

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

JANUARY 13, 2009

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
MARC D. LOUD Vice Chairman
MARY OATES WALKER Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON

MATT JESICK

DAN EMERINE

This transcript constitutes the minutes from the Public Hearing held on January 13, 2009.

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

2 1:01 p.m.

3 CHAIRPERSON MILLER: We have next
4 on our agenda the morning's Public Hearing and
5 this case went very long. So what we are
6 going to do is take a 10 minute break and
7 assess what we are going to do. We're
8 definitely, I believe, going to take -- I
9 think there is at least one case on the agenda
10 that is seeking a postponement and that's a
11 preliminary matter and we will probably deal
12 with that first.

13 And so in any event, I want to let
14 you all know if any of you need to step out
15 for 10 minutes or so, this is a good time. We
16 won't be starting that hearing for at least 10
17 minutes.

18 (Whereupon, at 1:01 p.m. a recess
19 until 1:25 p.m.)

20 CHAIRPERSON MILLER: Good
21 afternoon, ladies and gentlemen. This is the
22 January 13th Public Hearing of the Board of

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1 Zoning Adjustment of the District of Columbia.

2 As it is now 1:23 in the afternoon, we're
3 going to merge our morning and afternoon
4 cases.

5 So I'll just be reading one intro
6 which will apply to all the cases that are
7 remaining on the agenda today for the Public
8 Hearing.

9 My name is Ruthanne Miller. I'm
10 the Chair of the BZA. Joining me today to my
11 right is the Vice Chair, Mr. Marc Loud, and
12 next to him is Mr. Michael Turnbull from the
13 Zoning Commission. To my left is Mary Oates
14 Walker, Board Member. Our other Board Member,
15 Shane Dettman, will not be participating with
16 us today as he is out of the country.

17 And also joining us is Mr. Clifford
18 Moy from the Office of Zoning and Ms. Lori
19 Monroe from the Office of Attorney General. I
20 believe that Ms. Bailey will be joining us
21 shortly as well.

22 Copies of today's hearing agenda

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1 are available to you and are located to my
2 left in the wall bin near the door. Please,
3 be advised that this proceeding is being
4 recorded by a Court Reporter and is also
5 webcast live. Accordingly, we must ask you to
6 refrain from any disruptive noises or actions
7 in the hearing room.

8 When presenting information to the
9 Board, please, turn on and speak into the
10 microphone, first, stating your name and home
11 address. When you are finished speaking,
12 please, turn your microphone off, so that your
13 microphone is no longer picking up sound or
14 background noise.

15 All persons planning to testify
16 either in favor or in opposition are to fill
17 out two witness cards. These cards are
18 located to my left on the table near the door
19 and on the witness tables. Upon coming
20 forward to speak to the Board, please, give
21 both cards to the reporter sitting to my
22 right.

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1 The order of procedure for special
2 exceptions and variances is as follows: One,
3 statement and witnesses of the applicant.
4 Two, Government reports, including Office of
5 Planning, Department of Public Works, DDOT,
6 etcetera. Three, report of the Advisory
7 Neighborhood Commission. Four, parties or
8 persons in support. Five, parties or persons
9 in opposition. Six, closing remarks by the
10 applicant.

11 Pursuant to Section 3117.4 and
12 3117.5 of the Zoning Regulations, the
13 following time constraints will be maintained:

14 The applicant, persons and parties, except an
15 ANC, in support, including witnesses, 60
16 minutes collectively. Persons and parties,
17 except an ANC, in opposition, including
18 witnesses, 60 minutes collectively.
19 Individuals 3 minutes.

20 These time restraints do not
21 include cross examination and/or questions
22 from the Board. Cross examination of

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1 witnesses is permitted by the applicant or
2 parties. The ANC within which the property is
3 located is automatically a party in a special
4 exception or variance case.

5 Nothing prohibits the Board from
6 placing reasonable restrictions on cross
7 examination, including time limits and
8 limitations on the scope of cross examination.

9 The record will be closed at the
10 conclusion of each case, except for any
11 material specifically requested by the Board.

12 The Board and the staff will specify at the
13 end of the hearing exactly what is expected
14 and the date when the persons must submit the
15 evidence to the Office of Zoning. After the
16 record is closed, no other information will be
17 accepted by the Board.

18 The Sunshine Act requires that the
19 Public Hearing on each case be held in the
20 open before the public. The Board may,
21 consistent with it's Rules of Procedure and
22 the Sunshine Act, enter Executive Session

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1 during or after the Public Hearing on a case
2 for purposes of reviewing the record or
3 deliberating on the case.

4 The decision of the Board in these
5 contested cases must be based exclusively on
6 the public record. To avoid any appearance to
7 the contrary, the Board requests that persons
8 present not engage the Members of the Board in
9 conversation.

10 Please, turn off all beepers and
11 cell phones, at this time, so as not to
12 disrupt these proceedings.

13 The Board will consider any
14 preliminary matters. Preliminary matters are
15 those which relate to whether a case will or
16 should be heard today, such as requests for
17 postponement, continuance or withdrawal or
18 whether proper and adequate notice of the
19 hearing has been given. If you are not
20 prepared to go forward with a case today or if
21 you believe that the Board should not proceed,
22 now is the time to raise such a matter.

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1 MS. BAILEY: Thank you.

2 CHAIRPERSON MILLER: Does the staff
3 have any preliminary matters?

4 MS. BAILEY: Madam Chair, good
5 afternoon. There are two preliminary matters
6 and I'm not quite sure how the Board would
7 like to deal with this. The first one is in
8 the morning and in the afternoon there is one
9 associated with the afternoon.

10 The first one there is a request
11 for postponement and that is of the Ideal
12 Education, Inc., Application 17866. This is a
13 private school. Is the applicant here for
14 that case? Okay. And then again, there is
15 another one following this, Madam Chair.

16 CHAIRPERSON MILLER: Okay. Why
17 don't we take the first one first then?
18 Whoops, I need the microphone on. Thank you.

19 You press push, the green light goes on and
20 you'll be on the record.

21 MR. KOLONGI: Okay. My name is
22 Abdullah Kolongi. I'm with the Associates for

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1 Ideal Education. We were requesting a
2 postponement of this particular hearing and we
3 wanted to have an architect and engineer
4 review the plans. And we also wanted to meet
5 with the neighborhood and see if we can't
6 minimize any impact with the application.

7 CHAIRPERSON MILLER: Okay. Do you
8 know of any objection?

9 MR. KOLONGI: No, I don't know any
10 objection.

11 CHAIRPERSON MILLER: Okay. I just
12 want to make a couple of comments. That's no
13 problem then, you know, we don't mind
14 rescheduling you.

15 MR. KOLONGI: Okay.

16 CHAIRPERSON MILLER: After you have
17 all your meetings and submit another filing, a
18 lot of the issues that we look at when we are
19 considering -- this is a private school?

20 MR. KOLONGI: Yes.

21 CHAIRPERSON MILLER: A private
22 school. We look at, you know, the number of

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1 students and staff, what are the ages of the
2 students, are there any traffic concerns, like
3 for instance, with respect to drop-off or
4 pick-up, is your play area going to affect any
5 neighboring property, what's the parking
6 situation, what's your schedule going to be.
7 Those are kind of just basic points.

8 So you may have already addressed
9 some of them in your application, but I just
10 wanted to bring that to your attention.

11 MR. KOLONGI: Okay.

12 CHAIRPERSON MILLER: Okay. So how
13 much time are you thinking that you would
14 like?

15 MR. KOLONGI: A minimum of 90 days.

16 CHAIRPERSON MILLER: Well, what
17 would you ideally like?

18 MR. KOLONGI: 120 days.

19 CHAIRPERSON MILLER: 120? Okay.
20 We'll look at our calendar. Is June 2nd too
21 late?

22 MR. KOLONGI: No, that's okay.

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1 CHAIRPERSON MILLER: Okay. Because
2 we are pretty open in June. Is that okay, Mr.
3 Moy? Okay. And are you raising your hand on
4 this case? Okay. Do you want to come forward
5 then? You are here on this case? Oh, okay.
6 Would you introduce yourselves for the record,
7 please?

8 MS. THOMPSON: Yes. My name is --

9 CHAIRPERSON MILLER: Is your mike
10 on?

11 MS. THOMPSON: My name is Doreen
12 Thompson and I am President of the Carter
13 Baron East Neighborhood Association. And the
14 Ideal facility, the current facility is
15 located in our community.

16 CHAIRPERSON MILLER: Okay. Why
17 don't we go through the group and then we will
18 get back to you.

19 MR. WIELAND: I'm Sean Wieland. I
20 live at 1362 Hamilton Street, N.W. I live
21 within the Sabina boundaries.

22 CHAIRPERSON MILLER: I'm sorry,

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1 what's your name?

2 MR. WIELAND: Sean Wieland.

3 CHAIRPERSON MILLER: Is your mike
4 on?

5 MR. WIELAND: Yes.

6 CHAIRPERSON MILLER: Sean Wieland.
7 You live within?

8 MR. WIELAND: The Sabina
9 boundaries, 1362 Hamilton Street, N.W.

10 CHAIRPERSON MILLER: Okay. Yes?

11 MS. MEYERS: I'm Janet Meyers. I
12 am the newly elected ANC-4C02 in which Ideal
13 School is in my Single Member District. And I
14 live at 5005 13th Street, N.W.

15 CHAIRPERSON MILLER: Okay. And you
16 are automatically -- the ANC is automatically
17 a party to all applications. Do you have a
18 position on the --

19 MS. MEYERS: Yes.

20 CHAIRPERSON MILLER: -- request?
21 Yeah.

22 MS. MEYERS: (Speaking off mike) I

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1 have met with the community and our position
2 is that we will not support this.

3 CHAIRPERSON MILLER: Okay. Now,
4 the only question on the table right now is
5 the request to postpone the hearing until
6 June. Do you have any opposition to that?

7 MS. MEYERS: Well, I mean, they can
8 postpone certainly and go forward with their
9 application, but the ANC has met with the
10 community and we have met as a Commission as a
11 whole and, you know, whether they go forward
12 with that -- okay, thank you. We have taken
13 the position that we will not support the
14 application.

15 CHAIRPERSON MILLER: Okay. Now, in
16 granting a postponement, that also gives the
17 applicant an opportunity to change the plans
18 and perhaps meet some of the concerns of the
19 community or attempt to. So you may -- it may
20 result in another vote as well.

21 MS. MEYERS: Okay.

22 CHAIRPERSON MILLER: Okay. Do you

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1 all --

2 MS. THOMPSON: We just would like
3 to say that, for example, I think I feel --

4 CHAIRPERSON MILLER: No, you --
5 okay.

6 MS. THOMPSON: -- Ideal is here
7 today saying they want to meet with the
8 community. Ideal could have notified us that
9 they were seeking a postponement or that they
10 wanted to modify. They mentioned that they
11 wanted to bring in an additional -- an expert.

12 Ideal has posted no signs in preparation for
13 this hearing.

14 It is -- there is a lack of
15 communication and sensitivity towards us. We
16 have been here all morning as well. Ideal is
17 in close proximity to show people in the
18 community and could have communicated to us.
19 And, in fact, we were here this morning to say
20 that it should be postponed because no
21 placards, nothing has been done in preparation
22 for the hearing.

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1 And so to be -- to come today when
2 you have the opportunity to talk to the
3 community is really not respecting us as well.

4 CHAIRPERSON MILLER: Do you have
5 anything you want to say to that or not?

6 MR. KOLONGI: I cced the ANC and
7 the Office of Planning with the letters for
8 postponement.

9 CHAIRPERSON MILLER: Okay.

10 MR. KOLONGI: We also filed here.

11 CHAIRPERSON MILLER: Okay. We are
12 scheduling it for June 2nd not hearing any
13 opposition to that. But when that comes
14 around, there are regulations that require
15 that you do placard the property. There are
16 posting requirements. You might want to check
17 with the Office of Zoning if you are not
18 familiar with that, but you will need to do
19 that in advance of the hearing.

20 MR. KOLONGI: Okay.

21 CHAIRPERSON MILLER: And obviously,
22 the better the communication with the

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1 community in advance of the hearing often the
2 smoother the hearing goes.

3 MR. KOLONGI: Okay.

4 CHAIRPERSON MILLER: Okay.
5 Anything else? All right. Then this hearing
6 is rescheduled. This case is rescheduled for
7 hearing on June 2nd.

8 MR. KOLONGI: Thank you.

9 MS. BAILEY: Afternoon session?

10 CHAIRPERSON MILLER: Yes, afternoon
11 session. Okay. Okay. And then I believe we
12 have one of the cases scheduled for supposedly
13 the afternoon session, which this is afternoon
14 already. It's 17825 is going to be requesting
15 postponement. And why don't you introduce
16 yourselves for the record, please.

17 MR. AGUGLIA: That is correct. My
18 name is Richard Aguglia, counsel for the
19 applicant. With me is Nante Berhane, who is
20 with Dade Petroleum. We have requested a
21 continuance in this case until your May
22 calendar.

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1 Just to give you some brief
2 background, you will recall that the case was
3 originally set for October 14, 2008. The ANC,
4 which is in opposition to our application,
5 requested a continuance, so that the case
6 could go before the Public Space Committee.

7 We met with the Public Space
8 Committee on December 18th and presented our
9 plans, our revised plans. The Public Space
10 Committee rejected those plans. However, they
11 outlined an 8 point, roughly an 8 point,
12 summary of what we needed to do in order to
13 come into compliance.

14 However, there was no guarantee
15 that they would accept the revised plans. I
16 want to make that clear. We are still waiting
17 for the letter from the PSC and we have also
18 tried to order the transcript and we were told
19 that they were doing that. We still haven't
20 received this. It has been roughly a month,
21 but we do have copious notes.

22 So our proposal is to continue this

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1 until May and we're trying to get on a fast
2 track schedule, as I have put forth in my
3 letter. We would file our revised plans, we
4 think, consistent with the Public Space
5 Committee's remarks by the end of this month.

6 We would then go before the Preliminary
7 Design Review Committee to make sure that our
8 plans were consistent with the remarks.

9 And then there is a two month
10 hiatus before we can get on the Public Space
11 Committee hearing bringing us into April. And
12 then we would ask then, of course, that we be
13 scheduled for May.

14 I would bring to your attention
15 that I believe there are important public
16 policy aspects in keeping our case on the
17 calendar and, you know, keeping it alive and
18 calendaring it in May. As part of my
19 application -- as part of my request for a
20 continuance, I attached the traffic study that
21 was done by former Mayor Anthony Williams.

22 And if you can turn to page 16 of

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1 that report, you will see that from 1977 to
2 2002, the number of gas stations in the
3 District of Columbia decreased from 270 to
4 112, that's something else, but I'm going to
5 refer to that immediately after this
6 discussion.

7 Do you want to give them a copy?

8 MR. LUNA: I thought we were still
9 introducing ourselves. Is that not happening?

10 CHAIRPERSON MILLER: Yes, please.

11 MR. LUNA: Are we arguing?

12 CHAIRPERSON MILLER: I'm sorry.
13 Yeah, we're not going to hear too much
14 argument anyway, because we're just here for
15 postponement and scheduling. Go ahead.

16 MR. LUNA: I'm sorry, I'm Richard
17 Luna. I'm counsel for ANC-6A.

18 CHAIRPERSON MILLER: Your mikes
19 need to be on.

20 MR. LUNA: Richard Luna, counsel
21 for ANC-6A.

22 MR. RONNEBERG: Drew Ronneberg.

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1 I'm the Chair of the Economic Development and
2 Zoning Committee for ANC-6A.

3 MR. LUNA: I actually just wanted
4 to point out that there is a motion that is
5 chronologically prior to this motion to
6 continue the case. On --

7 CHAIRPERSON MILLER: We have a copy
8 of it. It's a motion based on mootness.

9 MR. LUNA: Right. The January 5th
10 motion to dismiss.

11 CHAIRPERSON MILLER: Okay. I don't
12 believe though there has necessarily been time
13 for the applicant to respond to the motion to
14 dismiss. I mean, were you intending to
15 respond?

16 MR. LUNA: And likewise, there
17 wasn't time for us to -- his motion to
18 continue the case was filed after his time for
19 filing papers, so we really haven't had a
20 chance to review his -- to answer his --

21 CHAIRPERSON MILLER: Are you
22 opposed to continuing the case?

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1 MR. LUNA: I would. We would
2 prefer denial or dismissal. I mean, the case
3 is moot. There is no --

4 CHAIRPERSON MILLER: Let me just
5 say this. I know that you cited N Street
6 Follies, but I don't -- that was the Board's
7 decision in N Street Follies. But in a rare
8 occurrence, the Court of Appeals reversed the
9 Board on our determination of mootness in that
10 case.

11 MR. LUNA: Okay. I did not --

12 CHAIRPERSON MILLER: So --

13 MR. LUNA: I was not made aware of
14 that.

15 CHAIRPERSON MILLER: Yeah, that was
16 decided June 5, 2008.

17 MR. LUNA: Okay.

18 CHAIRPERSON MILLER: So --

19 MR. LUNA: Thanks for pointing that
20 out.

21 CHAIRPERSON MILLER: Okay.

22 MR. LUNA: It did not come up in my

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1 search.

2 CHAIRPERSON MILLER: Well, you
3 know, a motion to dismiss though, I mean, I'm
4 not saying we're denying that, but I am saying
5 that that's a very important case that I
6 wanted to bring to your attention.

7 MR. LUNA: Right, right, thank you.

8 CHAIRPERSON MILLER: You know.

9 MR. LUNA: I appreciate that.

10 CHAIRPERSON MILLER: I think we
11 normally with a motion to dismiss do give the
12 applicant an opportunity to file a written
13 response to a written motion to dismiss,
14 because that takes care of their whole case
15 and that goes to the merits. But so what I
16 would propose is that the applicant have an
17 opportunity to respond to that and that we
18 take that up when this is continued, unless
19 the Board is convinced that it should not be
20 continued.

21 And that's rare that the Board
22 wouldn't continue a case for good cause. And

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1 good cause seems to be what is going on with
2 the Public Space Committee.

3 MR. LUNA: I guess giving -- ANC-6A
4 would not be opposed to giving the applicant
5 an opportunity to respond to the motion to
6 dismiss. The problem is really that because
7 of the nature of the changes that the Public
8 Space Committee requested and the permission -
9 - the extent of the space that the Public
10 Space Committee denied use of.

11 The application is really going to
12 have to be substantially different. We're
13 going to have to go through notice periods.
14 The ANC still -- the plans are going to be
15 completely different. So really the ANC and
16 the public should be entitled to the full
17 opportunity to review the plans, renew notice,
18 things like that.

19 So in all fairness and in the
20 interest of fairness, the application is going
21 to be so substantially different that it
22 really should be dismissed and refiled. It's

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1 going to be completely different from whatever
2 is on file right now.

3 MR. AGUGLIA: Of course, the basis
4 will still be the same. The PSC said the sign
5 is too high. So we're going to lower the
6 sign. They said you might be queuing on
7 public space, so we're going to go from four
8 stations and eight pumps to two stations and
9 four pumps. They said they wanted more
10 landscaping. We had proposed to landscape
11 roughly 18 percent of the impervious area.
12 We're going to landscape more.

13 So you still have the same
14 substantial basis.

15 CHAIRPERSON MILLER: Okay. And any
16 revised plans would be served on the ANC in
17 time for them to comment, correct?

18 MR. AGUGLIA: Absolutely. And it
19 will be served upon them as part of the PSC
20 hearing. So they will have it, you know,
21 within the next month or so.

22 MR. LUNA: That's purely

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1 speculative though. I mean, the -- they
2 haven't even gone before the Public Space
3 Committee. They haven't -- I mean, there are
4 lots of steps that happen between now and then
5 before they can even claim to have plans that
6 are ready for the Board to review.

7 MR. RONNEBERG: Madam Chair, the
8 applicant made many requests of the Public
9 Space Committee, all of which were denied and
10 was chastised by the Public Space Committee
11 for not following D.C. Regulations. So we
12 have a case here where the ANC has put a lot
13 of time and effort and it takes a lot of time
14 and effort to muster people to these hearings.

15 And when these hearings are constantly
16 continued, it's difficult for the community to
17 cope with a case that continues.

18 You know, for example, I have to
19 take -- I'm on vacation here to come to this
20 hearing for a case that has to be continued.
21 I have important things to do at my work. So
22 I think given the applicants lack of

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1 preparation for the prior case and the fact
2 that we have no plans here, I think,
3 functionally it would be better, much better
4 if the application was denied and they were
5 allowed to reapply.

6 CHAIRPERSON MILLER: Anything else?

7 MR. AGUGLIA: Of course, from our
8 perspective, we have a tenant paying a lot of
9 money for a vacant property with no income
10 coming in. We have vacant property which does
11 not bring any revenue into the District of
12 Columbia. And again, I point out very quickly
13 that there is an important policy
14 consideration. I passed out this pamphlet.

15 There are no gas stations in ANC-
16 6A.

17 CHAIRPERSON MILLER: Okay. We
18 don't want to get into the merits though.
19 Really, I think just the postponement. But I
20 think also if you were to -- if it were to be
21 dismissed, then they would have to pay again
22 for an application, I think. Is that not

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1 true, if it were to come in again? Well, I
2 think so. I think that's one of the --

3 MR. LUNA: \$200 for a guy that owns
4 30 gas stations doesn't seem too unfair.

5 CHAIRPERSON MILLER: Okay. Well,
6 let me ask my Board Members. I think that we
7 often just reschedule cases when they are
8 meeting with other bodies that are deciding
9 information that is going to affect this case.

10 So I don't see -- I know it is, you know,
11 somewhat of a burden when community members
12 have to take time out to come to hearings and
13 then they get continued.

14 But I think when you weigh that in
15 the whole picture, it doesn't seem like
16 grounds for dismissal and refileing. But also,
17 if there are other grounds for dismissal which
18 you have raised, the applicant can then
19 respond to that. I don't know. We don't
20 usually decide things ahead of time, so I
21 guess if we continue this, we would decide
22 that issue at that hearing. That's the way it

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1 usually works.

2 Do others have an opinion about
3 continuing or not continuing?

4 VICE CHAIRMAN LOUD: I agree with
5 you, Madam Chair. I think good cause has been
6 shown for a continuance. I would hope, and we
7 do this anyway, when we do these things, that
8 when we do continue it, it's a real firm date,
9 so we don't have the situation we have today
10 with the ANC-6A Chair of the Economic
11 Development Committee and his counsel coming
12 down and having to just recalendar another
13 date in the future.

14 On the other hand, our rules are
15 real clear about good cause being shown and
16 having to interact with other agencies of the
17 D.C. Government is good cause. So I'm -- I
18 support the continuance.

19 CHAIRPERSON MILLER: Okay.

20 MR. RONNEBERG: Can I make a
21 request? If we do show up, if the applicant's
22 public space -- next public space application

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1 is denied and we come to another continuing
2 case and they still do not have a public
3 space, I would ask the Board that, at that
4 point, to consider dismissal of the case.

5 MR. LUNA: I would also if it is
6 continued, I would ask for more time than the
7 applicant is giving. I mean, four months is,
8 I think, optimistic. I have actually
9 communicated with Matthew Marcou, the Chair of
10 the Public Space Committee, and he is not
11 quite as optimistic as the applicants are
12 about the timing.

13 I mean, he actually hasn't given
14 any firm dates. And so for the applicants to
15 say that they can provide plans by January 22nd
16 when the Chair of the Public Space Committee
17 isn't even sure he can pull together the
18 record by then, just seems far more
19 optimistic.

20 So either -- you know, the Public
21 Space Committee has decided the issue that was
22 -- that they had to decide. The applicants do

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1 not have -- this Board continued the case
2 previously so the Public Space Committee could
3 review whether the applicant used -- could use
4 public space. That permission was denied
5 already.

6 So now, we are basically looking at
7 continuing an application that can't legally
8 be built. So that is kind of the essential
9 problem. So now, we have to go through the
10 entire Public Space Committee review process
11 again on a time line that, quite honestly, the
12 applicant has somewhat fabricated.

13 I have been in communication with
14 Matthew Marcou and he hasn't set any firm
15 dates on anything, because he doesn't even
16 have the record and he doesn't know when he is
17 going to have the record.

18 CHAIRPERSON MILLER: Okay.

19 MR. LUNA: So if --

20 CHAIRPERSON MILLER: Let me just--

21 MR. LUNA: -- we are going to
22 continue it, it really should be beyond April.

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1 It should be 9 months to really give, 6 to 9
2 months, to give the process adequate time to
3 actually work through the notice periods. The
4 ANC is entitled to the Public Space
5 Committee's own review process and allow for
6 scheduling for all these things.

7 CHAIRPERSON MILLER: First of all,
8 is there consensus in postponing the case,
9 continuing it at least once more? Okay. So
10 now we have to find a realistic date. And we
11 don't have any time in May anyway, so I think
12 that the first available would be June, that's
13 where we started with the previous case that
14 was seeking postponement.

15 So do you want to -- Mr. Aguglia,
16 is June --

17 MR. AGUGLIA: June is acceptable.

18 CHAIRPERSON MILLER: Is Mr. Luna
19 wrong that -- is June going to be enough time?

20 Because -- so you're not in a position asking
21 for another continuance.

22 MR. AGUGLIA: That's acceptable.

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1 CHAIRPERSON MILLER: June?

2 MR. AGUGLIA: A June date.

3 CHAIRPERSON MILLER: You think is
4 realistic?

5 MR. AGUGLIA: Yes.

6 CHAIRPERSON MILLER: June 16th in
7 the afternoon?

8 MR. AGUGLIA: When would you want
9 me to prepare my opposition and file that to
10 the motion to dismiss?

11 CHAIRPERSON MILLER: And will you
12 be filing with the Board, in general? I
13 couldn't remember. You went through a
14 scenario. Are you -- will you only be filing
15 revised plans and a new, you know, reviewed
16 prehearing statement, you know, 14 days ahead
17 of the hearing or are you going to be --
18 that's too short for at least giving them
19 notice and everything.

20 I mean, I'm just wondering if we
21 should -- you file your opposition with some
22 other papers or you just want to file it ahead

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1 of time?

2 MR. AGUGLIA: I would file it ahead
3 of time.

4 CHAIRPERSON MILLER: Just get that
5 done. Okay.

6 MR. AGUGLIA: Yes.

7 CHAIRPERSON MILLER: When do you
8 think you can get it done by? I mean, the
9 minimum time is usually 10 days in accordance
10 with the Court rules. But we don't have any
11 specific rules.

12 MR. AGUGLIA: I would say March
13 2nd, which is a Monday.

14 CHAIRPERSON MILLER: Okay. When do
15 you see having revised plans served on the
16 ANC?

17 MR. AGUGLIA: When do you think?
18 Hopefully by the end of this month, because we
19 intend to file revised plans with the PDRM,
20 you know, with Public Space for the PDRM,
21 which is the preliminary meeting, so we can
22 provide them with the same plans at the same

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1 time.

2 So let's say not later than the end
3 of this month.

4 CHAIRPERSON MILLER: Okay. Good.
5 And will they change? Might they change as a
6 result of that meeting?

7 MR. AGUGLIA: They could.

8 CHAIRPERSON MILLER: Okay.

9 MR. AGUGLIA: And I guess your
10 question is then will we keep the ANC updated
11 with revisions and the answer is yes.

12 CHAIRPERSON MILLER: Okay. Good.
13 And certainly far enough in advance of the
14 hearing, so that they have an opportunity to
15 have their ANC vote on it. Yes, sir?

16 MR. RONNEBERG: We're still trying
17 to figure out our calendar, if you can give us
18 one brief moment? We can accept that date.

19 CHAIRPERSON MILLER: Okay. When is
20 your ANC meeting in May or in April, just so
21 that we know --

22 MR. RONNEBERG: Our ANC meeting is

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1 the second Thursday of the month. So May 14th.

2 CHAIRPERSON MILLER: So, Mr.
3 Aguglia, will they have the final revised
4 plans by May what?

5 MR. RONNEBERG: We need that -- we
6 have a committee structure and we need that --

7 CHAIRPERSON MILLER: Okay.

8 MR. RONNEBERG: -- if it's in May,
9 we're going to need the plans -- we have an
10 Economic Development and Zoning Committee
11 meeting in April and that's the third
12 Wednesday of April. And we need to have plans
13 at least a week ahead of that.

14 CHAIRPERSON MILLER: I mean, it
15 sounds like you will, but I just -- if you
16 want to get on the record what the -- the
17 hearing is June 16th. And Mr. Aguglia seems to
18 say that, you know, he is going to have stuff,
19 revised plans, in March. But I just wanted to
20 make sure that the final plans are to the ANC
21 in time for the hearing. Yes?

22 MR. AGUGLIA: Assuming that we get

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1 our hearing and we hope to, the PSC hearing,
2 in early April, then they will have the
3 revisions, if there are any further revisions
4 recommended by that board, in time for their--
5 when was your economic development meeting,
6 April what?

7 MR. RONNEBERG: April 15th.

8 MR. AGUGLIA: April 15th.

9 MR. RONNEBERG: And we need that
10 really a week ahead of time. So we have -- to
11 give our Committee Members time to review the
12 plans and the public. We post all our agendas
13 to the public.

14 MR. LUNA: So if we can have plans
15 by April 8th, then that would be in time for
16 our April 15th meeting. And then we make our
17 recommendation to the ANC.

18 MR. AGUGLIA: But the PSC hearing
19 isn't until April 9th, if we get on the
20 calendar.

21 CHAIRPERSON MILLER: Okay. You're
22 going to have to be flexible with that

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1 schedule. It sounds like though, I just
2 wanted to make sure that the June 16th date for
3 the hearing did allow enough time for the ANC
4 to meet and vote on the plans and it sounds
5 like it does certainly. So okay.

6 MR. LUNA: Now, this is all
7 contingent on the Public Space Committee
8 actually having an opportunity to review the
9 plans and approve the plans.

10 CHAIRPERSON MILLER: Yeah. Okay.
11 So June 16th is the date for the -- that the
12 hearing is continued to. And let's just get
13 that date. Mr. Aguglia, what did we say the
14 date that your opposition to the motion to
15 dismiss, what date?

16 MR. AGUGLIA: March 2nd.

17 CHAIRPERSON MILLER: March 2nd,
18 okay. Okay. And then if there is a revised
19 pre-hearing statement that may need to be
20 done, if there are big changes in the
21 application, you would do that 14 days in
22 advance of the --

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1 MR. AGUGLIA: That is correct.

2 CHAIRPERSON MILLER: -- hearing.

3 Okay. Good. Are we all set?

4 MR. AGUGLIA: Sure.

5 CHAIRPERSON MILLER: All right.

6 MR. AGUGLIA: Thank you, Madam
7 Chair.

8 CHAIRPERSON MILLER: Thank you.

9 MR. RONNEBERG: Thank you.

10 CHAIRPERSON MILLER: Okay. Ms.
11 Bailey, now I believe that completes the
12 preliminary matters, is that correct, for
13 today's hearings?

14 MS. BAILEY: Yes, Madam Chair.

15 CHAIRPERSON MILLER: And everyone
16 who is here who, I don't believe we have done
17 swearing in yet, wishes to testify in support
18 or opposition should rise now for any of the
19 cases and Ms. Bailey will swear you in.

20 MS. BAILEY: Please, stand to take
21 the oath. You look puzzled. What's the
22 problem? Yes. Would you, please, raise your

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1 right hand?

2 (Whereupon, the witnesses were
3 sworn.)

4 MS. BAILEY: Thanks. Madam Chair,
5 the next case is Application 17871. This is
6 the Application of NDC Home Again 22A LLC,
7 pursuant to 11 DCMR 3103.2, for a variance
8 from the lot area requirements under sub
9 section 401.3, to allow the conversion of an
10 existing building from two residential
11 dwelling units to three. The property is
12 Zoned R-4. It is located at 902 T Street,
13 N.W., Square 362, Lot 234.

14 CHAIRPERSON MILLER: Whenever you
15 are ready if you would introduce yourselves
16 for the record, please.

17 MR. BROWN: Good morning. My name
18 is Kevin Brown. I'm with the Neighborhood
19 Development Company. We're located at 4110
20 Kansas Avenue, N.W.

21 MR. GOINS: My name is Jeff Goins
22 with PGN Architects. I'm a partner with PGN

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1 Architects.

2 CHAIRPERSON MILLER: I'm sorry, I
3 missed your last name.

4 MR. GOINS: Jeff Goins.

5 CHAIRPERSON MILLER: Okay. Thanks.

6 Okay. You are here for a variance. You
7 know, with respect to the variance test you
8 need to address three prongs. What is unique
9 about your property or your situation that
10 gives rise to a practical difficulty in
11 complying with the regulations. And then why
12 our granting you this relief would not result
13 in a substantial impairment of neighboring
14 properties, the Zone Plan. Okay. So that's
15 our framework.

16 MR. BROWN: Good morning, Members
17 of the Board or good afternoon, Members of the
18 Board. Before I discuss the actual variance,
19 I just want to give a quick overview of the
20 project.

21 NDC was awarded 902-904 T Street by
22 DHCD's Home Again Initiative as a part of

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1 Bundle 22. After over a year of negotiations,
2 a land disposition agreement was executed
3 with the District in the fall of 2007. The
4 property was in transfer to NDC 22A Home Again
5 LLC in February of 2008.

6 The agreement with the District
7 requires that the property is developed into
8 three residential for-sale condo units with
9 one affordable unit. Due to the size of the
10 existing structure, these units will be very
11 large. There are two 1,300 square foot units
12 and one 900 square foot unit. Both are two
13 bedroom and two baths.

14 These buildings are currently
15 vacant and in very bad condition. Therefore,
16 it will be very expensive to restore and
17 renovate them. The major issues driving these
18 costs are the size of the existing structure
19 compared with the number of units.

20 The existing roof has failed on
21 both buildings. In the smaller building, the
22 floor structures have collapsed. In the

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1 larger structure, the floor systems are
2 failing. Lead and asbestos remediation will
3 be required in both buildings. And also, the
4 facade must be restored to historic criteria.

5 Throughout this lengthy process of
6 negotiating with the District and designing
7 the project, NDC has worked with the District,
8 our architect, the ANC, community groups and
9 HPRB to develop a plan that not only allows
10 the restoration of this vacant building, but
11 meets the concerns of the community, provides
12 affordable housing and is financially viable.

13 In our application, we have
14 requested approval of a variance, the minimal
15 lot area required for this apartment
16 conversion. We believe this project should be
17 granted relief, because we meet the three part
18 criteria for the variance to be granted.

19 In addition, their economic
20 hardships due to affordability requirements,
21 the condition of the building and the historic
22 restoration requirements.

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1 I want to address the three part
2 test, because there is some disagreement, I
3 believe, between us and OP.

4 CHAIRPERSON MILLER: Okay. First
5 of all, could you just set us up with respect
6 to exactly what regulation you don't meet?
7 Like it requires this and you can only meet
8 this much.

9 MR. GOINS: The regulation we don't
10 meet is 401.3. It's the land area required
11 for a subdivision to apartment building of 900
12 square feet per dwelling or flat. The current
13 site is 1,529 square feet, which the
14 requirement would be 2,700 square foot for
15 three dwellings and the site is only 1,529
16 square feet.

17 MR. BROWN: The -- I guess the
18 first part of the test is does this property--
19 is it specific uniqueness with respect to
20 exceptional narrowness, shallowness, shape,
21 topography or other extraordinary or
22 exceptional situations or conditions. And the

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1 answer to that is yes.

2 Jeff Goins of PGN can go into that
3 in further detail.

4 MR. GOINS: Yeah. I want to kind
5 of address that and then I think Kevin and I
6 will just kind of go backwards and forwards as
7 we present the case here.

8 The uniqueness of this site is the
9 fact that architecturally if you look at the
10 existing board here, there exists two
11 buildings on site. Not only in architectural
12 terms, but it actually has two separate
13 entrances and there is actually two separate
14 addresses.

15 And when you look at the drawing,
16 it might show a little bit better than the
17 picture here, you can see the second building,
18 the smaller building is roughly about 15 to 20
19 feet smaller than the other structure. There
20 is a party wall conditioned that separates the
21 two architecturally.

22 So there is no communication

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1 between the smaller structure and the larger
2 structure architecturally. And I think you
3 can further see from a design standpoint,
4 there is not much communication either, which
5 we actually think that's what makes this
6 building unique.

7 The building on the corner of 9th
8 and T is very ornate in nature and has many
9 ornate details, where the other building --
10 well, you can see from the mansard roof and
11 some of the other details, the historic porch
12 entry. The other building is really a flat
13 front brick facade with its own entrance.

14 The floor lines don't line up, so
15 there is -- architecturally it's very -- it's
16 not very feasible to actually connect these
17 buildings architecturally nor structurally.
18 So that's kind of what Kevin is talking about
19 the uniqueness in the architecture there.

20 CHAIRPERSON MILLER: So why are
21 they considered one building?

22 MR. GOINS: Because they are on one

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1 lot.

2 CHAIRPERSON MILLER: One lot, okay.

3 MR. GOINS: Yeah, they are on one
4 lot. And the second thing is the two
5 buildings actually occupy 87 percent of the
6 lot. They are not in accordance to the 60
7 percent. So I mean, if you wanted to kind of
8 put that in square foot terms, I mean, in an
9 R-4 Zone, this lot, that would be the
10 equivalent of about, approximately, 1,200
11 square feet of usable space at 87 percent.

12 And the two structures, we will get
13 into the design and the floor plans in a
14 minute. But that's kind of the overview of
15 the site and the architectural elements that
16 we think make it unique.

17 CHAIRPERSON MILLER: Sorry to be a
18 little bit dense here.

19 MR. GOINS: Oh, that's fine.

20 CHAIRPERSON MILLER: Okay.

21 MR. GOINS: Go ahead.

22 CHAIRPERSON MILLER: Which of the

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1 two buildings. because it looks like that
2 picture is divided into three parts. Do you
3 see what I'm saying? There is the third part
4 and then this.

5 MR. GOINS: Yeah, that building on
6 the end, if you can go there and show them
7 where that building actually ends? The
8 building on the end actually ends, yeah,
9 sorry. You can see -- there you go. There is
10 the floor plans of the two structures there.

11 The building on the end will
12 actually be a three-story single-family home,
13 in essence. It just happens to be on one lot.

14 And the other taller building that you see,
15 which is quite large, will actually be divided
16 into two units.

17 Each of those units will be 1,300
18 square foot, two bedroom, 2.5.

19 CHAIRPERSON MILLER: So that little
20 square one on the right --

21 MR. GOINS: Will be the affordable
22 unit, 900 square foot, two bedroom unit.

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1 CHAIRPERSON MILLER: Oh, that's --
2 so this is all part of the building?

3 MR. GOINS: Yeah, that's all part
4 of the building.

5 CHAIRPERSON MILLER: All three
6 parts. Okay.

7 MR. GOINS: And that's what we
8 think is unique about this particular property
9 is that the party wall, the architectural and
10 the design elements kind of make this unique
11 what the -- in respect to the 401.3 and the
12 land area requirement.

13 I mean, the two structures that are
14 on the one lot make up over 4,000 square feet
15 of usable area or gross area, excuse me.

16 CHAIRPERSON MILLER: When you're
17 talking about two structures, I'm sorry, I'm
18 just a little confused which. There seem to
19 be three parts there.

20 MR. GOINS: Kevin is going to show
21 you.

22 CHAIRPERSON MILLER: Okay.

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1 MR. GOINS: Yeah.

2 MR. BROWN: This is the --

3 CHAIRPERSON MILLER: You need to be
4 on a mike.

5 MR. GOINS: There is actually a
6 party wall condition meaning that there --

7 MR. BROWN: This is the party wall
8 that Jeff is talking about.

9 MR. GOINS: Yeah.

10 MR. BROWN: So this is one
11 structure. This -- all of this is the second
12 structure. This is a false line. It's just--

13 MR. GOINS: Yeah.

14 MR. BROWN: -- a shadow line.

15 CHAIRPERSON MILLER: Okay. That's
16 not a party wall. The line on the left?

17 MR. BROWN: No. This is the party
18 wall.

19 CHAIRPERSON MILLER: Okay.

20 MR. BROWN: And they actually had
21 two, it was 902 and 904 T Street with two
22 separate entrances.

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1 MR. GOINS: Right.

2 CHAIRPERSON MILLER: Thank you.

3 MR. GOINS: We have a section if
4 you would like to see that? That might show
5 it a little better. But I think as mentioned,
6 the larger building, the result and the
7 division of the two units will be two family
8 units at 1,300 square feet, over 1,300 square
9 foot. And then the affordable unit is 900
10 square foot and also a two bedroom unit. And
11 in essence, it will be like a single-family
12 home, because it will have its own entrance.

13 There is a section drawing there on
14 the end that might show it a little better
15 there. We have received HPRB approval. We
16 have worked with them for about -- I guess we
17 started this project about a year ago. We
18 have received approval from them.

19 MR. BROWN: Should I continue?

20 CHAIRPERSON MILLER: I should have
21 this in front of me, but I know, you know, it
22 was recently enacted. Does the regulation

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1 call for 900 square feet?

2 MR. GOINS: Yes.

3 CHAIRPERSON MILLER: For what?

4 MR. GOINS: 401.3. The land area
5 required in an R-4 Zone --

6 CHAIRPERSON MILLER: For a
7 conversion, right?

8 MR. GOINS: Yes, for a conversion,
9 yes.

10 CHAIRPERSON MILLER: So but you are
11 saying it isn't 900 square feet.

12 MR. GOINS: No.

13 CHAIRPERSON MILLER: Oh.

14 MR. GOINS: We only have 1,529 of
15 lot area. We would be required to have 2,700
16 for three units. And I think our argument is,
17 obviously, that what makes this unique is that
18 there is actually two existing structures on
19 the site now. It's not feasible to really
20 connect them into two units.

21 MS. MONROE: Madam Chair, can I ask
22 a quick question, which just dawned on me a

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1 second ago when you said this. Was this three
2 units in the past or was it two? The reason I
3 ask that and I'm -- legally, because if it was
4 already three --

5 MR. BROWN: Right.

6 MS. MONROE: -- is it a conversion?

7 MR. BROWN: It was a rooming house
8 is the last occupancy for it, for that
9 building.

10 MS. MONROE: So it would be
11 probably considered a conversion then.

12 MR. BROWN: Yeah.

13 MS. MONROE: It wasn't three units
14 and you're going with three units again. It
15 was a different use.

16 MR. GOINS: Right.

17 MR. BROWN: It was a different use.

18 MS. MONROE: Okay. Okay.

19 MR. GOINS: It has been vacant for
20 a long -- for some time. I'm not sure
21 exactly, but it has been vacant for a long
22 time. As Kevin mentioned, I think the other

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1 uniqueness thing that we would argue is that
2 it's a historic building that we are restoring
3 the exterior and renovating the interior. And
4 the current state is in very bad shape.

5 As Kevin mentioned, the roof and
6 the floor are collapsed. We have a picture of
7 the interior, if you would like to see it, but
8 I mean, one of the bathrooms fell from the
9 second floor to the first floor, so I mean
10 it's a substantial amount of work that is
11 going to be required.

12 CHAIRPERSON MILLER: Okay. You
13 know, when we look at exceptional condition or
14 uniqueness, it has got to be tied to the
15 practical difficulty. It's not just oh, all
16 the ways in which this property is like
17 different or whatever.

18 So the reason you are raising the
19 historic aspect of it that you need to
20 renovate it, does that go to the cost or does
21 that go to physical constraints, you know,
22 related to how you divide it?

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1 MR. BROWN: It goes to cost and
2 physical restraints, because we are not
3 modifying the exterior of the building.

4 MR. GOINS: Yeah. Not one square
5 foot is being added to this property. We are
6 working within the envelope of the two
7 structures restoring the exterior and
8 renovating the interior.

9 CHAIRPERSON MILLER: I mean, I
10 guess the point would be though then why can't
11 you just have two units instead of three,
12 since you don't have enough space for three?

13 MR. BROWN: Because it's not
14 financially viable and we are required to have
15 one of the -- it's not financially viable and
16 especially with the requirement that one of
17 the units be affordable. Can you explain the
18 requirement?

19 COMMISSIONER TURNBULL: Can you
20 explain the requirement?

21 MR. BROWN: Who asked?

22 COMMISSIONER TURNBULL: I asked

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1 that.

2 MR. BROWN: Oh, I'm sorry. When
3 this project was awarded to Neighborhood
4 Development via the Home Again Initiative, I
5 believe that initial award, correct me, was in
6 2006, but we didn't sign a Land Disposition
7 Agreement until late 2007. Part of their
8 goals when they dispose of vacant and
9 unimproved land is to also provide home
10 ownership opportunities to -- that are
11 affordable.

12 And so part of the covenant that
13 transferred with this property is the
14 affordable requirement.

15 COMMISSIONER TURNBULL: Did you
16 know at the time that this property would not
17 meet the zoning -- meet the requirements that
18 you -- to develop it as three units?

19 MR. BROWN: We did not. And I
20 believe that came about.

21 MR. GOINS: Yeah, that 401.3 was
22 revised last year.

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1 COMMISSIONER TURNBULL: Right.

2 MR. GOINS: And we had -- I think
3 we were -- completed the HPRB process at that
4 time. So we were not aware of it at the time,
5 so it definitely was a surprise, at that
6 point.

7 COMMISSIONER TURNBULL: Do you --
8 what range of affordability are you looking at
9 here? What income range is this house going
10 to be?

11 MR. GOINS: It is 80 percent, but
12 right now the maximum price per -- also part
13 of that covenant, the maximum price we can
14 charge for that is \$271.

15 COMMISSIONER TURNBULL: Okay.

16 MR. BROWN: Which is a substantial
17 discount to what is available in that area.

18 COMMISSIONER TURNBULL: Okay.
19 Thank you. Is the smaller structure historic?

20 MR. GOINS: Yes, it is.

21 COMMISSIONER TURNBULL: It is
22 considered historic?

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1 MR. GOINS: It is.

2 COMMISSIONER TURNBULL: Or
3 contributing?

4 MR. GOINS: It's contributing, yes.

5 COMMISSIONER TURNBULL: Okay.
6 Thank you.

7 MR. GOINS: Yeah.

8 CHAIRPERSON MILLER: So when you
9 entered the agreement, was 401.3 not revised
10 yet?

11 MR. GOINS: No.

12 CHAIRPERSON MILLER: Okay.

13 MR. JESICK: Madam Chair, if I may?
14 While 401.3 was updated, it has always said
15 that there will be 900 square feet per -- of
16 land area per unit. That's not new.

17 CHAIRPERSON MILLER: Do you want to
18 introduce yourself for the record?

19 MR. JESICK: Sorry, my name is Matt
20 Jesick with the Office of Planning.

21 CHAIRPERSON MILLER: Okay. Thank
22 you.

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1 MR. GOINS: Just to say one thing
2 to that, we had met with the Office of
3 Planning on several occasions during the
4 design of this building and Historic
5 Preservation on numerous occasions. At one
6 point we were even encouraged to add an
7 additional unit.

8 So during this process, it was
9 definitely not on our radar that this wasn't
10 going to be allowed.

11 CHAIRPERSON MILLER: And how long
12 has the property been vacant, that you know?

13 MR. BROWN: I'll get that. I don't
14 know. I know it has been vacant for many
15 years, because we -- the -- actually, the
16 biggest push we're getting to renovate this
17 project has actually been from the ANC and the
18 community. But I can't tell you how many
19 years it has been vacant. But just judging
20 from the condition, it has been many years.

21 CHAIRPERSON MILLER: Would it be
22 that it was vacant for so long because it

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1 needs so much work and money put into it and
2 then people haven't wanted to do that? Do you
3 have an idea?

4 MR. BROWN: I know the District
5 acquired it from the previous owner, who had
6 not renovated it, as part of the Home Again
7 Initiative. And that was brought about by the
8 community put pressure on the District to
9 obtain the property, because it had been
10 sitting vacant.

11 My guess is that it is a
12 substantial amount of renovation and given
13 current market conditions, even with relief,
14 this is going to be a very difficult project
15 for us to make work. It is absolutely not
16 viable without relief.

17 Earlier, Martine Combone was here
18 from DHCD, because, basically, without relief,
19 this is at a standstill and we will have to go
20 back to them to either renegotiate or
21 something else, but the project definitely
22 will not be restored or renovated.

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1 COMMISSIONER TURNBULL: What's next
2 to the smaller structure?

3 MR. GOINS: There is actually a
4 very small alleyway there that I think we
5 might have a -- you can kind of see right
6 there in that view right there. There is an
7 existing structure next to it and then there
8 is a small alleyway that goes to the units
9 behind. Yeah, there is kind of a site plan.

10 Oh, there is a side yard and then
11 there is a house and then the alleyway there.
12 There is a small side yard.

13 COMMISSIONER TURNBULL: Who does
14 the side yard belong to? Is that this
15 property?

16 MR. GOINS: Yes, it belongs to this
17 property.

18 COMMISSIONER TURNBULL: So that's
19 not a parking pad or anything? That's simply
20 a grassy area?

21 MR. GOINS: Yes.

22 MR. BROWN: Correct.

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1 COMMISSIONER TURNBULL: Okay.

2 Thank you.

3 CHAIRPERSON MILLER: This Land
4 Disposition Agreement was set up by whom, Home
5 Again Initiative? What is it?

6 MR. BROWN: Yes, the Home Again
7 Initiative.

8 CHAIRPERSON MILLER: Okay. And
9 that's a District of Columbia --

10 MR. BROWN: DHCD.

11 CHAIRPERSON MILLER: DHCD, okay.
12 And when they set this up, they set it up for
13 three units?

14 MR. BROWN: That was the original.
15 When we looked at it, we went through various
16 options of what we could do on this site. At
17 one point, there was talk of more units when
18 we initially met with OP. However, in the
19 final agreement with DHCD, it was determined
20 that it would be three units.

21 MR. GOINS: Well, I mean, just to
22 interject something here, because we're the

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1 architect. This was part of a bundle award
2 that included, I think, nine other vacant
3 properties. This was the only one that had an
4 existing building on it that in D.C. was
5 awarded. The rest of the properties that were
6 awarded were vacant properties and this was
7 the one that was existing. And I think that
8 was because of the community support to get
9 this building restored.

10 CHAIRPERSON MILLER: Okay. Go
11 ahead.

12 MR. BROWN: I guess the second part
13 of the test, does extraordinary or exceptional
14 situation pose a practical difficulty, which
15 is unnecessarily burdensome to the applicant?

16 And we believe it does. There are
17 architectural, market, practical, financial
18 issues that provide an unnecessary burden to
19 NDC.

20 First, again, it's just not
21 financially viable without the third unit.
22 There are the affordability requirements.

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1 Also, if we were forced to develop this as two
2 units, you would end up with one unit over
3 300. One unit basically will be 3,000 square
4 foot -- feet where you will be forced to
5 somehow connect these two separate buildings
6 that are separated by a party wall and have
7 floors at different levels. And just the
8 overall cost implication, the expense of doing
9 this renovation.

10 The third part of the test OP is in
11 agreement with us that not only does this not
12 provide substantial detriment to the public
13 good, it, in fact, benefits the community by
14 renovating this long vacant building. And I
15 would like to add it also provides affordable
16 housing opportunity in the neighborhood where
17 there aren't many.

18 The -- I guess the other thing I
19 would like to point out is that I believe
20 granting the relief to this project does not
21 impair the intent of the Zoning Regulations.
22 This is a unique nonconforming existing

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1 structure that when restored will provide
2 family units.

3 And so for those reasons, I don't
4 believe it impairs the intent of the Zoning
5 Regulations. And also, as stated earlier,
6 there are economic hardships on this project,
7 based on affordability, the scale of
8 renovation and the historic nature of the
9 facade.

10 MR. GOINS: Just to kind of echo
11 Kevin's thoughts there on the intent of the
12 zoning, when we looked at this and the Zoning
13 Regulations, we kind of read that as
14 protecting the R-4 Zone. I live in an R-4
15 Zone, which is a family zone. And we kind of
16 think that we are providing three two bedroom
17 units, two of which will be 2.5 bedrooms. I
18 mean -- yeah, 2.5 bedrooms, because they will
19 have a den, a study in both of those units.

20 So we feel like that the intent to
21 -- of the R-4 Zone is there. We just don't
22 have the land area, but we have this

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1 substantial structure that exists, two
2 structures that exist on the site to provide
3 those uses.

4 MR. BROWN: I guess the only other
5 thing I would like to add is that we have met
6 with the ANC on numerous occasions and have
7 their support. We have the support of Council
8 Member Graham. In fact, he keeps calling us
9 to let us know when we are going to finish
10 this project. And really that's -- and we
11 also have gone through and met with HPRB on
12 several occasions and they have, in fact,
13 stamped and approved the final version of the
14 plans.

15 CHAIRPERSON MILLER: Okay. I
16 certainly get the economic feasibility
17 argument and the affordable housing element
18 and, you know, your agreement. If economics
19 weren't a constraint and it was just -- well,
20 the historic I understand goes to the expense
21 as well, because it requires a big infusion of
22 money to do that, right?

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1 As far as the architectural
2 constraints of an historic structure, is there
3 a correlation between that and practical
4 difficulty of complying with the regulation
5 for the 900 square feet per unit?

6 MR. GOINS: Well, I think then you
7 would end up with two units. And as Kevin
8 said, basically, the house would be one unit.

9 Unless you try to make a physical connection
10 between the smaller structure on site, which
11 is really not possible, because the floor
12 lines don't line up and I think you would --
13 it would be very inefficient if you did try to
14 make a connection between the two units.

15 So you would end up with one very,
16 very large unit. And then the other building
17 would be your affordable requirement, so, you
18 know.

19 CHAIRPERSON MILLER: And what's
20 wrong with that? Is there not a market for
21 that or what?

22 MR. BROWN: One, there is really

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1 not a market for that size of a condominium
2 and also it wouldn't be financially viable.
3 We don't believe we would be able to sell that
4 one unit for the price of two units. Once you
5 get -- once you start going above certain
6 square footage or sizes in a unit, your actual
7 increase in sales price per square foot
8 declines.

9 MR. GOINS: You would end up with
10 probably about a five bedroom house as well.
11 I mean, it would be a five -- I mean, we have
12 -- yeah, five bedroom condo. We have
13 separated the structure into two units and we
14 are getting two bedrooms and a den in each
15 unit and 2.5 baths in each unit. So if it was
16 one structure, it would be a very large family
17 home.

18 CHAIRPERSON MILLER: And your point
19 though is -- I mean, there are some large
20 family homes, but there is not a market for it
21 in this location for what you would need?

22 MR. GOINS: Well, I think the

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1 burden with the restoration costs and the
2 renovation cost for the client, I would agree,
3 it would be hard.

4 CHAIRPERSON MILLER: Do you have a
5 copy of the Land Disposition Agreement that
6 requires the affordable housing?

7 MR. BROWN: I have the declaration
8 of covenant here for the property that we
9 signed with the District which has affordable
10 requirements here.

11 CHAIRPERSON MILLER: Is that a
12 problem for you to submit in the record? Is
13 there anything confidential or anything?

14 MR. BROWN: No, I brought copies.

15 CHAIRPERSON MILLER: Okay. Because
16 that is one of the factors that we would be
17 considering that it's a requirement for
18 affordable housing, correct?

19 MR. BROWN: Okay. And if needed, I
20 could have -- I could talk to DHCD also about
21 providing a letter confirming those
22 requirements.

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1 CHAIRPERSON MILLER: Let's see if
2 it's in this covenant, that might be
3 sufficient.

4 MR. BROWN: It's in this covenant.

5 CHAIRPERSON MILLER: Okay.

6 MR. BROWN: Can I --

7 CHAIRPERSON MILLER: Okay. Do you
8 have an extra copy now or not?

9 MR. BROWN: No, I brought the
10 appropriate amount of copies.

11 CHAIRPERSON MILLER: Okay, good.
12 Okay. Thank you.

13 COMMISSIONER TURNBULL: I've got
14 one question from a design standpoint. I'm
15 just curious on the second floor in the tower.
16 Why did you remove so much of the floor
17 space?

18 MR. GOINS: I think when we were
19 looking at the design idea, the market we were
20 looking at designing it as two condos. Are
21 you talking about the double heighted space
22 right there, I assume.

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1 COMMISSIONER TURNBULL: Yeah, it
2 looks like you have -- you aren't occupying
3 all of that tower on the second floor and the
4 study. It looks like you have got it open
5 down below.

6 MR. GOINS: We do, we do, indeed.
7 You can see from the rendering right there.

8 COMMISSIONER TURNBULL: Yeah.

9 MR. GOINS: It is open below.

10 COMMISSIONER TURNBULL: Okay. I'm
11 just curious, you are losing study space. I'm
12 just -- I mean, it's a nice design feature.

13 MR. GOINS: Yeah.

14 COMMISSIONER TURNBULL: But I'm
15 just curious.

16 MR. GOINS: Okay.

17 MR. BROWN: It's a nice design
18 feature and the unit is already 1,300 square
19 feet, which is above norm size unit in that
20 area for two bedrooms. So we just felt that
21 the design feature would be something that
22 sets it apart.

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1 COMMISSIONER TURNBULL: Okay.
2 Thanks.

3 CHAIRPERSON MILLER: Let me ask you
4 this. I guess there wasn't a possibility of
5 subdividing the lot into two lots with the
6 bigger part on one and the affordable housing
7 on the other?

8 MR. GOINS: We actually looked into
9 that and we still wouldn't have enough for
10 three units, to do three units.

11 CHAIRPERSON MILLER: And could you
12 do, I don't know, like a flat? No? I don't
13 know. You must have looked into this. This
14 was the only scenario? Nothing else worked?

15 MR. GOINS: Well, the actual other
16 scenarios were actually more units. This was
17 -- when we were working with Historic
18 Preservation, it was hard to actually get
19 additional units and still maintain the facade
20 and some of the other elements, you know,
21 maintaining the integrity of the facade was
22 very important.

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1 So when you add additional units,
2 walls don't line up in the right place. And
3 so it -- the actual other scenario we looked
4 at was additional units, not less. Our -- I
5 guess -- I think we did look at, you know,
6 providing one unit on the first floor and then
7 having a unit above as opposed to the design
8 we have, but I think it has always been three
9 or more units.

10 Because I think the second
11 structure is -- basically, it's a stand alone
12 structure. So we really kind of focused our
13 energy on the house. What do you do with this
14 large house? And how do you make it work, you
15 know, with the requirements of the Home Again
16 and all that.

17 So we always looked at the smaller
18 structure as one single-family home. And when
19 we looked at the other larger structure, it
20 was always two or three units. And through
21 the process, we have derived the two.

22 MEMBER WALKER: Now, I'm still sort

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1 of struggling with that. I guess, I'm just
2 curious as to why you didn't subdivide it into
3 two lots, so then you would have the smaller
4 unit would be its own separate structure. And
5 then you would have a flat in the larger
6 structure.

7 MR. BROWN: But the -- I believe if
8 we subdivided it, then we would be having the
9 same discussion about the --

10 MR. GOINS: Right. The other
11 house.

12 MR. BROWN: -- large structure,
13 because that lot would not meet 900 square
14 foot for two, if we subdivided it.

15 CHAIRPERSON MILLER: Well, I think
16 Office of Planning --

17 MR. BROWN: We need --

18 CHAIRPERSON MILLER: -- is going to
19 weigh in on this for a second.

20 MR. GOINS: Yeah, regardless, we
21 would need 1,800 square feet.

22 CHAIRPERSON MILLER: Is that true?

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1 MR. JESICK: Not for a flat.

2 CHAIRPERSON MILLER: I don't think
3 so.

4 MR. JESICK: A flat is a permitted
5 use on any lot size in the R-4. I mean, they
6 would still have to deal with probably some
7 variances in order to obtain the subdivision,
8 because those lots would be -- would not meet
9 the standard lot sizes in R-4.

10 CHAIRPERSON MILLER: Okay. So it's
11 just trading one variance for another. Okay.
12 I'm sorry, are there questions?

13 VICE CHAIRMAN LOUD: Good
14 afternoon. Just off the top of your head, do
15 you know which section of the Declaration of
16 Covenant requires the affordable unit or
17 units?

18 MR. BROWN: Yes. The quickest way
19 to -- the quickest is if you go to Exhibit F,
20 which is the second from the last page, which
21 is referenced in the covenant. And if you
22 look at Unit C and it is -- an asterisk

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1 indicates the property will be sold to
2 individuals whose incomes levels are at or
3 below 80 percent of AMI, which is the third
4 unit in the 902-904 T Street.

5 And then the references to the
6 requirements of the affordability are
7 contained on -- I'm sorry there is not a page
8 number, would be the first, second, third --

9 VICE CHAIRMAN LOUD: If you don't
10 know, that's fine. I can, you know, review
11 it.

12 MR. BROWN: The bottom of the third
13 page. I'm sorry. If you look to the middle
14 of the third page, Item C, it speaks to the
15 affordable unit. But then also at the bottom
16 of it in Article 5 it speaks to the occupancy
17 period for the affordable unit and it's also
18 under A and B, Article 4. It's Article 3 and
19 Article 4 where you are going to find it.

20 VICE CHAIRMAN LOUD: Let me just
21 ask a couple of quick follow-up questions. So
22 as I understand it then, you are now under a

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1 legal agreement with the District of Columbia
2 where you have to develop three units, one of
3 which is affordable?

4 MR. BROWN: Yes.

5 VICE CHAIRMAN LOUD: And when they
6 did the solicitation, DHCD, was the
7 requirement for affordable specifically on 902
8 and/or 904 or was it the bundles, that a
9 certain percentage of the bundle of 9 had to
10 have an affordability component?

11 MR. BROWN: Originally it was a
12 component of the full bundle. And then it
13 became -- the bundles that we were awarded was
14 reduced. So in its initial package, we were
15 only given 2 of the properties. And so in
16 order to make it financially feasible and find
17 a place where we could -- there was a
18 preference for two bedroom. And so this was
19 the property where that would work.

20 VICE CHAIRMAN LOUD: Okay. I'm not
21 sure I understand it totally, but I think I do
22 understand the argument that this land, to me

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1 I guess, you know, it would take a legal
2 interpretation to convince me differently, but
3 it's unique because, first of all, you are
4 under a legal obligation with the District of
5 Columbia to develop three units on a 1,500
6 square foot site.

7 And it resulted from a solicitation
8 where affordability was a requirement as a
9 part of -- if not this specific site, at
10 least, the bundle that included this site.

11 But getting from the award to the
12 actual three units and one of which had the
13 affordability requirement, was that a
14 negotiation driven by your team, based on the
15 numbers, or did the District require -- in
16 other words, I guess, you could not have done
17 three units on this site and made them all
18 market rate. There had to be an affordability
19 requirement, right?

20 MR. BROWN: I don't specifically
21 recall how it was determined, but I do know
22 that during the negotiations there was some

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1 give and take on where the affordable units
2 would be located.

3 VICE CHAIRMAN LOUD: And under your
4 agreement with the District, you could do two
5 units and only make one of them affordable and
6 have the other one market rate. I know that
7 for your purposes --

8 MR. BROWN: Not at this point.

9 VICE CHAIRMAN LOUD: -- it doesn't
10 work. So at this point, you have to do three.

11 MR. BROWN: Right. Not -- at the
12 point we are now, the location of the
13 affordable unit is dictated by the covenant on
14 the property.

15 VICE CHAIRMAN LOUD: No, but my
16 question is a little bit different. So, okay,
17 so the affordable is physically where it is
18 under the agreement. But could you do the
19 bigger part of the site as a single -- under
20 your agreement, could you just do it as a
21 single-family dwelling? Could you do it as a
22 2,600 square foot project under your

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1 agreement?

2 MR. BROWN: Under our agreement, I
3 am not sure, because it specifically tells us,
4 if you look at the -- we would have to go back
5 and -- I'm not sure.

6 VICE CHAIRMAN LOUD: But for the
7 whole host of reasons that you and your
8 architect went through, the different floors,
9 well, the finances of it, the historic nature
10 of the property and some of the other things
11 that you mentioned, you couldn't do the 2,600
12 square foot development for the bigger part of
13 the project. You would need to do two 1,300
14 square foot condos?

15 MR. BROWN: Yes, because if you
16 make it a single-family structure, the reason
17 the -- they are 1,300 and 1,300, but if you
18 made it a single-family structure, actually,
19 the size of it would go up to, approximately,
20 3,000, because you would take out -- part of
21 that square footage is used up by a stairway
22 that is serving two units.

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1 In addition, there would be a -- so
2 you would have 3,000, three levels above-
3 grade, but as a two unit condo, we're also
4 using the ground floor as storage for the unit
5 owners. So you would end up with,
6 approximately, 3,000 above-grade and then a
7 full basement that would be, and this is rough
8 numbers, almost -- you know, another 7 or so,
9 because -- if you looked at the section.

10 VICE CHAIRMAN LOUD: Thank you,
11 Madam Chair. I don't have anything further.
12 It sounds like a great project.

13 COMMISSIONER TURNBULL: The
14 separate building has storage in the main
15 building? So they have access to the basement
16 then, too?

17 MR. BROWN: Yes. It's a common --
18 the main entrance to the larger structure is a
19 common entrance for both units and the -- in
20 that building and the person -- because,
21 frankly, there was just so much square footage
22 in that building, we couldn't figure out what

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1 to do with the basement area, so we decided
2 storage for all three would just be a good use
3 of it.

4 COMMISSIONER TURNBULL: Okay.
5 Thank you.

6 CHAIRPERSON MILLER: What happens
7 if you don't perform in accordance with the
8 covenant?

9 MR. BROWN: We wouldn't pursue not
10 performing with the covenant.

11 CHAIRPERSON MILLER: No, I know you
12 wouldn't pursue it. But for instance, if we
13 were to deny relief in this case, and then if
14 I understand your argument, it wouldn't be
15 economically feasible for you to produce.

16 MR. BROWN: We wouldn't proceed
17 with the project. We wouldn't proceed with
18 the project. And then the next steps I guess
19 we would have to confer with counsel on how we
20 could alleviate the matter, talking to DHCD
21 and see if there is some other way we could
22 address it.

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1 CHAIRPERSON MILLER: Okay. And I
2 mean, for instance, when you entered this
3 covenant and agreement with DHCD, there was no
4 -- there doesn't seem to be any
5 acknowledgement that a variance might be
6 required in order to comply with this. Is
7 that right? You said there was never any
8 discussion about that. Was it on anybody's
9 radar screen?

10 MR. GOINS: It was on no one's
11 radar. You know, to mention about the other
12 properties and some of the reason we looked at
13 this property for affordable, a lot of the
14 other properties was very tough and it is very
15 tough to get two bedroom units. And I think
16 DHCD and the city was pushing for affordable
17 units that were two bedroom and family units
18 and not the smaller version.

19 So some of the other properties and
20 this one with the separate structure that
21 served as a single-family home that exists,
22 kind of seemed a reasonable place to put an

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1 affordable unit. I think that was part of the
2 discussions.

3 CHAIRPERSON MILLER: How many
4 bedrooms is going to be in the affordable
5 unit?

6 MR. GOINS: Two.

7 CHAIRPERSON MILLER: Two, okay.

8 MR. GOINS: Yeah. It's a three
9 bedroom. It's a small footprint, but there is
10 three levels with a basement. A bedroom on
11 the top floor and the basement.

12 CHAIRPERSON MILLER: Okay. Thank
13 you.

14 COMMISSIONER TURNBULL: Madam
15 Chair, I just have one more question.

16 CHAIRPERSON MILLER: Um-hum.

17 COMMISSIONER TURNBULL: And it's
18 not really a zoning issue, it's really a
19 building code. You have -- one of your
20 bedrooms is in the basement and there is no
21 windows. How are you achieving that as an
22 occupiable space?

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1 MR. GOINS: There are window wells
2 in the front. You know, how that all gets
3 worked out with the building permit, we -- I
4 don't know. We will probably call it a study
5 or add a window. There's not a window on the
6 back.

7 MR. BROWN: There is no window
8 well, but there is a full -- there is a --

9 COMMISSIONER TURNBULL: You have a
10 door.

11 MR. BROWN: A full door and we will
12 look at possibly adding -- we can look at the
13 possibility of adding a window adjacent to
14 that door.

15 COMMISSIONER TURNBULL: Okay. I
16 was just curious, because those spaces often
17 are very difficult to work with. I was just
18 curious.

19 MR. BROWN: Yeah, we have dealt
20 with those issues in the past where we have
21 had to do window wells with egress ladders and
22 such.

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1 COMMISSIONER TURNBULL: Okay.
2 Thank you.

3 CHAIRPERSON MILLER: Okay. Any
4 other questions? Is there more that you
5 wanted to say, at this point, or shall we move
6 on to Office of Planning?

7 MR. BROWN: I think we have said
8 everything.

9 CHAIRPERSON MILLER: Okay. Well,
10 you will have another opportunity anyway.
11 Unless, is anybody here from the ANC? Okay.
12 So why don't we go to the Office of Planning?

13 MR. BROWN: Oh, I'm sorry, but
14 there is -- there should be a letter of
15 support from the ANC as well as from Council
16 Member Graham, because we met with the ANC on
17 numerous occasions about this.

18 CHAIRPERSON MILLER: Okay. We will
19 get back to the ANC. But I just wanted to ask
20 that, at this point, in case they were here.
21 They have the right to cross examine. So but
22 as far as whose turn it is in the course of

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1 the proceedings, that would be Office of
2 Planning then. Okay.

3 MR. JESICK: Thank you, Madam
4 Chair, Members of the Board. Again, my name
5 is Matt Jesick. This was a tough case for the
6 Office of Planning. Obviously, you know, the
7 development would bring a lot of benefit to
8 the neighborhood: The affordable unit,
9 restoring an historic structure, simply
10 bringing people into a property that has been
11 vacant for a long time. Obviously, we support
12 all of those goals.

13 But like any variance, we looked at
14 this one using the three part variance test.
15 And we didn't see any particular uniqueness or
16 exceptional condition affecting this property
17 that had a nexus to the area of relief being
18 sought. And that's the first part of the
19 test.

20 And because that part of the test
21 isn't met, neither is the second part which
22 relies on the first part of analysis.

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1 The relief could be granted without
2 detriment to the public good. There would be
3 no significant impacts to light or air or
4 noise or traffic. Parking, there would
5 probably be maybe some additional demand for
6 something like parking, but not significant
7 for the addition of one extra unit.

8 We did conclude that relief would
9 impair the intent of the Zoning Regulations,
10 however. The applicant has mentioned the
11 financial hardship aspect and we do feel that
12 if they provided, you know, some substantial
13 documentation about, you know, maybe something
14 like a pro forma with a breakdown of the costs
15 and a breakdown of projected revenue from sale
16 of the property, that that might be some
17 information that the BZA could take into
18 account in its decision.

19 And they have started, I think,
20 with the Exhibit F of the covenants, which
21 does take a look at some projected revenues
22 for the project. So we do feel that the BZA

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1 could take into account that aspect of the
2 project and maybe the, as well, significant
3 deterioration of the interior of the property.

4 For the rest of my testimony, I
5 would just rest on the record, but I would be
6 happy to take any questions.

7 CHAIRPERSON MILLER: Well, it
8 sounds to me, in part, that Office of Planning
9 came to the conclusion because it didn't have
10 enough information to conclude that this was
11 an exceptional condition. but giving rise to
12 practical difficulty, but that you anticipate
13 that perhaps some information is out there,
14 such as a pro forma, that might convince the
15 Office of Planning otherwise? Is that
16 correct?

17 MR. JESICK: Yes, that's correct.
18 I mean, we -- I think, in general, we are very
19 hesitant to take the financial route through
20 the three part test. You know, that gets to
21 the question of, you know, does the first part
22 of the test ask about property or what does

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1 the property encompass.

2 But I think in this case, that
3 might be an argument because of the condition
4 of the property and the requirement for an
5 affordable unit, etcetera.

6 CHAIRPERSON MILLER: Yeah, because
7 the exceptional condition has been treated, I
8 think, a little more broadly by the Courts and
9 that we can consider the situation of the
10 property. And that for instance, this
11 covenant, I think, would fall within the
12 situation governing the property.

13 I guess, what strikes me here and I
14 would like your reaction, we seem to have a
15 covenant that is requiring the applicant to
16 have three units here, but they can't have
17 three units without a variance. So that it's
18 actually the D.C. Government or an arm of the
19 D.C. Government, I think, that is requiring
20 them to have to seek relief. Is that correct?

21 MR. JESICK: I mean, I don't know
22 how the Land Disposition Agreement or the

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1 Covenant were derived, whether that was, you
2 know, proposed by the applicant and DHCD
3 agreed to it or whether maybe the disposition
4 of the land is contingent upon getting all
5 appropriate zoning approvals. I don't know if
6 I'm answering your question or not, but --

7 CHAIRPERSON MILLER: Well, it
8 doesn't say it. It just seems like, you know,
9 we have different parts of the D.C. Government
10 doing things. Like on one hand the Land
11 Disposition Agreement does seem to require
12 them to alter the property in a manner that
13 has three units, but that that would be in
14 violation of our regulations and they would
15 need a variance for that.

16 So to me, that seems like an
17 exceptional condition. Not to say that we
18 have to grant a variance. For instance, if we
19 found that that would result in substantial
20 detriment, we don't have to. But it just
21 seems to me that it goes to an exceptional
22 condition of the property that gives rise to a

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1 practical difficulty.

2 MR. JESICK: Yeah, no, I think you
3 are correct that at the state we are now with
4 the agreement already in place, I think that
5 could create a practical difficulty. I don't
6 think we can exempt any property from going
7 through the proper zoning channels, but
8 certainly they would need relief to fulfill
9 the terms of the agreement.

10 CHAIRPERSON MILLER: And you didn't
11 have this covenant before you when you did
12 your report, right?

13 MR. JESICK: No, that's correct.

14 CHAIRPERSON MILLER: Okay. Other
15 questions? Does the applicant have with him
16 any type of pro forma with respect to Office
17 of Planning's concern about accepting a
18 practical difficulty related to the economic
19 feasibility issue?

20 MR. BROWN: I do not, but I would
21 like to point out that some of the initial
22 resale prices and projected profits that are

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1 shown on this attachment are -- were based on
2 a market and economy in the latter part of
3 2007.

4 And so a property that was already
5 difficult, I guess, all of us sitting here
6 realize that we're in a completely different
7 real estate market and that I could provide
8 something, but it's something that, I guess
9 could, I would hate to say understood, but
10 something that most people would realize that
11 the financial viability of this project,
12 regardless of the variance or not, is in a
13 much more difficult position than it was.

14 CHAIRPERSON MILLER: Well, let me
15 just ask you this. For instance, sometimes we
16 don't want too many numbers, because, you
17 know, we don't really need to get too bogged
18 down in all the financial parts. But we have
19 the numbers that we should be looking at are
20 in Exhibit F, right, or are there other
21 numbers?

22 MR. BROWN: Those were some of the

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1 projections that -- at the time. I mean, to
2 be honest, had we known the conditions of the
3 -- had we known the conditions that the market
4 was going to be in now, we wouldn't have took
5 the project at this number. And frankly, we
6 will, even with the variance, make a profit on
7 this project, but it will be minimal.

8 CHAIRPERSON MILLER: Is the
9 Neighborhood Development Company a nonprofit
10 or what?

11 MR. BROWN: No, we are a LSDB
12 developer in --

13 CHAIRPERSON MILLER: Okay.

14 MR. BROWN: -- the District located
15 in Ward 4 at Georgia and Taylor, roughly.

16 CHAIRPERSON MILLER: Okay. And the
17 reason we would not need more numbers on this
18 is why? What do we have so that we can
19 conclude that it wouldn't be economically
20 feasible without the three units? I know we
21 have some general statements about the cost of
22 historic, the renovation.

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1 MR. BROWN: Well, I guess if you
2 looked at what you have, if you had to make a
3 conclusion from what you had, you would see
4 according to these initial resale prices,
5 which I'll say are not -- they are going to be
6 reduced some percentage just due to market
7 conditions.

8 But if -- just using information
9 provided on here, those two units combined are
10 close to \$1.5 million, which is not what they
11 would ge combined, at this point, but we can
12 make the assumption that the market price of
13 the two units has decreased as much as the one
14 unit.

15 But the ability to sell a single-
16 family house in that neighborhood for \$1.5 or
17 as much as two condos is just not feasible.

18 I guess the other point we were
19 trying to make and I don't know if we were
20 successful is that in addition to the
21 financial aspect, and maybe we are incorrect,
22 we thought that the extraordinary circumstance

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1 or condition was just the nonconforming
2 existing building that was on the site that we
3 were dealing with.

4 MR. GOINS: Yeah, I think to
5 summarize, I think that we were looking at
6 this as two structures that occupy close to 90
7 percent of the lot, which make up two very
8 large -- it makes up a very large square
9 footage. And so we were looking at it as just
10 if it was new construction, obviously, it
11 wouldn't be built this way with the current
12 zoning.

13 It is nonconforming and it has
14 produced, you know, one very large structure
15 and a second structure and the relationship of
16 the two doesn't exist. There is, you know,
17 the language of the architecture on the
18 exterior as well as the structural language
19 doesn't exist between the two structures. And
20 they just happen to be on one lot.

21 And that's what we were looking at
22 from an architectural standpoint that made

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1 this unique as well as the historical aspect
2 of it.

3 CHAIRPERSON MILLER: But then the
4 next step is, okay, they are unique and how
5 does that contribute to your difficulty in
6 complying with the regulations?

7 MR. BROWN: I guess when we looked
8 at it, we were looking at -- you are looking
9 at the uniqueness because of the economic
10 burden, the uniqueness of the lot, you know,
11 affordability, all combined together not as
12 individual unique items.

13 MR. GOINS: And you know,
14 architecturally, the building is a beautiful
15 building. They don't get built like that
16 today. And so we were looking at it on the
17 historical side. You know, from an
18 architectural stand -- getting the opportunity
19 to restore this building and the good, the
20 benefit to the city and the neighborhood, you
21 know, that's where we didn't think it was a
22 determinant to the zoning as well.

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1 CHAIRPERSON MILLER: Well, is it
2 likely that it wouldn't get restored if it had
3 to comply with the regulations? I mean, it
4 has been vacant for a long time.

5 MR. BROWN: I believe it is going
6 to be vacant. If relief is not granted, I
7 don't believe it will be restored any time
8 soon.

9 CHAIRPERSON MILLER: Okay. Any
10 other questions? Okay.

11 COMMISSIONER TURNBULL: Actually,
12 if you tore -- even if you didn't have the
13 smaller structure, you couldn't put in two
14 units. It could be a flat.

15 MEMBER WALKER: It could be a flat,
16 Mr. Turnbull.

17 COMMISSIONER TURNBULL: You're
18 right, you're right. It could be a flat.
19 You're right.

20 MEMBER WALKER: And that --

21 COMMISSIONER TURNBULL: But you
22 can't tear down the smaller structure, because

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1 it's a contributing.

2 MEMBER WALKER: Right. When I look
3 at this project, I see a flat and then a
4 single-family. I mean, it was obviously meant
5 to be a separate structure. I mean, you know,
6 the floors don't line up. It's a different
7 building. It's only reasonable that they
8 would develop it as a separate building.

9 And so that's why I was just kind
10 of toying with the idea of looking at this as
11 if it were two different lots, because they
12 could do the flat, as a matter-of-right, and
13 then if the side yard or I guess what is
14 actually the rear yard, the way you have laid
15 the -- drawn the plans were associated with
16 the smaller structure, it would seem to me
17 that the lot area requirement would be met.
18 And I'm looking to Mr. Jesick over there for a
19 little help here.

20 MR. JESICK: If the lots existed--
21 if they were two separate lots today, they
22 could do up to four units as a matter-of-

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1 right. However, in order to achieve the
2 subdivision at the present time, they would
3 need variances to minimum lot area and
4 probably some other things, which I can't
5 think of off the top of my head. And who
6 knows whether that would be an easier variance
7 to grant or not. It's hard to say without
8 knowing exactly what relief would be needed.

9 MEMBER WALKER: So they would still
10 need a lot area variance if the rear yard were
11 associated with the smaller structure?

12 MR. JESICK: Well, because the R-4
13 District has a minimum lot size of, I believe,
14 I want to say, 1,800 square feet, just off the
15 top of my head.

16 MR. GOINS: It's 1,800 square feet.
17 And they have a minimum lot width as well.

18 MR. JESICK: So I think if you
19 subdivided those properties, they would not
20 meet the 1,800 square foot minimum.

21 MR. GOINS: I don't think we would
22 meet the width either, the minimum lot area

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1 width. You know, one of the reasons I think I
2 was calling that a side yard, the actual
3 address is on T Street for both properties,
4 you know, as 902 and 904 T Street are the two
5 addresses.

6 MS. MONROE: Just so you know, the
7 minimum lot size and width of lot for an R-4
8 row dwelling and flat is 1,800 square feet and
9 18 feet for width, so that's what Mr. --
10 that's what it is.

11 CHAIRPERSON MILLER: Mr. Jesick, so
12 what was your point about they could have four
13 units as a matter-of-right under what
14 circumstances?

15 MR. JESICK: If the lots -- if the
16 two structures were separated on two different
17 lots today, then they could put in two flats
18 as a matter-of-right. The problem though is
19 doing a subdivision today.

20 CHAIRPERSON MILLER: So the problem
21 is that they don't have enough width. They
22 don't meet that requirement of the square

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1 footage requirement?

2 MR. JESICK: Apparently both. We
3 would have to take a look at the plans.

4 CHAIRPERSON MILLER: Okay. Okay.
5 Any other questions? Does the applicant have
6 any questions for the Office of Planning? Do
7 you have a copy of the Office of Planning's
8 report? Okay. Okay.

9 I talked about the -- well, I asked
10 if the ANC was here and then I said I would
11 get back with respect to their filing. I see
12 in our record we have an Exhibit No. 22 from
13 Commissioner Phillip Spalding. The last line
14 says, well it says, "Writing to update the
15 Board in the ANC's review of the application."

16 And then the last line says "Should the
17 applicant secure a hearing date prior to our
18 November meeting, ANC-1B will not object to
19 the Board's considering this application."

20 Oh, there is another one?

21 MR. BROWN: No, there should be an
22 updated letter, because we went to three

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1 meetings and they didn't have a quorum.

2 CHAIRPERSON MILLER: Oh, that was
3 October.

4 MR. BROWN: Okay.

5 CHAIRPERSON MILLER: Thank you.
6 Our counsel is just giving me the latest.
7 Okay. That's December 5th. They voted 5-0-1
8 to support the application for variance relief
9 from 401.3.

10 And they say they have heard from
11 both the Westminster Neighborhood Association
12 and the Cardozo-Shaw Neighborhood Association,
13 who also support the plan. And they don't see
14 any detriment to the public good. They see it
15 as consistent with the general intent and
16 purpose of the Zoning Regulations and Map.
17 And they mentioned that it has also been
18 vacant for a long period of time.

19 Okay. Is there anybody here who
20 wishes to testify in support of the
21 application? Anybody who wishes to testify in
22 opposition? Okay. Any closing remarks? Oh,

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1 let me make another mention, we do have a
2 letter from Council Member Jim Graham as well,
3 dated January 8, 2009, expressing strong
4 support for the application.

5 He said this project is what was
6 envisioned when the property was transferred
7 to the Neighborhood Development Company
8 through the District's Home Again Initiative.

9 NDC's proposal, let's see, "It was
10 competitively bid and lawfully accepted by
11 DHCD and ODMPED and was to develop the
12 property as a three unit building and all
13 parties concerned, including the District NDC,
14 their design consultants and their financial
15 partners have been working with this
16 understanding for the last two years.

17 To go back to the drawing board now
18 would destroy all prospects from moving ahead
19 with the project in these difficult economic
20 times."

21 Then he mentions the importance of
22 the affordable housing. And he says that "The

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1 Home Again Initiative of Affordable Housing
2 requirement is one of the practical
3 difficulties for NDC in developing this site,
4 since at least one of the units must be
5 affordable. Decreasing the unit count to two
6 would irreparably weaken the economics of the
7 project."

8 Okay. Okay. Do Board Members see
9 any other documents in the record that they
10 want to highlight? I guess I would, in going
11 through the file, I mean, I would like to
12 reference I guess, since September, the Office
13 of Planning was quite concerned about the
14 condition of the property, noting that the
15 historic existing structure is in very bad
16 condition.

17 This was actually referencing the
18 applicant's characterization, but "The roof on
19 both buildings has failed, the floor supports
20 at 904 T Street have collapsed and the
21 building condition continues to deteriorate."

22 MR. GOINS: I think that was an

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1 attempt to get an --

2 CHAIRPERSON MILLER: Expedited
3 hearing.

4 MR. GOINS: -- hearing, yeah.

5 CHAIRPERSON MILLER: I think it
6 just buttresses though your point about the
7 bad condition of the property and the
8 significance of or the urgency in restoring
9 it, because of its historic nature.

10 MR. GOINS: Yeah, to kind of also
11 put on the record, we have gone through the
12 third-party permit process and we have
13 historic sign-offs and I mean, we were -- I
14 think construction was ready to begin in the
15 fall to start working on this project, so this
16 has -- here we are.

17 CHAIRPERSON MILLER: Okay. Do you
18 have any final remarks?

19 MR. GOINS: Thank you for your
20 consideration.

21 CHAIRPERSON MILLER: All right. I
22 think that the Board is ready to deliberate on

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1 this.

2 VICE CHAIRMAN LOUD: Madam Chair,
3 bear with me as I just pull together some
4 papers. This is a very interesting project
5 and it has, while it is not overly complex,
6 some complexities to it. So as I articulate
7 why I'm going to be supporting it, bear with
8 me if I'm not completely together on every
9 point of the matter.

10 But I would like to move for
11 approval of Application No. 17871 for variance
12 relief under our section 3103, to allow for
13 the development of a three unit condo at what
14 has been described as 902 T Street, 904 T
15 Street where the project does not meet the
16 requirements of our Rule 401.3 requiring at
17 least 900 square feet of area for each unit on
18 the lot.

19 And although we have two
20 structures, and there has been some discussion
21 about how that came to be, we are all in
22 agreement that there is a single lot here. So

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1 that would be my motion.

2 Now, in terms of sort of setting
3 out the variance test and why I'm supporting
4 approval of the application, we, essentially,
5 have two different buildings on a single lot.

6 Two buildings that don't articulate with each
7 other at all. They have different floor
8 plans. And the lot itself is 1,529.5 square
9 feet.

10 Our rules, as I indicated, would
11 require a minimum lot area of 2,700 square
12 feet in order to do three units. And this
13 cannot meet that requirement. So what the
14 applicant would like to do is to create two
15 units on the larger portion of the building of
16 about 1,300 square feet each and then one unit
17 at about 950 square feet, which would be
18 affordable.

19 In the context of the variance
20 test, the first element requires that there be
21 something unique or exceptional about the
22 property or the circumstances connected to the

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1 property that would allow us to grant relief
2 from strict application of our zoning
3 requirements.

4 And in this case, what I think is
5 unique is that there is actually a legal
6 binding agreement with the District of
7 Columbia Government, the Department of Housing
8 and Community Development that requires this
9 applicant to develop three units on this site,
10 including one that is affordable, and that's
11 evidenced by Exhibit F of an agreement that
12 does not itself have an exhibit number,
13 because it was just handed to us today, but it
14 is a part of our record.

15 Now, I think it is alluded to as
16 well in a letter by Council Member Jim Graham.

17 And certainly was a part of a lot of the
18 testimony that came out today regarding both
19 the existence of this agreement and the
20 evolution of how the applicant got to that
21 agreement with the Department of Housing and
22 Community Development.

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1 So for one, I think that is unique.

2 I think you -- not every single piece of
3 property that is going to come before us is a
4 property that was under the control of the
5 District of Columbia Government that was then
6 sold by the District of Columbia Government to
7 a developer as part of a competitive process
8 requiring that developer to yield three units
9 from it and make one of those units
10 affordable. I think that's a confluence of
11 unique factors with respect to this property.

12 Secondly, we did hear some
13 conversation about some testimony and a
14 conversation about the uniqueness of the
15 property itself in terms of the floor plates
16 being uneven and that necessitating a
17 tremendous expense if one were to try to
18 create a single structure on this property
19 where there would be articulation between the
20 two separate buildings, because one would have
21 to connect the two buildings with the uneven
22 floor plates.

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1 In addition to which, we have seen
2 the pictures on the record showing the current
3 condition of the property and the tremendous
4 expense that would be involved trying to
5 restore the property to a marketable
6 condition. So when one adds those factors to
7 the already existing reality of this LDA
8 agreement on the record, these, I think, are a
9 confluence of factors that make it a unique
10 situation.

11 With respect to practical
12 difficulty, we have testimony from the
13 applicant that this property would in all
14 likelihood remain vacant if relief were not to
15 be granted. And certainly in the case of this
16 applicant, he would have to abandon this
17 project. He could not do it without the
18 relief that he is seeking here today.

19 I think also that for him to -- for
20 us not to give relief would, in effect,
21 require this applicant to breach his agreement
22 with the District of Columbia Government,

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1 because again, he is duty bound by this
2 agreement to yield these three units on this
3 site.

4 With respect to substantial
5 detriment to the public good, I think we have
6 testimony from the Office of Planning in their
7 report which is our Exhibit 25, that there is
8 no substantial detriment to the public good.
9 We also have the ANC report, which is our
10 Exhibit 23, that there is no substantial
11 detriment to the public good.

12 And with respect to impairment of
13 the Zone Plan and/or Regs and Map, we again
14 have testimony through the regular report of
15 the Office of Planning that there is no
16 substantial impairment to the Zone Plan or
17 Regs.

18 So for all of those reasons, I am
19 in support of the application. I'll defer to
20 other Members of the Board.

21 CHAIRPERSON MILLER: Thank you. I
22 think that was very comprehensive. And I'll

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1 just add that as I was saying to the Office of
2 Planning, that the Court cases that have
3 considered exceptional conditions under
4 variance relief have said that the Board can
5 consider the situation, the improvements on
6 the property, not just the topography of the
7 property, and things like zoning history.

8 And I think that this case, as Mr.
9 Loud said, does involve somewhat of a
10 confluence of factors. You know, the fact
11 that there is this agreement with the District
12 of Columbia, that doesn't necessarily bind the
13 Board, but it is a factor for the Board to
14 consider that the three units is something
15 that was required in the agreement by another
16 arm of the District of Columbia.

17 And that there is this history that
18 all the parties have been working with us for
19 over two years and very significantly, that it
20 seems to be in the public interest. There
21 doesn't seem to be any other feasible even
22 alternatives.

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1 We have a property here that has
2 been vacant for a long time. And we have an
3 applicant who is going to be building on it
4 restoring a historic property, which is in the
5 public interest, and providing affordable
6 housing in the public interest.

7 And even though we don't have a pro
8 forma, I am convinced that the information
9 that we do have in the record is sufficient to
10 conclude that if we denied the relief, it
11 wouldn't be economically feasible to restore
12 the property, you know, especially in a way
13 that would provide affordable housing and
14 preserve the historic features.

15 So I will support this motion as
16 well. Others?

17 MEMBER WALKER: Madam Chair, I will
18 also be supporting the motion. I am less
19 persuaded by this argument about this
20 agreement with the District of Columbia, only
21 because the agreement sort of contemplates
22 that the covenants may be amended. It is the

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1 case that we had testimony about the fact that
2 the prices that are listed in Exhibit F will
3 likely change.

4 But I do agree that the property is
5 unique because there are two structures on one
6 lot. And while if it were the case that this
7 were two lots, we wouldn't even be here,
8 because they could do a flat as a matter-of-
9 right and there would be a nonconforming
10 single-family row house on the other property.

11 And as the Office of Planning has
12 pointed out, I mean, there are variance --
13 there would be variances required for them to
14 subdivide. But just in looking at this the
15 way this -- these two structures were
16 obviously constructed and intended to be used,
17 we are -- the applicant is taking us back to
18 the way that the property was erected in the
19 first place.

20 And so they could do two units in
21 the larger structure as a matter-of-right as a
22 flat. And so for that reason, I think that

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1 the public interest here really tips the
2 scale. I mean, they are doing a wonderful
3 project by bringing this blighted property,
4 you know, back into service, back into good
5 use.

6 And I think that the fact that
7 there will be an affordable unit as a part of
8 the project is tremendous and the applicant
9 should be commended.

10 CHAIRPERSON MILLER: Any other
11 comments?

12 COMMISSIONER TURNBULL: Madam
13 Chair, I am in an awkward position, since I
14 voted on strengthening the original Zoning
15 Commission Regs for doing -- for exactly --
16 I'm in the position that the Office of
17 Planning is recommending not approval, which
18 involves strengthening 401.1, 401.3 and
19 401.11.

20 So I think in this particular case,
21 I think I am, as Ms. Walker already stated,
22 not so as moved by the agreement. I think the

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1 agreement is annoying. That an agency can put
2 something in and kind of steer something a
3 certain way without looking at the Zoning
4 Regs.

5 But I think that the site does
6 offer some unique aspects: Two structures on
7 it, the fact that the floors will not align,
8 that it is a party wall that is probably 12
9 inches or more thick, so there is a structural
10 aspect of trying to combine them.

11 But I would agree with Ms. Walker's
12 analysis of it. I think that the -- there is
13 a uniqueness to this that is perhaps not as
14 evident as when you first look at it, but once
15 you get into it, you can see that there are
16 some aspects to it that we normally don't get
17 into.

18 So as reluctant as I am, I will
19 vote approval.

20 CHAIRPERSON MILLER: Okay. Now, I
21 think we have all commented. Mr. Loud, did
22 you actually make a motion or did you just

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1 begin the discussion on this?

2 VICE CHAIRMAN LOUD: I did make a
3 motion. I would be happy to make it again if
4 it's helpful, but I did move.

5 CHAIRPERSON MILLER: Okay. I don't
6 believe -- you moved approval, correct?

7 VICE CHAIRMAN LOUD: Um-hum.

8 CHAIRPERSON MILLER: Of the
9 application. I don't believe then it has been
10 seconded yet, so I will second that. Is there
11 further deliberation?

12 All those in favor say aye.

13 ALL: Aye.

14 CHAIRPERSON MILLER: All those
15 opposed? All those abstaining? Would you
16 call the vote, please?

17 MS. BAILEY: The vote is recorded
18 as 4-0-1 to grant the application. Mr. Loud
19 made the motion, Mrs. Miller seconded, Mr.
20 Turnbull and Mrs. Walker support the motion.
21 Mr. Dettman is not present at this time.

22 CHAIRPERSON MILLER: Okay. And as

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1 there is no party in opposition in this case,
2 this can be a summary order.

3 MS. BAILEY: Okay.

4 CHAIRPERSON MILLER: So you will be
5 getting your order fairly soon. Okay. Thank
6 you.

7 Okay. The Board has been going
8 pretty continuously since about 9:30 this
9 morning, so we're going to take about,
10 approximately, a 20 minute break. We have two
11 cases left on the agenda. So that's what we
12 are going to do. So you all feel free to go
13 and come back, whatever you want to do, but it
14 will be 20 minutes or so. Thank you.

15 (Whereupon, the Public Hearing was
16 recessed at 3:23 p.m. to reconvene at 4:14
17 p.m. this same day.)

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

2 4:14 p.m.

3 CHAIRPERSON MILLER: Okay. We're
4 back on the record. I believe, Ms. Bailey,
5 that we are ready for Case No. 17867, Baby
6 Land Development. Okay.

7 MS. BAILEY: Yes, Madam Chair.
8 Application 17867 of Baby Land Development
9 Center, pursuant to 11 DCMR 3104.1, for a
10 special exception to establish a child
11 development center, that's 40 children and 6
12 staff, under section 205 at premises 4628 H
13 Street, S.E. The property is Zone R-2. It is
14 located in Square 5359 on Lot 328.

15 CHAIRPERSON MILLER: Good
16 afternoon. Sorry that you have had such a
17 long wait today. It was kind of an unusual
18 day. Why don't we start with your introducing
19 yourself for the record, please?

20 MS. MANLEY: My name is Victoria
21 Manley. I reside at 4628 H Street, S.E.,
22 Washington, D.C.

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1 CHAIRPERSON MILLER: And is anybody
2 here from the ANC? Okay. Why don't you come
3 forward for a minute and introduce yourself
4 for the record as the ANC is automatically a
5 party in these applications.

6 MS. HAMLET: Good evening. My name
7 is Rosa Hamlet and I reside at 503 53rd Street,
8 S.E.

9 CHAIRPERSON MILLER: Let me just
10 ask you, do we have a report from the ANC in
11 this case? Oh, yes, I see it. I see we do
12 have a report.

13 MS. HAMLET: I didn't hear you,
14 ma'am.

15 CHAIRPERSON MILLER: We have a
16 report from the ANC.

17 MS. HAMLET: Yes.

18 CHAIRPERSON MILLER: Dated December
19 22nd.

20 MS. HAMLET: Yes.

21 CHAIRPERSON MILLER: Okay. So we
22 will hear from the applicant first and then if

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1 you have any questions of the applicant, you
2 will have an opportunity to ask. Okay. So if
3 you want to sit where you are, that's fine.
4 There is plenty of room at the table or if you
5 want to sit in the audience and come back if
6 you have any questions, whatever works for you
7 is fine. Okay. All right.

8 Now, you are here for a special
9 exception.

10 MS. MANLEY: Yes, ma'am. Asking
11 for a special permission to expand my existing
12 infant and toddler child care. The intended
13 use of the property at 4628 H Street is to
14 have an infant and toddler child development
15 center. The center will provide care,
16 education, supervision and guidance for infant
17 and toddlers 10.5 hours per day, Monday
18 through Friday.

19 The building will contain necessary
20 use such as office space, classroom, kitchen,
21 recreation activity area and a sick room.

22 CHAIRPERSON MILLER: Okay. And you

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1 are coming in under section 205 of the Zoning
2 Regulations, correct?

3 MS. MANLEY: Yes, ma'am.

4 CHAIRPERSON MILLER: So you say you
5 have an existing child development center?

6 MS. MANLEY: Yes, ma'am. I have a
7 home child development center. I have had it
8 for seven years. We are only allowed to have
9 5. I have an infant, so I only have 4. I
10 felt a need in my community for infants
11 especially. Also, I have a good friend and
12 she has her center at First Rock, which is not
13 far from my home.

14 And we have a list, a waiting list
15 for infants, so I decided to ask for special
16 permission to have more than 5.

17 CHAIRPERSON MILLER: Okay. It
18 sounds like you didn't exactly have a child
19 development center under 205. You have
20 probably had another type of child center that
21 didn't require special exception under 205.

22 MS. MANLEY: Right.

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1 CHAIRPERSON MILLER: As a child
2 development center.

3 MS. MANLEY: Um-hum.

4 CHAIRPERSON MILLER: Okay. So if
5 we look at 205 for the requirements that you
6 need to meet, do you have a copy of that, our
7 Regulations 205?

8 MS. MANLEY: No, I don't think so.
9 No, I don't, ma'am, no.

10 MS. BAILEY: Madam Chair, she has
11 the Office of Planning's report and I think
12 that it should be outlined in OP's report.

13 MR. JACKSON: Madam Chair, I just
14 wanted to highlight too that in her submittal,
15 she actually goes through each one of the
16 provisions. So if you want to just read from
17 your submittal?

18 MS. MANLEY: Okay. Mr. Jackson
19 asked to give further clarification of
20 addendums and one was the anticipated client
21 population.

22 MR. JACKSON: No, I'm sorry, the

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1 original submittal, your original application.

2 MS. MANLEY: Oh.

3 MR. JACKSON: It actually went
4 through each one of the provisions if you
5 wanted to give that --

6 CHAIRPERSON MILLER: Okay. I don't
7 necessarily need her to re-read it, to read
8 it, but let's pull it and have it before us.
9 Do you have an Exhibit No. on that?

10 MS. MONROE: It's Exhibit No. 4.

11 CHAIRPERSON MILLER: 4, okay. And
12 then you are also saying that you submitted
13 further documentation to respond to Office of
14 Planning's concerns?

15 MS. MANLEY: Yes.

16 CHAIRPERSON MILLER: I just want to
17 get that all in front of us.

18 MS. MANLEY: There was concern
19 about client population, child drop-off and
20 pick-up during peak hours, playground
21 accessory, in turn playground facility, the
22 refuse collection and other child care

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1 facilities in my community.

2 In reference to the client
3 population, the -- I can't determine a
4 capacity until a feasible survey is done by
5 DCRA.

6 CHAIRPERSON MILLER: Okay. Now, we
7 do make determinations here with respect to
8 numbers though, as far as -- I understand what
9 you are saying, they are the ones that make
10 the ultimate capacity, but you are here
11 seeking a certain number of students. I mean,
12 not student, I'm sorry, number of children and
13 number of staff. Is that right? Within what
14 you believe the building certain can
15 accommodate?

16 MS. MANLEY: That's correct. From
17 my measurements and the DCMR 29, it's 38, 35
18 square feet per child. And from my
19 measurements, it was 38 children. I initially
20 applied for 15, but I was told if I were given
21 20, I would have to redo the application over
22 again, so that's what I was trying to avoid

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1 with the number of 40.

2 I'm not sure if I'll even get 38
3 with DCRA, but I just didn't want to go
4 through the application of zoning again. So I
5 don't know how many children I'll be allowed
6 to have.

7 CHAIRPERSON MILLER: But how many
8 children are you seeking to have with respect
9 to getting permission from this Board to have?

10 Because that is something that we usually
11 set, the number of children.

12 MS. MANLEY: If I can have 38, I
13 would take 38. I would be appreciative to get
14 38. That's what I'm asking for.

15 CHAIRPERSON MILLER: Okay. So if
16 you are asking for 38, now, can you explain
17 why your building and, you know, your staff
18 can accommodate 38 children? And what ages
19 would they be?

20 MS. MANLEY: I wanted to do infant
21 and toddler. I have it set up, the program
22 set up for baby languages from 6 weeks to 18

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1 months. And then I have Tod-World, which will
2 be from 18 months to about 2.5 to 3. And then
3 in the second floor, I have Kid Zone, which
4 will be 3 and 4 year-olds.

5 I have to have two staff for each
6 room, which consists of a teacher and
7 assistant. I have in place that staff, one
8 with a degree in Kid Zone and the other two in
9 Baby Land and in the Tod-World, they have
10 their CDA.

11 I also have in place a Spanish
12 teacher that will come in on Tuesdays and
13 Thursdays and also Ms. Erica, she does sign
14 language. She will come in on Monday and
15 Wednesdays. I will be there all day, Monday
16 through Friday, to make sure it is operated
17 safely.

18 So I'm not looking to hire someone
19 to do this for me. I want to do it myself.
20 You know, I feel that in being in this seven
21 years, there is a -- you know, toddlers are
22 basically individuals that learn through

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1 interaction and I want to create that type of
2 environment for them, a safe environment.

3 I also want to create a stimulation
4 environment as well, you know, through
5 educational curriculum that is both physically
6 challenging and mentally stimulating in an
7 atmosphere that strives to make learning an
8 enjoyable adventure for them.

9 I have received everything possible
10 to maintain a good child care center. My CDA,
11 I'll graduate in May with my degree in early
12 childhood education specializing in infant and
13 toddlers. I have accreditation for my home
14 and I'm CPR/First Aid, you name it, I have it.

15 So I'm planning to do this with my center as
16 well.

17 CHAIRPERSON MILLER: How many staff
18 do you anticipate to serve 38 children?

19 MS. MANLEY: Six staff, six staff,
20 including myself, seven.

21 CHAIRPERSON MILLER: So it's one
22 staff for every six plus?

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1 MS. MANLEY: I think infants there
2 is -- it's two staff for each child care
3 setting room. If I have eight infants, I'll
4 need two staff. Even if I have one and I
5 become a center, I'll still have to have two
6 staff. So there will be two staff in each
7 room. Two staff persons in each room.

8 CHAIRPERSON MILLER: Do you have 17
9 rooms?

10 MS. MANLEY: No, ma'am.

11 CHAIRPERSON MILLER: Okay.

12 MS. MANLEY: I have one, two,
13 three.

14 CHAIRPERSON MILLER: Not 17. 19?

15 MS. MANLEY: 19 rooms?

16 CHAIRPERSON MILLER: You said two
17 staff and 38 kids? Two staff for each room?

18 MS. MANLEY: Well, not for -- I'm
19 talking about 38 as a whole. I'm not -- like
20 I said, I'm not sure if they will give me 38.
21 I'm looking at 8 infants. I'll have to have
22 two staff. They are not going to put 38 in

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1 one room. 12 toddlers, two staff. Kid Zone,
2 I'm not sure. I think it's still 35 feet. I
3 want to say I measured 15, two staff.

4 I'm not sure yet if they are going
5 to let me have that many in one room. And
6 DCRA wouldn't come out without the zoning
7 permit to let me know the information. So
8 whatever the rules and regulations are with
9 the DCMR 29, then that's what I'll go by.

10 CHAIRPERSON MILLER: Okay. Why
11 don't we look at -- you talked about
12 addressing concerns raised by Office of
13 Planning.

14 MS. MANLEY: Oh, yes. Office of
15 Planning had questions in regard to the
16 capacity, in which I just stated I don't know
17 the capacity. They had concerns with drop-off
18 and pick-up during peak hours.

19 CHAIRPERSON MILLER: Okay. Did you
20 address that?

21 MS. MANLEY: Yes, I did. I had
22 letters from 4618 to 26, those neighbors.

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1 They --

2 CHAIRPERSON MILLER: They said that
3 you could use their driveways?

4 MS. MANLEY: Yeah. I'm not saying
5 to use their driveways, but they have all been
6 really good in working with me and we have
7 letters from them and they don't see it as a
8 problem, because they work. So they are not
9 there during my hours, my drop-off and pick-up
10 hours. So they are not seeing a problem with
11 it.

12 CHAIRPERSON MILLER: What time are
13 your drop-offs and pick-ups?

14 MS. MANLEY: 7:30 to 9:00 and then
15 from 3:00 to 6:00 is when they normally come
16 in. I've been working for 7 years and they
17 don't come in as early as 3:00, but if they
18 do, they normally are in close to the time we
19 close, 5:30, 6:00.

20 They have been -- my neighbors have
21 been really generous in offering me their
22 driveways, but I have no intent on

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1 inconveniencing them in any way. I have plans
2 to have someone or myself to stand out to make
3 sure that there is no blockage of driveways.
4 And if we do use a driveway, that we will make
5 sure the child is in and out.

6 CHAIRPERSON MILLER: How about your
7 parking?

8 MS. MANLEY: I have -- we have off-
9 street parking and I have a three car
10 driveway. The teachers that I have is -- I
11 haven't talked to the Office of Planning. I
12 mean, the Office of Aging and Mr. Tomiko
13 Thomas in reference to hiring some people from
14 his office about their traveling, but there is
15 a bus that runs, a bus stop directly in front
16 of the property, every 12 minutes. So the
17 people that I had planned on hiring are going
18 to use that as transportation, because it's
19 convenient.

20 CHAIRPERSON MILLER: So you have a
21 driveway that can accommodate three cars? Is
22 that what you said?

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1 MS. MANLEY: Yes, ma'am.

2 CHAIRPERSON MILLER: And then --

3 MS. MANLEY: Yes, ma'am.

4 CHAIRPERSON MILLER: -- was there
5 any other off-street parking or is that it?

6 MS. MANLEY: Yeah, you have off --
7 we have off-street parking.

8 CHAIRPERSON MILLER: What is it?
9 What do you have?

10 MS. MANLEY: Public parking.

11 CHAIRPERSON MILLER: Oh, do you
12 mean on-street?

13 MS. MANLEY: Public parking.

14 CHAIRPERSON MILLER: You have on-
15 street parking?

16 MS. MANLEY: There is on-street.

17 CHAIRPERSON MILLER: Yeah, I know.
18 It is confusing.

19 MS. MANLEY: Okay.

20 CHAIRPERSON MILLER: But so you're
21 just saying there is spaces on the street --

22 MS. MANLEY: Yes.

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1 CHAIRPERSON MILLER: -- that the
2 public is allowed to use for parking.

3 MS. MANLEY: Yes.

4 CHAIRPERSON MILLER: Okay. So you
5 have three on your property.

6 MS. MANLEY: Yes.

7 CHAIRPERSON MILLER: And then,
8 okay. And your testimony is that they are
9 pretty available on the street?

10 MS. MANLEY: Oh, yeah.

11 CHAIRPERSON MILLER: Okay. Did
12 Office of Planning have some other concerns
13 you were responding to?

14 MS. MANLEY: Yes, they did. They
15 have concerns with the playground, in which I
16 thought was helpful. I was -- my plans were
17 to, the playground is about a block away, have
18 the kids to walk to the playground at the
19 school, Davis Elementary School. But as they
20 were saying that there is no sidewalk, which
21 there aren't, they will have to cross the
22 street.

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1 So what I have done and actually we
2 started today was I asked the Government for
3 D.C. General's Playground, because it wasn't
4 in use, but they decided to give me the one
5 from DC Village, which is very nice. So we
6 are -- today we started putting that in place.

7 So we have a playground right there on the
8 property.

9 CHAIRPERSON MILLER: Okay. And is
10 that going to be next to any residential
11 property or anything?

12 MS. MANLEY: Yeah. Well, I'm next
13 to residential property, but it will be in my
14 backyard. It won't be in their --

15 CHAIRPERSON MILLER: Do you have
16 neighbors on each side?

17 MS. MANLEY: -- property. Yes, I
18 do.

19 CHAIRPERSON MILLER: And do they
20 know that the playground equipment is going to
21 be in the backyard?

22 MS. MANLEY: Oh, yes, um-hum. I

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1 have playground equipment already in the front
2 yard, but it is for little kids. So the one
3 that we are putting in the backyard that they
4 are donating can accommodate 3 and 4 year-
5 olds. It's not very big, but they had no
6 problem in me putting it, actually, they
7 wanted it there, you know.

8 CHAIRPERSON MILLER: The neighbors
9 wanted it there?

10 MS. MANLEY: Yeah, because I'm not
11 going to be there on weekends, so they asked
12 me if they could use it, you know, if they
13 have events, which is fine with me, as long as
14 they ask for permission first.

15 CHAIRPERSON MILLER: And are these
16 neighbors there during the week?

17 MS. MANLEY: During the week?

18 CHAIRPERSON MILLER: Yes.

19 MS. MANLEY: Yes, they -- yeah.

20 CHAIRPERSON MILLER: I mean, they
21 are there or are they at work?

22 MS. MANLEY: The one to the right

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1 of me is at work. The one to the left, she
2 also has a day care, a home day care.

3 CHAIRPERSON MILLER: Oh, okay,
4 okay. Because sometimes we have situations
5 where child development centers are in homes
6 and they are next to other homes and sometimes
7 in those other homes there are people who work
8 out of their homes and then they find the
9 noise from the children to be disruptive to
10 them.

11 MS. MANLEY: I can understand that.

12 CHAIRPERSON MILLER: So that's kind
13 of why I'm asking, because we look at impacts
14 on neighboring properties.

15 MS. MANLEY: Okay.

16 CHAIRPERSON MILLER: So what you
17 are saying is you don't have that problem in
18 your situation, because one side is working
19 and the other side has day care anyway.

20 MS. MANLEY: That's correct, yes.

21 CHAIRPERSON MILLER: Okay.

22 MS. MANLEY: And then there is

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1 letters in my packet that -- my neighbors, all
2 of them work except the one next to me and at
3 the end. All of us do child care. But
4 everybody else is at work.

5 CHAIRPERSON MILLER: Okay.

6 MS. MANLEY: So there is letters
7 stating that they are not home during the
8 hours.

9 CHAIRPERSON MILLER: Okay.

10 MS. MANLEY: During those hours.

11 CHAIRPERSON MILLER: I think one of
12 Office of Planning's concerns might have been
13 that there is another child development center
14 within 1,000 feet.

15 MS. MANLEY: Yes, that's --

16 CHAIRPERSON MILLER: And that's
17 your friend? Is that right?

18 MS. MANLEY: Yes. We're graduating
19 this year in May and there should be a letter,
20 Joseph W. King is the name of the building.
21 The center is First Rock. There should be a
22 letter stating that she has an overflow. We

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1 talk about it all the time. And you know, she
2 is recommending that I do open up an
3 infant/toddler, because there is really need
4 where we are.

5 CHAIRPERSON MILLER: Okay. And
6 were there other points that you responded to
7 or have we covered them?

8 MS. MANLEY: The collection was
9 brought to my attention and I was encouraged
10 by Waste Management --

11 CHAIRPERSON MILLER: Okay.

12 MS. MANLEY: -- Ms. Russell, to go
13 on-line and find -- contact a solid waste
14 hauler in which I did. And it was Ace Trash
15 Removal, which is really conducive with this
16 mom/pop type of waste/trash removal. And I
17 talked to him, so I think that's who I'll go
18 with if I decide to open it.

19 CHAIRPERSON MILLER: And how often
20 will they collect the trash?

21 MS. MANLEY: Twice a week.

22 CHAIRPERSON MILLER: Twice, okay.

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1 So you won't be going to an off-site play area
2 any more, right?

3 MS. MANLEY: No, huh-uh.

4 CHAIRPERSON MILLER: All right.

5 MS. MANLEY: No. I was planning to
6 bring you guys pictures of them starting, but
7 on Wednesday and Thursday of last week when he
8 was supposed to start, it rained, so he
9 couldn't do the holes in the concrete, but he
10 did send a letter and signed it that they had
11 started today, as far as the playground is
12 concerned.

13 CHAIRPERSON MILLER: Okay. Okay.
14 Are there other Board questions?

15 VICE CHAIRMAN LOUD: Good
16 afternoon.

17 MS. MANLEY: Hi, Mr. Loud.

18 VICE CHAIRMAN LOUD: A quick
19 question for you. I'm looking at what is
20 Exhibit No. 6 in our package that is prepared
21 for us. I don't know if you actually have
22 these pictures.

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1 MS. MANLEY: Yes, I do.

2 VICE CHAIRMAN LOUD: Okay. Now,
3 this picture on the top, what is this a
4 picture of?

5 MS. MANLEY: That was the
6 playground area that I was intending to use
7 before they came out --

8 VICE CHAIRMAN LOUD: Oh, all right.
9 I gotcha. Okay.

10 MS. MANLEY: -- and encouraged me
11 to do something different.

12 VICE CHAIRMAN LOUD: Okay. All
13 right. I just wanted to be clear on that.
14 Okay. Thank you.

15 MS. MANLEY: You're welcome.

16 VICE CHAIRMAN LOUD: And one other
17 thing, when you said that you won't be there
18 on weekends, you mean the day care facility --

19 MS. MANLEY: Yeah, I --

20 VICE CHAIRMAN LOUD: -- won't be
21 open on weekends or that you physically would
22 not be at 4628 on weekends?

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1 MS. MANLEY: Both, both. I plan to
2 use it solely as infant and toddler center. I
3 won't be there on weekends, because we won't
4 be open on weekends.

5 VICE CHAIRMAN LOUD: So do you live
6 -- is this your residence?

7 MS. MANLEY: I currently live here
8 now.

9 VICE CHAIRMAN LOUD: All right.

10 MS. MANLEY: But we are planning to
11 move.

12 VICE CHAIRMAN LOUD: I see.

13 MS. MANLEY: Um-hum.

14 VICE CHAIRMAN LOUD: Okay. All
15 right. Thank you.

16 CHAIRPERSON MILLER: Actually, I
17 have one other question. The Board, at least,
18 got yesterday a package of letters from
19 neighbors and from community directors. Okay.

20 In one of my letters, there is a hand --
21 well, they are email messages. And then at
22 the bottom it says "I asked DOT to conduct an

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1 analysis to see how my parents and children
2 can get in my center safely. This was their
3 response to my call."

4 I don't know if that's what you
5 wrote.

6 MS. MANLEY: Yes, that's what I
7 wrote.

8 CHAIRPERSON MILLER: Okay.

9 MS. MANLEY: Because it was
10 encouraged that I would have someone, a
11 traffic analyst to come out to see how --
12 whether I would use homes or we will put signs
13 that will have you out and I wasn't really
14 successful, because DOT, Ms. Glenda Payne,
15 sent me to James Murphy. James Murphy sent me
16 to Ali Shakur. It was ongoing until I got a
17 message from Mr. A-N-D-A-R-G-H-I, which stated
18 that it wasn't their place to come out and do
19 an analyst. It was up to BZA. Let me see if
20 I can find that for you.

21 Here it is. He sent an email
22 saying that he spoke to his colleagues and

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1 Office of Planning. They said BZA ruling is
2 outside OP's jurisdiction. One guy said I
3 needed to pay for someone to come out and see
4 how they could ingress and egress out safely.

5 So I only have the email from Mr.
6 A-N-D-A-R-G-H-I and he was saying that
7 whatever BZA requests of the applicant is up
8 to the applicant to field in this case. He
9 don't believe OP is responsible to conduct a
10 traffic analysis, so I was -- that's where I
11 was as far as the analyst is concerned.

12 CHAIRPERSON MILLER: Okay. Yeah, I
13 just wanted to make sure that I wasn't missing
14 something, such as, you know --

15 MS. MANLEY: Yeah, that --

16 CHAIRPERSON MILLER: -- a response
17 from DDOT that is saying oh, this is what you
18 should do. So you never got that?

19 MS. MANLEY: No.

20 CHAIRPERSON MILLER: Okay. And is
21 there anything else you want to add, at this
22 point?

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1 MS. MANLEY: No. I thank you for
2 hearing my case.

3 CHAIRPERSON MILLER: Okay. Well,
4 you stay right there.

5 MS. MANLEY: Okay.

6 CHAIRPERSON MILLER: Now, are there
7 other Board questions?

8 MEMBER WALKER: Just one, Madam
9 Chair. You have probably given some thought,
10 even though you haven't had someone to come in
11 and do a formal analysis of what your pick-up
12 and drop-off procedure will be. So if you
13 could just walk us through what will happen
14 when a parent comes by car, let's say, to the
15 site.

16 MS. MANLEY: I plan to be there
17 initially, at least for the first year, to see
18 how it is flowing, to make sure that I'm not
19 inconveniencing my neighbors. And if I should
20 have to because, you know, normally during
21 drop-off and pick-up peak hours, they are
22 gone. There is no -- you know, the parent can

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1 bring the child in and I can get the child or
2 they can take it in and I can watch the car if
3 they are in the driveway.

4 But usually, all 15 is not going to
5 come in at one time. I'm sure of that. But
6 if they come in with a car, I'll be there.
7 I'll be standing there to make sure it's safe
8 to park here, make sure that if the neighbors
9 are home, okay, you can park here and take
10 your child in. You know, so I will definitely
11 not inconvenience them in any kind of way.
12 And I will stand out there personally, at
13 least for the first year, to see how traffic
14 is going in and out and how I can make it
15 safe.

16 MEMBER WALKER: So currently, your
17 parents pull into your driveway to drop-off?

18 MS. MANLEY: Yes, ma'am. They pull
19 into the driveway or you should have -- they
20 pull in front of the house, which is off-
21 street parking. Pull in front of the house,
22 because we have a lot of that, because we have

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1 three car driveway, so there is, you know,
2 always parking there.

3 MEMBER WALKER: And the same is
4 true for pick-up in the afternoon? They pull
5 into the driveway to load the children?

6 MS. MANLEY: Right, right, they
7 can.

8 MEMBER WALKER: And then what's the
9 location of these neighbors' driveways that
10 you propose to use?

11 MS. MANLEY: Well, the neighbor to
12 the right of me doesn't have a car at all,
13 which is Mr. Weil, Leonard. You should have a
14 letter from them. But all of us are next door
15 to each other. There is two conjoining, then
16 -- there is two conjoining houses. One
17 driveway is on one side and one is on the
18 other side. So they are right there in a row.

19 There is no driveways on the other side of
20 the street. Everybody is right here in a row
21 to the east of me.

22 Let me show you a picture. Let me

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1 see if I can find a picture.

2 MEMBER WALKER: So in Exhibit 6
3 that shows --

4 MS. MANLEY: Here we -- I don't
5 know if you can see.

6 MEMBER WALKER: Right.

7 MS. MANLEY: This is my driveway.
8 This is the conjoining house and her driveway
9 is on the other side. But the letters I got
10 are from this house all the way down to the
11 middle of the block. I didn't go that way. I
12 went this way. These neighbors don't have a
13 car, not that they would never get a car, but
14 they have no -- really have no problem with me
15 bringing the children in from their driveway.

16 MEMBER WALKER: Okay. So we are
17 actually looking at two driveways in this --

18 MS. MANLEY: We're looking at --
19 no, we're looking at, I think you have, five
20 letters, six letters.

21 MEMBER WALKER: In Exhibit 6, the
22 picture that you just referenced with the red

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1 car.

2 MS. MANLEY: No, this one driveway
3 where my car is holds three cars. The
4 driveway beside me, which is here, holds three
5 cars. So yeah, we're looking at two which can
6 hold six cars at a time. You are right.

7 MEMBER WALKER: Thank you.

8 MS. MANLEY: You're welcome.

9 CHAIRPERSON MILLER: I thought you
10 talked about how you didn't expect all 15 to
11 come at one time or something. So what does
12 that 15 represent? Are you talking about 15
13 children?

14 MS. MANLEY: Yes. All 15 --

15 CHAIRPERSON MILLER: You're not
16 talking about --

17 MS. MANLEY: -- vehicles.

18 CHAIRPERSON MILLER: -- 38
19 children, I mean?

20 MS. MANLEY: I'm -- as far as
21 parking and drop-off and pick-up, I'm talking
22 about vehicles. I have four and all -- three

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1 of them catch the Metro. There are young moms
2 that catch the Metro, so they get off the
3 Metro and get back on. Only one that is --
4 she drives and she is older. So I was
5 thinking about 15 vehicles being there at one
6 time. Not 15 children.

7 MEMBER WALKER: So you anticipate
8 that most of your clients will utilize public
9 transportation and that only 15 are likely to
10 drive?

11 MS. MANLEY: No. Um, in my
12 community, most of them probably will use
13 public transportation because of the
14 convenience. Actually, since I have been
15 working, parents have used public
16 transportation to my home, because it's really
17 convenient.

18 I don't know how many will use
19 public transportation. So that's why I said I
20 want to be out there initially for the first
21 year to see how it is -- how traffic is going
22 and coming during my peak hours as far as

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1 making sure my kids get in there safely.

2 MEMBER WALKER: Right. We're just
3 trying to figure out how you came up with the
4 number 15 when you are talking about 38
5 children.

6 MS. MANLEY: Oh, well, that's just
7 a roundabout number. I'm just saying I don't
8 think it will be that many vehicles coming
9 into the driveway at one time.

10 CHAIRPERSON MILLER: Okay. So
11 you're saying it's not necessarily -- there
12 might be more than 15 vehicles even, but they
13 are not going to come at the same time. Is
14 that your point?

15 MS. MANLEY: Right, yes.

16 CHAIRPERSON MILLER: You can
17 accommodate 15 at one time?

18 MS. MANLEY: Can I? You said can
19 I?

20 CHAIRPERSON MILLER: Yes.

21 MS. MANLEY: I didn't hear your
22 question.

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1 CHAIRPERSON MILLER: Yes, yes.

2 MS. MANLEY: Of course, then I'll
3 have to use the driveways, you know, because
4 in front of 246, there can be eight cars
5 parked off-street.

6 CHAIRPERSON MILLER: On the street,
7 on the street.

8 MS. MANLEY: Right.

9 CHAIRPERSON MILLER: Okay.

10 MS. MANLEY: On my side that's
11 eight and then the two driveways, which is my
12 driveway and the next door neighbor driveway,
13 there is six cars. So you know, I can
14 accommodate probably 15 at one time, but I'm
15 not seeing this happening.

16 CHAIRPERSON MILLER: Okay. All
17 right. We got it. Thank you. Okay. Any
18 other questions? Does the ANC have any
19 questions for the applicant? Okay. You're
20 not on the record though, do you want to say
21 that on the record? Okay. Yeah, you --

22 MS. HAMLET: They --

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1 CHAIRPERSON MILLER: And I'm not
2 asking for your testimony, at this point. I
3 just want to know if you have any questions
4 for her?

5 MS. HAMLET: We have no questions.

6 CHAIRPERSON MILLER: Okay. So you
7 can --

8 MS. HAMLET: Because they asked her
9 a lot of questions.

10 CHAIRPERSON MILLER: Okay.

11 MS. HAMLET: And they have been
12 answered.

13 CHAIRPERSON MILLER: Okay. Good.
14 All right. We will call you when it is your
15 turn to testify.

16 MS. HAMLET: Okay.

17 CHAIRPERSON MILLER: We've got to
18 go to Office of Planning first.

19 MS. HAMLET: Okay.

20 CHAIRPERSON MILLER: Okay. Thanks.
21 Okay. Mr. Jackson?

22 MR. JACKSON: Good afternoon, Madam

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1 Chairman and Members of the Board. My name is
2 Arthur Jackson. I'm a Development Review
3 Specialist with the District of Columbia
4 Office of Planning.

5 And on this case, you have a report
6 before you and I will be very brief in my
7 presentation.

8 The applicant -- I met the
9 applicant on the site and she was kind enough
10 to show me around. At that time, the child
11 care -- the building was in the process of
12 being converted to full-time use as a child
13 development center. And the major elements
14 that were missing are the ones that are
15 outlined in my report.

16 I raised concerns about the --
17 confirming that the play area would be on-site
18 and be ready for use by the time the child
19 care center opened because of the distance
20 between this building and the elementary
21 school and the fact the children would have to
22 cross the street two times coming and going.

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1 The applicant responded to that by
2 initiating the installation of the new
3 facility and we talked about having it ready
4 by the hearing date, but apparently it's
5 moving right along, so that addressed that
6 concern.

7 There was also the cumulative
8 impact of this proposed center with the
9 existing First Rock Baptist Church Development
10 Center at the Joseph W. King Senior Center.
11 At this point, it appears that that center
12 functions in a manner where all of their
13 children come off the street, that is the
14 pick-up and deliveries are done off-street on
15 the site. But I have no real fact -- no
16 information about that. So that is not fully
17 addressed at this time.

18 She has made provisions to take
19 care of the cumulative -- accumulated refuse
20 associated with the center and that is being
21 handled twice a week. And she has got -- I
22 assume you will have the correct containers to

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1 keep the materials in and all.

2 But I think the real concern we
3 had, and I guess it's up to you to decide
4 whether or not it has been addressed or not,
5 is that it's just so unclear about what the
6 jump from 5 to 40, what impact that will have
7 on the community. But I will say that I'm
8 very impressed by the fact that the applicant
9 has gone out and talked to all of her
10 neighbors, told them what she plans to do and
11 that so many turned in letters of support.

12 We were trying to do a little map
13 with dots showing where all the letters were,
14 all responses were, but we didn't have time to
15 get all the dots on before this hearing. But
16 the pattern appeared to be that if you look at
17 the map that is attached to the Office of
18 Planning report, the last map that shows more
19 of an aerial view of the site and highlights
20 the distance between this property and the --
21 it's Exhibit 2.

22 It highlights the distance between

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1 this property and the child care center at
2 Adelaide Davis Elementary School, of course,
3 this map is north and south. You see the site
4 and based on the pattern of the dots that came
5 in that were positive or for the center, the
6 neighbors to the west of her in every house,
7 virtually every house, indicated that they
8 were supportive.

9 And the neighbors across on Hannah
10 Place, that's the street just north of the
11 property, there were a number of letters of
12 support from those neighbors. The neighbors
13 who were opposed to the center were on the
14 south side of the street and they were
15 surrounding H -- no, I'm sorry, 16th -- 46th
16 Place, I believe.

17 So that there was solid support on
18 the north side of the center -- north side of
19 H Street. Then of course, there was a letter
20 of support from the management of the center
21 at the Joseph W. King Center.

22 So the pattern was that the folks

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1 who had the most experience with the existing
2 center were supportive of the expansion.

3 But again, our concern still was
4 that we didn't know how the drop-off and pick-
5 up would be managed. And the applicant has
6 done, I guess, all they could do without a
7 consultant coming in and doing an extensive
8 study. We encouraged her to contact the
9 Department of Transportation to see if they
10 would look into the matter.

11 I didn't -- I don't know -- there
12 have been other applications where the
13 Department of Transportation has sent out
14 representatives who have done analysis of the
15 centers, but those were in -- in retrospect,
16 those were large facilities. Those were large
17 facilities that were already controversial and
18 that were in a much more compact area.

19 I guess the complications in this
20 situation is that this is a fairly -- this
21 appears to be a fairly busy street with the
22 regular bus line that runs every few minutes.

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1 There is no sidewalk on the north side of the
2 street. It is manageable, just not a clear
3 plan of how it could be managed.

4 So that's the only caution we have,
5 because, based on the conversations with the
6 applicant and the effort she puts forth to
7 make this thing work, make this project work,
8 we think there is sincerity here and that she
9 has done about all you can do in terms of
10 contacting her neighbors and letting them know
11 what can be done.

12 That said, there is still some
13 intangibles that we may not be able to
14 determine without doing extensive
15 transportation study. So if the Board was to
16 decide to move forward on this project and it
17 may be prudent for a trial period, maybe a
18 short term of approval, because based on the
19 applicant's discussion, our discussions, I
20 don't think the intent was to open up a 40
21 person center initially.

22 The goal was to get approval such

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1 that the ultimate capacity that the center
2 could handle, would be allowed to handle could
3 be accommodated on site, so that it would be
4 an incremental increase up to that period.
5 The time period -- since there is a back log
6 of students in the -- of children in the area
7 who need service, that time period could be
8 fairly short.

9 But we would think that once, as
10 the applicant illustrated, as the -- it opens
11 and it begins to function and it's in -- the
12 cooperation of the neighbors holds up, that
13 this could -- the actual pick off and drop-off
14 mechanisms could be worked out over a period
15 of time.

16 But again, we're not -- if -- we
17 don't have enough information yet to actually
18 endorse the application, but we're saying if
19 the Board decides that it is good to move
20 forward, that the time frame for the approval
21 be such that there will be a reasonable period
22 for which to -- for which it to function and

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1 then you could check back to see whether or
2 not this -- the issue of transportation drop-
3 off, pick-up has worked itself out.

4 So at any rate, that's -- those are
5 the issues that we saw in the application.
6 Again, the primary ones were the -- just how
7 the vehicular and pedestrian circulation
8 generated by this center would work safely.

9 That concludes a brief summary of
10 the Office of Planning report and we are
11 available to answer questions.

12 CHAIRPERSON MILLER: Thank you. It
13 sounds like what you are saying though is
14 there is a question about the safety of the
15 children in drop-off and pick-up, because this
16 operation is on a busy street.

17 MR. JACKSON: Well, I don't really
18 know if it's busy. Again, we know that there
19 is a regular bus that comes down here on a
20 regular basis, but the site visit, on my site
21 visit, I didn't see that much traffic. But
22 again, that's not a traffic analysis.

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1 And we -- our expertise is not in
2 the area of transportation. And so we defer
3 to consultants, of course, the Department of
4 Transportation to do that type of analysis and
5 give us their best recommendations. That has
6 not occurred. And so at this point, we don't
7 have enough information to move forward.

8 Now, keep in mind that based on
9 some of the residents, at least in the
10 letters, recommendations that have come
11 forward from the Civic Association, for
12 instance, think it's a very busy street. But
13 I think the issue is more that the number of
14 40 children really is an unknown and it's so
15 much larger than the number that is current
16 there, that the impacts are just -- it's --
17 envisioning the impacts is somewhat difficult.

18 CHAIRPERSON MILLER: Okay. I guess
19 it has been my experience that it's not
20 usually such a big deal for DOT to go out and
21 do an assessment for BZA cases. I mean, I'm
22 not sure that we are talking about some

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1 complicated traffic analysis. It sounds like
2 we are talking about just somebody with
3 expertise in traffic going to the site and
4 making some assessment and some suggestions.
5 Is that right?

6 MR. JACKSON: Well, the -- we have
7 contacted DOT and requested some input and we
8 encouraged the applicant to do the same. And
9 to date, we haven't gotten any response.

10 CHAIRPERSON MILLER: Okay. Okay.
11 We will see what we want to do with that at
12 the conclusion of this hearing. But it's not
13 uncommon for the Board then to make a request
14 and then get a response, if Board Members
15 think it is necessary.

16 All right. And the other point you
17 are making is that we might want to consider a
18 phase-in in this case with respect to the
19 number of children, because the impact is not
20 clear from a change from 5 children or infants
21 to 40. Is that right?

22 MR. JACKSON: That would be one

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1 option, yes.

2 CHAIRPERSON MILLER: Okay. Is
3 there another one that you want us to
4 consider?

5 MR. JACKSON: I was thinking more
6 in terms of the term of approval.

7 CHAIRPERSON MILLER: Term, okay,
8 term.

9 MR. JACKSON: Yes.

10 CHAIRPERSON MILLER: And other than
11 that, the Office of Planning doesn't have any
12 concerns with the application?

13 MR. JACKSON: Well, the application
14 -- the applicant has addressed the concerns we
15 raised about the recreation being on-site,
16 about the -- what the accumulated refuse from
17 the center how that would be handled. The
18 cumulative impact of the child care center is
19 something that could also be -- of this center
20 compared with the other facilities is also
21 something that the Department of
22 Transportation could look at.

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1 But otherwise, I think the
2 applicant -- and we have -- we accept the
3 realization that although the Department of
4 Education, now I guess, has recommended
5 approval of the center, that the actual number
6 of students won't be determined until after
7 there is a formal review. And that review
8 won't occur until they have the proper zoning
9 approval.

10 CHAIRPERSON MILLER: I guess that's
11 my other question. That you know, in these
12 proceedings we normally set, you know, number
13 of children and staff. And yet, we're hearing
14 that that's going to be set by the other
15 department, you know, who licenses child
16 development centers.

17 Do you think we have enough or do
18 you feel comfortable with the number 40?

19 MR. JACKSON: Well, the applicant
20 actually --

21 CHAIRPERSON MILLER: Based on the
22 information in our record.

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1 MR. JACKSON: -- said 38, so I --

2 CHAIRPERSON MILLER: 38, 38.

3 MR. JACKSON: -- would say --

4 CHAIRPERSON MILLER: Sorry.

5 MR. JACKSON: -- we don't have any
6 better information to go on than what she
7 presented. Again, that could be reconsidered
8 at the term of if there is a shorter term, we
9 should consider it then. It might even be
10 more, who knows.

11 CHAIRPERSON MILLER: Okay. Thank
12 you. Other questions?

13 VICE CHAIRMAN LOUD: Just one quick
14 question, Mr. Jackson. I believe the
15 applicant testified earlier this morning that
16 there was a play center directly across the,
17 not the alleyway, garage. Not the garage, the
18 parking area that one of her neighbor's has.

19 I believe the testimony was that
20 one of her neighbors works during the day, so
21 wouldn't be impacted by potential noise, but
22 that the other neighbor has a child care

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1 center.

2 MS. MANLEY: Yes, she has a home
3 child care.

4 VICE CHAIRMAN LOUD: Okay. So in
5 light of that, I just wanted to ask you does
6 that change anything in your report,
7 particularly under 205.8, regarding the
8 location of these facilities within 1,000 feet
9 or do you want to just leave your report as
10 written?

11 MR. JACKSON: Well, if they are a
12 child care home --

13 VICE CHAIRMAN LOUD: Um-hum.

14 MR. JACKSON: -- that's different
15 from a child care center. I think the
16 regulations specifically talk about child care
17 centers. And there is one at the school.
18 There is one in -- I believe -- no, actually,
19 the elementary school doesn't have one, just
20 the elementary school.

21 MS. MANLEY: Just --

22 MR. JACKSON: Okay. This is the

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1 only one that the Department of Education said
2 was in the vicinity, within 1,500 feet.

3 VICE CHAIRMAN LOUD: So basically,
4 your -- other than what you have just shared
5 in the exchange with the Chair, your report
6 stands pretty much as written?

7 MR. JACKSON: Right.

8 VICE CHAIRMAN LOUD: Okay.

9 MR. JACKSON: The report from the
10 Department of Education said there were two
11 child care homes there.

12 VICE CHAIRMAN LOUD: Um-hum.

13 MR. JACKSON: But I didn't make
14 reference to them, since that's not
15 specifically addressed in the regulations.

16 VICE CHAIRMAN LOUD: Okay. Thank
17 you.

18 (Whereupon, at 5:00 p.m. the Public
19 Hearing continued into the evening session.)
20
21
22

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:00 p.m.

3 CHAIRPERSON MILLER: Okay. I mean,
4 just for the record, we are dealing with a
5 child/elderly development center or a child
6 development center. And in our definitions
7 section of our regulations at 199, there is a
8 child development center and then there is a
9 child development home. And what the
10 applicant was saying is she currently has a
11 child development home, because she has no
12 more than 5 individuals, 15 years of age or
13 less in her care.

14 And when you go over that
15 threshold, you get into the child development
16 center.

17 MS. MANLEY: Right.

18 CHAIRPERSON MILLER: Okay. All
19 right. Are there other questions? Do you
20 have questions for the Office of Planning?

21 MS. MANLEY: Yes, I do.

22 CHAIRPERSON MILLER: Okay. And do

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1 you have a copy of their report?

2 MS. MANLEY: From the Office of
3 Planning?

4 CHAIRPERSON MILLER: Office of
5 Planning.

6 MS. MANLEY: Yes, I do.

7 CHAIRPERSON MILLER: Okay. Good.

8 MS. MANLEY: Um-hum, um-hum.

9 CROSS EXAMINATION

10 MS. MANLEY: If I was -- if DCR
11 came in and said I can only have 15 children,
12 would it make a difference as far as ingress
13 and egress?

14 MR. JACKSON: Well, the potential
15 impacts on the street and on your neighbors
16 would be different, of course, because you
17 would have fewer children coming and going.
18 The -- this also presents -- so what we would
19 be looking at is the maximum, assuming the --
20 that you had less than 38 children.

21 If the BZA were to move forward
22 with a number of 38 and the Transportation

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1 Department did -- if the Transportation or
2 somebody else did some analysis, based on the
3 number of 38, then, of course, that would be a
4 good circumstance, because there would be
5 significantly less impacts than would be
6 projected and your Transportation Management
7 Plan could accommodate it easily.

8 So that it would be to your benefit
9 actually.

10 MS. MANLEY: Um, see, that's the
11 catch-22 I don't know exactly how many I'm
12 allowed to have, so I can't ask for what I
13 don't know. And I don't want to ask for less
14 than what I can have, because I have to do
15 this all over again and I don't want to do
16 that. So --

17 MEMBER WALKER: Ms. Manley, earlier
18 in your testimony you started to kind of walk
19 through a calculation based on square footage.

20 MS. MANLEY: Uh-huh.

21 MEMBER WALKER: What was that
22 calculation?

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1 MS. MANLEY: In the facility?

2 MEMBER WALKER: Yes.

3 MS. MANLEY: It's 35 square feet
4 per child that's allowed in the facility. In
5 the infant/toddler area, if the infants sleep
6 in the same play area, then it's 45 square
7 feet per child. With the toddlers and the 3
8 and 4 year-olds, school age kids, it's 35 feet
9 per child. But with infant and toddlers, if
10 they are sleeping and they are playing in the
11 same area, it's 45 square feet per child.

12 MEMBER WALKER: Okay. And the
13 square footage of your facility is what?

14 MS. MANLEY: Um, I want to say the
15 square footage is 3 -- of the facility, I'm
16 not sure. I'm not going to give you a number
17 and I'm not sure. But the entire square
18 footage of the facility is 3,000. That's
19 including the back and front yard. I think I
20 have -- I'm sure I have it.

21 CHAIRPERSON MILLER: Just to
22 clarify though, your 38 figure, that was based

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1 on your calculations of what you believe you
2 will be allowed to have, correct?

3 MS. MANLEY: Well, no. I don't
4 know what I'll be allowed to have, like I
5 said, but that's what I measured in the home
6 is 38 children. So when they come in, they
7 might say well, no, you can have only 20, but
8 I don't know how they do it, because even when
9 I went to the center's meeting, they were
10 telling us you may measure one thing, but when
11 we come in, it could be something different.

12 CHAIRPERSON MILLER: Okay. Okay.
13 So it sounds like you just don't want to
14 under-sell yourself here.

15 MS. MANLEY: Right, right.

16 CHAIRPERSON MILLER: You can always
17 have less, but --

18 MS. MANLEY: Right.

19 CHAIRPERSON MILLER: Okay.

20 MS. MANLEY: Right.

21 CHAIRPERSON MILLER: Okay. And
22 then I think Office of Planning's point is

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1 when whoever is assessing the impact, you
2 know, they may find that usually fewer may
3 have less impact. But we really don't know.

4 MS. MANLEY: Right.

5 CHAIRPERSON MILLER: I mean, DDOT
6 can go out and -- well, if we decide that we
7 need a report from DDOT, we're not going to
8 decide on the number until we get their report
9 or something or you have a chance to respond
10 to it or something like that. So we could
11 come up with a number, based on the evidence
12 in our record, and then, you know, the
13 licensing agency would come up with a
14 definitive number, based on, you know, their
15 regulations.

16 So we can just make the best
17 judgment, best guess here, you know.

18 MS. MANLEY: Okay.

19 CHAIRPERSON MILLER: That you would
20 like. Does the ANC have any questions for the
21 applicant? Office of Planning, I mean? No?
22 Okay, fine. Okay. We don't have any other

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1 questions for Office of Planning, at this
2 point, I don't believe. Okay.

3 So now, would the ANC like to
4 testify or just rest on the report that you
5 filed? Oh, wait, come to the table for a
6 minute.

7 MS. HAMLET: When you say testify,
8 what do you mean to testify to?

9 CHAIRPERSON MILLER: Okay.

10 MS. HAMLET: As to -- because what
11 I did was I followed everything she
12 surrendered, I mean, turned in and I based all
13 of the information that I put in the letter, I
14 based it on what actually happened. So I
15 mean, it's nothing else to -- that I can say,
16 at this point, because she has been keeping me
17 with copies of everything that she does.

18 So the only thing I can -- I mean,
19 you know, I don't even want to -- I guess,
20 well, you said --

21 CHAIRPERSON MILLER: You don't need
22 to testify.

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1 MS. HAMLET: Beg your pardon?

2 CHAIRPERSON MILLER: You don't need
3 to.

4 MS. HAMLET: Oh, okay.

5 CHAIRPERSON MILLER: I mean, the
6 ANC has submitted a report.

7 MS. HAMLET: Yeah, they have, we
8 submitted a report.

9 CHAIRPERSON MILLER: And that's
10 what we give great weight to. Just you are
11 here and if you heard something that you
12 wanted to respond to or explain, you have that
13 opportunity.

14 MS. HAMLET: Oh, okay.

15 CHAIRPERSON MILLER: Did the -- I'm
16 trying to review, look at the two documents we
17 have. One is December 12th and one is December
18 22nd. In your December 22nd, the ANC talks
19 about how she responded, I believe, to
20 information you requested. Did the ANC take a
21 position on support or opposition to the
22 application?

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1 MS. HAMLET: They didn't do
2 anything until December when I finally asked
3 for a call on the vote of how -- what their
4 position was. And we had a quorum and there
5 you see which -- each Commissioner said. Is
6 that what you are talking about in my letter?

7 CHAIRPERSON MILLER: Yeah, I'm
8 looking for if there was a vote. Okay. It
9 just wasn't all that clear.

10 MS. HAMLET: I beg your pardon?

11 CHAIRPERSON MILLER: It wasn't all
12 that clear to me about the vote. And we're
13 looking at the letters and, basically, the
14 second page of the December 22, 2008 has votes
15 next to each Commissioner, such as no, no, no,
16 no, abstain, yes. Okay. That represents the
17 vote on the application?

18 MS. HAMLET: Yes, that represents
19 the vote how each Commissioner voted.

20 CHAIRPERSON MILLER: So the
21 Commission voted against the application by a
22 vote of 4-1?

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1 MS. HAMLET: I beg your pardon?

2 CHAIRPERSON MILLER: The Commission
3 voted against the application by a vote of 4-
4 1?

5 MS. HAMLET: Yes.

6 CHAIRPERSON MILLER: Okay. And
7 there is a December 12th letter from the ANC.

8 MS. HAMLET: Who is it from?

9 CHAIRPERSON MILLER: Um, unless
10 there are two different ANCs. Oh, it's
11 another. No, it's ANC-7E from Naomi Robinson.
12 What's your name?

13 MS. HAMLET: She is 7E, Naomi
14 Robinson.

15 CHAIRPERSON MILLER: 7E, right.

16 MS. HAMLET: She must have sent her
17 own comments.

18 CHAIRPERSON MILLER: Okay. So they
19 don't reflect the ANC as a whole. They are
20 just her comments?

21 MR. JACKSON: I believe, just a
22 point of clarification, the borderline -- does

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1 the ANC borderline along H Street?

2 MS. HAMLET: No, we are 7E.

3 MR. JACKSON: Oh, okay. So --

4 MS. HAMLET: Her SMD is on H Street
5 and mine is on across.

6 MR. JACKSON: So her SMD is south
7 of H Street and yours is north of H Street?

8 MS. HAMLET: Mine is H, where she
9 lives.

10 MR. JACKSON: Right.

11 MS. HAMLET: Ms. Robinson's is up
12 46th Street, I think it is.

13 MR. JACKSON: Okay.

14 MS. HAMLET: She is 46th Street.

15 MR. JACKSON: So she is south of
16 where your's is? And the child care center is
17 north of H Street?

18 MS. HAMLET: Right.

19 MR. JACKSON: So she is in the
20 vicinity, but she is not in the same SMD, but
21 nearby.

22 MS. HAMLET: So I guess she

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1 submitted a letter because she said her
2 neighbors were in opposition. So I imagine
3 she sent a letter also.

4 MR. JACKSON: Well, another point
5 of clarification though, the negative
6 responses that I mentioned were all in that
7 south of H Street? So it's in the other SMD.

8 CHAIRPERSON MILLER: So Ms.
9 Robinson represents south of H Street?

10 MR. JACKSON: 64th Street -- 64th
11 Place is south of H Street, so she represents
12 that area, yes, I believe. Right, okay. So
13 she is south of H Street. And the current
14 representative -- resident here is north of H
15 Street.

16 CHAIRPERSON MILLER: Are you Ms.
17 Hamlet?

18 MS. HAMLET: Yes.

19 CHAIRPERSON MILLER: Okay. And do
20 you represent neighbors who are supportive of
21 the application or is it mixed?

22 MS. HAMLET: What I did was sent

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1 out letters and I thought I attached those
2 where I got the information of the 35 people
3 were solicited, they responded and whatever,
4 because this is what she gave me. So I --
5 they are on, I guess, I don't -- I guess they
6 are on my side of the SMD. They are in my
7 SMD.

8 CHAIRPERSON MILLER: Okay. Just
9 for clarification, it's the ANC report that we
10 give great weight to, but --

11 MS. HAMLET: I know.

12 CHAIRPERSON MILLER: -- is it --
13 are the response that you got, were they
14 favorable or not favorable?

15 MS. HAMLET: Yes, the --

16 CHAIRPERSON MILLER: They're
17 favorable.

18 MS. HAMLET: -- responses that I
19 got were favorable. But some people, you
20 know, like one person refused to open their
21 door or whatever to her, but I turned in the
22 ones, the responses that I had gotten from

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1 her.

2 CHAIRPERSON MILLER: Okay. Okay.

3 I see. I got it now where you listed it at 20

4 yes responses.

5 MS. HAMLET: Yes.

6 CHAIRPERSON MILLER: Okay.

7 MS. HAMLET: Yes.

8 CHAIRPERSON MILLER: I got it now.

9 Okay. Are there other Board questions?

10 Okay. Thank you very much. Is there anybody

11 here who wishes to testify in support of this

12 application? Anyone here who wishes to

13 testify in opposition? Okay. Are there any

14 other Board questions of the applicant before

15 she provides any closing remarks? No. Okay.

16 Do you have some closing remarks? No?

17 MS. MANLEY: No, ma'am.

18 CHAIRPERSON MILLER: Okay. All

19 right. Thank you. All right. Then I think

20 that we are at the point where the Board just

21 needs to decide whether we have all the

22 information we need to make a decision or

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1 whether we want to keep the record open for
2 additional information.

3 And I think that the main question
4 outstanding here is whether we want to request
5 the Department of Transportation to do an
6 assessment of traffic concerns and
7 recommendations for drop-off and pick-up for
8 this application.

9 I mean, to me, it sounds like it
10 might be a good idea. I think that Office of
11 Planning was having some difficulty in making
12 a clear recommendation, only with respect to
13 that aspect, but that's an aspect that does
14 affect safety. And so I don't see any harm in
15 asking for that. I think it would probably be
16 helpful to the applicant to get
17 recommendations and maybe peace of mind that,
18 you know, it's fine or that you need to put
19 these cones out.

20 I mean, I think it could be fairly
21 straightforward. And we have done it in other
22 applications. I don't recall whether they

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1 have to be big or not. I don't think so. It
2 sounds to me like they could just go out and
3 take a look.

4 Like Office of Planning says he can
5 go out and take a look, but that's not his
6 training, so, you know. Is there any
7 objection to doing that? Okay. And the
8 applicant, you would be supportive of that as
9 well?

10 I think that since we have that
11 question hanging out here, I think it would be
12 good for the community at large to know that.

13 You know, maybe traffic will come out and
14 say, you know, it's fine for 30, but not 38 or
15 it's fine, it doesn't matter as long as you do
16 the cones or sometimes they even put up a sign
17 and they give you a parking area for drop-off.

18 But that's a whole -- you know, I don't know
19 what they would do.

20 So, Mr. Jackson, how much time do
21 you think that we would need to provide in
22 order to get a response from Department of

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1 Transportation?

2 MR. JACKSON: Well, that's hard to
3 predict. But I would say three weeks.

4 CHAIRPERSON MILLER: When does the
5 ANC meet, in the event that this might be
6 something that the ANC might want to comment
7 on?

8 MS. HAMLET: Um, we meet the second
9 Tuesday of every month.

10 CHAIRPERSON MILLER: Okay. So is
11 three weeks from now February 3rd? Okay. When
12 is the ANC meeting after February 3rd then, the
13 next like February 10th?

14 MS. HAMLET: The -- well, actually,
15 our meeting is tonight at 7:00. Then we will
16 have February the second -- whatever the
17 second Tuesday is in February.

18 CHAIRPERSON MILLER: Okay. I
19 think, according to our schedule, that would
20 be February 10th.

21 MS. HAMLET: Yes.

22 CHAIRPERSON MILLER: Okay. I'm not

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1 sure that this report would require much
2 response, but we don't know.

3 MS. HAMLET: We have no idea.

4 CHAIRPERSON MILLER: Okay.

5 MS. HAMLET: Could you --

6 VICE CHAIRMAN LOUD: I believe you
7 have to put the mike on.

8 COMMISSIONER JONES: Oh, you know.

9 VICE CHAIRMAN LOUD: Okay.

10 MS. HAMLET: What the Commission is
11 going to be asked to --

12 CHAIRPERSON MILLER: The Commission
13 wouldn't be asked to do anything. It's just a
14 question of whether we leave the record open
15 in the event they wanted to respond to the
16 traffic report.

17 MS. HAMLET: Okay.

18 CHAIRPERSON MILLER: They certainly
19 don't have to, but they should be given it.
20 And we could leave the record open just for a
21 very short time and I'm not sure that the
22 applicant would want to respond either. But

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1 we could leave the record open for a very
2 short time as well, because we're really
3 looking for just, primarily, their assessment
4 and they are an expert in traffic.

5 In the event sometimes there is
6 something that some other party, information
7 they have that we should have related to
8 another report, we will leave the record open
9 just for that.

10 Okay. So we just need to determine
11 then when to set this for decision making. Is
12 there any time urgency? Otherwise, our next
13 decision meeting after the 3rd would be March
14 3rd. If there is an urgency, sometimes we can
15 fit in a decision on a non-meeting date. Is
16 there an urgency in the schedule?

17 MS. MANLEY: No, there is no great
18 urgency. I have a waiting list, so we will
19 have to wait until March 3rd for an answer, I
20 guess.

21 CHAIRPERSON MILLER: Well, we'll
22 take a look at our schedule and see. Mr.

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1 Jackson, let me just ask you, if we wanted to
2 go for the February 3rd decision meeting, is
3 there any way that you think we would have a--
4 you can't assure us that traffic would be able
5 to go out? That the Department of
6 Transportation would be able to go out
7 earlier, right?

8 MR. JACKSON: I haven't -- again, I
9 haven't been able to get them -- a response to
10 date.

11 CHAIRPERSON MILLER: Right.

12 MR. JACKSON: So --

13 CHAIRPERSON MILLER: Okay.

14 MR. JACKSON: But I would -- if you
15 set that date, I would urge them to do
16 something about it before that time.

17 CHAIRPERSON MILLER: Okay. But
18 this is important and we want to make sure
19 that it gets done.

20 MR. JACKSON: Right. Madam Chair,
21 I was just reminded that the Department of
22 Transportation might be a little busy next

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1 week, so --

2 CHAIRPERSON MILLER: That's right.

3 I think we ought to aim for the March 3rd
4 decision date. So in order -- if we back up
5 from that, is February 3rd still realistic?

6 MR. JACKSON: I can ask them to
7 shoot for that.

8 CHAIRPERSON MILLER: You can ask
9 what?

10 MR. JACKSON: After next week.

11 CHAIRPERSON MILLER: Yeah, after
12 the 20th, it should be better.

13 MR. JACKSON: Yes, that's a
14 possibility after the 20th.

15 CHAIRPERSON MILLER: Okay.

16 MR. JACKSON: Or actually the
17 following week, the week after the 20th they
18 probably will be back in full swing.

19 CHAIRPERSON MILLER: Okay. So the
20 February 3rd date should work. Okay. So
21 that's definite. Okay. So we'll do February
22 3rd date, will be a report from DDOT.

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1 And so they will come out to the
2 property before February 3rd, obviously, and
3 hopefully meet with you and assess the
4 situation and address, you know, how you might
5 do drop-off and pick-up and how safe the
6 street is, etcetera.

7 MR. JACKSON: Right and the
8 interaction with the other facilities.

9 CHAIRPERSON MILLER: Okay.

10 MR. JACKSON: But so when would the
11 report have to be in to the Office of Zoning
12 for them to put in your packet?

13 CHAIRPERSON MILLER: We were
14 talking about February 3rd, but if that's not
15 going to work --

16 MR. JACKSON: So it would be the
17 Friday before would be good or a week before?

18 CHAIRPERSON MILLER: Oh, no, it
19 doesn't have to be. The February 3rd date was
20 so then if the ANC needed to respond to it.

21 MR. JACKSON: Okay.

22 CHAIRPERSON MILLER: They would

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1 have it before their meeting.

2 MR. JACKSON: Okay.

3 CHAIRPERSON MILLER: Which is when?

4 MR. JACKSON: Gotcha. All right.

5 CHAIRPERSON MILLER: The 10th? The
6 ANC meeting is the 10th? Okay. So do you want
7 more than -- later than the 3rd?

8 MR. JACKSON: No, no. So you're
9 saying it needs, the report, to be in the
10 Office of Zoning by February 3rd?

11 CHAIRPERSON MILLER: Right.

12 MR. JACKSON: Okay. That's what I
13 wanted.

14 CHAIRPERSON MILLER: That's okay?
15 Would it get to the ANC on February 3rd? Would
16 you be giving it to them or they would have to
17 come down to the Office of Zoning to get it?

18 MR. JACKSON: We can do it -- do
19 you have email?

20 MS. HAMLET: Yes.

21 MR. JACKSON: Well --

22 CHAIRPERSON MILLER: Okay. You

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1 could email the ANC. That would be great.

2 MR. JACKSON: I can get that to
3 you.

4 CHAIRPERSON MILLER: Okay.

5 MS. HAMLET: Yes.

6 MR. JACKSON: All right.

7 CHAIRPERSON MILLER: Okay. All
8 right. So that's February 3rd. Okay. Our
9 meeting is March 3rd, so any response to the
10 DDOT report would be due by when, Ms. Bailey?
11 The Wednesday before at least?

12 MS. BAILEY: Madam Chair, um, did
13 you want an OP supplemental report? I know
14 that's not the question you asked me, but that
15 kind of helped me to frame the response to
16 you. Did you want a supplemental report from
17 OP?

18 CHAIRPERSON MILLER: I don't think
19 that's necessary. Do you, Mr. Jackson, I
20 mean?

21 MR. JACKSON: No.

22 CHAIRPERSON MILLER: No.

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1 MS. BAILEY: Okay.

2 CHAIRPERSON MILLER: Because we are
3 only interested in DDOT.

4 MS. BAILEY: Okay.

5 CHAIRPERSON MILLER: Right. We
6 have -- yeah, okay.

7 MS. BAILEY: And the response of
8 the applicant is that it?

9 CHAIRPERSON MILLER: We're leaving
10 the record open for the response of the
11 applicant, if she chooses to respond and same
12 with the ANC, if they choose, it's not
13 mandatory.

14 MS. BAILEY: Well, there is lots of
15 time. I'll say the 24th of February.

16 CHAIRPERSON MILLER: Okay. Any
17 problem with that? Okay. Good. All right.
18 So February 3rd is the date for the DDOT report
19 and someone from DDOT would be coming out,
20 obviously, before then. And then February 24th
21 would be the date for any responses to that
22 report by the ANC and the applicant. And our

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1 decision will be on March 3rd.

2 And we don't take testimony at our
3 decisions. You can, if you wanted to hear it,
4 come down and listen, otherwise, you can watch
5 on the Internet and then, otherwise, there
6 will be a transcript.

7 MS. MANLEY: I can also watch on
8 the Internet?

9 CHAIRPERSON MILLER: Yeah, um-hum.

10 MS. MANLEY: Oh.

11 CHAIRPERSON MILLER: Um-hum, yeah.

12 Okay. Any questions?

13 MS. MANLEY: And that's March the
14 3rd?

15 CHAIRPERSON MILLER: Right.

16 MS. MANLEY: Is there a particular
17 time?

18 CHAIRPERSON MILLER: Morning.

19 MS. MANLEY: Morning?

20 CHAIRPERSON MILLER: Morning,
21 morning. No earlier than 9:30.

22 MS. MANLEY: Okay, okay.

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1 CHAIRPERSON MILLER: There may be a
2 schedule up as well on the Internet. I'm not
3 sure, but sometimes we may change the order,
4 so any time from 9:30 on.

5 MS. MANLEY: The website for that
6 is?

7 MS. BAILEY: We can give that to
8 you if you just come up.

9 MR. MOY: DCOZ.dc.gov.

10 CHAIRPERSON MILLER: Also, if you
11 do have any other questions, feel free to ask
12 Mr. Moy or the Office of Zoning. Okay. Thank
13 you.

14 We have one more case on the
15 agenda. I think we are just going to take a 5
16 minute break. And if you all need to take a 5
17 minute break before we start the hearing on
18 that case, feel free to do so.

19 (Whereupon, at 5:28 p.m. a recess
20 until 5:40 p.m.)

21 CHAIRPERSON MILLER: We're back on
22 the record and ready for you to call the last

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1 case of the day, Ms. Bailey, when you are
2 ready.

3 MS. BAILEY: Madam Chair, thank
4 you. Application 17799 of Chy H. Yang,
5 pursuant to 11 DCMR 3104.1, for a special
6 exception under section 223, or alternatively
7 pursuant to section 3103.2, for a variance
8 from the open court requirements under section
9 406, for a rear addition to an existing one-
10 family row dwelling. The property is located
11 at 1121 Lamont Street, N.W. It is Zoned R-4.
12 It is located in Square 2842 on Lot 64.

13 The hearing is a continuation from
14 the September 16, 2008 scheduled Public
15 Hearing. And lastly, there is a request for
16 party status and that is from Mr. Charles
17 Green.

18 CHAIRPERSON MILLER: Thank you.
19 Why don't we start with introducing yourselves
20 for the record, please?

21 MR. YANG: I'm Chy Yang. I live at
22 1121 Lamont Street, N.W., Washington, D.C.

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1 20010.

2 MR. VAJPEYI: Good afternoon, Madam
3 Chairman and Members of Board. I'm Rajat
4 Vajpeyi. I live on the corner of 1121 Lamont,
5 Washington, D.C. 20010.

6 MR. GREEN: I'm Charles Green,
7 adjoining neighbor of 1119 Lamont Street. Ah,
8 Charles Green, adjoining neighbor at 1121 --
9 excuse me, 1119 Lamont Street. Just a point
10 of order, friends at the other table were not
11 here during the swearing in section and the
12 oath, just a point of order.

13 CHAIRPERSON MILLER: Okay. Anybody
14 here who plans to testify who wasn't sworn in
15 earlier, please, rise, unless you are an
16 attorney. You need to take the oath. So have
17 you taken the oath?

18 MR. YANG: No, we haven't.

19 CHAIRPERSON MILLER: Okay. Ms.
20 Bailey will administer it.

21 MS. BAILEY: And the gentleman
22 beside you? Please, raise your right hand.

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1 (Whereupon, the witnesses were
2 sworn.)

3 MS. BAILEY: Thank you.

4 CHAIRPERSON MILLER: Okay. And I'm
5 sorry, I didn't get your name exactly.

6 MR. VAJPEYI: Mine?

7 CHAIRPERSON MILLER: Yes.

8 MR. VAJPEYI: My name is Rajat
9 Vajpeyi.

10 CHAIRPERSON MILLER: And what's
11 your relation to the case?

12 MR. VAJPEYI: I'm the co-proponent
13 or, you know --

14 CHAIRPERSON MILLER: Okay. With
15 Mr. Yang?

16 MR. VAJPEYI: Yes.

17 CHAIRPERSON MILLER: Okay. Are you
18 an owner, co-owner? Okay, okay. I believe we
19 have a preliminary issue. Mr. Green is
20 seeking party status. Is that correct?

21 MR. GREEN: Yes, Madam Chair, that
22 is correct.

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1 CHAIRPERSON MILLER: And you are
2 the next door neighbor?

3 MR. GREEN: Yes.

4 CHAIRPERSON MILLER: Okay. So
5 therefore, you believe you will be more
6 impacted than the general public by relief
7 granted in this case?

8 MR. GREEN: Yes, ma'am.

9 CHAIRPERSON MILLER: Okay. Does
10 the applicant have any objection to granting
11 party status? Do Board Members have any
12 concerns, objections, questions? Okay.
13 That's often the case that the next door
14 neighbor is more impacted than the general
15 public and being more impacted than the
16 general public is, in essence, the test for
17 party status.

18 Okay. So not hearing any concerns,
19 the Board is going to give you party status,
20 Mr. Green. Okay. Now, before you get into
21 the heart of your case, I just want to clarify
22 the relief that is being sought. Are you

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1 seeking just special exception relief under
2 223 or are you seeking variance relief as
3 well?

4 MR. YANG: Just section 223.

5 CHAIRPERSON MILLER: Okay. Fine,
6 good. All right. Then I'm going to let you
7 proceed with your argument. Are you going to
8 have any witnesses? No? Okay.

9 MR. YANG: We don't have any
10 witnesses.

11 CHAIRPERSON MILLER: So you can
12 just present your case.

13 MR. YANG: Yeah. Can I say in the
14 -- during the September initial hearing on
15 September 16th, we did have a witness that was
16 going to show up and he did show up, but, you
17 know, it was postponed and it was later than
18 the 1:00 schedule, so he had to leave and he
19 couldn't be here today though.

20 CHAIRPERSON MILLER: Okay. Is
21 there anything else you want to --

22 MR. YANG: No.

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1 CHAIRPERSON MILLER: He didn't
2 submit anything in writing?

3 MR. YANG: No, he didn't. He --

4 CHAIRPERSON MILLER: Okay.

5 MR. YANG: -- is our Commissioner
6 for the ANC. The one that is in charge of our
7 area.

8 CHAIRPERSON MILLER: Is anybody
9 here from the ANC?

10 MR. YANG: No.

11 CHAIRPERSON MILLER: Okay. And
12 that's ANC what is your area?

13 MR. YANG: 1A.

14 CHAIRPERSON MILLER: 1A, okay.
15 Okay. So then that leaves you to see if there
16 is anything you want to add to your filings in
17 argument as to why you qualify for relief
18 under 223. Okay.

19 MR. YANG: Okay.

20 MR. VAJPEYI: Shall I begin? Okay.

21 So just as a background, we had -- we were
22 scheduled for a hearing back in September.

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1 And at that time, Mr. Green approached us and
2 he said that he would be willing to support
3 our case or drop his opposition if we made
4 certain design changes to our structure. So
5 we requested a postponement for today.

6 Since then, we have worked very
7 hard and we worked with Mr. Green to modify
8 our design. And we changed the design to
9 incorporate all the requests that Mr. Green
10 had made of us. We can go into the design
11 changes that we have made. We also presented
12 you the drawings.

13 Some of the changes that Mr. Green
14 wanted to make was that his main opposition
15 was that there was water. Because of how the
16 structure was designed, that there was water,
17 when there was heavy rain there was water,
18 which was going over to his side of the house.

19 And to alleviate that problem, he asked that
20 the pitch of the roof be removed and it be
21 flattened.

22 He also asked that we move the down

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1 -- rain downspout from the -- from his side of
2 the house to the other side of the house from
3 west to the east side. I'm sorry, east to
4 west. Basically, move it to the other side,
5 so that when water flows out, it doesn't flow
6 out near his house, but on the other side,
7 from the other side.

8 And then he also requested a
9 perimeter wall or perimeter -- a 10 inch high
10 structure be put up on the roof, so that it
11 prevents any water from flowing onto his side
12 of the house. So those were the three changes
13 that he requested, asked for and we
14 incorporated those in our designs in which we
15 have submitted to you.

16 So we feel that this will address
17 Mr. Green's issues that he has raised. And
18 based on those changes, I'm hoping that he
19 will support our case. That's what I wanted
20 to say.

21 CHAIRPERSON MILLER: You are
22 hoping? You didn't discuss it with him before

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1 this hearing?

2 MR. VAJPEYI: We did send the
3 designs over to Mr. Green after making those
4 changes and Mr. Green, I think, he didn't say
5 that he didn't disapprove, so I'm not 100
6 percent sure.

7 CHAIRPERSON MILLER: Okay.

8 MR. YANG: I can address the
9 issues, the answers, the response I have in
10 regards to the requirements of section 223.
11 The first requirement being that "The light
12 and air available to neighboring properties
13 shall not be unduly affected."

14 And you know, based on -- you know,
15 I don't know much about astrology or anything,
16 but based on what I know, you know, the front
17 of our house faces north and the -- I mean,
18 faces south. And the back of our house faces
19 north.

20 As a result, the -- so the sun
21 rises in the east. And there is a long
22 narrow, about 4 feet on my side, 4 feet on his

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1 side, so total the alley is about 8 feet wide
2 and 25, approximately, feet long. As a
3 result, that -- there's a narrow alley between
4 our house, which, you know, because the sun --
5 and -- the light that Mr. Green has addressed
6 as not receiving, due to the construction,
7 into the dining room of his house is on the
8 first floor and what I'm saying is that, you
9 know, the sun doesn't -- we don't get direct
10 sunlight into the dining room either.

11 And not because of the structure or
12 anything, just by the mere fact that, you
13 know, the sun doesn't shine directly into our
14 rooms.

15 Furthermore, you know, it's a two
16 level structure at one point and then the
17 middle of the house is a three level structure
18 and there are other buildings to the east of
19 us that block light into our -- into that
20 narrow -- it's very difficult. The type of
21 light that we get are, essentially, you know,
22 diffused light on just, you know -- light,

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1 just not direct light.

2 The second issue for the
3 requirements of section 223 relates to "The
4 privacy of use and enjoyment of neighboring
5 properties shall not be unduly compromised."
6 You know, we believe that the addition that we
7 have added, you know, doesn't have any effect
8 in relation to how he uses his property.

9 Basically, the alley that is in
10 between our house, that we share between our
11 house, he basically just -- you know, it's
12 just an alley. We don't use it as well and
13 he, basically, you know, from what I can see,
14 it's used basically to -- there is a trash bin
15 that collects the water that is emitted from
16 his AC system and to store, you know, any
17 debris or whatever you want to store in the
18 alley. That's what it's used for.

19 And that's what we use for it as
20 well. We haven't heard any complaint from any
21 of our other neighbors as to, you know, how it
22 affected negatively on their enjoyment of the

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1 neighborhood.

2 So the next requirement is that
3 "The addition together with the original
4 building as viewed from the street, alley and
5 other public ways shall not substantially or
6 visually intrude upon the character, scale and
7 pattern of the houses along the subject street
8 frontage."

9 Again, the addition is in the rear,
10 so no one in the front could see it unless
11 they come into the alley of our neighborhood.

12 And I have -- all I have heard is basically
13 consistent of various design and architecture.

14 There is -- in our neighborhood.

15 So in the back of the house, you
16 know, some people have two level decks, some
17 have one. Some have enclosed decks. And
18 there is, you know, also some designs as is
19 true throughout D.C.

20 Furthermore, I mean, I have
21 provided pictures of, you know, the
22 neighborhood in the front of the house and the

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1 diversity of the architecture in front of the
2 house and the back of the house. And you can
3 see from those pictures that, you know, there
4 is -- you know, recently there is a modern
5 condo right just two house away from our block
6 that shares our alley, which doesn't -- you
7 know, it's large, it's a much larger scale
8 than our house.

9 You know, just to show you that our
10 design is not like it's out of character of
11 the rest of the neighborhood.

12 The last requirement deals with the
13 lot occupancy, "The development of flat
14 together with the addition shall not exceed 50
15 percent in the R-1 and R-2 District or 70
16 percent in the R-3, R-4 and R-5 District."

17 I have provided calculations which,
18 you know, basically -- two types of
19 calculation. One based off the measurement
20 that is stated in the D.C. Public Record and
21 one based on my own measurement. And if you--
22 I think, I believe you do have these paperwork

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1 as well.

2 And that, basically, what I have
3 calculated is that, you know, they are way
4 under the 70 percent occupancy requirement.
5 It's somewhere around 49.362 percent. And the
6 other, the one based on my own measurement is
7 about 49.558 percent occupancy.

8 So basically, those, you know,
9 responses I do believe that I should be -- but
10 that's it.

11 CHAIRPERSON MILLER: Can you tell
12 me what happened with respect to this case
13 originally being advertised as a variance?
14 Did you change your application or did you
15 just realize that you didn't need to seek a
16 variance?

17 MR. YANG: Well, yeah, I did change
18 it. Initially, upon speaking to Matthew
19 LeGrant, I mean, the only thing that I -- you
20 know, based on his knowledge, that was what he
21 was -- that was what was told to you that I
22 needed to seek a variance. But after meeting

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1 with others, like Mr. Nero, he pointed me to
2 the Office of Planning.

3 And I spoke with, at that time, a
4 gentleman named Travis Parker. And he
5 mentioned that you actually should seek for a
6 special exception, because, you know, you will
7 qualify under that ruling. And that's how I
8 learned of the special exception. And on that
9 same day, I came back to this office and
10 amended the application to a special
11 exception.

12 CHAIRPERSON MILLER: Well, can you
13 address, for instance, there are documents in
14 the file such as Exhibit 33 it looks like it
15 is a resolution from the ANC opposing the
16 variance.

17 MR. YANG: Yes.

18 CHAIRPERSON MILLER: And I guess
19 I'm wondering, the variance that they thought
20 they were opposing, I mean, were they opposing
21 the plans that are being presented to us today
22 or were they opposing --

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1 MR. YANG: Yes.

2 CHAIRPERSON MILLER: -- different
3 plans and they just thought it was a variance
4 that you were asking for?

5 MR. YANG: Okay. This is actually
6 a complicated matter where the ANC is
7 concerned. I wasn't really familiar with the
8 ANC until two days before, two or three days,
9 the hearing. Actually, I was informed on
10 Sunday. And we -- our ANC meets at the first
11 Wednesday or the second Wednesday of every
12 month, I forget which one. But the Wednesday
13 of every month.

14 And so, you know, I had to travel
15 for work, which I had been planned way back,
16 you know, then, so, obviously, I was not able
17 to attend that particular ANC hearing. And so
18 we weren't going to attend, but I did send an
19 email out. Mr. Green did send me an email
20 giving me the -- you know, so that I would
21 have the email address of the ANC Members,
22 because I didn't know that it existed.

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1 And so, you know, when I got that
2 email, I did email the, you know, group saying
3 that, you know, unfortunately, I'm not going
4 to be able to attend because of work
5 requirements. But you know, I doubt that you
6 guys are going to reschedule my hearing
7 anyway, based on short notice.

8 And you know, so I had to travel,
9 but we weren't planning on attending, but then
10 when I was away in Denver, I did phone Rajat
11 and I said you know what, since we have never
12 been to one of these things, why don't you
13 just go and see what it is like?

14 And so he did appear and I can let
15 you talk about this, because I wasn't there.
16 So he can talk more about the experience. But
17 that's the precursor to what happened. So and
18 then I, you know, interject later.

19 MR. VAJPEYI: So yes, basically, to
20 answer your question, I attended the meeting.
21 I didn't -- I wasn't familiar with the
22 process and then when I went to the meeting I

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1 realized it was a hearing to approve our
2 variance. The application that Chy had
3 submitted as a variance.

4 At that time, he hadn't changed it
5 to an exception. And I was at the meeting and
6 I'm not very familiar with the case, even
7 though I'm the co-owner. Chy has been
8 involved with the entire process. So I wanted
9 to explain this and but what happened at the
10 ANC meeting was that they basically decided
11 that they would still vote on the matter.

12 And the -- at one point, the
13 Commissioners said that I didn't even have to
14 be there in order for them to decide on the
15 matter. So I wasn't really able to present my
16 case, just because I was not very familiar
17 with it and wasn't prepared to do so on that
18 date.

19 And our ANC, Mr. Commissioner, Mr.
20 Johnson, was out of town, so he wasn't -- and
21 we hadn't spoken to him at all until then.
22 And now, that's why he was going to be a

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1 witness in the last hearing explaining that he
2 was -- their decision was made against the
3 variance, while he was away.

4 And so what I feel is because it
5 was a decision against a variance and we are
6 seeking exception, that that is not as
7 relevant to the case.

8 MR. YANG: Can I add some more
9 stuff? Basically, so you know, after that
10 decision was made, I didn't know any decision.

11 This actually -- the copy that I have wasn't
12 actually, you know, given to us until actually
13 just a few weeks before the September 16th
14 hearing. And you know, so after that I
15 started communicating with Anne Thiessen,
16 which does all the email correspondence. And
17 I think she is the one that wrote up this ANC
18 decision.

19 And I told her like, you know,
20 actually you guys made the decision without
21 any input at all from our -- from us. And as
22 a result of that, you know, so I kept emailing

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1 her back and forth and that's when she
2 referred me to Mr. Samuel Johnson. He is like
3 -- she was like the hearing that we do on
4 Wednesday is very, very brief. You don't --
5 we don't give you time to add to -- respond to
6 anything.

7 It's basically just a brief thing
8 for us to make a decision. And so that's why
9 you should work with Mr. Samuel Johnson. And
10 that's so -- from that point on, I continued
11 to be in communication with Mr. Samuel Johnson
12 and relating the information and showing him
13 the paperwork that I have.

14 So then they were going to put us
15 on the agenda, because I wanted to find out
16 what's the appeal process for the decision and
17 that's when I was informed that there is no
18 such thing as an appeal process. We make our
19 decision that's the end of it.

20 But, you know, I wanted to be on
21 the agenda anyway, so he was going to have me
22 put on the next ANC agenda, which was, at that

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1 time, June of 2007. But then he -- you know,
2 something happened and he wasn't available to
3 -- he wasn't in town. And so they rescheduled
4 me for July ANC hearing.

5 And so but, you know, during this
6 time, I was making sure that I was on the
7 agenda. And I was ensured that I was on the
8 agenda for the July ANC hearing. But then on
9 the week of the ANC hearing, Mr. Samuel
10 Johnson just learned that you are actually not
11 on the agenda, but don't worry, I'll talk to
12 Dottie, Madam Chairman Dottie, and she will --
13 have you -- give you some, you know, slot, so
14 that you can make your case.

15 So but that -- it didn't turn out
16 to be the case at all. It was just like their
17 opinion was basically we have made our
18 decision, let's move on. But you know, it was
19 a struggle, because Mr. Johnson had to,
20 basically, say give him a chance. He has
21 never had, you know, a chance to say anything.

22 So then, you know, they gave in and

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1 they said okay, you have two minutes to make
2 your case. And of course, you know, two
3 minutes wasn't much. And then in that two
4 minutes, another ANC person would interrupt
5 and say we have made our decision and then
6 looking to Rajat and saying you were here, you
7 made your case and, you know, a decision was
8 made.

9 And that's when, you know, Rajat
10 was saying at that point in time, like he was
11 there, basically, just to learn the process.
12 He didn't prepare any document. He didn't
13 bring anything with him. So as a result of
14 that, you know, I tried to appear to them and
15 say that actually you guys made your decision
16 based on a variance request, but the
17 application has been amended to section 223
18 and that, you know, under the circumstances, I
19 wasn't given an opportunity to make my case.
20 No one knows anything about this case and the
21 decision that was made came from one source
22 only.

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1 But, you know, it failed.

2 CHAIRPERSON MILLER: Okay. Thank
3 you. I do want to note though that this
4 resolution does not, if I'm looking at it
5 correctly, appear to show the vote on this at
6 all or whether there was a quorum present or
7 whether it was publicly noticed and those are
8 all factors that would lead us to give it
9 great weight.

10 Is there something else here?
11 Okay. I was handed another ANC document. I
12 was looking at Exhibit 33.

13 MR. YANG: Which is what?

14 CHAIRPERSON MILLER: Which is
15 received by the Office of Zoning, September
16 9th, which says "Advisory Neighborhood
17 Commission 1A Resolution on BZA Hearing 17799
18 regarding 1121 Lamont Street, N.W." and it
19 starts with a whereas clause. And then it
20 resolves that the variance be denied.

21 But it doesn't show --

22 MR. YANG: Mine doesn't show that

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1 either.

2 CHAIRPERSON MILLER: Yes.

3 MR. YANG: I mean, this is all that
4 was given to me, so --

5 CHAIRPERSON MILLER: But then we
6 have another one dated April 9.

7 MR. YANG: Yeah.

8 CHAIRPERSON MILLER: 2008. Which
9 says "With due notice, quorum present, ANC-1A
10 voted 5 aye, 2 nay, 2 abstentions.

11 MR. YANG: Right.

12 CHAIRPERSON MILLER: To support
13 denial of the zoning variance for Case 17799.

14 MR. YANG: Yes, I'm familiar with
15 that one.

16 CHAIRPERSON MILLER: All right.

17 MR. YANG: I just saw that like
18 yesterday actually.

19 CHAIRPERSON MILLER: Okay. And it
20 is stapled to the resolution that I was
21 reading.

22 MR. YANG: Right.

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1 CHAIRPERSON MILLER: Okay.

2 MR. YANG: Yeah. But on September
3 16th it was not there.

4 CHAIRPERSON MILLER: Okay. Anyway,
5 great weight means that we would address the
6 issues that are raised in it. And if it does
7 qualify for great weight, we can address it to
8 the extent it is relevant. It does go to the
9 variance test as opposed to the special
10 exception test. So it does not make it as
11 relevant.

12 It does express concerns about
13 water running onto the neighboring property,
14 which is what I hear you saying you have
15 addressed and I'm sure Mr. Green will address
16 whether or not you have addressed it
17 adequately or sufficiently or not.

18 Okay. Yeah, the others don't seem
19 to really go to the 223 test, unless others
20 think so. Okay. That's it with my questions,
21 I think. Are there other questions?

22 VICE CHAIRMAN LOUD: Good

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1 afternoon. Through no fault of yours or
2 actually anybody else's except for mine, I did
3 not review a complete file of your case
4 beforehand and I'm a little confused just
5 trying to sort out what the basic addition
6 was.

7 I have looked at the application
8 and some of the back and forth. And
9 originally, it was supposed to be a one level
10 addition.

11 MR. YANG: It is a one level.

12 VICE CHAIRMAN LOUD: But then some
13 of the pictures show two stories. So just why
14 don't you just start with -- and you can do
15 this real briefly, but the original
16 application was what was actually built and
17 where we are today.

18 MR. YANG: Okay.

19 VICE CHAIRMAN LOUD: You can do it
20 really briefly, I mean.

21 MR. YANG: Okay.

22 VICE CHAIRMAN LOUD: I can follow

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1 you.

2 MR. YANG: The addition actually is
3 one story. The original -- I mean, what you
4 see up there, the top portion is the existing
5 addition that was already there when we
6 purchased the house. And so what we did was
7 we added an L-shape on the first floor. I
8 don't know if you have this, this should be in
9 the packet.

10 This picture here shows the actual
11 addition. The dotted line is the existing
12 addition and what we added is this L-shaped
13 thing.

14 CHAIRPERSON MILLER: What is that
15 attached to?

16 MR. YANG: Um, what do --

17 CHAIRPERSON MILLER: It's attached
18 to? Is there an exhibit number?

19 MR. YANG: Attached, um, I -- on my
20 copy it's doesn't have a number, but it is
21 attached to the survey document.

22 VICE CHAIRMAN LOUD: Can you show

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1 me the same thing by reference to Exhibit 25,
2 which you prepared and which includes
3 photographs?

4 MR. YANG: Yeah. I don't know what
5 Exhibit 25 is.

6 VICE CHAIRMAN LOUD: All right.

7 MR. YANG: Because -- oh, yes. In
8 Exhibit 25, the yellow area is the addition.
9 Yeah, okay, so the yellow area is the one
10 level addition that we added, the L-shape
11 area.

12 VICE CHAIRMAN LOUD: You can
13 continue.

14 MR. YANG: Oh, I mean, I don't know
15 specifically what you are looking for.
16 Basically, it is just the L-shaped area in the
17 -- on the first floor that was added.

18 VICE CHAIRMAN LOUD: When you were
19 issued the stop order, what's your
20 understanding of the reason why you received
21 the stop order?

22 MR. YANG: Because I did do the

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1 addition. I started the addition without a
2 permit.

3 VICE CHAIRMAN LOUD: And so the
4 difference between the -- the August 2004, is
5 that before you did the project or is that
6 after you completed?

7 MR. YANG: The addition -- sorry.
8 The addition in that photo does include the
9 addition on the first floor.

10 VICE CHAIRMAN LOUD: Okay. Thank
11 you. I think I understand a little bit better
12 now.

13 CHAIRPERSON MILLER: Any other
14 Board questions? Mr. Green, you are a party
15 in the case. Do you have any questions for
16 the applicant based on the testimony provided?

17 MR. GREEN: I do.

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19 MR. GREEN: Someone earlier asked
20 if I was an attorney and I said no, I just
21 happen to have a good suit, so I apologize for
22 my way of doing this. But thank you for your

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1 time today.

2 A question of testimony regarding -
3 - and before I even get to that, we're not
4 going with the special exception route,
5 because we don't disagree with anything albeit
6 special exception. Before I get to the
7 variance --

8 CHAIRPERSON MILLER: The variance?
9 They're not applying for a variance, so we're
10 not taking testimony or questions with respect
11 to variance.

12 MR. GREEN: This case, as I
13 understand, is part of enforcement by DCRA.
14 This case was started in 2004, was stop work
15 ordered, an issue eventually ordered that was
16 started in October of 2006 requesting --
17 requested by Mr. Matt LeGrant for an order of
18 abatement to --

19 CHAIRPERSON MILLER: We're not
20 doing enforcement here.

21 MR. GREEN: Okay.

22 CHAIRPERSON MILLER: That is done

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1 by DCRA and the Zoning Administrator. All we
2 are hearing is the 223 and the criteria that
3 is set forth under 223.

4 MR. GREEN: Okay. The reason
5 though that we are here is because Mr. LeGrant
6 in his Notice of Violation and Order of
7 Abatement for a violative condition gave three
8 options to the adjoining neighbors after four
9 years of time.

10 Those conditions were either tear
11 down the addition, fill in the entire lot,
12 height, width, breadth or seek a variance.
13 Mr. LeGrant did not ask them after that amount
14 of time to seek a special exception.

15 Mr. LeGrant says that you did not
16 accomplish any of the things that he had asked
17 for and your conduct demonstrates a lack of
18 good faith and indicates your unwillingness to
19 bring in the conforming -- structure into
20 compliance with the Zoning Regulations
21 voluntarily.

22 Because of that, Mr. LeGrant gave

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1 them one of three options and one of them was
2 a variance.

3 CHAIRPERSON MILLER: Okay. And I
4 know, you know, you're not an attorney. Okay.

5 So what I'm saying is this Board is limited
6 by the jurisdiction that it has.

7 MR. GREEN: Okay.

8 CHAIRPERSON MILLER: Okay. Now, we
9 do have jurisdiction to hear variances as well
10 as special exceptions. However, it's the
11 applicant that seeks relief before the Board.

12 So the applicant is here seeking relief
13 pursuant to 223, which is a special exception,
14 and the applicant has been advised, as I
15 understand it, by the Office of Planning that
16 they don't need to seek a variance, even
17 though maybe Mr. LeGrant said so.

18 So we don't really look beyond what
19 is before us. Basically, they are seeking a
20 223. So if there is something in the history
21 that impacts our decision looking at the
22 criteria under 223, that's one thing. But

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1 we're not here to argue about whether they
2 need a variance or special exception or hear
3 arguments about it.

4 They are the applicant. If they
5 need a variance and they don't ask for one,
6 then they take the risk that Mr. LeGrant, when
7 they go to get a permit, will deny the permit,
8 because he will say oh, you need a variance,
9 you didn't get one.

10 MR. GREEN: Okay.

11 CHAIRPERSON MILLER: Okay. That's
12 their risk.

13 MR. GREEN: Okay.

14 CHAIRPERSON MILLER: So at this
15 juncture, it's appropriate if you have any
16 questions that go to the 223 for you to ask
17 them. Now, if it's your position that you're
18 not challenging the 223, then that's fine or
19 if you want to -- you will have an opportunity
20 later to make your case as to why they may not
21 be qualified for the 223.

22 MR. GREEN: Okay.

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1 CHAIRPERSON MILLER: Okay. So --

2 MR. GREEN: I'll ask a question
3 regarding testimony then, if I may?

4 CHAIRPERSON MILLER: Okay.

5 MR. GREEN: Okay. Thank you.

6 CHAIRPERSON MILLER: Just so you
7 understand the process, yeah.

8 MR. GREEN: I do. I do. During
9 testimony, Rajat, my adjoining neighbor,
10 pleaded or I guess maybe both did, pleaded
11 ignorance of the ANC. But yet, I do want to
12 clarify that Rajat did plead the case.

13 CHAIRPERSON MILLER: Okay. You get
14 to do that under your testimony.

15 MR. GREEN: Okay.

16 CHAIRPERSON MILLER: You can
17 testify to that.

18 MR. GREEN: Okay.

19 CHAIRPERSON MILLER: Right now,
20 it's do you have a question?

21 MR. GREEN: What would you like
22 from me?

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1 CHAIRPERSON MILLER: What?

2 MR. GREEN: What would you like for
3 me? I don't want to go out of order.

4 CHAIRPERSON MILLER: No. It's an
5 opportunity if you have a question about
6 anything they testified to.

7 MR. GREEN: Okay. But I can't ask
8 them a -- okay. So if I -- did you plead your
9 case at the ANC?

10 MR. VAJPEYI: I presented my case
11 and I told -- before doing that, I told them
12 that I wasn't prepared to do so. I could
13 share information whatever I had with the ANC,
14 but I requested a continuation. And I did
15 that at the beginning of the ANC meeting. And
16 I believe it was Ms. Dottie, Chairman Dottie
17 who said that well, let's see what happens.
18 We could always postpone it to the next
19 meeting.

20 So I didn't know that I had an
21 option to just be silent. So they had asked
22 questions and I answered to the best of my

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1 knowledge, but I maintained throughout that my
2 co-owner was not present there and we got --
3 we came to know about this meeting just Sunday
4 prior to the meeting, so he couldn't get out
5 of something which was scheduled -- had been
6 scheduled for like a month. So he couldn't
7 get out of his travel.

8 I would like to point out that
9 there were two members or Commissioners of ANC
10 who vehemently said that they didn't see any
11 point why they needed to take a decision that
12 very day when Chy was not present and when I
13 wasn't -- I made it --

14 CHAIRPERSON MILLER: Okay. We
15 don't -- you testified a lot to this before.

16 MR. VAJPEYI: Okay.

17 CHAIRPERSON MILLER: And actually,
18 I almost was hesitant -- I mean, I almost was
19 -- say yes, that he did say that he testified
20 in a limited way.

21 MR. VAJPEYI: Okay.

22 CHAIRPERSON MILLER: Let's not go

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1 into a whole long story.

2 MR. VAJPEYI: Okay. Sorry.

3 CHAIRPERSON MILLER: Okay. If we
4 can.

5 MR. VAJPEYI: Okay.

6 CHAIRPERSON MILLER: Okay.

7 MR. GREEN: I think I'm done for
8 now.

9 CHAIRPERSON MILLER: Okay.

10 MR. GREEN: Thank you..

11 CHAIRPERSON MILLER: Okay, good.
12 Okay. Anything else before we go to the
13 Office of Planning then? All right. Let's go
14 to the Office of Planning.

15 MR. EMERINE: Thank you, Madam
16 Chair and Members of the Board. My name is
17 Dan Emerine and I am a Development Review
18 Specialist with the D.C. Office of Planning.

19 This is, as has been mentioned
20 before, a case with some complicating factors.

21 The bottom line from the Office of Planning
22 report, that you have in front of you, is that

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1 the Office of Planning does recommend approval
2 of the requested special exception pursuant to
3 section 223.

4 I do want to address a couple of
5 points that are mentioned in my report. One
6 of which is an error and the other is a lack
7 of information. The error relates to the
8 question of where the courts are that are --
9 that the Zoning Administrator deemed to be in
10 nonconformance.

11 There is no question about the
12 closed court that was formerly an open court
13 and turned into a closed court by the building
14 of the addition. However, our report refers
15 to the -- to an open court at the rear of the
16 property, essentially, where the addition juts
17 out and where the back stairs are.

18 That is an error or on our part.
19 That is not a court, because it is -- has a
20 roof over it. The confusion arose because the
21 actual court, the open court created by the
22 addition is per earlier interpretations by the

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1 Zoning Administrator. The area above the roof
2 of the addition is an open court.

3 Essentially, you have seen the L-
4 shaped portion on the plans before. The
5 portion, the area above the portion of the L
6 that is along the side lot line is, per the
7 Zoning Administrator's interpretation, an open
8 court. This may be -- if anyone believes that
9 that is a confusing or counterintuitive
10 decision, I won't disagree with that. But
11 that is how the Zoning Administrator has ruled
12 previously, so I just wanted to make sure that
13 the Board was aware of that.

14 As far as --

15 VICE CHAIRMAN LOUD: Can I ask you
16 a quick question to make sure I'm following?

17 MR. EMERINE: Yes, yes.

18 VICE CHAIRMAN LOUD: So that the
19 area that is shaped like an L --

20 MR. EMERINE: Yes.

21 VICE CHAIRMAN LOUD: -- all of that
22 L-shape is the open court?

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1 MR. EMERINE: Absolutely. My
2 reading of it would be that is simply the area
3 along the side lot line is the open court, not
4 that part of the L that is behind the original
5 existing structure.

6 VICE CHAIRMAN LOUD: So the area in
7 the rear, which would form the shorter part of
8 the L --

9 MR. EMERINE: Uh-huh.

10 VICE CHAIRMAN LOUD: -- is not an
11 open court?

12 MR. EMERINE: Correct.

13 VICE CHAIRMAN LOUD: But on the --
14 okay.

15 MR. EMERINE: Correct.

16 VICE CHAIRMAN LOUD: All right.

17 MR. EMERINE: Okay.

18 VICE CHAIRMAN LOUD: Thank you.

19 MR. EMERINE: As far as meeting the
20 tests of the special exception, oh, I'm sorry,
21 the area in which our report was deficient,
22 relates to the community comments. The Board

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1 just heard testimony relating to whether the
2 ANC had weight on this case and we have not
3 seen any submission from the ANC before
4 submitting our report. So I just wanted to
5 acknowledge that.

6 Related to the applicant's meeting
7 of the 223 test, the test refers to light and
8 air available to neighboring properties. Our
9 analysis does not indicate any unduly -- any
10 undue effect on light and air. There does not
11 appear to be any effect on the privacy of any
12 neighboring properties.

13 Use and enjoyment of the
14 neighboring properties, the drainage certainly
15 could be a concern. On my site visit to the
16 property, my finding, my assessment of it was
17 inconclusive. I couldn't determine, because
18 it wasn't a rainy day, where the water was
19 draining.

20 I think it is certainly an issue
21 that should be addressed by the applicant and
22 the applicant has indicated today that they

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1 are willing to address that issue.

2 The addition shall not
3 substantially visually intrude upon the
4 character. As the applicant noted, there is a
5 variety -- there are a variety of additions
6 along the -- this alley along Lamont Street,
7 some of which are much larger in scale than
8 the applicant's addition.

9 And as the applicant indicated
10 previously, the addition puts the property
11 well within the 70 percent lot occupancy limit
12 for an R-4 District.

13 That concludes my summary of my
14 report, but I am available to answer any
15 questions that you might have.

16 CHAIRPERSON MILLER: Thank you. I
17 just want to make sure I understand what you
18 were saying about the courts.

19 MR. EMERINE: Okay.

20 CHAIRPERSON MILLER: So since you
21 gave your explanation, I'm looking at page 7
22 of your report.

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1 MR. EMERINE: Yes.

2 CHAIRPERSON MILLER: Okay. So do
3 you believe that the relief is needed for both
4 courts that you circled or were you saying
5 that one of those is an error?

6 MR. EMERINE: I'm saying that the -
7 - on page 7 of my report, the area which was
8 indicated as a new nonconforming open court,
9 that is actually not an open court. No relief
10 is required for that. The relief would be
11 required for the area along the top of the
12 addition that abuts the side lot line.

13 CHAIRPERSON MILLER: Okay. And do
14 you have an understanding as to why the Zoning
15 Administrator thought that variance relief was
16 necessary with respect to the courts?

17 MR. EMERINE: My only understanding
18 of this is that the Zoning Administrator
19 indicated to the applicant what the provisions
20 were that the applicant was not in conformance
21 with. In other words, the addition created a
22 nonconforming closed court and a nonconforming

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1 open court. And those related to section 406.

2 So I don't have any knowledge of
3 why the Zoning Administrator's information
4 only covered that as an option as opposed to
5 also listing 223 relief as another possible
6 option.

7 CHAIRPERSON MILLER: Okay. Yeah, I
8 was looking at Exhibit No. 23, which is a
9 Notice of Violation, in order for abatement of
10 violative condition and that references that
11 the construction created illegal open and
12 closed courtyards requiring a variance.

13 Okay. But in any event, that was
14 the ZA's characterization, at that point. But
15 since then, when the Office of Planning
16 reviewed the project, you have determined that
17 variance relief is not required, in your
18 opinion, and only relief under special
19 exception 223 is, correct?

20 MR. EMERINE: That was our analysis
21 upon initial review of the case, that's what
22 we told the applicant. And upon receiving the

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1 full information of the case, that would still
2 be our recommendation.

3 CHAIRPERSON MILLER: Right, okay.
4 Because the situation is that, you know, it
5 could be either one. If it's a violation of
6 the court requirements, but if you meet
7 certain requirements under 223, then you can
8 get a special exception as opposed to
9 requiring a variance. And they meet the other
10 requirements, such as lot occupancy and things
11 like that. Is that correct?

12 MR. EMERINE: Correct.

13 CHAIRPERSON MILLER: Okay. Okay.
14 Any other questions? Does the applicant have
15 a copy of the Office of Planning report? And
16 do you have any questions for the Office of
17 Planning?

18 MR. YANG: No.

19 CHAIRPERSON MILLER: Okay. Mr.
20 Green, do you have a copy of the Office of
21 Planning report? Yes, you do?

22 MR. GREEN: Yes, I do.

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1 CHAIRPERSON MILLER: Okay. And do
2 you have any questions for the Office of
3 Planning, based on that report or the
4 testimony that was just given?

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6 MR. GREEN: A question, I'll
7 presume -- a question of 223 versus 406. Is
8 223 available to anyone, are there some
9 restrictions?

10 MR. EMERINE: Section 223,
11 essentially, within section 223, it outlines
12 the standards that you have to meet to get
13 relief under that section. So anyone who is
14 building an accessory structure that does not
15 comply with all of the requirements of section
16 401, 403, 404, 405, 406 and 2001.3 can apply
17 for special exception relief under section
18 223.

19 MR. GREEN: And does anyone have to
20 be a single-family dwelling?

21 CHAIRPERSON MILLER: Excuse me, let
22 me just interrupt here. Do you have a copy of

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1 223?

2 MR. GREEN: Um --

3 CHAIRPERSON MILLER: Just to be --

4 MR. GREEN: Yes.

5 CHAIRPERSON MILLER: Okay. I'm --

6 MR. GREEN: Yes.

7 CHAIRPERSON MILLER: -- just going
8 to -- I'm sorry to intercept, but Office of
9 Planning doesn't have it right in front of
10 him.

11 MR. GREEN: Okay.

12 CHAIRPERSON MILLER: And I do and I
13 just want to make this quicker.

14 MR. GREEN: Okay.

15 CHAIRPERSON MILLER: 223.1 says "An
16 addition to a one-family dwelling or flat in
17 those residence districts where a flat is
18 permitted, that does not comply with all of
19 the applicable area requirements of 401, 403,
20 404, 405, 406 and 2001.3, shall be permitted
21 as a special exception if approved by the
22 Board of Zoning Adjustment under 3104, subject

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1 to the provisions of this section."

2 And then it goes through the rest
3 of the provisions. It doesn't affect light
4 and air, etcetera.

5 MR. GREEN: Right. A question,
6 one-family dwelling or flat, does a building
7 with a basement apartment constitute a one-
8 family dwelling or not or flat or not? I
9 mean, I would -- and I'm presuming that a flat
10 is not -- and a one-family dwelling is not an
11 apartment building. So I'm just asking
12 clarifications as to what a flat is and a one-
13 family dwelling. Because it seems to hinge.

14 CHAIRPERSON MILLER: Okay. You
15 know, I just jumped in to read you the
16 regulations.

17 MR. GREEN: I understand.

18 CHAIRPERSON MILLER: But the Board
19 doesn't give interpretations necessarily. You
20 know, so if Office of Planning wants to
21 address that any further, you can. But you're
22 asking in relation to this particular case?

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1 Is there something about this particular case
2 you want to ask Office of Planning about?

3 MR. GREEN: I guess because we seem
4 to be going over the -- whether a variance is
5 required or a special exception is allowed.
6 And that it might hinge on whether this
7 property is a single-family dwelling or a
8 flat.

9 CHAIRPERSON MILLER: Okay. Let me
10 stop you there then.

11 MR. GREEN: Okay.

12 CHAIRPERSON MILLER: I'm going to
13 go back to what I said. The applicant is
14 proceeding at its own risk, okay? It is
15 proceeding under the assumption that the
16 Office of Planning is correct, that that's all
17 they need is the 223, not a variance.

18 If they go before the Zoning
19 Administrator and the Zoning Administrator
20 says you need a variance, then they are back
21 here before the Board for a variance. So --

22 MR. GREEN: Okay.

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1 CHAIRPERSON MILLER: -- we're not
2 debating whether --

3 MR. GREEN: Okay.

4 CHAIRPERSON MILLER: -- the need a
5 variance or not.

6 MR. GREEN: No, I wasn't debating.
7 I'm asking for clarification, because you --
8 there is a lot that one must know.

9 CHAIRPERSON MILLER: I mean, unless
10 you want to ask Office of Planning a question
11 that goes to whether they qualify under 223.1
12 as a one-family dwelling, is that your
13 question?

14 MR. GREEN: I guess that would be.
15 So if it is a one-family dwelling or a flat -
16 -

17 MR. EMERINE: Um-hum.

18 MR. GREEN: -- a house that has a
19 basement apartment and -- two-family dwelling.
20 And as I have read, this is only for a one-
21 family dwelling, as I have heard, a one-family
22 dwelling or a flat. So if that's --

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1 MR. EMERINE: No, I'm not sure I
2 understand your question.

3 MR. GREEN: Is a building that has
4 an apartment and another residence above it a
5 one-family dwelling.

6 CHAIRPERSON MILLER: Or a flat.

7 MR. GREEN: Or a flat or neither?

8 MR. EMERINE: Right. Generally, it
9 would be considered a flat, unless the
10 apartment was considered an accessory
11 apartment.

12 MR. GREEN: Another question. What
13 is an accessory apartment?

14 MR. EMERINE: There are provisions
15 in the R-1 District that define what an
16 accessory apartment is, but, essentially, it's
17 something that -- it's an apartment that is no
18 greater than 25 percent of the floor area.
19 There are a few other provisions related to
20 that that limit what it can be.

21 MR. GREEN: Okay. Thank you.

22 CHAIRPERSON MILLER: Okay. Is

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1 there anybody here from the ANC? I think I
2 asked that before, but just in case someone
3 happened to have strolled in. Not hearing
4 from anyone, Mr. Green, would you like to --
5 wait, you are not -- are you in support or
6 opposition to this application?

7 MR. GREEN: I'm in opposition.

8 CHAIRPERSON MILLER: Okay. Is
9 there anybody here who wishes to testify in
10 support of this application? Not hearing from
11 anybody, then it's time for anyone here who
12 wishes to testify in opposition. So that
13 would be you, Mr. Green, I gather.

14 MR. GREEN: I gather you are
15 correct --

16 CHAIRPERSON MILLER: All right.

17 MR. GREEN: -- Madam Chair.

18 CHAIRPERSON MILLER: Then this is
19 your time.

20 MR. GREEN: Okay. Well, I do want
21 to stay within the scope, but I guess I can
22 give history. Is that correct?

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1 CHAIRPERSON MILLER: You can, but
2 all I would say is I encourage you to testify
3 to what might be relevant to our analysis.
4 We're going to be analyzing this under 223.
5 So if there is some history that is related to
6 our consideration of any of these criteria
7 that would be relevant. If it's just --

8 MR. GREEN: I will ask is it
9 relevant that it was built without a permit or
10 no?

11 CHAIRPERSON MILLER: I don't know.
12 I mean, you tell me. You -- I don't -- not
13 per se. Not per se.

14 MR. GREEN: So no.

15 CHAIRPERSON MILLER: So --

16 MR. GREEN: Because I don't want to
17 waste your time --

18 CHAIRPERSON MILLER: Right, or your
19 time.

20 MR. GREEN: -- with the history,
21 you know. So --

22 CHAIRPERSON MILLER: I mean, what I

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1 say is, you know, to look at the criteria
2 under 223, you know, light and air and privacy
3 or whatever or special treatment that you
4 think the Board should consider for the
5 protection of adjacent and neighboring
6 properties. You are a neighboring property.

7 Those are criteria that we will be
8 going through in considering this application.

9 MR. GREEN: Okay. I'll make this
10 brief. The property was obtained by my
11 adjacent neighbors in 2004. My wife and I
12 went away for a three week period. When we
13 came back, they had built this addition. We
14 were not happy with it. We asked them if it
15 was a matter of aesthetics or law.

16 They told us, at the time, that
17 they did not have a permit to build it. They
18 did not have plans to build it. They did not
19 -- they were surprised by how large it was
20 when they actually saw it.

21 After that point, we realized that
22 the design of the building or the design of

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1 the addition caused water, when it does rain
2 heavily, water when it rains to drain over
3 onto our property. It just empties from their
4 house onto ours.

5 At the time the property, the
6 addition was built over the property line, so
7 it actually extended onto our property, in the
8 air, but it was on our property. We asked
9 them to adjust this. They did not until this
10 year of 2008, recently about two months ago.

11 The only thing that they have done
12 regarding the property and adjusting the water
13 issue is to cut off, approximately, 4 inches
14 from the structure. The roof is still pitched
15 towards our house and during very large rains,
16 water does flume, approximately, 10 feet
17 across our back deck. And we do have evidence
18 of that.

19 So the structure causes a problem
20 for us. They have said that they are willing
21 to make adjustments, but this has been a four
22 year process. Many people in Government,

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1 including the Attorney General's Office,
2 Inspector General's Office, the Mayor's Office
3 have been involved.

4 They are our next door neighbor.
5 They have not come to us directly, except
6 recently to hand us a few, three exactly,
7 plans, but otherwise there has been
8 conversation. And in one of their emails, we
9 have done a couple back and forth emails, they
10 have said that they are looking into plans and
11 costs for doing the work that would alleviate
12 our problem. But we have not received any of
13 those as of yet.

14 So the only effort we have seen
15 from them is the removal of 4 inches of the
16 roof and a few plans. That's it.

17 CHAIRPERSON MILLER: What's the
18 evidence that you were alluding to with
19 respect to the water coming?

20 MR. GREEN: The rain water?

21 CHAIRPERSON MILLER: Yeah.

22 MR. GREEN: Okay. If you will

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1 notice the design, what takes place -- I'm
2 just going to run through this. What takes
3 place is that water comes down. And at any
4 point when it does rain, because the property
5 does go to -- the structure does go to the
6 property line, originally it went over the
7 property line, water does drain onto our
8 property.

9 This by some set of D.C. standards
10 is illegal. But that is not to be addressed
11 here. During very heavy rains, water does
12 flume down the side of the building, hits that
13 roof and then basically jump skis across a 3
14 foot area, 3.5 foot area onto our deck and
15 continues across.

16 The water then falls through the
17 deck and we have a basement well there and
18 well, there is only one place for that water
19 to go once it does go through that deck.
20 These are slides that have to do with the
21 variance, not the 223. So I'm going to go
22 through these to get to the evidence.

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1 But we were surprised at how far
2 the water went. The evidence is that we did
3 put up a screen between the addition and our
4 property. What would be on the left hand side
5 there in that opening. It was an indoor
6 screen and not meant to be outdoors.

7 But what took place is water during
8 a heavy rain storm flumed across and we were
9 able to see evidence of the ink from the shade
10 and where it went. So basically, the path of
11 the water, and that's a long pole, a board
12 that is there to show the direction of the
13 water and how it comes across.

14 It comes across as far as our door,
15 which is across the other side. The evidence,
16 now this is not a pretty picture, but it's
17 better than I thought. That's the ink that
18 was on the shade that was in that opening.
19 And to back up, that one that you saw a moment
20 ago is right below that table, which wasn't
21 there at that time.

22 So water comes all the way across

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1 and there's no way for us to prevent this.
2 You know, we could build an awning, but then
3 we need a variance. We could put up a sign,
4 but then we would need a variance. And there
5 are things we could do, but then we need to go
6 through a permitting process.

7 We can't do anything to stop this.
8 So that's the evidence.

9 CHAIRPERSON MILLER: Is there
10 something you suggest that they could do to
11 stop this?

12 MR. GREEN: We had talked about --
13 an architect had looked at the structure and
14 suggested the flattening of the roof.
15 Creating a flat roof where water would drain
16 on the other side of the property, putting up
17 a perimeter wall, as is normally done in a
18 courtyard situation, as is done on all of our
19 roofs in that area.

20 CHAIRPERSON MILLER: Okay. Now, I
21 thought I heard that the did do that. No?

22 MR. GREEN: No, they have not done

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1 that. They have submitted some plans. They
2 did not submit -- they said that they would
3 submit quotes for getting this work done.
4 This -- originally, this hearing was
5 originally set for July. They postponed it
6 from July until September. At the September
7 meeting, we met to see if we could work
8 something out.

9 And it was our expectation that
10 they would be doing some work, starting some
11 physical work before this time, giving them,
12 approximately, four months from September
13 until now, that was the thought. But no work
14 has been done. They did submit -- they have
15 given us three sets of plans, very different
16 plans, but here we are.

17 CHAIRPERSON MILLER: I'm not sure
18 how they could do work before we gave them
19 approval. But are there other -- let me ask
20 the applicant. Are there specific plans that
21 respond that are before us or that respond to
22 Mr. Green's concerns or what's your response

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1 to that?

2 MR. VAJPEYI: Yes, may I say
3 something? To respond directly to what Mr.
4 Green said that in September when we
5 discussed, Mr. Green said that he would be
6 willing to drop his opposition if we made
7 changes to our design. I specifically asked
8 and I discussed -- I was in presence of the
9 Zoning --

10 MR. YANG: Mr. Nero.

11 MR. VAJPEYI: -- Mr. Nero. So I
12 was of the understanding that we will not be
13 able to do anything until we get a permission
14 from you. And I did specifically say this in
15 presence of Mr. Green that all we can do from
16 then until now is agree on what changes he
17 would agree to.

18 As a result of that, and it was
19 clear to all of us, I thought, that we
20 wouldn't be able to do any work. It would be
21 violation -- in violation. So we presented
22 whatever plans we thought to him to make sure

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1 that he was in agreement of that. And I'm not
2 sure we could have started any work. So I'm
3 not sure what else we could have done.

4 CHAIRPERSON MILLER: Okay. So no,
5 I don't believe you could have started work,
6 that's why you are here for us to --

7 MR. VAJPEYI: Right.

8 CHAIRPERSON MILLER: -- determine
9 whether to approve your project, since you
10 can't do it as a matter-of-right. So my
11 question then is did you have the specific
12 plans that are before us, are they responsive
13 to Mr. Green's concerns as we have heard
14 today?

15 MR. VAJPEYI: Yeah.

16 MR. YANG: Yes, yes.

17 CHAIRPERSON MILLER: You think they
18 are? Okay.

19 MR. YANG: Yeah.

20 CHAIRPERSON MILLER: You want to
21 explain how they are?

22 MR. YANG: In the packet that you

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1 have, you should have some drawings that look
2 like these with Mr. Green's comments. These
3 are the suggestions after the September 16th
4 hearing he dropped off in our front door,
5 which I took and, you know, basically, from
6 that point on, you know, I would take his
7 suggestions.

8 We did need to discuss a suggestion
9 because, ultimately speaking, I was thinking
10 that the pitch of the roof, all I would have
11 to do is put up a vertical perimeter to
12 prevent water from flowing downward to his
13 property. You know, that was fine with him.

14 He wasn't okay with that, so he
15 wanted us to flatten the roof. So then we're
16 like, okay, we'll flatten the roof. And this
17 -- these, like I said, are basically drawings
18 improvements presented by him. And I
19 basically took these drawings and made up some
20 new drawings just to show that the roof --
21 just, you know, if we were to proceed forward
22 and get the exception, we would try to get a

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1 permit to build.

2 You know, if you have like these
3 three, mine aren't numbered, so I don't know.

4 Like this drawing, this drawing and this
5 drawing, basically, shows you that the roof
6 will be flattened. And if you have it, I can
7 explain to you what the colors mean.

8 CHAIRPERSON MILLER: Exhibit 39?

9 Okay. Wait a minute, we'll get it before us.

10 Do you have that, Mr. Green?

11 MR. GREEN: I do not.

12 CHAIRPERSON MILLER: All right. I
13 believe we all have it before us. Does Office
14 of Planning have it? Exhibit 39.

15 MR. EMERINE: Yes.

16 CHAIRPERSON MILLER: Okay. Okay.
17 I think we all have it.

18 MR. YANG: Okay. These aren't the
19 exact drawings that I gave to Mr. Green. I
20 gave him the same drawing, but different views
21 and larger printout to him. I -- so he does
22 have something similar to this, but not this

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1 exact one.

2 Basically, this -- these new
3 drawings basically shows you that, you know,
4 if you look at this one, it shows you that --
5 okay, this is what it originally looked like
6 on September 16th, the hearing date that we
7 requested postponement.

8 It shows that there is an overhang.

9 After the September 16th hearing here, Mr.
10 Inspector Eric Cox, basically, phoned me every
11 week for me to take off the overhang, which is
12 the encroachment that he is referring to that
13 goes into his property. So, you know, after
14 three weeks of phone -- he gave me 90 days.

15 But the official letter said you
16 have 90 days to take the overhang out. And
17 within three weeks, you know, the fourth week,
18 I think, I -- or one weekend we took it off.
19 We took it out. The middle picture basically
20 shows that it's no longer there. But the
21 roof still has the pitch.

22 Because -- the reason we were able

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1 to take it off is because, you know, Mr. Cox
2 informed me that I did not need a permit to do
3 correction. Because I was, you know, very --
4 I was very concerned. I'm like do I need a
5 permit? Do I need a permit? I don't want to
6 have this type of issue again. He said I
7 don't think you do need a permit. Just get
8 that -- remove that.

9 So I removed that. The third
10 drawing, if you look at a larger picture has
11 purple, red and yellow coding to it. I had a
12 drawing you can look at either this or this.
13 The colors are all the same.

14 But basically, the red portion that
15 you see, that's just represent that the raised
16 roof, it just represents how high it would --
17 it used to be. Since it's removed, the
18 highest point of the raised roof was -- the
19 pitched roof was at the highest point of the
20 red portion of this drawing. That's all it is
21 showing is that. That's how tall it used to
22 be before it is going to be flattened.

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1 The yellow portion, as you can see,
2 is just showing you that this is what the roof
3 will look like when it is flattened. And the
4 purpose represents the 10 inch perimeter on
5 three sides of the drawing to prevent any
6 overflow into the other property.

7 So this is the drawing that, you
8 know, it's essentially what was recommended by
9 Mr. Green.

10 MR. VAJPEYI: Downspout.

11 MR. YANG: And the downspout also
12 is the brown portion. It has been moved from
13 the east side of the house to the west side as
14 he requested.

15 CHAIRPERSON MILLER: So, Mr. Green,
16 is there something wrong with that revision
17 that is not responsive to your concerns?

18 MR. GREEN: The only thing is a
19 matter of trust, Madam Chair.

20 CHAIRPERSON MILLER: Well, let me
21 just say this. We don't do really trust here,
22 I mean.

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1 MR. GREEN: I understand that.

2 CHAIRPERSON MILLER: If this is the
3 plan that we approve, then this is the plan
4 that, the only plan, they can get permitted
5 on.

6 MR. GREEN: Okay.

7 CHAIRPERSON MILLER: So my question
8 to you is does the plan as they have revised
9 it, including the flattening of the roof and
10 the perimeter wall, does that respond to your
11 concerns or is there anything else that the
12 Board should consider? Because we hear your
13 concerns about the drainage and the water.

14 MR. GREEN: I --

15 CHAIRPERSON MILLER: And that, you
16 know, they were significant concerns. And
17 then we hear that the applicant has revised
18 the plans since then to respond to that and
19 that the revisions are, in fact, based on your
20 suggestions.

21 MR. GREEN: Yes, they are.

22 CHAIRPERSON MILLER: Okay.

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1 MR. GREEN: Yes, they are.

2 CHAIRPERSON MILLER: Okay.

3 MR. GREEN: After several changes,
4 yes, these are. If these can go through, as I
5 understand that you would approve this to be
6 done, then this is acceptable.

7 MEMBER WALKER: Madam Chair, in
8 looking at the plans, I'm just wondering if
9 they are -- if they have enough specificity.
10 I mean, we have got, you know, some renderings
11 here with a few measurements, but, you know,
12 is this specific enough for the Board to
13 really approve?

14 I mean, we don't even -- I mean, we
15 have a little testimony in the record now
16 about what these various colors mean, but, you
17 know, these are a long way from being clear.

18 MR. GREEN: Madam Chair, part of
19 the issue is we do want to make sure this is
20 done professionally. Part of the back and
21 forth between my adjoining neighbor has been
22 about who would do this work to make sure that

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1 they -- it is done by a D.C. licensed
2 contractor.

3 Through four years of history, they
4 have had much work done, not by a D.C.
5 licensed contractor nor by permit. We do want
6 to make sure that that this work is done
7 legally with permits and is inspected.

8 CHAIRPERSON MILLER: Okay. Most of
9 that is not within our jurisdiction. I mean,
10 our jurisdiction is what their plans are going
11 to look like.

12 MR. GREEN: Okay.

13 CHAIRPERSON MILLER: Are they in
14 accordance with zoning. So --

15 MR. GREEN: Can we ask for an
16 architect drawn design or no?

17 CHAIRPERSON MILLER: Well, I think
18 Ms. Walker raised a point as to whether we
19 need more detailed plans, correct? And so I'm
20 open to suggestion as to what kind of plans
21 that would be. I'm not an architect. I'm a
22 lawyer. So I can't, you know, articulate that

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1 myself. And I would be happy to entertain
2 suggestions from, you know, Office of Planning
3 or Office of Zoning, you know, or my Board
4 Members as to what kind of -- if we would like
5 further plans submitted by the applicant.

6 In accordance with the renderings
7 that we have here, what would we be asking
8 for?

9 VICE CHAIRMAN LOUD: Well, Madam
10 Chair, I just want to go on the record
11 supporting Board Member Walker, that the plans
12 -- I don't think the plans are specific
13 enough. And the ones I have seen they call
14 construction documents, architects prepare
15 them and they have detailed measurements that
16 indicate how long something is.

17 Just spelling out the measurements
18 of the different parts of the project. So to
19 your point, maybe OP can delineate that
20 further. But I know they are called
21 construction documents. And they tell the
22 contractors what they are going to build.

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1 CHAIRPERSON MILLER: Okay. Yeah,
2 it looks like we are very close here to your
3 not having opposition to this special
4 exception. But what is being sought is
5 something more detailed than these pictures
6 that you would take to permitting that would
7 ensure that the representations that are being
8 represented by these renderings and by your
9 testimony would be in a format that is really
10 enforceable and clearer to the parties and the
11 Board.

12 And so I guess I understand that
13 that would probably be achieved if you have an
14 architect draw up the plans as to what would
15 be built as opposed to just having these
16 renderings. Do you have any comments to that?

17 MR. VAJPEYI: I have a question.
18 So these drawings will be submitted to your
19 Board later on --

20 CHAIRPERSON MILLER: Um-hum.

21 MR. VAJPEYI: -- for your review?

22 CHAIRPERSON MILLER: Um-hum.

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1 MR. VAJPEYI: Okay.

2 MR. YANG: I mean, these drawings,
3 the ones that I have submitted does not have
4 the number, but it's -- the software that is
5 being used are used by architects to -- and
6 they can -- I can easily incorporate the
7 number. I just didn't do it here.

8 CHAIRPERSON MILLER: Well, let me --
9 -- are you going to have an architect?

10 MR. YANG: I mean, we can.

11 MR. VAJPEYI: We spoke to the
12 Office of Zoning, Mr. Nero, and he said that
13 as long as the plans are professionally drawn
14 and, like you said, enforceable, then anyone
15 can draw them. And I think that's what Chy is
16 saying that he has the software that he can
17 use to draw renderings. But I understand that
18 you want to see something.

19 You may not have seen in our --
20 someone other than architect do these
21 drawings, so I think that's why you are asking
22 for an architect.

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1 CHAIRPERSON MILLER: Well, what
2 does that mean professionally drawn if it is
3 not drawn by a professional, such as an
4 architect?

5 MR. VAJPEYI: Basically, there are
6 softwares available in the market which can --
7 which are used to, you know, accurately draw
8 these construction drawings, from what I
9 understand. And those are the drawings that
10 Chy has used and worked with the various
11 offices in D.C. So that's what I was saying
12 that he could draw drawings with proper
13 specifications, but --

14 MR. YANG: I have worked with the
15 D.C. Permit Office, though I'm not an
16 architect or a builder or a licensed
17 contractor and stuff like that. An individual
18 can submit drawings that the D.C. Board can
19 look at and review whether it meets the
20 specification or not. And that's been my
21 experience in the past.

22 So I have not -- you know, I have

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1 been able to provide the required document in
2 order to get a permit. And you know, like I
3 said, going through these drawings that I have
4 given to you doesn't have the measurements and
5 stuff like that, but they are drawn to scale.

6 This is a software that the professionals do
7 use and it is drawn to scale.

8 It is just not identified in the
9 drawing that I have submitted.

10 CHAIRPERSON MILLER: Well, let me
11 ask you though, was it your plan to generate
12 those documents with the software that are
13 more specific that give measurements, take
14 that to permitting and then that's what
15 contractors would use?

16 MR. YANG: Yes. I mean, the Permit
17 Office would not, you know, approve any
18 document without measurement and
19 specification. So the documents that I submit
20 to the Permit Office would have measurements
21 and would indicate, you know, how thick or
22 tall the perimeter was or would be.

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1 So you know, it would have all the
2 necessary specification that is required by
3 the DCRA Office.

4 CHAIRPERSON MILLER: Okay. Does
5 the Office of Planning have any position on
6 this?

7 MR. EMERINE: I guess I would say
8 that, you know, generally, these drawings are
9 done by an architect. I don't know that it is
10 a requirement. I would say it is good advice
11 that they be done by someone with a
12 professional background. But if the applicant
13 is able to submit something that the D.C.
14 Permitting Office can understand, can review
15 and can deem enforceable, then I don't see any
16 legal or regulatory barrier to him submitting
17 them in that form.

18 CHAIRPERSON MILLER: In the first
19 instance, we would have to also draw that same
20 conclusion, find it, you know, understandable
21 and more precise to, you know, address the
22 point Ms. Walker made that these are not

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1 sufficient. Whether that will be -- Mr.
2 Green?

3 MR. GREEN: Madam Chair, this has
4 been a four year process. A part of that
5 process is that the structure was built
6 illegally. After the fact, my adjoining
7 neighbor submitted plans that they drew, and I
8 do have them, in their original seeking of a
9 permit that did not accurately reflect what
10 was actually built.

11 So the structure was in place for a
12 month or so. Then they submitted plans for
13 the structure for a retroactive permit. They
14 submitted plans that did not accurately
15 reflect what was built. They were false.

16 With this history of submission of
17 false documents, of false drawings, of
18 drawings which are not accurate, it is not my
19 hope that they can just submit drawings
20 without a professional, without an architect
21 being involved.

22 And I'm not sure if, you know,

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1 using professional software makes one an
2 architect more so than using a will software
3 makes one an attorney.

4 CHAIRPERSON MILLER: Okay. All
5 right. I don't want to put words in your
6 mouth. I just want to clarify though what I
7 think I hear you saying. Correct me if I'm
8 wrong. That if they were to file more
9 detailed plans that were drawn up by an
10 architect or certified by an architect, that
11 you would know -- in accordance with the
12 representations made here with the flat roof
13 and the perimeter wall, that you would no
14 longer be opposed to the special exception
15 relief.

16 However, if it's not certified by
17 an architect, you might not have that same
18 trust and might still be opposed. Is that
19 correct?

20 MR. GREEN: That is correct.

21 CHAIRPERSON MILLER: Okay.

22 MR. MOY: Madam Chair?

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1 CHAIRPERSON MILLER: Yes.

2 MR. MOY: Just you had asked
3 whether or not -- for feedback from the staff.

4 In our own requirements for submission, we
5 ask for drawings, elevation drawings, site
6 plans, so that the Board can get a better
7 understanding of the project.

8 In the past, the Board has received
9 drawings anywhere from a licensed architect
10 with the typical elevation drawings, roof
11 plans, floor plans and so forth to schematics.

12 We have had architects who are licensed
13 architects submit which appear to be by hand
14 drawings, schematics even, that the Board has
15 accepted.

16 So I think maybe the bottom line is
17 whether, as has already been discussed, all
18 the dimensions be on the drawings, to scale
19 and I guess the ultimate result is whether or
20 not it is acceptable to Permitting Office.
21 That's part of the objective.

22 So I don't know if that adds to

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1 what the Board is looking for or not, but
2 that's where we are. In other words, we don't
3 make it mandatory that an applicant must hire
4 an architect or a licensed architect.

5 MR. YANG: Madam Chair, can I add
6 something to respond to Mr. Green's comment
7 that we submit a false documents and drawings
8 to DCRA. That is not the case at all. I
9 mean, if you look at the -- what -- the
10 structure that is now and we look at the
11 drawing that has all the necessary DCRA stamps
12 on it, it does look like the drawing.

13 Maybe it's off by an inch or two,
14 but it does look like the drawings that we
15 have submitted to you.

16 MR. GREEN: Madam Chair, I cannot
17 let that go, because I have a document that
18 they are referring to in front of me and it
19 has an additional roof area that is -- that
20 was never there and it's, approximately, 20
21 feet long. So I'm just saying that there is a
22 history, DCRA has this history of false

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1 documents being submitted.

2 And it is because of those false
3 documents that they were able to get an
4 original building permit, which was revoked by
5 DCRA.

6 CHAIRPERSON MILLER: Okay. We're
7 not going to be deciding that.

8 MR. YANG: Madam Chair, again, can
9 I add something?

10 CHAIRPERSON MILLER: Yes.

11 MR. YANG: That roof that he is
12 referring to is the reason why we have this
13 open courtyard. The roof -- the original
14 drawing that I submitted to the Permit Office
15 did not have the -- I mean, I worked with the
16 Permit Office for three weeks eight hours a
17 day. I had to go back and forth, back and
18 forth and modify the drawings that -- based on
19 their recommendation.

20 I did not know that -- you know, we
21 never knew about that we had to build a roof
22 all the way up. And the only reason I knew

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1 that that roof -- even had I built it, we
2 weren't finished with the construction before
3 we got the second stop work order.

4 And based on that, when we got that
5 \$1,000 fine, I went and spoke to Rochelle, who
6 I -- at that point in time, she worked there.

7 And I asked her like why do you guys keep
8 giving me the stop work order? And I cannot
9 pay this \$1,000 fine every time you need to
10 speak to me. And she said, oh, it was just a
11 way to force you to come in, so that we can
12 talk to you.

13 And I'm like -- I mean, that's when
14 she told me that even if you build that roof
15 all the way out according to your plan, it
16 would still not meet DCRA Zoning's Regulation
17 and that was the first I heard of that. I'm
18 like what do you mean? You guys approved
19 this.

20 And so I told her like so if I
21 build all the way out, I'm going to have to
22 later pay people to demolish it. I have to

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1 spend more money to build it out, why would I
2 do that if you're telling me that it still doe
3 snot meet DCRA Regulations?

4 She is like, right. You know, but
5 we made a mistake. But building it all the
6 way out does not meet. So that -- it was --
7 we were intending to build it all the way out,
8 but it makes no sense after hearing from her
9 that, you know, this roof, even if you build
10 it -- and the reason it was in the drawing to
11 begin with was because the permit -- people at
12 the Permit Office told me I had to build it
13 out in order to get the permit.

14 It was not that I know -- I don't
15 know every Zoning Regulation to work with the
16 rules and regulations. These were the things
17 that were given to me as fact and I
18 implemented in my drawing to get the necessary
19 permit. And so the reason I didn't build that
20 all the way out is because it would still not
21 have been compliant.

22 CHAIRPERSON MILLER: Okay. We

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1 don't need to go there really. As I was
2 saying really what is before us is just your
3 application now on 223. I know there has been
4 a long history here and Mr. Green has pointed
5 out that, you know, some of the history may go
6 to trusting what you are submitting.

7 But in any event, also what I hear
8 is, No. 1, that Ms. Walker has raised the
9 point and other Board Members agree that we
10 need more specificity to show exactly what is
11 going to be built. And what you have
12 represented is acceptable to Mr. Green, but he
13 needs just more specificity, so that those
14 specific plans would be enforceable to a
15 specific degree.

16 Okay. The question then is, you
17 know, what form that will take. And I guess
18 what I heard from Office of Zoning is that,
19 you know, we don't require that it be prepared
20 by an architect. However, if it is prepared
21 by an architect, then I think that all parties
22 involved have more confidence in those

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1 drawings.

2 So I guess, and I'll see what my
3 Board Members -- see if they agree. I mean,
4 we can leave the record open for you to submit
5 plans that are more specific showing
6 measurements and those kinds of things. It
7 may be up to you whether or not -- I don't
8 know what the expense is involved with an
9 architect, but it may be worth your while to
10 leave, you know, no stone unturned if you have
11 an architect.

12 Unless my Board Members feel that
13 we actually want to dictate that you have an
14 architect prepare the documents. I'm not sure
15 that that's in our regulations to require it,
16 so that's kind of why I might encourage it.
17 But what do others think?

18 VICE CHAIRMAN LOUD: I still agree
19 with Board Member Walker and if we can't
20 require it, I want to encourage it as strongly
21 as we can. And I'm looking at whether the
22 applicant can make 223 convincingly, in my

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1 mind, in light of the testimony of Mr. Green
2 regarding the deprived -- what's the word?
3 It's so late I can't even think. Is
4 deprivation a word?

5 MS. MONROE: Depravation.

6 VICE CHAIRMAN LOUD: Depravation of
7 normal use and enjoyment of his deck. And for
8 me to sort of reach that hurdle in my mind
9 now, I really would like to see plans from a
10 licensed architect. Basically, what we have
11 are two very, very bright lay people agreeing
12 with each other.

13 Mr. Green, who apparently came up
14 with the concept, and Mr. Yang who refined it
15 with the software program saying that it
16 satisfies their needs. But a licensed
17 architect may look at this and say you are way
18 off base, because they are bringing knowledge
19 to the process and not just the ability to
20 draw.

21 So I think that that would kind of
22 satisfy me that this four year ordeal is going

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1 to be over for everybody and not the two of
2 you sort of going around and around with what,
3 again, is very, very capable, but it's
4 layman's approach to architecture. So and as
5 Mr. Yang testified, he was relying on staff at
6 DCRA to tell him whether permits and drawings
7 were accurate.

8 And then at the 11th hour he found
9 out that despite the software program, despite
10 what he was doing, they happen not to be
11 accurate and he had to start all over again.
12 So let's just nip it at the bud and have
13 professional plans done and submitted, so that
14 we can review it.

15 In addition to which the three of
16 us are sitting here without the benefit of Mr.
17 Turnbull or others that normally sit with us
18 who bring some of that architectural insight
19 to our deliberations normally when we sit down
20 and review these kind of things. So that's
21 kind of my take on where we are.

22 CHAIRPERSON MILLER: I think that's

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1 a good point, because, you know, we three
2 actually happen to be lawyers. And sometimes
3 we have an architect with us. And we don't.
4 And so I think, you know, we are saying
5 honestly to you actually if we get something
6 that is not prepared by an architect, we are
7 going to be less sure about our confidence in
8 what it is saying than if we have an architect
9 certifying the plans.

10 MR. VAJPEYI: Okay.

11 CHAIRPERSON MILLER: Do you think
12 you can do that?

13 MR. VAJPEYI: Yes.

14 CHAIRPERSON MILLER: Okay. Why
15 don't we leave it at that then. How soon
16 would you -- how much time would you like to
17 have in order to submit that? Because we will
18 leave the record open for those plans and
19 that's it. And then we will -- maybe we could
20 leave it open if you were to say there is
21 something wrong with those plans.

22 But basically, we can leave that

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1 open for that option, Mr. Green, as a party in
2 this case. But it's not how the plans can be
3 improved or anything like that. It's that
4 these plans depict what has been represented
5 to us today with respect to the flat roof and
6 the perimeter wall and the moving of the
7 downspout and that kind of stuff.

8 So that's what we would leave it
9 open. If for some reason it doesn't do that,
10 you know, Mr. green could respond. But what I
11 want to do is give you enough time to do that
12 and then set it for a decision.

13 So you are the ones that, you know,
14 want this sooner than anyone else, I would
15 assume. So what date are you comfortable with
16 giving us as to when you think you can have an
17 architect prepare the plans?

18 MR. VAJPEYI: I would like to say
19 as soon as possible, but just so that I don't
20 give a date and can't meet it, I would think
21 that if we could have two or three weeks, that
22 will give us enough time to talk to an

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1 architect and do the drawings. Hopefully it
2 will be sooner than that.

3 I was just talking to Chy and he
4 thinks that if -- he things two or three weeks
5 might be reasonable. If he cannot get a
6 drawing within two or three weeks, we
7 basically don't know how long an architect
8 would take. I'm thinking it won't take long,
9 but --

10 MR. YANG: We don't know their
11 schedules. We don't know -- I mean, I can't
12 get them and say you have two weeks to do
13 this. So it's kind of hard to give you an
14 exact date.

15 MR. VAJPEYI: Would we be turning
16 those to you or the -- those dates will be so
17 that we can get agreement with Mr. Green as
18 well and then present them to you?

19 CHAIRPERSON MILLER: Okay. We're
20 not going to have another hearing, because we
21 don't think it would be necessary. We just
22 want the plans. And then, you know, we will

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1 look at them and make sure that they are in
2 accordance with the representations that are
3 made in the rendering and in your testimony
4 today, you know, with the assistance of the
5 Office of Zoning, you know, they have
6 architectural experience.

7 But that's what we will be looking
8 at. So we don't need to have another hearing.

9 What we want to do is set the date to decide
10 the case on. But we would need -- that would
11 be after we get your plans and after enough
12 time for Mr. Green to respond or the ANC in
13 the event that a response would be necessary.

14 MR. VAJPEYI: How many drawing
15 would you be requiring?

16 CHAIRPERSON MILLER: How many what?
17 Drawings?

18 MR. VAJPEYI: Drawings.

19 CHAIRPERSON MILLER: Oh, Mr. Moy?

20 MR. VAJPEYI: And what kind of
21 drawings?

22 MR. YANG: Elevation.

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1 CHAIRPERSON MILLER: The question
2 is how many copies and what kind of drawings.

3 I think would not the architect know what
4 kind of drawings or do you believe you can
5 articulate that for him?

6 MR. MOY: Well, it's in our
7 submission requirements in terms of the
8 drawings. In terms of the copies, I mean, we
9 are -- it's typically 20 copies. But the
10 typical architectural drawings which includes
11 elevation drawings. You show facades of the
12 buildings, the roof top. Considering that
13 drainage is one of the issues here, you know,
14 you might want to be sure that on the drawings
15 and on the site plan indicate how the
16 drainage, water drainage is going to flow.

17 MEMBER WALKER: On that point,
18 Madam Chair, I'm a little concerned. I
19 understand that moving the downspout is to the
20 opposite side is a positive thing for Mr.
21 Green. But that could be a disaster to the
22 other neighbor. I just want to make sure that

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1 the ANC is also going to receive a copy of
2 these plans, because there could be a
3 significant impact to the neighbor on the
4 other side.

5 CHAIRPERSON MILLER: Do you want to
6 just address that while we are still in
7 hearing?

8 MR. YANG: What do you mean?

9 CHAIRPERSON MILLER: Well, did you
10 show your plans to the neighbor on the other
11 side where the downspout is going to be?

12 MR. YANG: I mean, we are on
13 friendly terms with the other neighbors and
14 they have never -- I mean, we -- I haven't
15 told them that this is what we are going to
16 do. But yeah, I have no problem going and
17 talking with the other neighbors.

18 I mean, currently, you know, the
19 last time I spoke to him, they seemed fine
20 with it, with the current structure. But like
21 I said, I haven't proposed the new structure
22 based on the new drawings. But you know,

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1 yeah, I can consult with them.

2 CHAIRPERSON MILLER: Yeah, okay. I
3 think that you need to. They are not a party.

4 Oh, the ANC is a party. But I think that you
5 ought to show the new plans to your neighbors
6 as well.

7 MR. YANG: Yeah, that's fine.

8 CHAIRPERSON MILLER: And I guess we
9 -- are you suggesting we leave the record open
10 in case they have a concern?

11 MEMBER WALKER: Absolutely. If you
12 are talking about taking all the water off the
13 roof and down -- through one downspout onto
14 the adjoining neighbor's property, I mean,
15 that could have --

16 CHAIRPERSON MILLER: Okay. Let's
17 do that. I mean, I was going to say, I mean,
18 they are not here and they could have come.
19 But what you are saying is you didn't show
20 them that the downspout was moved to that
21 side. Is that right?

22 MR. YANG: The other neighbor, no.

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1 CHAIRPERSON MILLER: Okay.

2 MR. VAJPEYI: One of the --

3 MR. YANG: And I have no problem
4 putting downspout on both sides.

5 MR. VAJPEYI: No, no.

6 CHAIRPERSON MILLER: Okay. We're
7 just saying that because you made a change
8 that might affect your other neighbor, that
9 we're going to leave the record open to give--
10 for you to show it to them and in the event
11 they want to file anything.

12 MR. YANG: Yes, yes.

13 CHAIRPERSON MILLER: Okay. Yes,
14 Mr. Green?

15 MR. GREEN: Madam Chair, we were
16 friends with the -- our adjoining neighbor
17 until the issue of water came up. So I do not
18 want to have this force onto their adjoining
19 neighbor on the other side.

20 CHAIRPERSON MILLER: Okay. Well,
21 they will have that opportunity and then the
22 ANC will be notified as well of the change. I

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1 mean, with the new plans.

2 MR. VAJPEYI: So we should notify
3 ANC?

4 CHAIRPERSON MILLER: Yeah.

5 MR. VAJPEYI: And just make sure--

6 CHAIRPERSON MILLER: You didn't
7 notify them of the change that you presented
8 today. Is that right?

9 MR. VAJPEYI: Right.

10 CHAIRPERSON MILLER: Okay. Yes,
11 you should send them the final drawings.

12 MR. VAJPEYI: Okay.

13 CHAIRPERSON MILLER: Okay.

14 MR. VAJPEYI: And should --

15 CHAIRPERSON MILLER: And whatever
16 you filed today actually. They are an
17 automatic party to our cases. You don't have
18 to appear before them. You don't have to, you
19 know, make your case before them again, if you
20 don't want to, but you do need to serve them
21 with any papers that are served on the Board.

22 MR. VAJPEYI: Okay.

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1 CHAIRPERSON MILLER: Okay. So
2 basically, we are looking at a schedule, you
3 know, to give you enough time. I mean, we
4 could go to March 3rd for a decision if that's
5 a comfortable amount of time. Okay.

6 MR. VAJPEYI: And within that time
7 we should have gotten the plan reviewed by Mr.
8 Green?

9 CHAIRPERSON MILLER: Right. We
10 need to set a schedule, if we can, you know,
11 the date by which you would need to give it to
12 Mr. Green and the ANC, so that they could
13 respond before the decision date, which is
14 March 3rd. So we can try to back up from March
15 3rd.

16 Ms. Bailey or Mr. Moy, whichever,
17 if we need to have a decision March 3rd, then
18 we would need to receive any responses to the
19 additional plans by what date?

20 MS. BAILEY: I would suggest
21 February 24th for the responses, Madam Chair.

22 CHAIRPERSON MILLER: Okay.

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1 MS. BAILEY: And February 10th for
2 the submission from the applicant.

3 CHAIRPERSON MILLER: You're
4 suggesting two weeks for a response?

5 MS. BAILEY: The 10th. Um, yes,
6 not knowing when the ANC is going to be
7 meeting, I think that's the quandary. So
8 that's -- if it's agreeable.

9 CHAIRPERSON MILLER: Unless you
10 need more time.

11 MR. VAJPEYI: If I followed the
12 time line correctly, we should have our
13 architects drawing to you by February 10th.

14 MS. BAILEY: Yes.

15 CHAIRPERSON MILLER: Now, is that
16 enough time or you don't know?

17 MR. VAJPEYI: I don't know.

18 MR. YANG: I just don't think that
19 architect will work that fast.

20 CHAIRPERSON MILLER: Okay.

21 MR. YANG: I mean, we have to find
22 one, first of all, so we have to do our

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1 research and contact various architects.

2 CHAIRPERSON MILLER: Okay. How
3 about if you have another week, the 17th?
4 Because we are not really changing. What they
5 are doing is not changing anything really.
6 It's just depicting it in a more professional
7 way. So I'm not sure that this is an issue
8 that the ANC necessarily would change their
9 position on.

10 I don't see why they would. Do you
11 have a concern? I mean, this is just a better
12 professional picture of what has been
13 represented at this hearing.

14 MR. GREEN: I do agree.

15 CHAIRPERSON MILLER: Okay.

16 MR. GREEN: And --

17 MEMBER WALKER: Is it the case that
18 the ANC has seen these three drawings that we
19 have looked at at this hearing today? I mean,
20 it sounded to me like the applicant shared
21 them with Mr. Green, but that is as far as it
22 has gone.

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1 MR. GREEN: That is correct.

2 CHAIRPERSON MILLER: Well, I think
3 that these pictures -- all right. Let's just
4 say this. These renderings, whatever was
5 served here today should be served immediately
6 on the ANC. And if we want to set a date for
7 the ANC to respond to this, if they choose, we
8 could.

9 I'm just saying that they need time
10 for a professional to do the type of
11 professional product that we are asking for.
12 But it doesn't change the issues that the ANC
13 would respond to. Whether or not a perimeter
14 wall is sufficient in a flat for their
15 concerns.

16 And if the neighbor has no concerns
17 and that's what this addresses, I don't really
18 understand what the ANC's concern would be
19 related to the changes that were made. Unless
20 you're saying the other neighbor perhaps, what
21 might be happening on the other side.

22 MEMBER WALKER: That was my point.

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1 If you're taking all the water from one side
2 and taking it to --

3 CHAIRPERSON MILLER: Okay.

4 MEMBER WALKER: -- the other side.

5 CHAIRPERSON MILLER: I don't know
6 if that's what is happening, but, to me,
7 that's depicted right here in the pleadings
8 that have been filed today.

9 MEMBER WALKER: And I have
10 absolutely no faith in the drawings that have
11 been submitted today. They have not been
12 vetted by any professional at all. So I don't
13 have any faith that they are in compliance
14 with building regulations, with the building
15 code.

16 I mean, we have --

17 CHAIRPERSON MILLER: We have --
18 Office of Planning has weighed in and looked
19 at these pictures, these renderings. So
20 that's not why we're getting an architect.

21 MEMBER WALKER: I think this has
22 been an extremely loose process and that's why

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1 we have ended up where we are. We have
2 drawings that have not been viewed by the
3 community. We have had some -- you know, an
4 applicant who has represented that he is not
5 an architect, you know, who has really played,
6 apparently from the record, fast and loose and
7 has been ordered to stop work on a couple of
8 occasions.

9 And Mr. Green has made some
10 suggestions that are to his liking, but I
11 don't have any faith that these renderings
12 that are before us are really going to
13 withstand scrutiny once they are submitted for
14 -- to obtain a building permit.

15 An architect could look at these
16 drawings and change them completely.

17 VICE CHAIRMAN LOUD: You know,
18 Madam Chair, as much as I don't want to drag
19 this out, to be honest with you, looking at --
20 until Board Member, I know I always call her
21 Commissioner, but until Board Member Walker
22 brought it out of the testimony, I really

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1 didn't zero in on the fact that the entire
2 downspout is relocated to the opposite side.

3 So it is something that, you know,
4 we ought to make sure that the ANC is aware
5 of. I don't know if it has to be plans or
6 just some sort of written notification or
7 something. But to me, it would be prudent to
8 not have us go through all of this and then at
9 the 11th hour the ANC jumps in and says wait a
10 minute, you changed the whole drainage system
11 on us and we didn't know anything about it.

12 And we're just going around and
13 around and around all over again.

14 CHAIRPERSON MILLER: Okay. I
15 didn't really disagree with that, but I didn't
16 know that they have to have the final, I don't
17 know --

18 MEMBER WALKER: I think you have to
19 have --

20 CHAIRPERSON MILLER: -- plans. But
21 I don't think that that would change their
22 comments that they had of what we have today,

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1 since the final plans are only supposed to
2 represent what we have today.

3 However, let me just say this is
4 really a scheduling issue. And so if you know
5 if we can schedule it so that they have it all
6 before they respond, then everybody is happy.

7 Mr. Moy, don't you have a --

8 MR. MOY: Yes.

9 CHAIRPERSON MILLER: -- schedule?

10 MR. MOY: Yes.

11 CHAIRPERSON MILLER: Good. Okay.

12 MR. MOY: The ANC typically meets
13 the second Wednesday of the month, so their
14 next meeting actually will be tomorrow. I'm
15 looking at January. For February it would be
16 February the 11th, which would be their next
17 meeting.

18 CHAIRPERSON MILLER: Okay.

19 MS. BAILEY: Madam Chair, don't
20 forget the ANC can always have a special
21 public meeting if there's something that they
22 really want to take up. They can always have

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1 a special meeting.

2 CHAIRPERSON MILLER: Right. That's
3 true, too. So I think what I'm hearing from
4 the applicant though is that you really are
5 not sure if you'll have anything from the
6 architect by February 10th. You really don't
7 know, right?

8 MR. YANG: Right.

9 CHAIRPERSON MILLER: Okay. And if
10 the ANC, unless they have a special --

11 (Whereupon, at 7:26 p.m. a recess
12 until 7:29 p.m.)

13 CHAIRPERSON MILLER: Okay. Looking
14 at the calendar, I mean, it seems to me there
15 are a couple of wrinkles here that Board
16 Members are concerned with, such that we want
17 to give the ANC an opportunity to look at the
18 plans as well as the neighbor on the other
19 side.

20 And in that you did not submit the
21 documents showing changes to the ANC or to the
22 other neighbor, we want to build in time for

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1 them to have an opportunity to look at all the
2 documents. And it may be that when the
3 architect looks at these renderings, the
4 architect may feel that something else needs
5 to be changed, because this isn't prepared by
6 an architect.

7 Therefore, I would suggest that we
8 schedule this for our April meeting, which is
9 April 7th. And that the architect's documents
10 be given to the ANC and the neighbors prior to
11 their March meeting, which is what March 11th?

12 Is that what you said?

13 MR. MOY: Yes.

14 CHAIRPERSON MILLER: Since we have
15 a little bit of time here, I mean, I would
16 think maybe we could say by March 1st or so
17 that they have time to at least digest the
18 architectural drawings and any other changes.

19 Mr. Green -- okay, let's see. And
20 the ANC meeting would be March 11th. And then
21 the ANC would have time to get any -- and Mr.
22 Green and the other neighbor would have time

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1 to submit in any comments to the Board prior
2 to April 7th.

3 So looking at an April 7th date,
4 what would be the date, Ms. Bailey, that the
5 ANC and Mr. Green and the other neighbor would
6 need to submit any comments back to the Board
7 on?

8 MS. BAILEY: Um, March 23rd, Madam
9 Chair.

10 CHAIRPERSON MILLER: Okay. Could
11 you -- first of all, I think that since we are
12 going further out now, that that March 1st date
13 for providing the documents to the neighbors
14 and the ANC, that's not a problem for you, is
15 it? Mr. Green, does that sound like
16 sufficient amount of time for you?

17 MR. GREEN: Yes, it does.

18 CHAIRPERSON MILLER: Okay. You
19 would have from March 1st to March 23rd, yeah,
20 to file something. All right. And that gives
21 time for the ANC to consider all the documents
22 at their meeting.

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1 However, I would suggest that the
2 applicant serve the ANC and your neighbor with
3 the documents that you have served us as soon
4 as possible, because they are entitled to be
5 served, basically, when we are. And then that
6 would just leave the plans prepared by the
7 architect and if there is any other
8 explanatory language, if there are some
9 changes.

10 For instance, you know, if it just
11 depicts what you have represented here, it can
12 say that, but if the architect looks at it,
13 we're going to leave the record open, I think
14 if the architect were to determine that, for
15 instance, you couldn't have a downspout just
16 on one side, you really should have it on both
17 sides or something, and then the reason for
18 that.

19 And then Mr. Green and the others
20 would have that information. Okay. Other
21 comments by Board Members?

22 MR. MOY: Madam Chair, the March

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1 1st date is a Sunday, so the filing for the
2 applicant should be March 2nd, Monday.

3 CHAIRPERSON MILLER: Okay.

4 MR. VAJPEYI: I have a question,
5 Madam Chair. When I present this to ANC, so
6 am I applying for a hearing or I just present
7 it to them in reference to this case?

8 CHAIRPERSON MILLER: Right. What I
9 was saying is you're not required, we don't
10 require you to ask for a hearing from the ANC
11 to make a presentation. If you want to and
12 you think it's going to help your case and you
13 want to communicate with the community, that's
14 up to you.

15 But you are required just to serve
16 the documents on them, because they are, under
17 our rules, a party.

18 MR. VAJPEYI: Okay.

19 CHAIRPERSON MILLER: Mr. Green is a
20 party now, too. We gave him party status. So
21 he is entitled, too. We didn't give party
22 status to the neighbor, but we would like you,

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1 on the other side, to do the same on the other
2 side, so that there are no questions out
3 there, you know.

4 MR. VAJPEYI: And how do the rest
5 get back to you? So we explain to them this
6 is the purpose of sharing the documents, but
7 they will have an opportunity to respond to
8 those drawings. How do they get their
9 feedback to you or do I just -- I just want to
10 make sure that I have given them the
11 instructions.

12 CHAIRPERSON MILLER: Oh, right.
13 Well, we're just here certainly giving
14 deadlines that we talked about. I think we
15 talked about March 23rd would be their
16 deadline. If you want to communicate that to
17 them, you could also have them call the Office
18 of Zoning if they want to find out really
19 specific information.

20 MR. VAJPEYI: Okay.

21 CHAIRPERSON MILLER: Okay.

22 MS. BAILEY: Madam Chair, would it

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1 be acceptable to just go over those dates, so
2 everyone is on the same page? The applicant
3 is to file detailed plans, as discussed here
4 today, drawn to scale by a licensed D.C.
5 architect. Those plans are to be filed by
6 March 2, 2009 to the BZA and others.

7 The responses from Mr. Green, ANC-
8 1A and the neighbor, the next door neighbor,
9 if appropriate, is March 23rd. The ANC is
10 scheduled to meet on March 11th. And the
11 Board's decision is scheduled for April 7th.

12 CHAIRPERSON MILLER: What day of
13 the week is March 23rd?

14 MS. BAILEY: March 23rd is on a
15 Monday, Madam Chair.

16 CHAIRPERSON MILLER: Okay. I just
17 wanted to say that, you know, we can leave the
18 record open also if the Office of Planning did
19 want to file something, but we are not
20 necessarily seeking it from the Office of
21 Planning.

22 And I just was wondering if we

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1 wanted to put a date down for that? March 30th
2 or something like that?

3 MS. BAILEY: March 30th, okay.

4 CHAIRPERSON MILLER: Okay. Just in
5 the event that the Office of Planning wants to
6 comment.

7 Okay. Any questions?

8 MR. VAJPEYI: One final question.

9 CHAIRPERSON MILLER: Okay.

10 MR. VAJPEYI: April 7, do we have
11 to come here or this is just for decision?

12 CHAIRPERSON MILLER: Right.

13 MR. VAJPEYI: And we will be
14 notified.

15 CHAIRPERSON MILLER: Good question.

16 We don't anticipate continuing any more on
17 the hearing, that we just want those
18 documents. So you do not need to come here.

19 If that changes, we could let you know. But
20 we don't take testimony normally in our
21 decision making. We just come out here and we
22 have considered all the evidence in the record

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1 and then the record will be closed after the
2 dates that we talked about.

3 We will deliberate and we are also
4 webcast live, so you could just watch us on
5 the Internet, if you want to. Okay?

6 MR. VAJPEYI: Thank you.

7 CHAIRPERSON MILLER: All right.
8 Thank you very much.

9 MR. VAJPEYI: Thank you.

10 MR. YANG: Thank you, Madam Chair.

11 MS. BAILEY: Mr. Green, we will
12 need a copy of your PowerPoint presentation
13 when you get an opportunity.

14 MR. GREEN: Okay.

15 MS. BAILEY: Thank you.

16 MS. MONROE: It needs to be in the
17 record. That's all, so sending a copy, you
18 know, paper copy.

19 CHAIRPERSON MILLER: That probably
20 should be served on the other parties as well
21 then, correct? Can you do that on the --
22 okay. Thank you.

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1 MS. BAILEY: No, we need for you to
2 print it out.

3 MS. MONROE: Yeah, printed.

4 MR. GREEN: Oh, printed out.

5 MS. BAILEY: Yeah.

6 MR. GREEN: Oh, okay.

7 CHAIRPERSON MILLER: Okay. Ms.
8 Bailey, do we have anything else on the agenda
9 for this evening?

10 MS. BAILEY: No, Madam Chair. And
11 don't forget, we won't be here next week.

12 CHAIRPERSON MILLER: No, we won't.
13 Okay. Happy inauguration, everybody. And
14 this hearing is adjourned.

15 (Whereupon, the Public Hearing was
16 concluded at 7:38 p.m.)

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