous instances this  
15 Board has essentially determined that  
16 practical difficulties often amount to  
17 inconvenience to the building owner? That  
18 that's what a practical difficulty is. Is an  
19 inconvenience. It's something that is -- you  
20 know, people don't need bigger kitchens, but  
21 the Board has often granted variances to  
22 accommodate larger kitchens or third bedrooms.

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1                   So, what's your view of what a  
2 practical difficulty is?

3                   MR. COCHRAN:           A practical  
4 difficulty first off is something that has to  
5 be demonstrated. That you cannot effectively  
6 use the property.

7                   Certainly, in this instance, I  
8 don't think that the -- that your application  
9 has demonstrated that the property can't be  
10 used.

11                  MS. PRINCE:    You think that's the  
12 burden of an area variance --

13                  MR. COCHRAN:   Perhaps the property  
14 could not be used as the owner most wishes it  
15 to be used, but there are many -- honestly,  
16 there are many things that I would like to be  
17 able to do to my own house that I can't do  
18 because of the Zoning Regulations.

19                  MS. PRINCE:    So, you don't think  
20 that there can be a variance granted if the  
21 owner is capable of continuing to live in that  
22 house as it is. In that case, when would a

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1 variance ever be granted?

2 MR. COCHRAN: But, the owner -- the  
3 owner is -- the owner is choosing to make a  
4 duplex unit.

5 MS. PRINCE: Um-hum.

6 MR. COCHRAN: The owner could  
7 choose to make a duplex unit on other floors  
8 of the building and have the lower floor be  
9 its own separate unit not the owner's unit.

10 MS. PRINCE: But, is that --

11 MR. COCHRAN: We don't know that  
12 there are any -- to me, that is absolutely not  
13 a burden.

14 MS. PRINCE: That if there are  
15 alternative ways of accomplishing a project,  
16 that the Board cannot grant a variance for a  
17 given project?

18 MR. COCHRAN: Certainly, in  
19 something like this, no, I don't see where it  
20 would be appropriate for the Board to grant  
21 it.

22 It really begins to lead to asking

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1 for a variance because I want a variance. I  
2 want to do it this way. Please give me a  
3 variance.

4 You have certain steps that you  
5 have to meet to justify granting a variance.  
6 It's not a small thing. The Applicant has to  
7 demonstrate that there's something genuinely  
8 unique or at least has unusual circumstances  
9 about the property. The Applicant has to  
10 demonstrate that there's a real practical  
11 difficulty not just that the property can't be  
12 developed the way that you would like to use  
13 it or that might even produce the best looking  
14 design.

15 This is certainly a great looking  
16 design. I think if I were living in the unit  
17 I would very much enjoy living in that unit,  
18 but that's not what the Zoning Regulations are  
19 about.

20 MS. PRINCE: Do you agree that  
21 there's value to preserving the interior  
22 spaces and not chopping up the historic dining

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1 room with an interior stairway?

2 MR. COCHRAN: That would have to be  
3 -- you'd be asking my personal opinion on that  
4 and I'd rather not give that.

5 MS. PRINCE: You stated that we  
6 hadn't demonstrated that we couldn't  
7 accommodate interior access when, in fact, we  
8 showed the historic interior of the building  
9 and explained the manner in which we're  
10 preserving that and that was our way of  
11 explaining why it didn't make sense to put a  
12 stairway in the middle of a historic dining  
13 room.

14 MR. COCHRAN: I took so many notes.  
15 I can't find the first one right now, but you  
16 -- I believe that the architect essentially  
17 said that to put in a staircase would  
18 certainly violate the historic integrity of  
19 the building. Well, this building as you've  
20 all pointed out was built as a grand single  
21 family house. It's already been split into  
22 five apartments. It's integrity is already

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1 not what it was originally.

2           You haven't demonstrated, at least  
3 to me, that an alternate location for a  
4 staircase would substantially change the  
5 integrity of the building that's already been  
6 changed considerably by going from a single  
7 family to an apartment building.

8           MS. PRINCE:        Have you ever  
9 supported a variance application involving a  
10 row house? Just a regular old row house. Has  
11 Office of Planning ever supported such an  
12 application?

13           MR. COCHRAN: I think you know the  
14 answer to that is yes.

15           MS. PRINCE: And how on earth could  
16 a row house ever be unique? If this isn't  
17 unique, how on earth could a row house be  
18 unique? A row house with a regularly  
19 configured rear yard. A row house with a  
20 regular footprint that's just like its  
21 neighbors. That fronts on the same alley.  
22 How could that ever be unique? When, in fact,

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1 your office has routinely found many row  
2 houses to be fairly unique because you look at  
3 each individual factor affecting the property.

4 And here with this footprint and  
5 this -- on this lot with this lot  
6 configuration, this historic use and the  
7 evidence that we're putting back what was  
8 there in large part. That's not -- doesn't  
9 strike you as unique in anyway?

10 MR. COCHRAN: Well, I don't want to  
11 address the first part of that question  
12 because I think that's a hypothetical. You  
13 know that we have supported variances in row  
14 houses before and there have been conditions  
15 where we found them unique.

16 To engage in a back and forth on  
17 whether something that I might answer on that  
18 and then you might object is not particularly  
19 productive.

20 The case here is whether this  
21 property is unique and whether this  
22 application has demonstrated its uniqueness.

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1           When we're looking at putting back  
2 things that were already there, that's  
3 something that's subject to the Historic  
4 Preservation Review Board. That's not  
5 something that is necessarily the purview of  
6 the Board of Zoning Adjustments at least  
7 taking that into account as part of the  
8 uniqueness.

9           The property did conform even less  
10 to the Zoning Regulations by your testimony  
11 prior to the demolition of these additions.

12           The Zoning Regulations were put in  
13 to put those -- the same additions back and  
14 then it seems another floor on that glass-in  
15 addition goes against the whole intention of  
16 2001.3.

17           I can go back. I've already  
18 stated the dimensions of the lot, they're not  
19 unique. The parking spaces versus the  
20 recreation spaces, that's not unique. That's  
21 a choice that people have to make all the time  
22 in a row house neighborhood.

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1           The lack of access, we've already  
2 demonstrated that there isn't a lack of access  
3 at this point contrary to what the application  
4 seemed to say.

5           MS. PRINCE: There's not a lack of  
6 access from the main level of the house to the  
7 rear yard?

8           MR. COCHRAN: The main level of the  
9 house can go to the common stairway and go out  
10 to the rear yard. Yes.

11           There's not a -- if there's a lack  
12 of security, it's -- it could certainly be  
13 rectified by putting up a wall or roll-up  
14 garage in the back and why now? Why when the  
15 Applicant has already testified that Logan  
16 Circle is improving so much.

17           The lack of security seems to be  
18 getting lessened rather than greater.

19           MS. PRINCE: Except for the murder  
20 last year.

21           MR. COCHRAN: That's true.

22           MS. PRINCE: And so, Office of

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1 Planning would be more supportive of a 12-foot  
2 tall roll-up metal door at the rear of the  
3 property than this proposal?

4 MR. COCHRAN: I can't speak to the  
5 exact height. That's up to the building  
6 regulations, but as far as a roll-up back  
7 there, yes, we would be more supportive of  
8 that than a garage with a deck on top and the  
9 addition.

10 MS. PRINCE: I have no more  
11 questions.

12 CHAIRPERSON LOUD: Thank you, Ms.  
13 Prince. Thank you, Mr. Cochran.

14 Board Members, following the cross,  
15 are there any additional questions for either  
16 Mr. Cochran or the -- okay.

17 Then what we'll do is move on to  
18 the Advisory Neighborhood Commission. In this  
19 case, it's ANC-2F and if someone from 2F is  
20 here, you can come on up. No one's here.

21 So, ANC-2F did submit a report.  
22 It's our Exhibit 25 and in the report, they

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1 indicate that they met, had a quorum. They  
2 had notice. One of their committees had a  
3 number of zoning related questions that they  
4 went through including lot coverage and the  
5 uniqueness of the site, types of practical  
6 difficulties presented, so on and so forth and  
7 the bottom line is that after the committee  
8 forwarded back to the full ANC, a vote was  
9 taken and at the May 6 meeting, ANC-2F voted  
10 to approve, I'm sorry, voted to recommend  
11 approval of the application.

12 So, that's a part of our record.  
13 It will be given appropriate great weight  
14 under our rules.

15 And with that unless there are any  
16 comments from the Board about the ANC report,  
17 what we'll do then is ask whether there are  
18 persons in the audience who are in support of  
19 the application and if so, this would be the  
20 time to come up here. You'll be given three  
21 minutes to give your testimony.

22 I thought I heard earlier that

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1 there was a witness who lived across the alley  
2 in the rear.

3 No, you can sit at the table  
4 actually. There are two open mikes.

5 MR. BIGLOW: I don't know if I need  
6 a mike.

7 CHAIRPERSON LOUD: You do. Well,  
8 you're still going to need for the purpose of  
9 the court reporter a mike. But, we can get --  
10 don't we have the portable microphone

11 Ms. Bailey all the way to your  
12 right has a microphone that you can use and  
13 then you can use your pointer.

14 Now, bear in mind, you got about  
15 three minutes.

16 MR. BIGLOW: I just lost 30  
17 seconds.

18 CHAIRPERSON LOUD: No, it won't  
19 start until you're ready.

20 MR. BIGLOW: My name is Grafton  
21 Biglow and I live directly across from Bernie.

22 This is my house right here and it should

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1 have two stars on it and I bought also back in  
2 '78 when the neighborhood was run down, full  
3 of prostitutes and everything, et cetera.

4 Presently, you talk about the  
5 improvement of the neighborhood, we have some  
6 improvement due through the renovation, et  
7 cetera, but we still have tons of homeless and  
8 tons of transients coming in. They shop down  
9 here at the end of the alley at Popeyes and 7-  
10 Eleven is across the street and they come  
11 through the alley and they eat.

12 Most of the time of the day, these  
13 three parking spots are unoccupied. So, they  
14 come out here through the alley, parking here  
15 and they eat their Popeyes Chicken because  
16 it's open parking.

17 There's no parking on the streets  
18 because of two-hour limits and the  
19 neighborhood is crowded.

20 So, even on the weekends when  
21 people go to the clubs and the restaurants, if  
22 they see an open spot and a unsecure parking

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1 space, they will stick their car there with  
2 Virginia tags known that you cannot get it  
3 towed at 9:00 to 11:00 at night. All right.  
4 So, we have a big security problem here.

5 You talk about security and  
6 improvement in the neighborhood.

7 If you could show that slide with  
8 the black wooden fence right across from  
9 Bernie's, this -- this is my house. I have a  
10 double gate here and I have a single gate for  
11 individual passage where you don't have to  
12 open the whole thing.

13 This morning is trash day. So, I  
14 get up this morning at 8:00 to take out my  
15 trash. Somebody has gone in this gate and  
16 taken out my trash can and removed the whole  
17 trash can. It's not in the alley. I figure  
18 it's probably identity theft. Okay. So, my  
19 trash can is gone.

20 So, you talk about security and  
21 improvement in the neighborhood. Even if you  
22 have a fence, I mean if you don't double bolt

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1 it, they're going to come in. Okay.

2 Another case, the roll ups. Isn't  
3 that ugly? Yes, it gives you security and we  
4 have several of them on the -- in the alley  
5 and they're about 10/12 feet high and they're  
6 noisy. Clank, clank, clank, clank, clank.  
7 Clank, clank, clank, clank, clank. Half of  
8 the time they break, you know, and there's two  
9 or three days where you have no security.

10 More so, if you have four or five  
11 people who don't have a car and they want to -  
12 - but, anyway, they don't have a car.  
13 Everybody in that building has to have a key  
14 to make this thing go up and down. Roll ups  
15 doesn't have an individual gate on the side  
16 where you can just go out and walk your dog  
17 without rolling up the whole gate.

18 Like I said, I've been in the  
19 neighborhood 30-some years and I've watched my  
20 neighbors improve and if you can show the  
21 alley again with the star, all these -- and --  
22 and he doesn't have the biggest house on the

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1 lot. I mean there are houses. I can't get  
2 this thing to work. But, anyway, this house  
3 here is 10,000 square feet, Confederate  
4 Memorial Hall. Only the houses down on that  
5 end get smaller. Yes, we over here live in  
6 shacks.

7 But, all of these yards, there are  
8 no backyards. No, there is no alley access  
9 for these houses. There's a secure gate  
10 there, but these people along this alley have  
11 very little parking and here again, like I  
12 said, there's not much that you can do with  
13 that space. Very little.

14 There's no green space there. It's  
15 paved. Everybody paves their back yard. I  
16 mean even if you have a deep back yard, it's  
17 paved. Okay.

18 And the carriage houses are not  
19 used for garages. They're all occupied.  
20 They're all duplexes. The one next door to me  
21 is a duplex. There's no parking in there.  
22 Yes, everybody lives in these things.

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1           So, one other comment. In the last  
2 three years, we've had two new neighbors and  
3 both of them have come in and for convenience  
4 or something, my next-door neighbor, she  
5 expanded her kitchen feet out into her parking  
6 and she has a smaller backyard than I do with  
7 an additional 4-foot metal deck and that was  
8 just last year they completed it.

9           So, you know, I don't know why you  
10 want to confine individuals who are trying to  
11 improve their living and their house to what  
12 they can do when there's nothing you can do in  
13 this little backyard anyway. All right.

14           So, I mean one day I might want to  
15 do something on my own. I'm too old. I don't  
16 have the money and I don't have the energy,  
17 but anyway, I'd like to say that we need some  
18 security across that alley. Anything would be  
19 an improvement. I hate to see a roll up.

20           And the back elevation, can you  
21 show that again? The one directly. This.  
22 Now, this sure is an improvement and I think

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1 this is a much better improvement on the roll  
2 up. All right. And I would imagine this is  
3 not two story. I would imagine at the most  
4 this is 11/12-feet tall. It's not two story.

5 So, I mean you got a 10-foot roll up or  
6 something that's a whole lot better. Eye  
7 pleasing you know.

8 So, like I said, I live directly  
9 across. This is what I see everyday when I  
10 open my gate and I support it wholeheartedly.

11 That's all I can say.

12 Thank you.

13 CHAIRPERSON LOUD: Thank you, Mr. -  
14 - is pronounced Biglow?

15 MR. BIGLOW: Biglow.

16 CHAIRPERSON LOUD: Thank you, Mr.  
17 Biglow. Thank you.

18 Are there any questions for Mr.  
19 Biglow? All right. Appearing none.

20 We'll not see if there are any  
21 persons who are in the audience who are in  
22 opposition to the application. If so, this

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1 would be the time to come up and give your  
2 testimony and seeing none, then we'll turn  
3 back to the Applicant for closing remarks.

4 MS. PRINCE: Thank you. We  
5 appreciate your time this morning and your  
6 thorough consideration of this application.

7 As I mentioned, when I took on this  
8 case, I really wanted to -- I don't come to  
9 you with cases that I don't think are strong  
10 cases. I come to you with cases that I feel  
11 meet the burden of proof. Because frankly,  
12 they don't get filed by me if I really don't  
13 think I'm going to win them.

14 And in this case, when I took it --  
15 and the Board -- because I feel as a Board,  
16 you have an obligation to try to be consistent  
17 in your decision making. I reviewed 26  
18 variance applications. I studied extensively  
19 findings of uniqueness in previous cases,  
20 findings of practical difficulty. I spent a  
21 lot of time with the court cases and at the  
22 end of the day, I was thoroughly convinced

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1 that this application is fully consistent with  
2 past decisions of this Board.

3 For example, as I've mentioned not  
4 once, not twice, but probably three times,  
5 just a year ago, the Board approved  
6 unanimously relief for 1515 Vermont Avenue  
7 which is a row house that did not have an  
8 unusual rear dependency. It did not have an  
9 unusual rear yard. Yet, the Board found in  
10 that case that the owner really had a  
11 practical difficulty in not being able to have  
12 green space in its location in the middle of  
13 the city and it felt that the property was  
14 unique enough to justify unanimous grant of  
15 variance relief.

16 In this case, we, in fact, has a  
17 much more unusual footprint confounded by this  
18 rear dependency. That were it not there, we  
19 could accomplish all of our objectives. So, I  
20 do think that's relevant and that Board on  
21 numerous instances has found that building  
22 configuration can constitute uniqueness.

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1           And practical difficulties, I heard  
2 a comment that we had a wish list of  
3 everything we wanted and we ignored the  
4 regulations. I have to disagree with that.  
5 Practical difficulties are about ways in which  
6 the regulations create burdens in achieving an  
7 owner's wishes for the use of the property.  
8 There is no obligation whatsoever that an  
9 owner demonstrate that the property simply  
10 can't be used absent variance relief.

11           Frankly, most variance cases are  
12 about the convenience of the owner. They are.  
13 They just are. Who needs a third bedroom?  
14 Go buy a new house. Who needs a bigger  
15 kitchen? All these court cases over and over  
16 again in the variance area tend to deal with  
17 houses because homeowners have changes in  
18 their family situation and want to change the  
19 manner in which their house works. So, they  
20 seek variance relief.

21           Does the Board say well, you're not  
22 entitled to an additional bedroom? Generally

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1 not. They say is there something unusual  
2 about your property that creates a practical  
3 difficulty in meeting the requirements of the  
4 regulations.

5 In our case, we have an historic  
6 mansion that yes was chopped up into five  
7 apartment houses. However, Bernie is doing  
8 his best to restore a fairly significant part  
9 of this house to its original footprint.

10 I believe we introduced into the  
11 record extensive plans that show that there is  
12 -- we are creating -- recreating the dining  
13 room to its original configuration. We're  
14 preserving it. The original hallway into the  
15 apartment is preserved. The rear dependency  
16 is preserved. We are, in fact, recreating the  
17 connection that formerly existed at the rear  
18 of the property.

19 I'm hard pressed to understand how  
20 it's not a practical difficulty to put a  
21 stairway in the middle of an unusually  
22 configured original dining room or in a

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1 kitchen dependency that is original to the  
2 house.

3           So, I don't understand why this  
4 situation involving a 30-year resident who has  
5 gone to extraordinary lengths to reach out to  
6 his neighbors and find an unbelievable level  
7 of support is being held to a different  
8 standard than a owner was held to just one  
9 year ago, the lot occupancy for 1515 Vermont  
10 97 percent. You didn't have a long discussion  
11 about it. You simply said I don't think we  
12 should take lightly the opportunity -- their  
13 opportunity to gain some green space. I look  
14 at this as a practical difficulty.

15           So, when we come to this Board,  
16 when applicants come to this Board, I think we  
17 are entitled to consistency and I think you've  
18 probably heard that over and over. How  
19 valuable that is to us. Because we don't want  
20 to waste our time either. That is just not  
21 the way we do business.

22           We want to know that we're

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1 presenting a case that meets the burden of  
2 proof and I would not have taken this on, I  
3 absolutely would not have taken this on if I  
4 felt that this factual scenario fell so far  
5 short of the burden of proof and I don't think  
6 you see me often here on case that doesn't  
7 meet the burden of proof.

8 So, I urge you to consider very  
9 carefully our prehearing statement which we  
10 spent a lot of time writing, which goes  
11 through a lot of your earlier decisions, goes  
12 through a lot of court cases and I think  
13 explains why we've fully satisfied all three  
14 parts of the variance test.

15 And I thank you for your time  
16 today.

17 CHAIRPERSON LOUD: Thank you, Ms.  
18 Prince.

19 We are now at 12:05. We have a  
20 couple of different options. We could  
21 deliberate the case today if we feel like the  
22 record is full and we are prepared to move

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1 forward on that record and our understanding  
2 of the case and so on and so forth or we can  
3 set it for decision making in the future, in  
4 the very near future.

5 And I think for me, I'd like to  
6 think it over a little. Some of the testimony  
7 this morning sort of amplified what was in the  
8 record and I think I would benefit from having  
9 some additional time to review and reflect  
10 upon the record a little bit better.

11 So, I'll open it up to other Board  
12 Members and get your thinking as well. I see  
13 Mr. Dettman shaking his head affirmatively and  
14 Mr. Turnbull as well.

15 So, then what we'll do is we will  
16 continue this case -- not continue it. We  
17 will set it for decision making.

18 It looks like the first available  
19 date we have is the 14th coming after the  
20 holiday and we have space in the morning for -  
21 - to add another decision. We're already  
22 doing a public meeting on the 14th at 9:30

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1 a.m. So, we could probably squeeze this one  
2 in between 9:30 and 10:00. It would give us,  
3 you know, a couple of weeks to review  
4 everything.

5 So, that would be my suggestion.  
6 There's -- yes, sir. I think you have to  
7 speak into the microphone.

8 MR. ROBINSON: You seem to be  
9 focusing on the interior of the building with  
10 the idea of an internal stairwell and that  
11 sort of thing. I'd like to point out a couple  
12 of things that we --

13 MS. BAILEY: I'm sorry, sir, but  
14 we're -- the Board has finished with the --

15 CHAIRPERSON LOUD: No, Ms. Bailey,  
16 that's okay.

17 MS. BAILEY: Okay.

18 CHAIRPERSON LOUD: Let's hear him  
19 out and let's hear what he has to say and I'd  
20 like to hear from his counsel if -- are you  
21 closing your case or are you reopening it  
22 or --

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1 MS. PRINCE: We just reopened it.

2 CHAIRPERSON LOUD: Okay. Well, let  
3 me ask the Board. Do you think the record's  
4 full enough or do you want to hear additional?

5  
6 How long will this take, Mr.  
7 Robinson?

8 MR. ROBINSON: Two minutes.

9 CHAIRPERSON LOUD: Two minutes.  
10 I'm fine with that. Board Members, are you  
11 fine with that? Okay.

12 MR. ROBINSON: This is the proposed  
13 plan. Presently this is a blocked off wall.  
14 We're restoring that in a faux condition so it  
15 appears to be original from the exterior  
16 hallway and from the interior living space  
17 although it wouldn't be usable.

18 We're going to restore this from a  
19 single-leaf door to a double-leaf door.

20 We've already taken out a kitchen  
21 that was in this area totally obscuring this  
22 part of the dining room.

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1           We had previously considered in the  
2 previous plans attempting to put stairways  
3 interior to the space and for example, this  
4 entryway is very unique. We have the original  
5 swinging oak door. Restored this. To try to  
6 put a stairway in here, totally obstructs the  
7 interior of the building.

8           So, we have considered the  
9 interior. The Mindowd installed reproduction  
10 mahogany windows in their building and we  
11 would hope to do that with 1332 Vermont  
12 instead of aluminum-clad single-pane windows.

13           So, we have consider, Mr. Cochran,  
14 the interior of the building and the  
15 accessibility on the interior and we're really  
16 trying to put the building back to where it  
17 was.

18           CHAIRPERSON LOUD: Thank you, Mr.  
19 Robinson.

20           So, we will then, as I said, set  
21 the decision for Tuesday, July 14, the second  
22 decision case in the morning. We'll start at

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1 9:30 and this will be the second one that we  
2 get to.

3 Is there anything further on this  
4 case?

5 MS. BAILEY: No, Mr. Chairman, the  
6 record of this case is closed.

7 CHAIRPERSON LOUD: That's correct.  
8 Yes. Thank you very much.

9 Do we have any further cases for  
10 the morning calendar?

11 MS. BAILEY: No, sir.

12 CHAIRPERSON LOUD: Okay. The  
13 morning session is adjourned.

14 (Whereupon, the hearing was  
15 recessed at 12:13 p.m. to reconvene this same  
16 day.)

17

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 2:08 p.m.

3 CHAIRPERSON LOUD: We're now going  
4 to go directly into the Public Hearing  
5 scheduled for June 30 and so, I believe we  
6 have two cases on the calendar.

7 There is a talking point that I  
8 have to read from. So, bear with me  
9 particularly if you've been in the audience  
10 for most of the day and have heard this two or  
11 three times before. I'll go through it  
12 quickly and once I do that, then we can call  
13 the calendar for the afternoon and hopefully  
14 make it through the cases with some sense of  
15 haste.

16 Good afternoon. This hearing will  
17 please come to order.

18 Ladies and gentlemen, my name is  
19 Marc Loud and this is the June 30 Public  
20 Hearing of the Board of Zoning Adjustment of  
21 the District of Columbia.

22 Joining me today are Vice Chair

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1 Shane Dettman representing the National  
2 Capital Planning Commission. Peter May  
3 representing the Zoning Commission. To my  
4 left is Mr. Clifford Moy, Secretary of BZA;  
5 Ms. Lori Monroe, Office of Attorney General;  
6 Ms. Beverley Bailey, Zoning Specialist in the  
7 Office of Zoning.

8 Copies of today's hearing agenda  
9 are available to you and located to my left in  
10 the wall bin near the door.

11 Please be aware that this  
12 proceeding is being recorded by a court  
13 reporter and is also webcast live.

14 Accordingly, we must ask you to  
15 refrain from any disruptive noises or actions  
16 in the hearing room.

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

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1 background noise.

2 All persons planning to testify  
3 either in favor or in opposition are to fill  
4 out two witness cards. These cards are  
5 located to my left on the table near the door  
6 and on the witness tables. Upon coming  
7 forward to speak to the Board, please give  
8 both cards to the reporter sitting to my  
9 right.

10 The order of procedure for special  
11 exceptions and variances is: statement and  
12 witnesses of the applicant; Government reports  
13 including the Office of Planning, the  
14 Department of Public Works, et cetera; the  
15 report the ANC; parties or persons in support;  
16 parties or persons in opposition; and finally,  
17 closing remarks by the applicant.

18 Pursuant to Sections 3117.4 and  
19 3117.5, the following time constraints will be  
20 maintained. The applicant, appellant, persons  
21 and parties except an ANC in support including  
22 witnesses 60 minutes collectively. The

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1 appellees or persons and parties except an ANC  
2 in opposition including witnesses 60 minutes  
3 collectively. Individuals are allowed three  
4 minutes.

5 These time restraints do not  
6 include cross examination and/or questions  
7 from the Board. Cross examination of  
8 witnesses is permitted by the applicant or  
9 parties only.

10 The ANC within which the property  
11 is located is automatically a party in a  
12 special exception or variance case.

13 Nothing prohibits the Board from  
14 placing reasonable restrictions on cross  
15 examination including time limits and  
16 limitations on the scope of cross examination.

17 The record will be closed at the  
18 conclusion of each case except for any  
19 material specifically requested by the Board.

20 The Board and the staff will specify at the  
21 end of the hearing exactly what is expected  
22 and the date when the persons must submit the

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1 evidence to the Office of Zoning.

2 After the record is closed, no  
3 other information will be accepted by the  
4 Board.

5 The Sunshine Act requires that the  
6 public hearing on each case be held in the  
7 open before the public. The Board may  
8 consistent with its rules of procedure and the  
9 Sunshine Act enter executive session during or  
10 after the public hearing on a case for  
11 purposes of reviewing the record or  
12 deliberating on the case.

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

19 Please turn off all beepers and  
20 cell phones at this time so as not to disrupt  
21 these proceedings.

22 The Board will make every effort to

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1 conclude the public hearing today as near as  
2 possible to 5:00 p.m. today. If the afternoon  
3 cases are not completed, the Board will assess  
4 whether it can complete the pending case or  
5 cases remaining on the agenda.

6 At this time, the Board will  
7 consider any preliminary matters. Preliminary  
8 matters are those that relate to whether a  
9 case will or should be heard today such as  
10 requests for postponement, continuance or  
11 withdrawal or whether proper and adequate  
12 notice of the hearing has been provided.

13 If you are not prepared to go  
14 forward with a case today or if you believe  
15 that the Board should not proceed, now is the  
16 time to raise such a matter.

17 Ms. Bailey, are there any  
18 preliminary matters?

19 MS. BAILEY: Yes, Mr. Chairman.  
20 One of the cases that was originally scheduled  
21 for this afternoon has been withdrawn, Mr.  
22 Chairman.

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1                   It's Appeal Number 17939 of Change  
2 Suk Chan. There's no action required by the  
3 Board at this time.

4                   CHAIRPERSON LOUD: Thank you, Ms.  
5 Bailey.

6                   MS. BAILEY: Just to put on the  
7 record that it was withdrawn.

8                   CHAIRPERSON LOUD: Thank you.  
9 Thank you. Go ahead.

10                  MS. BAILEY: Secondly, there is a  
11 request for a postponement from Mr. Jerome  
12 Bauman. This case is continued from the May  
13 5th, 2009 Public Hearing, Mr. Chairman.

14                  CHAIRPERSON LOUD: Thank you.  
15 Okay. Let us do this then. I'm not sure. I  
16 don't have the printed calendar in front of  
17 me, but the Bauman case is not scheduled  
18 first, let's take them out of order. It's my  
19 understanding that all we need to do is get a  
20 date, then we can go ahead and take care of  
21 that quickly and then move on to our next  
22 scheduled case.

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1                   Is that where we are, Mr. Gell? We  
2 just need to get a date.

3                   MR. GELL: Thank you, Mr. Chairman.  
4 Yes, if there's a date --

5                   CHAIRPERSON LOUD: Okay.

6                   MR. GELL: -- sort of late  
7 September, I think that would give Mr. Bauman  
8 a chance to find a potential tenant and  
9 thereby be able to narrow down his request.

10                  I think the Board was concerned  
11 about such an open-ended request that he be  
12 permitted to rent to a variety of uses in  
13 advance of knowing exactly what that use would  
14 be.

15                  In the meantime, Mr. Bauman has --  
16 I can hold off.

17                  CHAIRPERSON LOUD: No, I'm sorry.  
18 We're just looking at some dates.

19                  MR. GELL: That's fine. Mr. Bauman  
20 has -- and he can testify for himself, but he  
21 has had real estate agents up looking for  
22 tenants. They've had nibbles. He's been told

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1 that a few of them look like real prospects,  
2 but so far, it's not gone to the point where  
3 we can say yes, this is the use and we would  
4 like the Board to permit that particular use.

5 We fell that given a few months  
6 that issue could be resolved. So.

7 CHAIRPERSON LOUD: Okay. We were  
8 looking at some dates actually. We have come  
9 up with a date in early September actually  
10 instead of late September. We don't have  
11 anything in late September. We can go into  
12 October and I think it's the first part of  
13 October.

14 MR. GELL: That'll be fine.

15 CHAIRPERSON LOUD: Okay. What was  
16 the date that we had looked at? Was it  
17 October the -- what was that --

18 MS. BAILEY: October the 6th, Mr.  
19 Chairman.

20 CHAIRPERSON LOUD: Okay. October  
21 the 6th and in the afternoon --

22 MS. BAILEY: Afternoon.

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1 CHAIRPERSON LOUD: -- we just have  
2 that one.

3 MS. BAILEY: First case in the  
4 afternoon.

5 CHAIRPERSON LOUD: Okay. All  
6 right.

7 MR. GELL: What would the September  
8 date be?

9 CHAIRPERSON LOUD: September 1st.

10 MR. GELL: September 1st?

11 CHAIRPERSON LOUD: Um-hum.

12 MR. GELL: We wish we knew.

13 CHAIRPERSON LOUD: You know what?  
14 I would suggest give yourselves some time.  
15 Because a lot of people leave in August anyway  
16 and so, that would be the first date back  
17 after the August break. So.

18 MR. BAUMAN: Could I just interject  
19 an opinion? Just I -- I just don't know  
20 which way to go because on the other hand --

21 MS. BAILEY: Mr. Bauman, are you on  
22 a microphone?

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1 MR. BAUMAN: I'm sorry. Thank you.  
2 I'm unfamiliar.

3 A tenant may or may not like  
4 signing a lease contingent on the zoning. So,  
5 maybe it's the only option I have is to do  
6 that, but that's the dilemma that I have.

7 MR. GELL: I would suggest that the  
8 early date would be preferable because if --

9 CHAIRPERSON LOUD: Okay.

10 MR. GELL: -- the real estate  
11 agents are correct that there's interest,  
12 again, one never knows how strong the interest  
13 is and whether they'd be the acceptable  
14 tenants to have the sufficient capacity to  
15 rent.

16 CHAIRPERSON LOUD: So, you would be  
17 for the September 1st date?

18 MR. GELL: Yes.

19 CHAIRPERSON LOUD: Okay.

20 MR. GELL: And, you know, if it  
21 doesn't work out, we may be back asking the  
22 Board for another continuance and obviously,

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1 the Board wouldn't indicate in advance what  
2 that answer would be, but we hope that by then  
3 we will know what the use will be and be able  
4 to present that.

5 CHAIRPERSON LOUD: Okay. Let me  
6 just turn to colleagues. See if they have any  
7 questions or concerns. Okay.

8 All right. Then so, let's go with  
9 September 1 and Ms. Bailey, if you could just  
10 refresh me if that's the morning or the  
11 afternoon where we could fit that in.

12 MS. BAILEY: Actually, Mr. Chairman,  
13 I would like your guidance. So, let me just  
14 bring the schedule over.

15 CHAIRPERSON LOUD: Okay.

16 MR. MOY: While she's doing that,  
17 Mr. Chairman, I notice on the schedule Peter  
18 May is scheduled to participate in the morning  
19 of September 1st.

20 CHAIRPERSON LOUD: Okay. Thank  
21 you, Mr. Moy.

22 Okay. Ms. Bailey was sharing some

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1 insights about the September 1st date, but it  
2 will work and what we'll do is put you as the  
3 final case in the morning on September 1st and  
4 Mr. May will be back on the 1st in the  
5 morning. So.

6 COMMISSIONER MAY: Excellent.  
7 Which case would that be right now? How many  
8 cases?

9 CHAIRPERSON LOUD: It'll be the  
10 third case.

11 COMMISSIONER MAY: The third case.

12 CHAIRPERSON LOUD: Yes, and we're  
13 going to try to start the hearings at 9:45  
14 a.m. on that date. So, we hopefully can get  
15 through those cases.

16 We may end up having to work  
17 through the lunch hour if you're amenable to  
18 it. We're going to put you third. So, if  
19 anybody crossed over into the lunch hour, it  
20 would be your case.

21 MR. GELL: Right and since the ANC  
22 is behind us and we really put on most of our

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1 case, there may be some additional things that  
2 you'll be interested in hearing from us or  
3 discussing, but we don't anticipate that it  
4 should be a long --

5 CHAIRPERSON LOUD: Good. Okay.  
6 All right.

7 MR. GELL: Thank you so much.

8 CHAIRPERSON LOUD: That sounds  
9 great. So, if we don't see you before August,  
10 have a great summer and we'll see you in  
11 September.

12 Ms. Bailey, I think -- we don't  
13 have anything further with that case.

14 MS. BAILEY: No, sir.

15 CHAIRPERSON LOUD: It's gone.

16 MS. BAILEY: That's it for that  
17 case.

18 CHAIRPERSON LOUD: Okay. So, I  
19 think we can call the next case.

20 MS. BAILEY: Application 17940 of  
21 Natural Body Spa and Shoppe. It's pursuant to  
22 11 DCMR Section 3104.1 for a special exception

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1 to allow a massage establishment under Section  
2 731 at premises 1104 24th Street, N.W., Square  
3 25, Lot 22. The property is zoned C-2-C.

4 And could I just give them the oath  
5 real quickly, Mr. Chairman?

6 CHAIRPERSON LOUD: Please. Thank  
7 you. Sure thing.

8 I think we have a fairly full  
9 record. So, you may want to give some  
10 consideration to how extensive a presentation  
11 you put on, but okay.

12 MS. BAILEY: Can I just give you  
13 the oath real quickly?

14 Do you solemnly swear or affirm to  
15 tell the truth, the whole truth and nothing  
16 but the truth? Thank you.

17 CHAIRPERSON LOUD: Good morning and  
18 please state your name for the record?

19 MR. LABLONSKY: Bart Lablonsky.

20 CHAIRPERSON LOUD: Okay.

21 MR. LABLONSKY: Natural Body.

22 CHAIRPERSON LOUD: Say good

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1 morning. I should say good afternoon.

2 The record is full. We've read the  
3 record. The case seems to be a strong case  
4 although, you know, you never know what can  
5 happen at the hearing.

6 So, you can feel free to highlight  
7 the aspects of your case that you find  
8 compelling and want to push forward and then  
9 the Office of Planning is going to give  
10 testimony after you and in their report, they  
11 recommend approval and go through the test  
12 warranting the approval.

13 So, whatever you don't cover  
14 specifically, it's in their report and they  
15 may lift it up at this hearing. So.

16 MR. LABLONSKY: I'll be brief then.

17 Just to give you a quick why we're here,  
18 Natural Body started in Atlanta in 1989.  
19 We're a full-service spa. My wife and I have  
20 been the owners of the locations in this  
21 market for about eight years and we opened the  
22 D.C. location in December of 2007 and we're

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1 here today for a special exemption hearing  
2 just because of a lot of misunderstanding in  
3 the zoning process when we went through the  
4 initial build-out of the location and so, we  
5 are licensed currently, but were asked to come  
6 through to get a special exemption or to renew  
7 our certificate of occupancy and we're a full-  
8 service spa. Just some pictures of what we  
9 do.

10 And I guess I'll let the record  
11 stand. If there's questions, you can ask  
12 them.

13 CHAIRPERSON LOUD: Board Members,  
14 do you have any questions for the Applicants?  
15 Okay.

16 Why don't we then turn to the  
17 Office of Planning? Good afternoon.

18 MR. GOLDSTEIN: Good afternoon, Mr.  
19 Chairman and Members of the Board.

20 For the record, my name is Paul  
21 Goldstein and I am a Development Review  
22 Specialist for the Office of Planning.

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1           The Office of Planning recommends  
2 approval of the Applicant's request for  
3 special exception relief under Section 731 and  
4 with that, we're willing to rest on the record  
5 on our submission and, of course, willing to  
6 take any follow-up questions that you may  
7 have.

8           Thank you.

9           CHAIRPERSON LOUD: Thank you, Mr.  
10 Goldstein and it was a very outstanding report  
11 as all of your reports are and we appreciate  
12 it.

13           Let me see if either Board Members  
14 or the Applicant have any questions for you.  
15 They appear to be sort of looking things over  
16 and reflecting upon it.

17           Let me ask the Applicant. Do you  
18 have any questions for the Office of Planning?

19           Did you get a copy of their report?

20           MR. LABLONSKY: I do not have a  
21 copy of the report, but I did speak with them.

22           CHAIRPERSON LOUD: Okay. All

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1 right. Hearing -- Mr. May.

2 COMMISSIONER MAY: I'm just  
3 curious. How is it that this was -- your  
4 current use was actually granted as an  
5 oversight or it was -- they didn't flag that  
6 you needed a special exception early on?

7 MR. LABLONSKY: No, that was what  
8 the problem was.

9 COMMISSIONER MAY: The oversight  
10 was.

11 MR. LABLONSKY: Yes.

12 COMMISSIONER MAY: Okay.  
13 Otherwise, you would have been here long  
14 before you opened up for business.

15 MR. LABLONSKY: Correct. Correct.

16 COMMISSIONER MAY: Okay. All  
17 right.

18 CHAIRPERSON LOUD: Thank you, Mr.  
19 May. All right.

20 Well, if there are no questions for  
21 the Office of Planning, we would now turn to  
22 the ANC for their report. Is any member of

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1 the ANC here? No, they're not here. I can  
2 see that.

3 They did submit a report though.  
4 It's our Exhibit 22 and it's from the Chair of  
5 ANC-2A and they are in support of your  
6 application. So, their report which I am  
7 retrieving as I speak appears to meet the  
8 great weight requirements of Section 3115 and  
9 as such, we will be giving their  
10 recommendation great weight.

11 It's also good because if the Board  
12 votes to approve, then we can do a summary  
13 decision since they're not in opposition to  
14 you.

15 But, again, they note -- this is  
16 Exhibit 22. It's dated April 15. They note  
17 that they had a quorum present. It was  
18 properly noticed. Vote of 4 to 2. They  
19 support the application. So, you do get the  
20 great weight support of your ANC.

21 Now, would be the time where we  
22 would call forward any persons in the

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1 audience, but there are none, both in support  
2 and in opposition of the application and they  
3 would be given three minutes, but again, since  
4 there aren't any, there are no persons to  
5 call.

6 But, there are some letters in our  
7 record of support including Exhibit 23 which  
8 is from a Neil Conway and I believe a couple  
9 of letters that are signed as petitions.

10 So, there are no letters in  
11 opposition.

12 And now, what we would do is turn  
13 back to you for your closing statement.

14 MR. LABLONSKY: I just appreciate  
15 you taking the time to listen and I'll wait  
16 for your result.

17 CHAIRPERSON LOUD: All right.

18 MR. LABLONSKY: Thank you.

19 CHAIRPERSON LOUD: I think what  
20 we'll do is deliberate today. This has been a  
21 very full record and when the record is full  
22 like this and everything is pulled together

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1 professionally like it was in this case, it  
2 doesn't take long to get through the  
3 proceeding or deliberate. So, we're going to  
4 go ahead and deliberate and vote on this today  
5 I do believe and I think Mr. Dettman was going  
6 to lead us off.

7 VICE CHAIRMAN DETTMAN: Thank you,  
8 Mr. Chairman.

9 Instead of taking the Board through  
10 the relevant provisions of 731 and 3104.1  
11 which is the Board's general special exception  
12 criteria, I can just incorporate by referring  
13 DCOP's report which took us through those  
14 provisions and just stating that the  
15 Applicant's been in operation since 2007.

16 The criteria of 731 essentially  
17 deal with making sure that the use is  
18 compatible with other uses in the area and  
19 looking at the proposed use and making sure  
20 that it doesn't have any effects with respect  
21 to noise, traffic, other conditions as well as  
22 making sure that there are no adverse impacts

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1 on religious, educational or other  
2 institutional facilities.

3 I think it's pretty clear that the  
4 Applicant meets the special exception criteria  
5 of 731 and 3104.

6 As you stated, the ANC gives its  
7 support in Exhibit 22. DCOP supported in our  
8 Exhibit 26 and finally, we also have in the  
9 record an Exhibit Number 23 from the Neil  
10 Conway, from the Applicant's neighbor, from  
11 District Hardware as well as a petition that  
12 was signed by 118 clients of the Applicant and  
13 that's our Exhibit Number 24.

14 CHAIRPERSON LOUD: All right.  
15 Thank you, Mr. Dettman. That was an excellent  
16 job of pulling together the record before us.

17 Is there a motion?

18 COMMISSIONER MAY: Mr. Chairman --

19 CHAIRPERSON LOUD: Are there  
20 further deliberations? I'm sorry.

21 COMMISSIONER MAY: Mr. Chairman, I  
22 would make a motion that we approve

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1 Application Number 17940 of Natural Body Spa  
2 and Shoppe for a special exception to allow a  
3 massage establishment under Section 731 at  
4 premises 1104 24th Street, N.W. and ask for a  
5 second.

6 VICE CHAIRMAN DETTMAN: Second.

7 CHAIRPERSON LOUD: Motion has been  
8 made an seconded. Is there further  
9 deliberation?

10 Hearing none, all those in favor  
11 say aye.

12 (Ayes.)

13 CHAIRPERSON LOUD: All those  
14 opposed? Are there any abstentions?

15 Ms. Bailey, can you read back the  
16 vote please?

17 MS. BAILEY: Mr. Chairman, the vote  
18 is 3-0-2 to grant the application. Mr. May  
19 made the motion. Mr. Dettman seconded. Mr.  
20 Loud supported the motion. There are two  
21 Board Members not sitting at this time.

22 CHAIRPERSON LOUD: Thank you, Ms.

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1 Bailey. Then congratulations. The  
2 application has gotten the support of the BZA.

3 I think a summary order is warranted.

4 MR. LABLONSKY: Thank you.

5 CHAIRPERSON LOUD: And is there  
6 anything further on this case?

7 MS. BAILEY: Nothing further to  
8 discuss, Mr. Chairman.

9 CHAIRPERSON LOUD: All right.  
10 Thank you. And unless there is anything  
11 further for the afternoon session, this  
12 session is adjourned.

13 (Whereupon, the hearing was  
14 concluded at 2:30 p.m.)

15

16

17

18

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