

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 11, 2008

+ + + + +

The Regular 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 Chairperson
MARY OATES WALKER, Board Member
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CURTIS L. ETHERLY, JR., Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOHN MOORE
MAXINE BROWN-ROBERTS
ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing held on March 11, 2008.

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

10:26 a.m.

CHAIRPERSON MILLER: This hearing will please come to order. Good morning, ladies and gentlemen. This is the March 11th, 2008 Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I am the Chair of the BZA and to my right is Mr. Marc Loud the Vice Chair and next to him is Mr. Curtis Etherly from the Zoning Commission. To my left is Mary Oates Walker and Shane Dettman, Board Members. Next to Mr. Dettman is Mr. Clifford Moy from the Office of Zoning, Lori Monroe from the Office of the Attorney General and Ms. Beverley Bailey from the Office of Zoning.

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

Please be advised that this proceeding is being recorded by a court

1 reporter and is also webcast live.
2 Accordingly, we must ask you to refrain from
3 any disruptive noises or actions in the
4 hearing room.

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

12 All persons planning to testify
13 either in favor or in opposition are to fill
14 out two witness cards. These cards are
15 located to my left on the table near the door
16 and on the witness table.

17 Upon coming forward to speak to
18 the Board, please give both cards to the
19 reporter sitting to my right.

20 The order of procedure for special
21 exceptions and variances is as follows. One,
22 statement and witnesses of the applicant.

1 Two, government reports including Office of
2 Planning, Department of Public Works, DDOT, et
3 cetera. Three, report of the Advisory
4 Neighborhood Commission. Four, parties or
5 persons in support. Five, parties or persons
6 in opposition. Six, closing remarks by the
7 applicant.

8 Pursuant to Section 3117.4 and
9 3117.5, the following time constraints will be
10 maintained. The applicant, persons and
11 parties except an ANC in support including
12 witnesses 60 minutes collectively. Persons
13 and parties except an ANC in opposition
14 including witnesses 60 minutes collectively.
15 Individuals three minutes.

16 These time restraints do not
17 include cross examination and/or questions
18 from the Board. Cross examination of
19 witnesses is permitted by the applicant or
20 parties.

21 The ANC within which the property
22 is located is automatically a party in a

1 special exception or variance case.

2 Nothing prohibits the Board from
3 placing reasonable restrictions on cross
4 examination including time limits and
5 limitations on the scope of cross examination.

6 The record will be closed at the
7 conclusion of each case except for any
8 materials specifically requested by the Board.
9 The Board and the Staff will specify at the
10 end of the hearing exactly what is expected
11 and the date when the persons must submit the
12 evidence to the Office of Zoning. After the
13 record is closed, no other information will be
14 accepted by the Board.

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

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

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

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

20 Does the Staff have any
21 preliminary matters?

22 MS. BAILEY: Madam Chair, Members

1 of the Board, to everyone, good morning.

2 There is a preliminary matter and
3 it has to do with Wisconsin Avenue Baptist
4 Church and I'm not sure if the Board wanted to
5 take that up at this time or did you want it
6 to wait on -- to take it up in the normal
7 sequences of cases?

8 CHAIRPERSON MILLER: I -- I think
9 we should take it up as the first case and why
10 don't we just swear everybody in and then call
11 that case first.

12 MS. BAILEY: Thank you.

13 CHAIRPERSON MILLER: Okay.

14 MS. BAILEY: Would you please
15 stand and take the oath?

16 CHAIRPERSON MILLER: So, anyone
17 who is intending to testify today in any case
18 this morning, you should stand now and take
19 the oath.

20 MS. BAILEY: And would you please
21 raise your right hand? Do you solemnly swear
22 or affirm that the testimony that you'll be

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1 giving today will be the truth, the whole
2 truth and nothing but the truth? Thank you.

3 CHAIRPERSON MILLER: So, why don't
4 you call the case that is seeking a
5 postponement first.

6 MS. BAILEY: Madam Chair,
7 Application Number 17726 of Wisconsin Avenue
8 Baptist Church pursuant to 11 DCMR 3104.1 for
9 a special exception to construct an addition
10 to the existing building and to allow a child
11 development center under section 205 and a
12 special exception to allow a private school
13 under section 206 at premises 3920 Alton
14 Place, N.W. The property is known as square
15 1779, lot 824. It's zoned R-1-B and as I read
16 the description, Madam Chair, it does include
17 an amendment that the Applicant had requested.

18 CHAIRPERSON MILLER: Okay. And do
19 you know whether it was advertised with the
20 amendment?

21 MS. BAILEY: As far as I know, it
22 was not advertised with the amendment.

1 CHAIRPERSON MILLER: Okay. Thank
2 you. Good morning. Would you identify
3 yourself for the record please?

4 MS. BALDWIN: Good morning. I'm
5 Stephanie Baldwin with the law firm of
6 Greenstein, DeLorme & Luchs and I have here
7 with me Reverend Lynn Bergfalk who's the
8 reverend of the Wisconsin Baptist Church.

9 COMMISSIONER SOLOMON: I'm Jane
10 Solomon. I'm the Chair of ANC 3F.

11 MR. GELL: Steven Gell. I'm
12 representing several neighbors who would like
13 to become parties to this proceeding.

14 CHAIRPERSON MILLER: Okay. Let's
15 just -- could we just start with the
16 advertisement and the posting. Was it
17 advertised and posted as amended or not?

18 MS. BALDWIN: the notice placards
19 had the amendment included in the --

20 CHAIRPERSON MILLER: Right.

21 MS. BALDWIN: -- description.

22 CHAIRPERSON MILLER: The posting,

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1 did that?

2 MS. BALDWIN: The posting?

3 CHAIRPERSON MILLER: Was it posted
4 for --

5 MS. BALDWIN: Oh, we sent a notice
6 to all of the people within 200 feet.

7 CHAIRPERSON MILLER: I mean did
8 you have a placard posted?

9 MS. BALDWIN: Yes, the notice
10 placard said with an addition.

11 CHAIRPERSON MILLER: Okay. So,
12 everything included the addition.

13 MS. BALDWIN: Yes.

14 CHAIRPERSON MILLER: So, that's
15 not an issue. Okay. So, it looks like the
16 two issues are party status and postponement.

17 Sometimes we do parties, you know,
18 before the case is continued and sometimes we
19 do it -- we wait until then.

20 Mr. Gell, do you have an opinion
21 as to whether you would like the Board to
22 consider party status today?

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1 MR. GELL: Well, Madam Chair,
2 several of the neighbors have come down for
3 that purpose and I would appreciate if the
4 Board could at least consider their
5 applications.

6 There are a few others who could
7 not make it and it's perfectly appropriate for
8 the Board to hold that until the date of the
9 hearing and consider them as parties if the
10 Board's willing to do that.

11 CHAIRPERSON MILLER: Well, are you
12 -- would you be representing all of the
13 neighbors as one party?

14 MR. GELL: I'm representing all of
15 the neighbors that are here.

16 CHAIRPERSON MILLER: Right. The
17 ones that are here.

18 MR. GELL: And that's right and
19 they're going to put on a unified
20 comprehensive case.

21 CHAIRPERSON MILLER: Okay.
22 Sometimes we do consider that ones that are

1 here and often when they're a group and then
2 we allow that group to let others in with the
3 same interest.

4 So, is there a -- let me just ask.
5 Is there any opposition to the party status
6 application that Mr. Gell is representing?

7 MS. BALDWIN: Not generally. We
8 would like to point out that there are some
9 members of the party that are not as uniquely
10 affected arguably as others or not at all and
11 we hope the Board will look at that.

12 CHAIRPERSON MILLER: Okay. I
13 would suggest to the Board that maybe we do
14 consider party status if that's okay. That
15 was our first threshold question are we going
16 to consider it today, but I think it's a good
17 idea. We do have the attorney here and we do
18 have neighbors here and we also think that it
19 might facilitate the communication during this
20 period if it's being -- going to be continued
21 which it most likely looks like it would be,
22 but we'll get to that and does that --

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1 COMMISSIONER ETHERLY: Madam
2 Chair.

3 CHAIRPERSON MILLER: Yes.

4 COMMISSIONER ETHERLY: If I may, I
5 have no objection, but I perhaps just want to
6 be sure that we confirm all of the neighbors
7 that Mr. Gell is preparing to represent just
8 so we're clear on that and then I just wanted
9 to make sure I'm clear on Mr. Gell's answer
10 with regard to neighbors who may not be
11 present today and may not be on your submitted
12 list of neighbors representation. Perhaps
13 just getting some clarity on what your posture
14 would be relative to including them in your
15 efforts.

16 MR. GELL: Certainly, Mr. Etherly.
17 All of the people who have sought party status
18 are being represented by me.

19 CHAIRPERSON MILLER: Do you want
20 to name them?

21 MR. GELL: Yes, certainly.

22 CHAIRPERSON MILLER: Okay.

1 MR. GELL: At 3903 Alton Place,
2 Lisa Bhansali and Jose-Miguel Vivanco and Mr.
3 Vivanco is here. At 3901 Alton Place, Judy
4 Chesser and Dan Wilson. Sorry. And Judy
5 Chesser is here. At 3900 Alton Place, Pam
6 Roberts and Jose Antonio-Mejia and both of
7 them are here. At 4412 39th Street, John and
8 Patrice Allen-Gifford and John is here.

9 I believe that's all the people
10 that are here. The other three houses are not
11 -- are not currently here. I know Mr. Hirsh
12 very much wants to be a party. I believe the
13 others do as well.

14 And I think we can show that in
15 each case people are affected in slightly
16 different ways. Obviously, some more than
17 others, but we think that there are some
18 identifiable unique ways that each one is
19 affected by the proposal by the church. So,
20 I'd be happy to have that discussion.

21 CHAIRPERSON MILLER: Okay. Yes,
22 maybe you can, you know, generally tell us how

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1 these individuals are as a group more impacted
2 than the general public as a result of this
3 application.

4 MR. GELL: Well, certainly. First
5 of all, I've submitted a diagram which is
6 generally correct, but has a few flaws and if
7 you'll look at the diagram that Mr. Baldwin
8 has provided, I think that's more accurate.
9 It's coming around. More accurate in terms of
10 the sizes and the locations of the people who
11 have asked for party status.

12 The Bhansali Vivancos live across
13 -- directly across the street from the
14 entrance to the -- not only the church but
15 also the parking space.

16 Judy Chesser and her husband have
17 frequently had cars parking in front of their
18 homes and they depend on the street for
19 parking since they don't have their own
20 parking space and this has been a particular
21 concern for them.

22 Roberts Mejia right on the corner,

1 they are contiguous to the church. I think
2 the Board traditionally has granted party
3 status in those cases.

4 John Allen-Gifford backs up to the
5 entrance to the parking lot which is only 12
6 feet and it's really only room enough for one
7 car, very often, but two cars have to use it
8 because it's the only entrance and exit from
9 the lot and very often in picking up children,
10 the cars kind of sit there and the fumes rise
11 up and could affect them. In addition, there
12 are noise issues and others that affect them.

13 The same is true with Koczela.
14 They're right across from the parking -- the
15 main parking area and there's trash issues.
16 we have pictures that show that there were no
17 trash bins. Have not been trash bins and
18 trash is laying around. I don't want to get
19 too much into the detail of the concerns.

20 With Hirsh and Feeney, they would
21 be very affected by the loss of light if an
22 additional were built on the church because --

1 particularly at four stories. I know the
2 other side claims three stories. That may be
3 an issue. Some of their light is going to be
4 cut off as the sun goes across to the south
5 and particularly in their upper stories
6 besides which the windows that will be looking
7 out over to the -- oh, that would be the east,
8 would also be invading their privacy and
9 there's that concern.

10 CHAIRPERSON MILLER: Can I just
11 ask you? I know we don't want to get into too
12 much detail because it's not really testimony
13 at this point, but just looking at this
14 diagram, I'm not sure -- is this your diagram?
15 Okay.

16 The Hirsh-Feeney family, are they
17 behind the Allen-Gifford family. So that if
18 they're being affected by loss of light, are
19 the Allen-Giffords being affected by loss of
20 light, too?

21 Okay. So, you're just saying --

22 MR. GELL: They would both be

1 affected by loss of light.

2 CHAIRPERSON MILLER: They would
3 both be. It's just carrying that far.

4 MR. GELL: But, at different
5 times.

6 CHAIRPERSON MILLER: Okay.

7 MR. GELL: That's right and
8 Petsonk-Watts would be affected. Not quite as
9 much as Hirsh-Feeney. That's pretty much it.

10 CHAIRPERSON MILLER: Okay. So,
11 the issues that you're clients are concerned
12 with would be parking, noise --

13 MR. GELL: Parking. Parking,
14 traffic.

15 CHAIRPERSON MILLER: Traffic.
16 Okay.

17 MR. GELL: Noise, trash, fumes.

18 CHAIRPERSON MILLER: And some of
19 it's based on the --

20 MR. GELL: And shadows and
21 privacy. Yes.

22 CHAIRPERSON MILLER: Okay. So,

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1 the light and air is based -- the light and
2 shadows are based on the construction.

3 MR. GELL: That's right.

4 CHAIRPERSON MILLER: And the
5 traffic --

6 MR. GELL: And privacy is, too.

7 CHAIRPERSON MILLER: And privacy
8 and the traffic and parking issues are based
9 on somewhat existing conditions that they
10 expect to increase or become worse.

11 MR. GELL: The increased use and
12 intensity of use of the premise.

13 CHAIRPERSON MILLER: Okay.

14 MR. GELL: Oh, there is a safety
15 issue which particularly affects Pam Roberts
16 and her husband. Because they have small
17 children and they're right next to the
18 entrance to the lot. Just thought I'd add
19 that.

20 CHAIRPERSON MILLER: So, are you
21 authorized to represent all the surrounding
22 neighbors?

1 MR. GELL: All the ones listed in
2 this chart.

3 CHAIRPERSON MILLER: In this
4 chart.

5 MR. GELL: Yes.

6 CHAIRPERSON MILLER: Okay. Now,
7 do you have a -- does the Applicant have an
8 objection to this party applicant -- this
9 group?

10 MS. BALDWIN: Not the group in a
11 whole, but the individuals who live in the
12 west of 39th Street, they're over 100 feet
13 away. I don't the exact, but -- or east side.
14 Sorry. I'm so bad at east and west. The far
15 side of 39th Street, it's definitely over 100
16 feet away. It's more than that and I don't
17 know that shadows can even reach that far from
18 -- from the edition if it -- when it's built.

19 There are also -- by distance,
20 they're not uniquely affected than -- anymore
21 than someone around the block in the other
22 direction.

1 This is 39, I'm sorry, 4415 39th
2 and 4413th 39th Street.

3 VICE CHAIRPERSON LOUD: Just a
4 point of clarification before we tread too far
5 down this path. I thought that for today's
6 purposes, we were only going to consider the
7 party status applications of the parties or
8 potential parties that are present which would
9 exclude Hirsh-Feeney -- the 39th Avenue.
10 Hirsh-Feeney, Petsonk-Watts and I guess
11 Koczela because that parties not here also.
12 So, we might be able to facilitate the party
13 status on the folks that are here.

14 MS. MONROE: Madam Chair, can I
15 interrupt on that issue for a second.

16 I need to clarify. I think we all
17 need to clarify. Are you representing these
18 people as a group? As one party? Like the
19 neighbors against or are you representing each
20 as individuals? Because that matters --

21 MR. GELL: Yes.

22 MS. MONROE: -- as to who we can

1 deal with today and who we can't and whether
2 or not you're here shouldn't be the defining
3 criteria in whether or not you get party
4 status. Usually what's in the regs --

5 MR. GELL: No, I understand.

6 MS. MONROE: So, what is the -- is
7 it one group or is it individual?

8 MR. GELL: Each of these people
9 are asking for party --

10 MS. MONROE: Tell them. Not me.

11 MR. GELL: Yes.

12 MS. MONROE: I just want to know
13 how it works.

14 MR. GELL: Each of them are asking
15 for party status in their own right. I am
16 representing them as a group and they would be
17 presenting their testimony as a group.

18 I'm not -- I hope that responds
19 and we're perfect -- sorry. What's the
20 problem?

21 CHAIRPERSON MILLER: Oh, that's
22 okay. But, you know, we were just commenting

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1 here that, you know, if you represent the
2 group as this -- these neighbors, you know, we
3 could see that, you know, this block looks
4 like they're going to be more impacted than
5 others and then, you know, can make your case.

6 I don't know whether we have to
7 look at them each one individually and say
8 well, this one is a little further away. You
9 know, to me that kind of goes to the case, the
10 weight of the evidence. I mean is -- are they
11 just so far away that there isn't an impact.
12 That would come out in the case. But --

13 MS. MONROE: I think that's kind
14 of the point I was trying to make.

15 CHAIRPERSON MILLER: Yes.

16 MS. MONROE: If it is a group, I
17 don't think we need to separate out well, this
18 person is less affected that. I mean if it's
19 a group as a whole that is against and if the
20 group gets party status, I think everybody in
21 it would get party status. I mean that's the
22 way I would, you know, recommend that you go

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1 or nobody gets kind of thing.

2 I don't know how you feel about
3 that, but that's -- I think it needs to be,
4 you know, clear.

5 CHAIRPERSON MILLER: I guess I'm
6 feeling like -- we've often used 200 feet as
7 a measure in general and if they're all, you
8 know, within this general proximity to the
9 property, I'm not sure we need to nitpick if,
10 in fact, Mr. Gell, you will be just
11 representing, you know, the interest as a
12 whole and not -- we won't be hearing nine
13 different cases for people. We'll be hearing
14 one case presenting the various impacts.

15 MR. GELL: Oh, absolutely.

16 CHAIRPERSON MILLER: Okay. Did
17 you have an objection that?

18 MS. BALDWIN: No, if they are
19 going to be a group as one, that makes a big
20 difference --

21 CHAIRPERSON MILLER: Okay.

22 MS. BALDWIN: -- between each

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1 individual.

2 CHAIRPERSON MILLER: Exactly.

3 Yes. Does the ANC have a position on this?

4 COMMISSIONER SOLOMON: I think the
5 ANC feels it would be very appropriate for
6 them to be a party and not to -- again, to
7 nitpick, we I just want to add to what Mr.
8 Gell said with respect to the folks on the
9 other side of street.

10 I think the reason that they are
11 also rather uniquely affected is it has to do
12 with their proximity to the single entrance to
13 the parking lot. So, that -- there aren't
14 that many parking spaces on Alton. So, it
15 becomes the next natural place to park. So --
16 and the further you can go down that block and
17 around the corner, I believe there's less and
18 less impact because you're further and further
19 away from the entrance. So, but, you know, we
20 certainly have no objection.

21 CHAIRPERSON MILLER: Any other
22 comments? Do the Board Members need to

1 question any of the people that are here?

2 I think it's pretty evident by the
3 chart and by what we received in the file
4 previously that there are neighbors
5 surrounding this property that will be
6 impacted in some way and I would suggest that
7 we admit as a party one entity and we can
8 give, you know -- I don't know if you have a
9 name for them, Mr. Gell, you know, like
10 Neighbors of Wisconsin Avenue Baptist Church
11 or do you have a name?

12 MR. GELL: Right. We don't have a
13 name.

14 CHAIRPERSON MILLER: Okay.

15 MR. GELL: And I would -- well, I
16 really would urge the Board to let these
17 people be parties with their own names as a
18 group.

19 CHAIRPERSON MILLER: Well, tell me
20 if this would work. I mean I was anticipating
21 that we say that this party, the entity,
22 consisted of the following and name them and

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1 give their addresses.

2 MR. GELL: I think that would work
3 for us.

4 CHAIRPERSON MILLER: Okay. Okay.
5 And so, I think that, you know, we can -- do
6 you have authorization to represent those that
7 aren't here today so that we don't have to
8 make a distinction between those who are here
9 and those who aren't here? But, that's really
10 not -- what's important is that you have the
11 authorization to represent them.

12 MR. GELL: Yes.

13 CHAIRPERSON MILLER: They want to
14 be in this party.

15 MR. GELL: Of those three, those
16 three other houses, yes, I can represent them.
17 Koczela, Hirsh-Feeny and Petsonk-Watts.
18 Those are the only other three. Right?

19 CHAIRPERSON MILLER: Is it
20 everybody -- is it everybody listed on this
21 chart or is it more than that?

22 MR. GELL: I'm being told that the

1 property between Allen-Gifford and Koczela
2 that the folks there do also want to be
3 represented by me. So, they could be part of
4 the group.

5 In addition, the gentleman who
6 lives directly -- I don't want to make this
7 more complicated than it is.

8 CHAIRPERSON MILLER: What I think
9 we have to do though is we have people that
10 apply for party status. They filled out the
11 forms and they -- you know, they're the ones
12 that we're considering consolidating in one
13 party.

14 MR. GELL: Absolutely and I --

15 CHAIRPERSON MILLER: So, we can --

16 MR. GELL: -- I have no --

17 CHAIRPERSON MILLER: Okay.

18 MR. GELL: -- problem with your
19 limiting it to the group and naming the people
20 that have already submitted for party status.

21 CHAIRPERSON MILLER: Okay. Now,
22 if there's some --

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1 MR. GELL: The others will be
2 represented by us either way.

3 CHAIRPERSON MILLER: Okay. If
4 there's some other neighbors that wish to join
5 between now and when the hearing is, we're not
6 going to necessarily preclude them, but they
7 would have to file their applications and we
8 would rule on that, you know, at the next
9 hearing.

10 MR. GELL: And I would appreciate
11 it if the Board would permit that when the
12 hearing, you know, takes place. Yes.

13 CHAIRPERSON MILLER: Okay.

14 MR. GELL: Thank you.

15 CHAIRPERSON MILLER: Okay. Let me
16 just clarify in case it's not clear that there
17 will be one entity represented by Mr. Gell.
18 It'll be -- the entity will be comprised of
19 the individuals or families that filed party
20 status applications in our record that have
21 authorized Mr. Gell to represent them and just
22 for the record so we know, you know, who

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1 everybody is and they're in there and that
2 they live in the neighborhood, we'll receive
3 into the record any party status applications
4 that haven't been filed yet for neighbors that
5 you will be representing.

6 MR. GELL: Yes.

7 CHAIRPERSON MILLER: Okay.

8 MR. GELL: And I hope it's
9 understood as well that the individuals that
10 you're naming as part of the group will in the
11 case of an appeal or something have individual
12 party status that they can carry with them.
13 That's not a matter for the BZA. It may be a
14 matter for the Court of Appeals.

15 CHAIRPERSON MILLER: As we
16 understand it, the laws with respect to the
17 Court of Appeals, that anybody who's aggrieved
18 can file an appeal. So, that's not an issue
19 for --

20 MR. GELL: Generally speaking,
21 they have to have participated in the
22 hearings. It helps if they also have party

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1 status.

2 CHAIRPERSON MILLER: Yes.

3 MR. GELL: So, that's why I raised
4 that.

5 CHAIRPERSON MILLER: That's fine.

6 MR. GELL: Yes.

7 CHAIRPERSON MILLER: That's fine.

8 I think our major concern is we don't have,
9 you know, ten different cases going on here.
10 So --

11 MR. GELL: That's not our
12 intention.

13 CHAIRPERSON MILLER: Right. Okay.
14 I think for clarity unless you can point in
15 the record exactly that it's -- that you're
16 representing those that have filed in our
17 record applications for party status, if it's
18 any different, would you file something with
19 the Board indicating who is a member of this
20 party or if you can clear it up right now,
21 that's fine. If it's all in the record. I
22 just haven't checked to see whether, you know,

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1 these individuals on your chart, do they match
2 up with those that have filed applications for
3 party status?

4 MR. GELL: Yes. Yes, they do.

5 CHAIRPERSON MILLER: Okay.

6 MR. GELL: They're actually all on
7 this one application.

8 CHAIRPERSON MILLER: Does that
9 have an exhibit number on it?

10 MR. GELL: It was received in the
11 Office of Zoning. It's --

12 MR. MOY: I believes it's Exhibit
13 35, Madam Chair.

14 CHAIRPERSON MILLER: Okay.

15 MR. GELL: This was done before I
16 got into the matter. I would have recommended
17 each one file separately, but I think they've
18 certainly made their case.

19 CHAIRPERSON MILLER: Okay. So, at
20 page 2 of Exhibit 35, when it lists certain
21 neighbors and their addresses, those are, you
22 know, from Pamela Roberts all the way down to

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1 Steven Hirsh --

2 MR. GELL: That's right.

3 CHAIRPERSON MILLER: -- those are
4 the members of your group.

5 MR. GELL: That's correct.

6 CHAIRPERSON MILLER: And they've
7 all filed. Okay. Fine. Is that clear to
8 everyone? Okay. Good. Seven. One, two,
9 three, four, five, six, seven. Seven
10 addresses. Yes. Okay.

11 MS. BALDWIN: Can I ask a
12 question?

13 CHAIRPERSON MILLER: Yes.

14 MS. BALDWIN: In terms of
15 distributing things we filed, do we just file
16 one or give one to their attorney or should we
17 give one to each.

18 CHAIRPERSON MILLER: No, that's
19 the whole point.

20 MS. BALDWIN: Okay. Just -- I was
21 clarifying that.

22 CHAIRPERSON MILLER: Serve Mr.

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1 Gell. Serve Mr. Gell and the ANC.

2 MS. BALDWIN: Okay.

3 CHAIRPERSON MILLER: Now, you have
4 a liaison which is -- which will be helpful I
5 think in communications.

6 MS. BALDWIN: Thank you.

7 CHAIRPERSON MILLER: Okay. Do you
8 do you have a name?

9 MR. GELL: To the extent that
10 electronic filing is possible, that would
11 facilitate my being able to get the word out.
12 I'm sorry. Do we have a name? Well, Families
13 Neighboring the WABC.

14 CHAIRPERSON MILLER: Okay.

15 MR. GELL: That's about as --
16 we'll try to come up a better one.

17 CHAIRPERSON MILLER: That's fine.
18 Families Neighboring WABC. Okay. So, then
19 it's the consensus of the Board that this
20 entity has party status in this case. Okay.
21 We're all set on that. Serve Mr. Gell and the
22 ANC. Okay. So, then I think we can move on

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1 to the question of the continuance unless
2 there's any other questions on party status.

3 MR. GELL: That's fine.

4 CHAIRPERSON MILLER: Okay.

5 MS. BALDWIN: In terms of the
6 continuance when we submitted the letter, we
7 asked for 30 days, but the Applicant's now
8 seeking 60. So, would drop us in May and I
9 understand from Mr. Gell that he's on vacation
10 the early part of May and so, we're looking
11 for the -- the last two weeks in May. We also
12 have a conflict the first week of June. So.

13 CHAIRPERSON MILLER: So, you're
14 requesting the last two weeks in May sometime
15 if we have time in the schedule.

16 MS. BALDWIN: If you have time,
17 the 20th or the 27th of May.

18 CHAIRPERSON MILLER: Okay.

19 MR. GELL: Some of my folks --
20 people are on vacation just before and around
21 Memorial Day..

22 COMMISSIONER SOLOMON: If I may,

1 the ANC really wants to weigh in on the date.

2 CHAIRPERSON MILLER: Please do.

3 Thank you.

4 COMMISSIONER SOLOMON: Well,
5 because we have our own monthly meeting
6 schedule to meet, our next meeting -- we're
7 meeting next Monday. We then meet April the
8 21st followed by May the 19th and we're
9 awaiting a traffic study from the church.

10 That's one of the main things that
11 needs to be submitted for discussion and I
12 believe the Reverend is hoping that he's going
13 to see that in the next maybe two weeks or so.
14 I'd like to think that that would give the
15 ANC, the neighbors and so forth enough time to
16 digest it.

17 I think it may be unrealistic. I
18 believe all the parties would like to come
19 back to the hearing all on the same page, all
20 working together and, you know, behind a
21 single plan.

22 I think we would all be best

1 served if our ANC were to be able to take that
2 issue up on the May 19th meeting so we would
3 have a full month to 6 weeks and so long as we
4 have a good week or so on the far end of that
5 to then turn around our decisional report in
6 advance of the hearing, we should be okay.

7 So, for me, that would be a bare
8 minimum of the May -- is it May 27th?

9 CHAIRPERSON MILLER: Yes.

10 COMMISSIONER SOLOMON: Have I got
11 the date correct? Or possibly then into early
12 June.

13 CHAIRPERSON MILLER: Okay. You
14 know, we have a calendar that's already, you
15 know, full and sometimes we get a withdrawal
16 or whatever, but we don't have that. So, what
17 we were looking at is July 22nd is our first
18 -- this is July now. Middle of summer. I
19 don't know if you want it. It's our first
20 like wide-open day. So, you'd be first in the
21 morning.

22 Otherwise, we can go into June and

1 put you like last in the afternoon which is
2 not a great situation sometimes, but if you're
3 anxious to proceed, that way I think we could
4 do it either -- it would late June though.
5 One second.

6 COMMISSIONER SOLOMON: Chair
7 Miller, if I may just raise one consideration
8 that hasn't been brought up yet and I think
9 we're all sensitive to is that the church
10 houses a nursery school and so, it's going to
11 very rapidly come up on time for parents to be
12 figuring out what's going to happen and I just
13 want to make that -- put that out there.

14 CHAIRPERSON MILLER: I mean if
15 time is, you know, an issue, then we'll
16 squeeze you. You know, we'll look at an
17 earlier day from May 27th through June and
18 see. You know, put you last in the afternoon
19 or something if that's important.

20 COMMISSIONER SOLOMON: It's
21 preferable. Okay. And hopefully, we'll come
22 in happier together.

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1 CHAIRPERSON MILLER: Okay.

2 COMMISSIONER SOLOMON: So, it
3 might not take so long.

4 CHAIRPERSON MILLER: Well, before
5 we get into June which is the tightest, can we
6 go back to May 27th which I think is near
7 Memorial Day or something, but is that a big
8 problem or it's a Tuesday. I would think that
9 people would be back from -- right. Let me --

10 MR. GELL: Most people would be
11 taking several days around Memorial Day.

12 CHAIRPERSON MILLER: I mean if the
13 people aren't going to be here, then we won't
14 do it. I just -- none of you are on a mike.
15 Is the school on recess? No, somebody says
16 they take that week. I don't know who takes
17 it. Neighbors take the week off. No, you're
18 not on mike though. So, if you want to be on
19 mike -- okay. If that's not a feasible date,
20 we're going to do a tighter date.

21 MS. BALDWIN: We didn't have a
22 problem with the date of May 27th.

1 CHAIRPERSON MILLER: The Applicant
2 doesn't have a problem.

3 MS. BALDWIN: No.

4 CHAIRPERSON MILLER: Just the ANC.

5 COMMISSIONER SOLOMON: It's not
6 optimal. I mean it would give us a full week
7 after our meeting, but these reports and
8 things do take a lot of time to put together.
9 We could do it. Probably prefer one week
10 further out. But, if it meant going far into
11 the future, we'd push ourselves to do it for
12 May 27th. So.

13 CHAIRPERSON MILLER: Okay. We
14 have the whole crew looking at this. All
15 right. How about June 10th first in the
16 afternoon? Okay.

17 COMMISSIONER SOLOMON: What time
18 is considered first in the afternoon?

19 CHAIRPERSON MILLER: One o'clock.

20 COMMISSIONER SOLOMON: That's when
21 you reconvene.

22 CHAIRPERSON MILLER: You know

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1 what? I'm sorry. I don't know if I want to
2 promise you first in the afternoon. Let's do
3 it June 10th. Sometimes we have some cases
4 that might be really fast and we want to get
5 those out. So, what I was told was that we
6 could juggle the schedule to accommodate this
7 case into June 10th in the afternoon. So,
8 we'll do the best we can with that afternoon.
9 Okay. Okay.

10 So, in the meantime, you'll be
11 trying to work out the issues and Mr. Gell
12 will be the liaison for the party status.
13 Well, they're already -- for the parties in
14 opposition or whatever and you'll serve the
15 ANC and you know that. Okay.

16 Any other questions?

17 MS. BALDWIN: Do have a pre-
18 hearing two weeks before --

19 CHAIRPERSON MILLER: Yes. Yes.

20 MS. BALDWIN: Okay.

21 CHAIRPERSON MILLER: Okay.

22 MS. BALDWIN: Well, that's great.

1 Thank you very much.

2 CHAIRPERSON MILLER: Okay. Thank
3 you all very much.

4 MR. GELL: Thank you.

5 CHAIRPERSON MILLER: We're ready
6 for you to call the next case when you're
7 ready, Ms. Bailey.

8 MS. BAILEY: Application Number
9 17728 of The Family Place pursuant to 11 DCMR
10 3104.1 for a special exception for a community
11 service center (last approved under BZA Order
12 Number 16910) under section 334. The property
13 is located in the R-5-B District at premises
14 3309 16th Street, N.W., Square 2676, Lot 469.

15 CHAIRPERSON MILLER: Good morning.
16 Would you introduce yourselves for the record
17 please?

18 MS. DUMAS: Good morning, Madam
19 Chair and Members of the Board. My name is
20 Kinley Dumas with the law firm of Arent Fox.
21 I'm representing The Family Place and with me
22 is Camille Fountain the Executive Director of

1 The Family Place, the Applicant in this place.

2 CHAIRPERSON MILLER: Okay. And
3 this is for a continuation of a child
4 development center?

5 MS. DUMAS: That's correct. The
6 Family Place has been operating as a community
7 service center at this location 3309 16th
8 Street since 1985 pursuant to multiple BZA
9 approvals. The last of which was granted in
10 case number 16910 in 2002. We're requesting
11 a renewal or a continuation of that use.
12 There are no material changes and in lieu of
13 a presentation given the late hour and the
14 support of the Office of Planning in this
15 matter, we'd like to stand on the record.

16 We're available to answer any
17 questions that you might have.

18 CHAIRPERSON MILLER: Thank you.
19 Thank you for correcting me. Okay.

20 I have a question about one of the
21 conditions that it's been operating under.
22 Number 7, Applicant's --

1 VICE CHAIRPERSON LOUD: Madam
2 Chair, if I could interrupt for a brief
3 second.

4 CHAIRPERSON MILLER: Yes.

5 VICE CHAIRPERSON LOUD: There's
6 something that I wanted to place on the record
7 before we go too far into the case. A matter
8 of disclosure and that being that I am
9 personally familiar with Ms. Fountain. She
10 and I both run nonprofits and we've
11 intersected in the nonprofit community. So,
12 I do have a professional acquaintance with
13 her.

14 That being said, I don't think
15 that there's any reason why I could not be
16 fair and impartial in reviewing the special
17 exception request. So.

18 But, I did want to make it clear
19 for the record that I am personally acquainted
20 with Ms. Fountain.

21 CHAIRPERSON MILLER: Thank you.
22 Ms. Fountain, do you have an objection?

1 MR. FOUNTAIN: No, not at all.

2 CHAIRPERSON MILLER: Okay. And is
3 the ANC here in this case? Is anybody here in
4 this case to testify in support?

5 MS. CAMPANY: I'm a -- I'm a
6 neighbor.

7 CHAIRPERSON MILLER: Okay. And
8 you're planning to testify?

9 MS. CAMPANY: Sure.

10 CHAIRPERSON MILLER: Okay. I'll
11 call you when we get to that. Okay.

12 You know, it seems like these
13 conditions have been carried forward each time
14 that the Center's been authorized. Number 7
15 says the Applicant shall submit proof of its
16 nonprofit status for the record. What is
17 that? Where are you submitting the proof? Do
18 we have it in our record or --

19 MS. DUMAS: You do have it in your
20 record in case number 16910. It was filed
21 after the hearing in that case and we
22 submitted those materials as part of our

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1 application in this case. It probably isn't
2 necessary to continue that condition forward
3 since it's well documented. It's an IRS
4 letter accepting the 501(c)(3) application.

5 CHAIRPERSON MILLER: You attached
6 it to the application?

7 MS. DUMAS: Let me just look here.
8 I thought it had been included in the
9 application. If not, I have it with me and I
10 can submit it for the record today.

11 CHAIRPERSON MILLER: Okay.
12 Perfect. Let me just ask you with respect to
13 also the terms. I think that's changed over
14 the years. Did you have a shorter term for
15 the last order for some reason you want to
16 address and what kind of term you would want
17 this time?

18 MS. DUMAS: My understanding was
19 that there was a neighbor in opposition to the
20 application the last -- in the last case 16910
21 and for that reason, the term which was in
22 place at that which was 10 years was shortened

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1 to 5 years at the recommendation of the ANC
2 and the Office of Planning.

3 The Office of Planning has
4 suggested that the term now be extended to 10
5 years. Of course, we have no objection with
6 that given the burden of putting together an
7 application, the fee, obtaining counsel and
8 the strain that that puts on a nonprofit
9 organization.

10 That neighbor is no longer -- that
11 particular neighbor is no longer residing at
12 that location and The Family Place has been in
13 contact with its new neighbors and Camille can
14 elaborate on that.

15 CHAIRPERSON MILLER: All right.

16 MS. CAMPANY: Part of the concern
17 of the neighbors who one of them is here has
18 been the loitering that happens after hours
19 because we operate from, you know, roughly
20 from 9:00 to 7:00 Monday through Friday of
21 vagrants and homeless people, but over the
22 last year or so, it's been -- had been some

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1 problems. But, we had addressed those. We
2 were trying to address it and, you know, we
3 would deal with it and it would come back.
4 But, we finally did work with the 3-D
5 Substation, police substation, and talked with
6 Commander Linda Brown and she has put the
7 police officers, you know, really on point in
8 terms of keeping the vagrancy down.

9 There was some issues about
10 lighting. We installed new lighting. We've
11 been cleaning up.

12 I mean the things that might have
13 been nuisance to the neighbors we have been,
14 you know, really focused on making sure that
15 it doesn't continue to be a problem and those
16 were some of the issues that were going on in
17 the case before and, you know, in the --
18 remember we got approval in 2002. They did
19 reoccur this time, but we have fixed it.

20 CHAIRPERSON MILLER: How is the
21 operation of the center related to the
22 loitering? I mean why is their loitering

1 there because of your operations?

2 MS. CAMPANY: We're only open -- I
3 said we're only open Monday through Friday,
4 you know, during normal business hours and a
5 couple of times a week we have an evening
6 program and when we're not there, you know,
7 when we lock up and go away, then the homeless
8 people, vagrants will come and sleep on the
9 porch or eat or --

10 CHAIRPERSON MILLER: Just because
11 you're not there.

12 MS. CAMPANY: Yes.

13 CHAIRPERSON MILLER: Okay. Okay.
14 And you've worked with the police and they're
15 addressing it?

16 MS. CAMPANY: Yes, it hasn't been
17 a problem.

18 CHAIRPERSON MILLER: Okay. Okay.

19 MS. CAMPANY: To my knowledge.

20 CHAIRPERSON MILLER: And the rest
21 of your operations just stay the same?

22 MS. CAMPANY: Yes.

1 CHAIRPERSON MILLER: And they're
2 working and you intend to keep them the same?

3 MS. CAMPANY: Yes, absolutely.

4 CHAIRPERSON MILLER: Okay. And
5 other questions?

6 Okay. Do you have anything else?
7 Otherwise, we'll turn to Office of Planning.

8 MS. DUMAS: No, nothing else at
9 this time.

10 CHAIRPERSON MILLER: Okay. Good
11 morning, Mr. Moore.

12 MR. MOORE: Good morning, Madam
13 Chair and Members of the Board. I'm John
14 Moore of the Office of Planning.

15 The Office of Planning will stand
16 in support of the application. We did make
17 the recommendation that the time frame be
18 changed to 10 years based on the history of
19 the last 5 years where there's been no
20 complaints filed.

21 CHAIRPERSON MILLER: There have
22 been no complaints. Is that what you said?

1 MR. MOORE: That we're -- we're
2 unaware of any complaints from the neighbors
3 or the ANC.

4 MS. FOUNTAIN: We -- in the last
5 few months, we have received the endorsement
6 of the ANC through meetings.

7 The neighbors at that time came to
8 talk about what their concerns were, again, as
9 I talked about before and we have addressed
10 them, but there were minor complaints and we
11 took care of that.

12 CHAIRPERSON MILLER: Okay. Do we
13 have a letter from the ANC in the file? I
14 don't see it in my --

15 MS. DUMAS: It was submitted with
16 our affidavit of posting because I noticed
17 that it had not been sent directly to the ANC.
18 It had been provided to The Family Place and
19 that was filed last Thursday, the 6th.

20 CHAIRPERSON MILLER: Okay. We see
21 it and there isn't a representative of the ANC
22 here today. Is there? Okay.

1 The ANC just for the record
2 submitted a letter dated July 11th, 2007
3 saying they supported the application. That
4 The Family Place provides valuable services to
5 the community. Okay. I'm not going to read
6 it all, but just to get the general gist.
7 Okay.

8 I can't tell that it was voted on
9 at a -- that there was a resolution voted on,
10 but --

11 MS. FOUNTAIN: You mean with the
12 ANC?

13 CHAIRPERSON MILLER: Yes.

14 MS. FOUNTAIN: Yes, they did vote
15 on it and this letter was provided after that
16 meeting.

17 CHAIRPERSON MILLER: Yes, you
18 would -- you know, you would assume so. It's
19 fine. There's this provision in the law
20 called you give great weight to the ANC and,
21 you know, that means we address their issues
22 basically and usually when we do that that

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1 means that it's -- they've taken an official
2 act. They've, you know, passed a resolution
3 in front of a regular scheduled meeting and
4 voted on it and a quorum was present, et
5 cetera.

6 They don't indicate that here, but
7 they're not raising any issues with the
8 application anyway. So, we recognize this as
9 community -- as support. Okay.

10 Any questions for Office of
11 Planning?

12 COMMISSIONER ETHERLY: Very
13 quickly, Madam Chair, if I may. Mr. Moore, as
14 always, thank you very much for your excellent
15 work.

16 With these particular type of
17 cases, I haven't seen anything in the record
18 to suggest these concerns, but I'll just touch
19 upon them because they do typically arise when
20 we deal with centers of this type.

21 Is the Office of Planning aware of
22 any concerns with respect to pick-up/drop-off

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1 issues, traffic-related issues?

2 MR. MOORE: No, we're not. We
3 indicate in the report that most of the people
4 who utilize the center live in the community
5 and take public transportation.

6 COMMISSIONER ETHERLY: Okay.

7 MR. MOORE: And it's on the major
8 bus route.

9 COMMISSIONER ETHERLY: Okay. And
10 then with respect to operations at the rear if
11 I'm correct from the photographic evidence
12 that's provided at Exhibit Number 7. At the
13 rear of the property, are the two parking
14 spaces that are utilized by the center.
15 Correct?

16 MR. MOORE: There are two parking
17 spaces. Basically, one is utilized.

18 During the previous application
19 before this, the Office of Planning had a
20 little problem with the rear of the property.
21 As you can -- if you look at the previous
22 report, you'll see we took pictures of the

1 back of the property and then discussed it
2 with the Applicant and we're comfortable
3 that's been addressed.

4 COMMISSIONER ETHERLY: Okay.
5 Thank you. Thank you, Madam Chair.

6 CHAIRPERSON MILLER: Okay. Any
7 other questions? Does Applicant have any
8 questions for Office of Planning?

9 MS. DUMAS: We do not.

10 CHAIRPERSON MILLER: Do you have a
11 copy of the report from Office of Planning?

12 MS. DUMAS: Yes, we do. Thank
13 you.

14 CHAIRPERSON MILLER: Okay. And
15 the ANC is not here as we've determined. So,
16 at this point, are there any persons or
17 parties in support of the application that
18 want to come forward? In opposition?

19 Okay. Come on. Good morning.

20 MS. CAMPANY: Sorry. My name's
21 Rebecca Campany and I live next door to The
22 Family Place. I own 3311.

1 And the first thing I should say
2 is that in the window of The Family Place is
3 a notice of this hearing, but it says the
4 hearing will take place at 1:00 p.m. So,
5 there are probably many people who couldn't
6 make it who perhaps intended to come. I know
7 I had to run out of my office and couldn't
8 make it. I was going to put down a bunch of
9 stuff and I just didn't even have time. I
10 just ran out of the office when I heard that
11 the time was moved up and I have a photo of
12 that notice if you'd like to see that.

13 CHAIRPERSON MILLER: Okay. Okay.
14 Because I'm surprised by it because I -- as
15 far as we knew --

16 MS. CAMPANY: Okay.

17 CHAIRPERSON MILLER: -- this case
18 was scheduled on our schedule for the morning.

19 MS. CAMPANY: Well, the big orange
20 poster in the window says 1:00 p.m.

21 MS. DUMAS: The placards that were
22 -- the placard that has been posted was the

1 placard provided by the Office of Zoning and
2 all of the hearing notices that have been sent
3 to the Applicant and to the Advisory
4 Neighborhood Commission indicated that the
5 hearing would be between 9:30 and 12:00 p.m.
6 today.

7 CHAIRPERSON MILLER: Why don't you
8 show to the Applicant and the Board what it is
9 that you're referring to.

10 MS. CAMPANY: I beg your pardon.

11 CHAIRPERSON MILLER: The picture
12 that you have --

13 MS. CAMPANY: Oh, sure.

14 CHAIRPERSON MILLER: -- of the
15 1:00 time.

16 MS. CAMPANY: Unfortunately, I
17 took it on my way out of the door when I
18 realized it -- when I realized the time wasn't
19 the same as the posted time.

20 MS. DUMAS: Actually, our own
21 photograph shows that it's -- that it is
22 indeed 1:00 p.m.

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1 MS. CAMPANY: Yes, okay.

2 MS. DUMAS: From the affidavit of
3 posting.

4 MS. FOUNTAIN: But, the --

5 MS. DUMAS: But, all of the --

6 MS. FOUNTAIN: -- the notice --
7 all the notice -- the hearing notices say
8 between 9:30 and 12:00.

9 MS. CAMPANY: I actually didn't
10 receive a notice. My neighbor up the street
11 received a notice and told me about it because
12 he got called out of town and asked me to
13 bring a letter for him, but I actually didn't
14 receive a letter.

15 CHAIRPERSON MILLER: Are you the
16 owner?

17 MS. CAMPANY: I am.

18 CHAIRPERSON MILLER: And you
19 didn't -- next door and you didn't receive a
20 letter?

21 MS. CAMPANY: No, but I have a co-
22 owner and the letter was addressed to him, but

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1 he works for the World Bank and is out of town
2 for months on end. So, I never got it. I
3 might be sitting there in his name.

4 MS. DUMAS: Is that Mr. Collier?

5 MS. CAMPANY: Yes.

6 MS. DUMAS: Yes, the tax records
7 which are what the Applicant relied on in
8 order to provide the Office of Zoning with 200
9 -- the list of property owners within 200 feet
10 lists only Mr. Collier as a property owner for
11 3311 16th Street, N.W.

12 CHAIRPERSON MILLER: Okay. I just
13 want to state for the record that all of our
14 notices that I'm seeing -- our advertisements
15 have this for the morning session.

16 But, anyway, let's --

17 MS. CAMPANY: Sure.

18 CHAIRPERSON MILLER: -- hear what
19 your issues are and then decide --

20 MS. CAMPANY: Sure.

21 CHAIRPERSON MILLER: -- if there's
22 a reason to --

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1 MS. CAMPANY: Sure. Sure.

2 CHAIRPERSON MILLER: -- do
3 something about that. Okay.

4 MS. CAMPANY: Well, first let me
5 say that in general I support The Family
6 Place's extension, but I'd like to see it
7 limited in time.

8 While, you know, I like their
9 mission, I mean they provide economic
10 mobility. They provide education and I'm in
11 support of that and I'm also in support in
12 general of mixing social services in with
13 residential areas. I think that's a good
14 thing, but I would note that on that
15 particular block, there are nine residential
16 homes three of which are social services.
17 There's the Federal Bureau of Prisons halfway
18 house. There's The Family Place and a few
19 doors down further is a place where volunteers
20 for the Jubilee Center live while they're
21 volunteering for the Jubilee Center's various
22 operations and things and so, it's a lot of

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1 people coming and going and so on.

2 So, one-third of the block of
3 residential homes is taken up with social
4 services that have exceptions. So, that's of
5 concern as a property owner.

6 The other thing I'd like to
7 address is -- first of all, let me make it
8 clear that during business hours I don't have
9 any problems with The Family Place. Their
10 clientele is great. They come and they go.
11 They do their thing. I support all of that.

12 As Camille pointed out, the
13 problem has been after hours.

14 Additionally, from my point of
15 view, my other problem is the upkeep of the
16 property in general. You noted that in a
17 previous year that there -- the back of the
18 property, I don't know. I'm going to assume
19 that what you saw was that it wasn't very
20 tidy. Which is status quo. They did clean it
21 up. I guess about a month ago they cleaned it
22 up, but already, there are several pieces of

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1 furniture back out there on the back. I've
2 got photos from the summer where there's all
3 sorts of toys and office equipment and all
4 sorts of just junk back there.

5 Additionally, in the front, during
6 the warm months, vagrants do hang out.
7 Between the two of us, we've done a lot of
8 calling. Well, in the old days, 311. Now,
9 911 and the police come and I have on my
10 laptop -- as I said, I had to leave the
11 office. Didn't have time to print out, but I
12 have photos. I call most Saturday and Sunday
13 mornings. I called 311 all during the warm
14 months and up would show an ambulance and a
15 fire truck and a police car because they would
16 never believe me that they really didn't need
17 -- I would say look, there's somebody passed
18 out drunk and they would send, you know,
19 everybody and they would block the street up
20 and somebody would come out and hustle the
21 drunk along and then everyone would move on.

22 But, they defecate. They urinate.

1 They leave their trash. They eat. There is
2 an elevator at The Family Place which Camille
3 tells me ironically the people who owned the
4 house before me forced them to install, but
5 anyway, there's an elevator there that they
6 use as a latrine and a storage place. The
7 homeless people.

8 And I don't think The Family Place
9 is as good as I'd like to see it keeping their
10 property up. Again, I have photos. The
11 gutters are falling apart. They keep the lawn
12 mowed, but I think they have a maintenance
13 crew that comes around once a week. So, once
14 a week, the trash gets picked up, but the rest
15 of the week, the trash is kind of around.

16 So, I'd like to see them work more
17 to become neighbors and what I should add is
18 that myself and a few neighbors have gotten a
19 fund together and we're going to as a donation
20 buy The Family Place an iron fence around
21 their property to help keep -- help discourage
22 people from kind of hanging out there.

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1 So, we do want to work with them.
2 We do want to see them succeed, but I'm
3 reluctant to see them have a long-term renewal
4 because I think there's still a lot of work we
5 need to do together.

6 CHAIRPERSON MILLER: Okay. Let me
7 ask you a couple of questions.

8 MS. CAMPANY: Sure.

9 CHAIRPERSON MILLER: First of all,
10 I was thinking about a fence thing, too, as
11 you were talking. That you identify the
12 problems and if there are some solutions, we
13 might consider them for conditions. So, I
14 mean a fence was something that --

15 MS. CAMPANY: Okay.

16 CHAIRPERSON MILLER: -- that came
17 to my mind and a fence is actually something
18 you're going to help The Family Center out
19 with.

20 MS. CAMPANY: Yes.

21 CHAIRPERSON MILLER: So, that's
22 one thing.

1 As far as the backyard or them
2 putting things in the backyard, would it be
3 your hope that we would strengthen the
4 condition that deals with maintenance of their
5 backyard?

6 MS. CAMPANY: Yes, maintenance
7 overall, with the backyard.

8 CHAIRPERSON MILLER: Maintenance
9 overall.

10 MS. CAMPANY: And I'd have to ask
11 Camille, but my guess is they have the trash
12 hauled away about once a month. I mean they
13 have their refuse picked up, I don't know once
14 or twice a week, the things in the bins, but
15 the big junk, I think I see disappear about
16 once a month and I think the problem is that
17 people donate a lot of junk and you're like,
18 okay, what can we do with this? It's of no
19 value and out the back door it goes because
20 you've got no place to put it. But,
21 meanwhile, it sits out there for quite awhile
22 and then one day, it all disappears and then

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1 it gradually builds up and then it disappears
2 again. So, I don't know if I'm observing
3 correctly, but that's my guess.

4 CHAIRPERSON MILLER: Do you want
5 to respond and then we'll have other Board
6 Members ask questions?

7 MS. DUMAS: Well, I have a couple
8 of questions for Ms. Company. Is it?

9 MS. COMPANY: Yes. Yes.

10 MS. DUMAS: How long have you
11 owned the property with Mr. Collier?

12 MS. COMPANY: Since November 2005.

13 MS. DUMAS: Two thousand five.
14 Okay. And did I hear you correctly that the
15 vagrants that you've reported to the police
16 are not, at least not that you're aware,
17 Family Place clients or any --

18 MS. COMPANY: That's correct.
19 Yes.

20 MS. DUMAS: -- in any other way
21 related to The Family Place's use?

22 MS. COMPANY: No, I don't think so

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1 at all. No.

2 MS. DUMAS: Okay. That's the only
3 question I have. I think Ms. Fountain would
4 like to respond to the issue with the trash
5 that's been raised as well as the idea of a
6 fence.

7 MS. FOUNTAIN: Just to speak on
8 what Rebecca has been talking about in terms
9 of the problem that have persisted, those
10 problems persisted I would say anywhere from
11 6 to 9 months ago back and the last 6 months
12 or so, that has not been going on. We have
13 been maintaining the property on a regular
14 basis. None of that is happening anymore.

15 Like I said, we had worked -- when
16 this was a persistent problem, we had worked
17 -- I was constantly anyway dealing with the
18 police -- the area police and they would
19 sometimes patrol. Then not patrol. They said
20 they would have a special exception report and
21 when -- when the neighbors continued to say
22 it's still happening, then, you know, I -- I

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1 got involved with Jim Graham's office to try
2 to resolve this and he then was able to have
3 the Commander of the 3-D Substation to come
4 and meet with me and actually, meet with us
5 and we did address that and like I said, to my
6 knowledge, this has not been going on.

7 I mean I'm there everyday.
8 There's nothing going on. The elevator --
9 but, the things that she did state were
10 happening. They just have not been going on
11 for the last 6 months or so.

12 MS. DUMAS: How often is your
13 regular refuse and bulk refuse picked up?

14 MS. FOUNTAIN: The regular trash
15 is picked up twice a week and depending on how
16 big it is, the trash company, which is a
17 commercial trash company, will pick up bulk
18 items. When they won't do that, then we have
19 to schedule with them when they will do the
20 bulk pick up and so, sometimes, it is -- does
21 -- you know, I have to wait until they put me
22 on the schedule which could be two weeks.

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1 MS. DUMAS: And how often does
2 that occur?

3 MS. FOUNTAIN: It -- it's when
4 needed. It's when needed.

5 MS. DUMAS: Can you estimate how
6 many times a month that you need to schedule
7 a bulk pick up?

8 MS. FOUNTAIN: Not more than once
9 a month.

10 MS. DUMAS: Okay. Thank you.

11 MS. FOUNTAIN: Yes.

12 CHAIRPERSON MILLER: What is the
13 bulk that you -- that the center accumulates
14 that is causing a problem for the neighbors?

15 MS. FOUNTAIN: Usually desks, old
16 computers, trash, maybe toys. It's as she
17 said. Donations that people have given us
18 that are of no use or that -- really refuse
19 and so, we just end up having to throw it
20 away.

21 A lot of times what will happen is
22 we'll put something -- because we don't have

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1 storage space inside and trying to contact
2 another agency for us to donate it to. So,
3 sometimes if it sits there longer than the --
4 when we -- you know, as we're trying to be on
5 the schedule. When we get on the schedule for
6 the pick up, we're also trying to find
7 somebody else to donate it to and if that
8 doesn't happen, then we just let the bulk
9 trash pick up.

10 CHAIRPERSON MILLER: Do you have
11 to accept the --

12 MS. FOUNTAIN: A lot -- we -- a
13 lot of times, if they bring it between normal
14 business hours, no, we don't and we a lot of
15 times turn people away.

16 But, what happens a lot is people
17 just bring it when we're not there and leave
18 it on the porch. So, then we bring it in and
19 take it, you know, to the basement.

20 CHAIRPERSON MILLER: I mean if you
21 had a, I don't know, a sign or a notice to
22 people that you don't accept certain bulk --

1 MS. FOUNTAIN: We have that.

2 CHAIRPERSON MILLER: You have
3 that?

4 MS. FOUNTAIN: We have that.

5 CHAIRPERSON MILLER: And that's
6 not working?

7 MS. FOUNTAIN: Right. We have
8 that.

9 CHAIRPERSON MILLER: Like we don't
10 accept or we don't need computers. Don't drop
11 them here.

12 MS. FOUNTAIN: Right. We don't
13 need -- yes, we have that. We say please
14 don't bring donations unless it's Monday
15 through Friday 9:00 to 5:00. We also have
16 that.

17 The one thing that I -- that I am
18 happy about is the fact that we're working
19 with the neighbors to put this wrought-iron
20 fence around the property which will be a
21 detriment for vagrants as well as hopefully
22 people who just want to kind of bring

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1 donations. It won't be as easy to get up to
2 the porch when they have to go through a
3 fence.

4 CHAIRPERSON MILLER: Any other
5 questions? Yes.

6 VICE CHAIRPERSON LOUD: Ms.
7 Fountain, good afternoon.

8 Ms., I believe it's, Gibbney --
9 is it Gibbney?

10 MS. CAMPANY: Company.

11 VICE CHAIRPERSON LOUD: Company.
12 I'm sorry.

13 Ms. Company has proposed a period
14 of less than 10 years I think is where she's
15 going with this. Can you respond in terms of
16 between -- I think you originally proposed
17 five. OP increased it up to 10 and now, she's
18 proposing some period of less than 10. But,
19 just can you respond in terms of the impact to
20 your organization of it being less than 10 and
21 what number might be a number that would work?

22 MS. FOUNTAIN: A number between 5

1 and 10 would be preferable. I mean to be
2 honest we would like it to be in perpetuity,
3 but we know that's probably not possible and
4 the issue is because we have to go through --
5 as Ms. Dumas stated, you know, the resources
6 on the organization to go through, you know,
7 putting this application together and is --
8 you know, we're already drained. It really
9 means a lot of my time to be honest and, you
10 know, the time that I spent there is time
11 spent away from raising funds so that we can
12 pay for operations and pay for the trash to be
13 picked up and pay for, you know, our clients
14 to be served. So, it's just a drain on the
15 already limited resources that we have.

16 We're a very small nonprofit. Our
17 budget is just barely over a half a million.
18 Ranges about between a half a million and
19 600,000.

20 VICE CHAIRPERSON LOUD: So, if you
21 were to quantify a period between 5 and 10
22 years, what would -- given what you said and

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1 sort of what you see that we might not see --

2 MS. FOUNTAIN: Seven or 8 years.

3 VICE CHAIRPERSON LOUD: Okay. And

4 Ms. Company, she said over the last 6 to 9
5 months the various things that you had raised,
6 the unkept back yard, gutters falling apart,
7 public urination, et cetera has been resolved.
8 Is that your experience?

9 MS. COMPANY: I would have to
10 disagree and let's separate two things that is
11 kind of the physical infrastructure which is
12 just kind of the gutters that need work and
13 things like that.

14 And then there's the vagrants and
15 I recognize that there's limited things that
16 they can do about the vagrants, but the
17 vagrants tend to hang out during the warmer
18 months. So, around Thanksgiving when it began
19 to get cold is when they stopped really
20 hanging out. They tend to hang out most often
21 on weekend evenings. Some other evenings and
22 I've always guessed that when it's colder,

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1 they prefer to go to a shelter, but when it's
2 warm out, it's nice to hang out on their front
3 porch.

4 It's kind of a secluded view. If
5 you have photos from the street, you can see
6 anybody laying up on that porch or sitting on
7 that porch. You really can't see them from
8 the street or sidewalk.

9 So, in -- what I do want to say is
10 though we've done a lot of work together and
11 done a lot of talking with the police and Jim
12 Graham and, you know, I think the police are
13 patrolling more and I'm very hopeful, but I
14 don't feel comfortable saying that once the
15 warm weather comes back around it won't pick
16 up again.

17 CHAIRPERSON MILLER: This fence
18 that you're talking about, is it going to just
19 go across the front of the property or is it
20 going to go around the whole property or
21 what's it going to do?

22 MS. CAMPANY: No, we're going to

1 put it around the sides.

2 CHAIRPERSON MILLER: The sides and
3 the front?

4 MS. CAMPANY: Yes, we're right
5 next to them. So, we're going to put one
6 around both sides and the front of ours and
7 then finish off with the side and the front of
8 theirs as well.

9 CHAIRPERSON MILLER: How tall is
10 it going to be? Do you know?

11 MS. CAMPANY: Well, my co-owner
12 has been working on it, but I -- you know,
13 whatever typical kind of front-yard fences.
14 Kind of the waist high. Something like that
15 and he's been speaking with an iron works
16 company and I don't -- I think he's shared
17 plans and things like that with you. I don't
18 remember what the details were though.

19 MS. FOUNTAIN: I think the fence
20 is somewhere between 36 and 42 inches at the
21 top.

22 CHAIRPERSON MILLER: And is there

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1 any kind of confidence level that, you know,
2 this type of fence at this height will be
3 enough of a deterrent?

4 MS. CAMPANY: I think it's a help.
5 First of all, I would hate to put something
6 big. I think that would send a bad message to
7 clients. I want the clients to feel like it's
8 a nice place they can come to, but I think
9 there's a real psychological deterrent when a
10 property is kind of fenced in like that. I
11 think people are less likely to kind of open
12 the gate and hang out. You know, same thing
13 if there's a bright light somewhere, they're
14 less likely to hang out. So, I'm very hopeful
15 that it's going to help out a lot.

16 CHAIRPERSON MILLER: Okay. So,
17 you're really not against the continuation of
18 the center. You're just concerned about those
19 aspects.

20 MS. CAMPANY: Yes, and again, I
21 really support the center's work. I've never
22 had a moments trouble with the clientele or

1 their operating during business hours. It's
2 the physical condition of the property that
3 I'd like to see kept up a little bit more. I
4 just don't think they have a -- I don't think
5 that they show a lot of pride in the
6 neighborhood and I think that they're strapped
7 for cash and I think they've outgrown their
8 facility and they're really hoping to be able
9 to save money and find another facility and
10 that's something we've talked about and I
11 totally understand that position. So, I think
12 there's also a reluctance on their part to put
13 a lot of money into the physical
14 infrastructure now. It would be my guess
15 again.

16 But, I think that the two concerns
17 I have are the mix of social services and
18 residences in that one little block and then
19 just really wanting to make sure that we all
20 function as neighbors.

21 MS. DUMAS: Might I suggest that
22 the conversations that have been had between

1 The Family Place and the neighbors have been
2 on an ongoing basis just as needed to talk
3 about issues that come up and one of the
4 things that The Family Place would be willing
5 to do and be willing to submit to in the form
6 of a condition would be a quarterly meeting
7 with neighbors to address any ongoing issues
8 related to public safety or infrastructure
9 improvements and again, we'd be happy to have
10 that be a condition of the order.

11 One thing I'd like to point out is
12 The Family Place is not outgrowing its
13 facility. It's not proposing any increase at
14 this time. While The Family Place may like to
15 in the future serve additional families, it's
16 very clear by the terms of the order how many
17 people can be there at any given time, how
18 many staff and there is no intention to exceed
19 that at any time.

20 CHAIRPERSON MILLER: I guess my
21 only concern here is, you know, if we're going
22 to give this a long term that we, you know,

1 address any of the issues that need addressing
2 and it seems to me -- I mean the basic one is,
3 you know, the vagrancy to hardly any fault of
4 the center, but it's problem by its existence
5 there and it seems like that -- that will be
6 addressed with the fence and which we can add
7 as a condition if we so choose to our order.
8 The police which we wouldn't add as a
9 condition, but that's just something the
10 community's doing.

11 And so, you know, my question is
12 is there anything else that we need to
13 consider, you know, for a possible condition,
14 you know, to alleviate -- address the problem
15 and alleviate concerns of neighbors and then
16 anything else with respect to trash, you know,
17 that could be added to the order.

18 So, I just open that up for any
19 comments from you all.

20 MS. CAMPANY: I would say that --
21 and again, this is totally my observation and
22 my guess, but Camille has always been very

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1 agreeable and very responsive. But, I think
2 she's not always been able to deliver in
3 wanting to be responsive.

4 So, for instance, it took her a
5 long time to kind of get the front light
6 resolved to where there was a light that kind
7 of stayed on at night and so, my concern
8 moving forward is just that and I think we're
9 in a real Catch-22 here.

10 I recognize that shortening the
11 renewal time puts burdens on them, but not
12 shortening it puts burdens on the neighbors as
13 well. So, it's a difficult situation and I'm
14 not sure what the solutions are and I think
15 we've struggled to find some solutions and I
16 think we've found some and there's others
17 we're still struggling to find.

18 CHAIRPERSON MILLER: Well, I guess
19 my point is that, you know, this isn't a new
20 operation and if you know what the problems
21 are and we can address them in the order and,
22 you know, there's built in, for instance, this

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1 quarterly meeting and communication and stuff.
2 Then a longer term would be okay as long as --
3 I think that we're not -- it's not like there
4 are some unanticipated events lying out there
5 that we need to -- oh, we better come back in
6 5 years because I don't know what's going to
7 happen. It seems like you know what the
8 issues are.

9 So, if there's anything else, you
10 know, for instance, there's a condition that
11 talks about trash being picked up two times a
12 week. If for some reason that doesn't seem to
13 be working or that's not enough, I guess now's
14 the time to say what -- you know, any other
15 suggestions at least for our order.

16 MS. CAMPANY: Can you explain to
17 me what the conditions would do so let's just
18 suppose that, I don't know, something terrible
19 happens. Their trash isn't picked up for a
20 long time which I wouldn't expect, but suppose
21 that happens. What does that condition mean
22 then?

1 CHAIRPERSON MILLER: It means that
2 they would be out of compliance and someone
3 could go to our compliance officer first in
4 the Office of Zoning and complain and then the
5 compliance officer as I understand it would --
6 would first probably try to meet with everyone
7 and work it out and if it wasn't worked out,
8 then send it over to DCRA for enforcement
9 action and there could be penalties and things
10 like that.

11 MS. CAMPANY: Okay. So, the other
12 thing I would just like to add and I'm not
13 quite sure how you would state such a thing,
14 but would be more upkeep of the property in
15 general. Again, I think it needs -- the
16 gutters are kind of sagging off. After
17 storms, some of the slates on the roof kind of
18 fall off and I think it just needs kind of
19 some general painting and upkeep.

20 MS. FOUNTAIN: As I stated before,
21 the -- I wanted to respond to one of the
22 things that Rebecca said about the -- not

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1 being so sure that when the weather warms up
2 that the vagrants won't come back. I've been
3 the Executive Director there for 9-plus years
4 and the problems that had existed with the
5 prior neighbors and as they experienced when
6 they first moved there a couple of years ago,
7 happened year round and I'm very confident
8 that this steps that were put in place as I've
9 said over and over again in the last few
10 months in the 9-plus years I've been there
11 seem to have been very different and, of
12 course, we never know if the vagrants will
13 come back. But, I'm pretty confident that
14 they won't.

15 The other thing is that I'm taking
16 a different approach in terms of communicating
17 with the 3-D Substation on a regular basis.
18 That if I come in on Monday and find that
19 there was, you know -- I see some trash there,
20 I have been in communication with the 3-D
21 Substation to say I've noticed something going
22 on. I guess I didn't inform them that that

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1 was the case, but I have been doing that.

2 The issue with -- again some time
3 ago with the lighting, we had the motion
4 sensor lighting there. What was going on the
5 vagrants were turning it off and so, one of
6 the things that we had to do was to get a cage
7 installed so that that couldn't happen.

8 The responsiveness, yes, I've
9 always been willing, but the responsiveness
10 has a lot to do with the financial resources
11 that the organization has and not able to, you
12 know, get new gutters and get -- I mean we
13 operate on grants mostly from -- a third of
14 our money comes from D.C. Government. We get
15 foundation grants and not nearly enough
16 general support dollars and so, the money we
17 get is for operations and I can't, you know,
18 use it to paint and, you know, do things like
19 that.

20 I mean to the extent that we can,
21 that's what we do, but it's, you know, not as
22 responsive or not as -- the dollar amount is

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1 not available to the extent that's desired.

2 CHAIRPERSON MILLER: I'm sorry.

3 What's your name? Ms. Camden?

4 MS. CAMPANY: It's Campany. Looks
5 like Company, but it's --

6 CHAIRPERSON MILLER: Campany.

7 MS. CAMPANY: -- C-A.

8 CHAIRPERSON MILLER: Okay.

9 Campany. One more question.

10 As far you're concerned, it's
11 about the upkeep or the bulk items in the
12 back. What's the adverse impact on your
13 property? Is this just a visual thing?

14 MS. CAMPANY: I think it feels
15 like it's an uncared for property. Makes it
16 feel like someone who isn't invested in the
17 neighborhood lives there or is there and I
18 think that, you know, every homeowner has
19 different ideas or different assets with which
20 to keep their property and I totally
21 understand that, but I think when there's a
22 lot of trash hanging around, I think it sends

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1 a message about the neighborhood.

2 MS. DUMAS: In an effort to try
3 and divert this discussion which obviously
4 needs to happen between community members, I
5 would suggest that the Board consider and The
6 Family Place is willing to accept conditions
7 which would as I stated earlier impose a
8 requirement to have a quarterly meeting with
9 the surrounding neighbors which may include
10 the neighborhood liaison from 3-D Substation.

11 And also in order to address the
12 issues which may arise related to bulk pick up
13 of trash which cannot be done on a twice a
14 week basis like the regular refuse, that The
15 Family Place would submit to you a requirement
16 that bulk trash be picked up on a monthly
17 basis. That there would be a standing monthly
18 date on which bulk trash would be picked up
19 and that refuse would be stored in a -- in a
20 safe manner awaiting that pick up.

21 With respect to the fence, because
22 I understand that any fence would require a

1 public space permit and because of The Family
2 Places limited resources that the funding has
3 not yet been completely resolved for how that
4 fence would be paid for. I understand that
5 some of it may come from the neighbors
6 donation. Some of it may come from a grant
7 from the ANC. We would prefer that that not
8 be part of the conditions. Although, you
9 know, we'll say on the record here The Family
10 Place welcomes the opportunity to install a
11 fence so long as there are resources available
12 to do so.

13 And the -- I'd like just to make a
14 couple of statements to conclude our -- our
15 case, presentation and respond to some of the
16 issues that have been raised if the Board
17 would like me to do so now or have additional
18 questions.

19 CHAIRPERSON MILLER: Well, before
20 you do that, let me just ask one other
21 question.

22 On the bulk trash issue, I'm not

1 sure whether -- could it be bimonthly instead
2 of monthly or how -- I don't really understand
3 how often this is a problem. Is this a
4 continual problem?

5 MS. FOUNTAIN: It's not a
6 continual problem. It's on an as-needed
7 basis. I mean it really is and once we -- for
8 instance, last week, we had some desks that
9 needed to be put out and they're stored
10 underneath the porch. It's like a deck. It's
11 stored underneath and one is on top and we
12 have to -- once it gets put out, then we call
13 for the pick up and they schedule it.

14 And so, I mean I could say once a
15 month or I could say twice a month, but if we
16 don't have anything, then we're therefore
17 paying for something that's not happening.
18 So, it really is on an as-needed basis.

19 CHAIRPERSON MILLER: But, you do
20 have once a month. So, if that were a
21 condition or something, that would reflect
22 reality. It wouldn't be imposing a --

1 MS. FOUNTAIN: At least once a
2 month. I mean --

3 CHAIRPERSON MILLER: Yes.

4 MS. FOUNTAIN: -- I mean at the
5 most once a month I mean. Because we can
6 schedule that and, of course, if there's
7 nothing there, hopefully, I talk with the --
8 with the company and make sure we don't have
9 to pay if they don't have to pick up.

10 CHAIRPERSON MILLER: Okay. I
11 don't want to dwell on this too much longer.
12 Okay. We're finished with this. Any
13 questions?

14 MEMBER WALKER: Madam Chair, let
15 me just suggest that rather than impose a
16 condition which would require bulk trash to be
17 picked up on a monthly basis that we limit the
18 amount of time items might remain in the rear
19 of the property before they have to have it
20 removed. So, rather than coming once a month,
21 that nothing might remain -- no bulk trash
22 might remain for more than, you know, seven

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1 days or ten days or something like that.

2 CHAIRPERSON MILLER: Do you have a
3 response to that? That sounds like a good
4 suggestion to me.

5 MS. COMPANY: I think that's
6 fantastic. Yes.

7 CHAIRPERSON MILLER: Is 7 day/10
8 days a reasonable amount of time or --

9 MS. FOUNTAIN: Yes, 10 days is
10 fine.

11 CHAIRPERSON MILLER: Okay. Okay.
12 I guess if there aren't any other questions --
13 Mr. Etherly.

14 COMMISSIONER ETHERLY: Madam
15 Chair, just -- I just -- for what it's worth
16 as we begin to kind of move towards
17 potentially some closure on this case, I'd
18 just like to commend both the Applicant and
19 Ms. Company for the spirit in which you've
20 approached these issues. Clearly, there are
21 still areas of concern and areas where
22 attention is necessary, but this Board is no

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1 stranger to even more protracted and more
2 vitriolic disagreements between neighbors and
3 facilities and I just appreciate the
4 constructiveness with which you all have
5 approached some of these issues.

6 Thank you, Madam Chair.

7 CHAIRPERSON MILLER: Okay. I
8 don't believe there's anybody else here who
9 wishes to testify and, Ms. Company, are you
10 aware of any other concerns of neighbors or
11 you basically have expressed --

12 MS. COMPANY: I do have a letter
13 that neighbors who had to be out of town asked
14 me to bring.

15 CHAIRPERSON MILLER: Okay.

16 MS. COMPANY: I can just hand it
17 to you. Let's see.

18 MS. DUMAS: We haven't had an
19 opportunity to review that. So, I would like
20 a copy as well if she's got one.

21 MS. COMPANY: I just have one, but
22 you can --

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1 CHAIRPERSON MILLER: Want to give
2 it to Ms. Bailey. Well, let me -- I think I'm
3 going to take it directly. Just so it would
4 be easier, we'll glance at it quickly to see
5 whether there are any other issues that
6 haven't been addressed.

7 You know, I think for -- I think
8 I'll read it into the record.

9 This is from William Taylor and
10 Arthur Johnson. It says "I regret that I'm
11 out of town on business and not able to attend
12 the March 11 hearing regarding Application
13 Number 17728. I had intended to appear in
14 person and so, did not submit my written view
15 in advance. I hope that my input as a
16 neighbor of The Family Place will still be
17 strongly considered.

18 "I support Mr. John Bryant Collier
19 and Ms. Rebecca Company in their concern of
20 the extension of the zoning exemption given to
21 The Family Place, 3309 16th Street, N.W. I
22 feel that The Family Place detracts from the

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1 blocks potential as a residential block.

2 "I propose that the zoning
3 exception for The Family Place to operate as
4 a community service center be extended for a
5 3-year period and not longer.

6 "I live just four houses down from
7 The Family Place and so see the property at
8 many different times of day on both weekdays
9 and weekends. While I applaud the mission of
10 The Family Place, it's clear that they are not
11 invested citizens of the block.

12 "Often trash sits for days on end
13 in the front yard. I have on several
14 occasions come home from work on a snowy night
15 to discover that The Family Place shoveled the
16 walkway leading up to their house, but left
17 the sidewalk in front of the house untouched
18 with no regard for neighborhood residents many
19 of whom are elderly.

20 "The backyard of The Family Place
21 is perpetually piled high with what appears to
22 be excess computer equipment and unwanted

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1 donations such as large plastic toys and bags
2 of items.

3 "I would like to see The Family
4 Place become a neighbor and support the
5 residents of the 3300 block of 16th Street as
6 well as the constituents it serves."

7 Okay. I think that the main new
8 thing in here is -- is there trash in the
9 front?

10 MS. FOUNTAIN: No.

11 CHAIRPERSON MILLER: Okay.

12 MS. FOUNTAIN: All of the things
13 that have been talked about in terms of how we
14 have been viewed not as the optimal neighbors
15 are things as I've been saying have been long
16 since passed and have not been going on. None
17 of these are issues now.

18 There hasn't been any trash. You
19 know, staff knows if there's trash when they
20 come in and pick it up. I haven't been told
21 anybody's been picking it up.

22 I mean we have to rake the leaves

1 and wind will -- you know, the debris from the
2 street, you know, when it's been windy. There
3 may be newspaper or something that blows.
4 Which happens all up and down the whole block.
5 It's not like it just all blows into our yard.
6 It blows all over the block.

7 So, we are maintaining the
8 property. This has not been going on for
9 quite a while.

10 CHAIRPERSON MILLER: Okay. Ms.
11 Dumas.

12 MS. DUMAS: Right. I'll try and
13 wrap this up. I just want to point out for
14 the record that The Family Place has been
15 existing at this property since 1985 and it's
16 been before this Board on at least three
17 occasions.

18 Some of these issues are obviously
19 continual issues that come up. Many are
20 related to the general state of the community
21 as opposed to the particular use on this -- on
22 this property and Ms. Company and others have

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1 -- including Ms. Fountain has noted that the
2 problems with vagrancy in particular are not
3 directly related to the use of The Family
4 Place as a special exception on the property.

5 I just want to point out that, you
6 know, with respect to the standards for
7 granting a special exception, the use is in
8 general harmony and in harmony with the
9 general intent and purpose of the Zoning
10 Regulations which is to effectuate the Zone
11 Plan and the Comprehensive Plan for the
12 District of Columbia which specifically notes
13 that the -- that the city needs to fulfil a
14 growing demand for these types of services,
15 parent training, job training, community
16 service needs and that these provision --
17 these services should be provided throughout
18 the District's neighborhoods including in
19 residential areas.

20 And the special exception that
21 exists on the property is consistent with
22 those recommendations of the Comprehensive

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1 Plan. It is a permitted use in the R-5 zone
2 and while there may have been particular
3 issues in the past that have been raised with
4 respect to impact on the surrounding
5 neighborhood, I think The Family Place has
6 clearly demonstrated that they have a history
7 of working with the neighbors and responding
8 to any concerns as they come up and they will
9 continue to do so.

10 The Family Place is a nonprofit
11 organization as demonstrated by the 501(c)(3)
12 letter submitted into the record today and
13 which appeared in the record in the last case
14 and it is a neighborhood-serving use which is
15 self-contained on its property.

16 So, we comply with all the
17 specific and general requirements, the special
18 exception requirements in the Zoning
19 Regulations and we would urge approval of the
20 use for the 10-year term that is requested.

21 We would be willing to submit to a
22 7 or 8-year term as Ms. Fountain noted if the

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1 Board pleases.

2 CHAIRPERSON MILLER: Thank you.
3 Okay. We were just discussing how we want to
4 proceed and what we've decided is that we
5 would like to set this off for a decision
6 making and give you, the Applicant, there
7 isn't another party, but you can confer with
8 neighbors if you so choose, but to craft a few
9 more conditions to address the concerns that
10 we were hearing today such as the bulk trash
11 in the backyard, the pick up for that. The
12 quarter meetings. Perhaps the lighting on the
13 front porch or lighting in general when the
14 Applicant, you know, is not there. You know,
15 the state of the property in general.

16 It's up to you all. You know, we
17 can certainly at the decision meeting, you
18 know, take or leave or add or not. But, we
19 just thought that we would give you the first
20 shot to craft the conditions that, you know,
21 you believe will really work for the Applicant
22 in the neighborhood and address the problems.

1 Are there other issues that Board
2 Members just want to raise for their
3 consideration for conditions?

4 MEMBER DETTMAN: Madam Chair, I
5 was a little bit unclear when Ms. Company was
6 talking about the loitering that was
7 occurring. I didn't know -- I think she had
8 mentioned that it was occurring in the rear
9 alley. It's not occurring in the rear alley?

10 MS. COMPANY: It's on the front
11 porch.

12 MEMBER DETTMAN: Okay.

13 MS. COMPANY: Yes.

14 CHAIRPERSON MILLER: I guess the
15 -- and the last one is the term, you know, and
16 so, again, I guess it's my view the greater
17 the protections in the conditions, the less
18 likely we need to see the Applicant come back
19 sooner rather than later. So, you can
20 consider that.

21 So, other than that, I mean we'll
22 be addressing this case. At the decision

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1 meeting though, you know, I think we recognize
2 that this center has been in operation for a
3 long time. So, it has a history. You know
4 the problems and hopefully, you can, you know,
5 address them a little better and these
6 conditions.

7 So, see when our decision making
8 would be. Would it be -- our next decision
9 meeting is April 1st. So, I think that would
10 be a natural place to put this case for a
11 decision and then we would need to set a date
12 for the submission of the conditions.

13 MS. BAILEY: March 24th, Madam
14 Chair.

15 CHAIRPERSON MILLER: Is that a
16 problem?

17 MS. DUMAS: No.

18 CHAIRPERSON MILLER: Okay. Any
19 questions?

20 MS. CAMPANY: So, what does that
21 mean for the neighbors in terms of being able
22 to review the conditions or have impact or

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1 feedback on any of that? Is that a
2 possibility or --

3 CHAIRPERSON MILLER: Okay. We're
4 going -- I think we're going to take --
5 consider this for a minute. You're not a
6 party. So, you don't automatically under our
7 rules get to file something.

8 Ms. Dumas, do you have an opinion
9 on this? Do you -- okay.

10 MS. DUMAS: The Family Place would
11 like to suggest that they offer or hold a
12 meeting with the neighbors in advance of March
13 24th so the neighbors can have input on what
14 it is The Family Place submits.

15 We would not be opposed to the
16 holding open of a record, you know, for a
17 couple of days past that if the neighbors feel
18 that they need to submit a letter responding
19 to that in anyway.

20 Obviously, we're not dealing with
21 a party. So, they wouldn't have a full chance
22 to respond. So, I would -- wouldn't want to

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1 push this past the April 1st decision date and
2 I think we would need at least between now and
3 the 24th to try and schedule that meeting, but
4 the -- I think a neighbor meeting is warranted
5 here.

6 CHAIRPERSON MILLER: Yes, I mean I
7 think that would be a good idea in this case
8 and it's not to say that the Board can't allow
9 you to submit something.

10 And I would say with respect to
11 the notice issue that you raised about the
12 1:00 hearing, you know, everything I've seen
13 except that advertises it to be in the
14 morning. However, since there was that issue
15 that you raised and since this is all about
16 how the center works in the neighborhood, I
17 think the Board is amenable to opening up the
18 record for you and other neighbors to respond
19 to the conditions and we'll set a date for
20 that.

21 But, I do think it's best that as
22 Ms. Dumas seems to be indicating that you all

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1 meet and talk about it and maybe if you come
2 to an agreement, that's even better. But, if
3 you don't, then hopefully what will be left
4 will be just very narrow issues and the Board
5 can consider those.

6 So, we need to change the -- well,
7 we need to set a date for any response to the
8 conditions, Ms. Bailey, or do we need to move
9 the 24th back? But, you don't think we can do
10 that. Well, this is a very quick -- this is
11 very quick and I think pretty transparent
12 issue. So, that if you do it on the 24th --
13 how much time do you think that the neighbors
14 would need to respond?

15 MS. CAMPANY: Oh, I'm not sure
16 what day of the week the 24th is. I think
17 it's a Friday. Isn't it?

18 CHAIRPERSON MILLER: Monday.

19 MS. CAMPANY: It's a Monday?

20 CHAIRPERSON MILLER: Isn't it?

21 MS. BAILEY: Yes, it's a Monday.

22 MS. CAMPANY: Oh, Monday. So, a

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1 few days.

2 CHAIRPERSON MILLER: And when we
3 need it. So, when would the Board -- when
4 would they file it, Ms. Bailey?

5 MS. BAILEY: Would two days later
6 on the 26th be appropriate or enough time for
7 you?

8 MS. CAMPANY: I would think so.
9 What do -- what do we need to do? We need to
10 read it and then respond in writing that we
11 submit to you in some manner. Is that right?

12 CHAIRPERSON MILLER: What we're
13 saying is I mean hopefully you'll work it out.
14 Okay. But, if you don't, they'll submit
15 conditions. There are conditions in the last
16 order. There were seven conditions. So,
17 they'll propose maybe whatever number of
18 conditions. If there's any condition you
19 disagree with or you want to add a new one, do
20 it very simply. That's it.

21 MS. CAMPANY: Okay.

22 CHAIRPERSON MILLER: You know, it

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1 shouldn't be more than a page necessarily, you
2 know, and why.

3 MS. DUMAS: And it would be our
4 hope that we make a joint filing on March 21st
5 -- 24th if we can come to an agreement, but
6 that would give you an opportunity in that we
7 don't agree --

8 MS. CAMPANY: Sure.

9 MS. DUMAS: -- to submit
10 something. The Family Place is absolutely
11 committed to working with the neighbors.

12 MS. FOUNTAIN: Right. I mean my
13 preference is to -- what we submit is
14 something that's agreed upon between the two
15 and that it wouldn't even warrant them --
16 because it would be joint.

17 MS. CAMPANY: I certainly hope so
18 also. Yes.

19 CHAIRPERSON MILLER: Okay. Good.
20 So, 24th I believe to be the Applicant's
21 filing or joint filing and what date, Ms.
22 Bailey, in the event there's any differences

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1 with that filing?

2 MS. BAILEY: The 26th which would
3 be a Wednesday.

4 CHAIRPERSON MILLER: Okay. And
5 then the Board will deliberate on April 1st.
6 Okay. Thank you. Any other questions?

7 MS. DUMAS: Thank you.

8 CHAIRPERSON MILLER: Okay. The
9 Board's going to just take a very short break,
10 5 to 10 minutes. If the next case wants to
11 set up in anyway, you'll welcome to come up
12 and do that.

13 (Whereupon, at 12:06 p.m., off the
14 record until 12:20 p.m.)

15 CHAIRPERSON MILLER: Okay. We're
16 back on the record. Would you call the next
17 case please, Ms. Bailey.

18 MS. BAILEY: Madam Chair, that's
19 Application Number 17729 of Morrison-Clark
20 Limited Partnership I and Morrison-Clark LP
21 pursuant to 11 DCMR 3103.2 and 3104.1 for a
22 variance under the use provisions under

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1 subsection 350.4(d), a variance from the
2 nonconforming structure provisions under
3 subsection 2001.3, a variance from the rear
4 yard requirements under section 404 and a
5 special exception from the roof structure
6 setback requirements under subsection 411.11
7 to allow the renovation and expansion of an
8 existing inn located in the DD/R-5-E District
9 at premises 1015 L Street, N.W., square 341,
10 lots 63, 69, 70, 831 and 832.

11 CHAIRPERSON MILLER: Thank you.
12 Good afternoon and would you introduce
13 yourselves for the record please?

14 MR. COLLINS: Certainly. Thank
15 you, Madam Chair and Members of the Board. My
16 name is Christopher Collins with the law firm
17 of Holland & Knight.

18 Seated to my left is Kyrus Freeman
19 of our office. To my right is Mr. Ted Vogel
20 of RB Properties representing the Applicant.

21 Also with me today are Mr. John
22 Jessen and Mr. Tony Wong from BOA Architects,

1 Emily Eig from Traceries, Eric Smart from
2 Bolan Smart Associates and Steven Sher from
3 Holland & Knight.

4 This is an application for a use
5 variance and area variances to allow the
6 conversion of the former Chinese Community
7 Church properties as an addition to the
8 existing Morrison-Clark Inn at the corner of
9 10th and L Streets, N.W.

10 You have the pre-hearing statement
11 and the exhibits attached thereto. There are
12 several additional exhibits which we submitted
13 this morning. Some are at the request of the
14 Office of Planning for further clarification
15 and we'll describe that when we get to that
16 point and then there's some additional
17 exhibits to put the buildings in context and
18 those will be all on the boards that you will
19 see.

20 We believe that the evidence of
21 record including the witness testimony will
22 demonstrate that this application meets the

1 test for use-variance and area-variance relief
2 from lot occupancy, rear yard and additions to
3 a nonconforming structure and a special
4 exception for the roof structure as well.

5 The property is affected by
6 several exceptional situations or conditions
7 as you will hear in more detail. The property
8 is -- includes a historic landmark, Morrison
9 Park Inn as well as several properties in the
10 historic district.

11 The configuration of these
12 buildings and lots and the buildings having
13 different architectural styles and the zoning
14 history and zoning restrictions on the
15 property all combine together to create an
16 exceptional situation or condition.

17 The undue hardship that supports
18 the use variance and you'll hear more detail
19 about that, in sum, we will demonstrate that
20 the property cannot reasonably be used for any
21 purpose for which it is zoned with a fair and
22 reasonable return. The property was tested in

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1 the marketplace. In fact, when it was for
2 sale, there was no interest in the purchase
3 for any conforming use in a good market.

4 The configuration, secondly,
5 precludes the use of the property for most all
6 other conforming purposes. It is a small mid-
7 block site. The -- there's inability to put
8 windows on the side and you will see with
9 respect to the church sanctuary, there's an
10 inability to put windows on the front.

11 Parking, there's inability to
12 access the lower level of the church if it was
13 to be converted to a parking garage which it
14 is not currently. But, there will be an
15 inability to access it for any usable space of
16 only a few spaces, but the ramp would take up
17 most of that area for parking.

18 They are narrow -- the existing
19 buildings are narrow buildings on narrow lots
20 and with a configuration that would not lend
21 itself to most other conforming uses and
22 that's with regard to both the -- to any other

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1 conforming use.

2 With the regard to the church use,
3 as I mentioned earlier, the property was
4 tested in the marketplace. It was offered for
5 sale, but no one came forward.

6 You'll also hear that the expense
7 of renovating and maintaining the church would
8 preclude most smaller churches from being able
9 to take on that burden.

10 With the practical difficulty test
11 for the area variances with regard to lot
12 occupancy, the property is now at 80 percent
13 lot occupancy. The property was rezoned and
14 now, the maximum lot occupancy allowed is 75
15 percent. The proposed is 80 percent to be
16 consistent with the existing.

17 With regard to the rear yard,
18 there is no rear yard now and now is proposed.
19 We believe that the internal courtyard will
20 provide better quality open space than a rear
21 yard a long the alley would. In order to
22 provide the required rear yard, we'd have to

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1 demolish up to 19 feet of the depth of the
2 hotel building for the full width of the hotel
3 building and possibly even the historic garage
4 carriage house to create a rear yard.

5 To go from an increase of 75
6 percent to 80 percent lot occupancy would
7 require -- this is driven by room dimensions
8 that surround the open court. To increase
9 that would compromise these room dimensions
10 and then we would be able, I guess, to make up
11 the difference by increasing the height of the
12 building. But Historic Preservation's
13 consideration of the building is actually
14 lower than matter-of-right height even with a
15 roof structure on top. Does not exceed the 90
16 foot allowed in that zone.

17 This rear yard, it would also
18 create a gap in the streetscape along 11th
19 Street. We'd have a 15-foot wide alley plus
20 a 19-foot wide rear yard and this would not be
21 high quality or any kind of quality open
22 space. The courtyard provides a better

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1 quality open space. In terms of no adverse
2 impact on the public good, the court in lieu
3 of rear yard provides, as I said earlier,
4 better quality open space.

5 The lot occupancy issue, 75 versus
6 80, we believe is not a major difference, 5
7 percent and it allows us to better organize
8 the space in a logical manner and in terms of
9 no adverse impact, we have support in the
10 community, the Logan Circle Community
11 Association. The Advisory Neighborhood
12 Commission gave us a strong letter of support
13 and we have the support with a conceptual
14 design approval from the Historic Preservation
15 Review Board with final approval delegated to
16 staff.

17 With regard to the roof structure,
18 the roof structure does not meet the setback
19 requirements on the south and the west sides.
20 It is a small roof structure on a small roof
21 and the size of the roof really drives this
22 special exception request because of the

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1 Historic Preservation considerations in
2 sculpting the building to create an
3 appropriate size of addition for the historic
4 buildings, limits the size of the roof and the
5 location within which we can place the
6 equipment and one of the submissions that we
7 gave in today is a layout of that equipment
8 and the roof structure so you could see
9 actually what kind of space is needed and
10 where we're putting the equipment.

11 Again, as stated before, the
12 building with the penthouse is lower than the
13 matter-of-right height and is less than the
14 matter-of-right FAR. So, if this penthouse
15 was included in the building, no setbacks
16 would be required and we would still be lower
17 than the matter-of-right height and the
18 matter-of-right FAR.

19 I have four witnesses I'd like to
20 offer as experts today and they will give
21 their -- you'll have their résumés in a minute
22 if you don't already and they will go through

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1 their testimony and their qualifications if
2 you wish.

3 But, at this point, I'd like to
4 turn it over to, unless there's any questions
5 preliminarily, I'd like to turn it over to the
6 first witness Mr. Ted Vogel.

7 Mr. Vogel, would you identify
8 yourself for the record and proceed with your
9 testimony.

10 MR. VOGEL: Good afternoon, Board
11 Members and Madam Chair.

12 I'm Ted Vogel, Vice President of
13 RB Properties, the majority owner of the
14 Morrison-Clark entities, the Applicant today.

15 I am not one of the aforementioned
16 experts that Mr. Collins mentioned, but merely
17 the owner. As I said, the majority owner of
18 this property.

19 By way of background, we own five
20 other -- five total hotels here -- all in
21 Washington and seven commercial office
22 building properties in Washington as well.

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1 We're a local group. Third generation
2 Washington, D.C. developers and owners of
3 properties.

4 We pride ourselves actually on
5 ownership of very interesting properties. We
6 have not purchased properties if you will just
7 to simply own them and make a nice income off
8 of them.

9 We buy interesting properties.
10 Although we do want the income, don't get me
11 wrong, but they all have a very personal --
12 they're very personal to us and our ownership
13 is long-term in nature. We simply don't buy
14 them just to flip them at a later date for
15 some profit as I said.

16 So, our approach is long term and
17 towards that end, that's why we like these
18 types of properties such as the Morrison-
19 Clark.

20 The Morrison-Clark we bought in
21 1993 out of bankruptcy. It was a distressed
22 area at the time, but again, that did not

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1 truly impact our decision to buy that
2 property. It was just a very unique property
3 we felt at the time and proceeded to buy it.

4 Some of the other hotels we own
5 just so you know are the Henley Park which is
6 diagonally across the street from here. The
7 Hotel Lombardi at 21st and Pennsylvania. We
8 also own historic properties such as Canal
9 Square in Georgetown. Another group of
10 properties over by Dean & Deluca in
11 Georgetown.

12 So, anyway, those are -- that's
13 sort of our background. Again, forgive me.
14 I'm not the most eloquent speaker, but again,
15 merely an owner put in this position to have
16 to come before you. But, thank goodness we
17 have good professionals here with us to make
18 the case even better than I can.

19 One thing I felt interesting about
20 this project is it's similar to some of our
21 other ones in that I think it's going to be a
22 case of the sum of the parts. I mean the end

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1 product will be greater than the sum of the
2 parts that are right there now.

3 This compares to Canal Square in
4 Georgetown where we took several buildings and
5 then merged them into one project and I think
6 if any of you know that project in Georgetown,
7 it's a very exciting project and it has some
8 similarities to this one where it's combining
9 several styles of architecture and again, the
10 end project was a great one.

11 One thing I guess I should speak
12 about is the background of our relationship
13 with the church that Mr. Collins mentioned.
14 As I said, since '93 when we bought the
15 building, we've had a good relationship with
16 the church over those years until we finally
17 purchased the property a couple of years ago.

18 The church bought the property --
19 now, to back up, everything I'm saying today
20 is based on many conversations I've had with
21 many of the church members, their elders,
22 their board members, et cetera. So, this is

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1 all based on many discussions I've had with
2 them over that time.

3 They bought their properties in --

4 MR. COLLINS: Mr. Vogel, did you
5 ask the church if they would come here today
6 and speak about their ownership and use the
7 church?

8 MR. VOGEL: I do and --

9 MR. COLLINS: What was the result
10 of that conversation?

11 MR. VOGEL: They felt that --
12 well, they didn't want to come out in public
13 such as I don't want to, but they felt that I
14 could certainly express what I'm going to
15 share with the Board today. Thank you.

16 So, where was I? Oh, yes.

17 MR. COLLINS: The church.

18 MR. VOGEL: The church, yes. So,
19 1955 is when they bought their property and
20 their property is actually -- it's an historic
21 carriage house in the back. It's an historic
22 townhouse up front and my understanding was

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1 there was another townhouse up front that they
2 demolished to then build their sanctuary in
3 1958.

4 Also, when they built that
5 sanctuary in '58, they then linked internally
6 to the old parsonage and they did some
7 modifications to the carriage house in the
8 back.

9 MR. COLLINS: And the old
10 parsonage, is that the townhouse that you
11 spoke of that they bought?

12 MR. VOGEL: Yes.

13 MR. COLLINS: Okay.

14 MR. VOGEL: Yes. When they bought
15 the property and they did their renovations
16 and created that sanctuary, it was at the time
17 built to hold about 200 to 250 members of the
18 church and then over the years, they realized
19 that as their -- their needs changed and as
20 their membership grew that the existing
21 facilities simply would not work for their
22 purposes.

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1 Roughly in the -- around the 1990s
2 when we came in to buy the Morrison-Clark and
3 when I started to know some of these church
4 members, that's when they were truly looking
5 seriously to -- what their alternatives were
6 for their property. Around that time also,
7 they -- the fact that they grew out of their
8 existing facilities, they had to work out an
9 agreement with the church across the street,
10 the Mount Vernon Church, where they were able
11 to have additional classes and -- and other
12 uses, I guess, of the church. They had this
13 relationship with Mount Vernon at that time.

14 That led up to about 2002, they
15 actually commissioned a study of -- by a local
16 architect who then examined their alternatives
17 seriously at that point. They came up with
18 two alternatives. One was to stay and
19 renovate their existing facilities and bring
20 them up to code compliance at that time and
21 the second one was to renovate and add
22 additional space for their needs.

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1 They found out that as a result of
2 that study that it would have cost
3 approximately 4.6 to renovate and then the
4 expansion would have cost them about 8
5 million. With that information, they then
6 proceeded to create a fundraising committee
7 and those fundraising efforts were started.
8 Although after a few years, it was apparent
9 they just were not -- they would not be able
10 to raise the money for either one of those
11 scenarios.

12 A little later after that, they
13 came back -- I'm sorry. There was another
14 development around -- about a year later, the
15 church was approached by the property to be --
16 bear east which is now a condominium building
17 and that developer was Carr. At the time,
18 approached the church to purchase, but they
19 were unable to find another church for them at
20 the time because it was very important for the
21 church that they have a church in Washington,
22 D.C. and close to Chinatown. They were not

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1 willing to go out to the suburbs like many
2 other churches. So, that was an important
3 factor for them. So, anyway, the Carr
4 discussions never got further than just
5 discussions.

6 Also, around that time, they came
7 back to us, to me and asked about a potential
8 joint venture with us which would include
9 renovations and somehow us adding onto the top
10 of it and creating some residential component
11 that would tie into the church and so, then I
12 went and hired some architects and some other
13 professionals and analyzed their proposal
14 seriously. I had several meetings with them.

15 It was interesting. The church
16 also -- their members were very -- they had a
17 very good group of members. I mean very
18 learned. They had architects, attorneys,
19 financial people, you name it. They have
20 every type of profession in house as well as
21 the ones they hired. So, they really vetted
22 all these possibilities very seriously.

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1 Anyway, with our architect on
2 board, we came up with a plan, a physical
3 plan, but again, we priced it out and then
4 after analyzing that plan with the church and
5 their -- they had a development committee
6 specifically to look at this with us. It was
7 just determined that the joint venture would
8 not be feasible.

9 Then around --

10 MR. COLLINS: What do you mean by
11 that? The building would be complicated.
12 There would be structural issues and --

13 MR. VOGEL: Yes, complications.
14 Structural. Code. Because then you were
15 combining the church needs with the
16 residential need above. There was also --
17 just physically didn't lay out as well for
18 split use on one property.

19 Then around 2005 -- so, that was
20 about 2002. Coming up now to about 2005, the
21 church found that there was an opportunity of
22 another church that was for sale very close to

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1 Chinatown which was the old Corinthian Baptist
2 Church.

3 The church then started to look at
4 that. They hired a broker to examine what
5 possibilities there were for them to then sell
6 their property and then go buy the Corinthian
7 Church.

8 The Corinthian Church was a very
9 interesting property for them. Not only
10 closer to Chinatown, but was larger for them
11 and would accommodate all their different
12 needs and facilities including that they -- by
13 this time they had services I believe in four
14 different languages. I think English,
15 Cantonese, Mandarin and perhaps one other one.
16 I forgot, but they needed a larger facility
17 for those types of purposes and that they had
18 larger membership.

19 So, after looking at other
20 potential purchasers, they seem to have
21 exhausted those possibilities and then came to
22 us and asked us if we would buy the property.

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1 Even brought the Baptist minister from the
2 Corinthian Church to pay for us to buy the
3 property so then the Corinthian Church could
4 go move of to where they wanted to go.

5 So, anyway, we've done that
6 several times in the past where we've owned
7 buildings that I've mentioned to you before.
8 Where we've bought adjacent properties when
9 the opportunity came up and a lot of times --
10 well, in two cases, the properties were
11 historic and were vagrant and in disrepair.
12 So, that's always a nice opportunity for us to
13 buy something next door when the opportunity
14 arises so it doesn't become derelict and
15 impact our properties.

16 So, anyway, so, the opportunity
17 came up and that's when we proceeded to buy
18 the church.

19 As Mr. Collins has mentioned, we
20 met with many of the different groups already,
21 the historic group, the neighborhood group.
22 There's another group. The Logan Circle

1 Group. We were happy to get great support
2 from them. It's very encouraging as a
3 property owner to hear that type of support
4 from the community.

5 We've also had the opportunity to
6 have these great professionals with us to help
7 us craft our application today and I think
8 that everybody should be given a lot of credit
9 for their hard work so far, but hopefully, as
10 I said, they can describe this project much
11 more eloquently than I.

12 So, with no further ado, I'd like
13 to introduce the next --

14 MR. COLLINS: Before you do that,
15 can I ask you a couple of questions? In your
16 discussions with the Advisory Neighborhood
17 Commission --

18 MR. VOGEL: Right.

19 MR. COLLINS: -- did you ever talk
20 about or was there ever any discussion about
21 doing a residential project on this site as
22 opposed to the hotel expansion?

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1 MR. VOGEL: There was, but they
2 expressed that they would not be -- they would
3 not be interested in that due to their -- the
4 neighborhood's concern with parking already.
5 That there is already a shortage of parking
6 they feel and that another residential
7 property would only exacerbate those issues
8 and that a hotel use certainly would not and
9 matter of fact, that reminds me that we host
10 the ANC and Foggy Bottom for, I don't know, 20
11 years in one of our hotels, the State Plaza.
12 We also host another ANC over at the
13 Washington Plaza. So, we're -- we're very
14 community oriented in that respect.

15 MR. COLLINS: Thank you.

16 MR. VOGEL: Sure.

17 MR. COLLINS: John. Our next
18 witness is Mr. John Jessen.

19 CHAIRPERSON MILLER: Could we just
20 ask a couple of questions?

21 MR. COLLINS: Of course. Of
22 course.

1 CHAIRPERSON MILLER: Before we get
2 into all sorts of different areas. I just
3 want to make sure that I understand a couple
4 of things you mentioned because I think it
5 goes to the question about the use variance.
6 You know, you tried to use it for these
7 different uses and it didn't work out.

8 Did you say something about at one
9 point that you had a joint venture with the
10 church to create residences with the church
11 structure?

12 MR. VOGEL: Well, we explored --
13 we didn't have a joint venture per se.
14 Nothing was agreed to in writing, but we were
15 certainly exploring that possibility with
16 them. When I say exploring, we hired -- both
17 parties had professionals, architects,
18 attorneys and as I said, they had a
19 development committee within the church.
20 Very, very learned church members that were
21 well versed in the various components, I
22 guess, that you would consider in a joint

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1 venture.

2 So, it got no further that
3 discussions, hiring of these professionals I
4 mentioned, literally having plans drawn to
5 look at and cost and analyze, but that's are
6 far as it got.

7 CHAIRPERSON MILLER: Did the
8 reason it didn't go further was that due to
9 cost?

10 MR. VOGEL: Cost certainly and
11 again, trying to, this is a strong word, but
12 force two different uses together on one
13 property because each one -- each -- the
14 church had to have their own distinct entrance
15 if you will. The residences would have needed
16 their own distinct entrance. Code issues of
17 separating uses like that. So, it was a
18 variety of reasons and due to the restraints,
19 the physical restraints of that property. It
20 simply didn't allow it to proceed.

21 CHAIRPERSON MILLER: And with
22 respect to the Carr Company's interest in --

1 that would have been to make the whole
2 property residential? Sell the church and
3 make it totally residential. Is that correct?

4 MR. VOGEL: That was my
5 understanding. Again, my understanding was
6 that the talks were very limited. I don't
7 know whether they got further than a phone
8 call, but I also know that the historic nature
9 of the church properties presented problems
10 for the Carr development because the -- well,
11 again, physically, that was my understanding.
12 There would have been some problems with that
13 as well.

14 CHAIRPERSON MILLER: Are you the
15 witness that would be addressing the church
16 trying to sell the property, you know, for
17 another use or is there somebody else that's
18 going to be testifying to that? Because if
19 you all, maybe you can elaborate on that a
20 little bit.

21 MR. VOGEL: Sure. That's me. I
22 had those discussions with them.

1 CHAIRPERSON MILLER: Okay. Good.

2 MR. VOGEL: As a matter of fact,
3 when I say them, it was at least over the
4 years probably ten or 12 different church
5 members, elders. They had various boards in
6 place. So, it was different -- different
7 people in different capacities for the church.

8 CHAIRPERSON MILLER: Because I
9 think Mr. Collins made reference to the fact
10 that it was put on the market in a good market
11 and there were no takers. Do you know how
12 long it was on the market or when it was on
13 the market?

14 MR. VOGEL: I'm guessing maybe six
15 months -- three to six months and when I say
16 on the market, they were exploring. I don't
17 know per se how long it was -- you know, I
18 don't know when you can define when it
19 actually was, but my understanding was they
20 were looking at for potential purchasers six
21 months or so in examining who -- who would --
22 who would like to buy their property at the

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1 time.

2 CHAIRPERSON MILLER: Okay. And do
3 you know when that was?

4 MR. VOGEL: It was about 2005 to
5 '06. Somewhere in that range.

6 CHAIRPERSON MILLER: Okay. Thank
7 you.

8 MR. VOGEL: Thank you.

9 CHAIRPERSON MILLER: Any other
10 questions? Thank you very much.

11 MR. VOGEL: Thank you.

12 MR. COLLINS: Mr. Jessen.

13 MR. JESSEN: Hi. My name is John
14 Jessen and I am with VOA Associates
15 Architects. We are the architects of record
16 for this project.

17 I was asked to give a little bit
18 of background about my qualifications.

19 VOA Associates is an international
20 firm. I am the managing partner of the
21 Washington, D.C. office. We're located at
22 Dupont Circle. We have about 30 people and

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1 I'm excited to say that we'll be celebrating
2 our 15th year in D.C. this coming up year with
3 the move over to 12th Street just down the
4 street from this site.

5 We do historic projects, adaptive
6 reuse. We also do new buildings like the
7 House of Sweden in Georgetown on the Potomac
8 River. On the adaptive reuse side, Chicago's
9 Navy Pier is a project of ours we've been
10 working on for some years.

11 I bring a passion for historic
12 adaptive reuse to this project and as Ted
13 eloquently described the project in my mind,
14 those are the reasons we're so excited about
15 this project. We think it's a wonderful
16 project. It enlivens old buildings, old
17 historic buildings with a new use and I think
18 it's good for D.C. and I think it's good for
19 the neighborhood.

20 I can also comment on other uses
21 and I would like to do that in a minute
22 especially residential because we studied

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1 that.

2 MR. COLLINS: In the meantime, I
3 would like to offer Mr. Jessen as an expert in
4 architecture and adaptive reuse.

5 CHAIRPERSON MILLER: Okay. And
6 let me ask. Is the ANC here in this case?
7 Okay. Do Board Members have any questions or
8 any objections? Okay. Then Mr. Jessen's
9 accepted as a expert --

10 MR. JESSEN: Thank you.

11 CHAIRPERSON MILLER: -- in
12 architecture.

13 MR. JESSEN: Fantastic.

14 CHAIRPERSON MILLER:
15 Congratulations.

16 MR. JESSEN: All those hard years.

17 I thought I could spend a couple
18 of minutes time allowing to go through the
19 project, the proposed design and really
20 capture the context of it.

21 So, I'm going to stand and gesture
22 to the boards and Tony Wong is going to help

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1 support me going through these boards and I
2 just wanted to share that Tony has a very
3 interesting and unique perspective on this
4 project because as a young boy, he attended
5 the Chinese Community Church. So, it brings
6 a little bit more passion and interest and
7 connection to this project that we really feel
8 passionate about.

9 CHAIRPERSON MILLER: Do you have a
10 handheld mike there?

11 MR. JESSEN: I do.

12 CHAIRPERSON MILLER: Great. Okay.

13 MR. JESSEN: Is it working? Okay.
14 First of all, just an orientation. This is a
15 site plan and we have colored the site in red.
16 I hope everybody can see these boards clear
17 enough. You have the material in front of you
18 as well.

19 The site is located on L Street
20 and 11th and the Morrison-Clark sits on the
21 corner of that intersection. This is Thomas
22 Circle, upper left-hand corner. The new D.C.

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1 Convention Center is in this location here and
2 Mount Vernon Square.

3 So, that's our location. We have
4 a nice open space park between L Street and
5 Mass Avenue.

6 Regarding context, this is the
7 Morrison-Clark. Tony has creatively removed
8 a tree for this picture to show you, just for
9 the picture, to show you the Chinese Community
10 Church and the old parsonage beyond.

11 The project encompasses the old
12 parsonage, the Chinese Community Church, the
13 Morrison-Clark and its more recent addition in
14 the back as well as the carriage house in the
15 back of the property.

16 This is the context. Beautiful
17 image of the neighborhood. We wanted to take
18 into account the neighboring buildings as
19 well.

20 It's important for us to convey to
21 you, at least it is for me, that this is not
22 a commercial hotel property. You heard Mr.

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1 Vogel describe the type of projects they do.
2 It's a boutique historic inn and we take the
3 project as that.

4 They did not have the intention of
5 maximizing the site necessarily and so, it
6 wasn't necessary for us to reach the full FAR
7 and, you know, maximize the site.

8 Instead what their goal was was to
9 create an interesting -- expand the Morrison-
10 Clark and create an interesting addition for
11 this historic inn.

12 It's a collection of historic
13 buildings and our proposed design which I'll
14 show you in a moment tries not to overwhelm
15 those buildings. It tries to unit them. It's
16 really a backdrop building. It's pushed back
17 so it's not, you know, a prominent feature on
18 the streetscape. It's really more respectful
19 of the rest of the property.

20 So, we had five guiding objectives
21 in developing the design, the first and I'll
22 just read them to you and elaborate a little

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1 bit.

2 We wanted to maintain the unique
3 character of the historic inn and that has
4 everything to do with what I was just talking
5 about. It's an historic inn. It's not a
6 commercial hotel and so, what we wanted to do
7 was really use the historic buildings and
8 their framework that's there now and add
9 interest to the project remembering it's a
10 boutique hotel.

11 We wanted to respect the existing
12 historic buildings and we also wanted to
13 recognize a new entrance. By combining the
14 Chinese Community Church and the old parsonage
15 to this project, we now have the opportunity
16 to put Morrison-Clark's main lobby facing L
17 Street because there has been some confusion
18 at least in my mind about where is the front
19 entrance to the Morrison-Clark. That's okay.
20 It's an historic building. It is what is it,
21 but we have this great opportunity now to
22 celebrate this Chinese arch and bring people

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1 into the new lobby and I'll show you plans in
2 a moment exactly how that works.

3 It also preserves the dining
4 experience on the first floor of the Morrison-
5 Clark. That won't change and you'll have a
6 separate entrance for that on the side. It
7 organizes the plan a lot better in my mind.

8 We wanted to gesture to the
9 historic Morrison-Clark Inn that being a very
10 significant recognized asset in D.C. We
11 didn't want to overpower it. You'll see that
12 I hope in some of the diagrams and plans.

13 And then we also wanted to
14 acknowledge the broader neighborhood context.
15 We were actually -- this picture shows that
16 we're thinking about the older buildings.
17 This beautiful little historic building a
18 block away and the larger historic building
19 and also the new condominium tower that was
20 built just adjacent to the old parsonage.
21 These all came into consideration as we start
22 to plan.

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1 Okay. These start to describe a
2 little bit more detail about the existing
3 conditions. This is -- there are all L Street
4 angles, perspectives. You're looking at
5 almost a pure elevation of the site here and
6 our site again is with the Morrison-Clark, the
7 old Chinese Community Church and the old
8 parsonage and this is the new condominium
9 tower, the fairly new condominium tower that
10 was added recently.

11 As I move to this next board,
12 we're looking at some of the important
13 elements of the site. This is the 1903
14 Sanborn map and highlighted in green are the
15 four historic buildings on the site that still
16 remain today that we see as a great
17 opportunity, very valuable assets in this
18 town.

19 Our design, which I'll show you
20 next, maintain the old parsonage building. It
21 actually keeps the historic -- one of the most
22 historic buildings on the site is in the back

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1 of the alley, an old carriage house. We're
2 going to keep that. Actually, going to
3 celebrate that design.

4 As well, of course, as the
5 Morrison-Clark and we're actually not going to
6 figuratively speaking touch the Morrison-
7 Clark. We're going to connect to it, but with
8 our many conversations with HPRB, they're
9 actually great. They helped guide this
10 solution. It was important to them that the
11 new building not slam up against the Morrison-
12 Clark, but be respectful and set back and
13 we've done that and I'll show you that in a
14 moment.

15 This is a 1999 Sanborn map. It's
16 about 9 years old. It's starting to show the
17 insertion here of the Morrison-Clark which was
18 -- I mean, I'm sorry, the Chinese Community
19 Church which was added in '57 I believe and
20 then there was a fairly recent addition put on
21 the Morrison-Clark more recently in the back.
22 That's the carriage house.

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1 What this starts to point to is
2 the challenge particularly with other uses on
3 this site because it's a very narrow site.
4 It's bordered by buildings on both sides and
5 in the back and the floor plates are
6 relatively small.

7 These next boards, I'm going to
8 come back to use in a moment. Other uses
9 we've studied.

10 This is a model that we've had
11 built recently that shows the new design. So,
12 if I can just try to point it out clearly to
13 you. This is -- looking at the building from
14 L Street. You have the Morrison-Clark on the
15 left. We have a gap between. We're not
16 touching the Morrison-Clark. This is the
17 historic Chinese arch that I talked about and
18 the parsonage, the old parsonage.

19 Our building rises up behind.
20 It's set back. You can see in the model shot
21 over here to be pushed back further. The
22 building is very simple. It has in my mind

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1 just enough ornamentation to give it some
2 visual interest, but not being a dominated
3 building. It's brick. It's masonry with
4 punched openings and that gestures to the
5 other buildings on the site.

6 We thought about glass and metal
7 in that and we thought, you know, that's too
8 overpowering. It's too modern. Although it's
9 interesting to have modern and historic. We
10 can possibly agree with that. In this case,
11 it didn't want to be the signature piece. It
12 wanted to be a backdrop. It really is trying
13 to unite the buildings together.

14 And as I mentioned before, we are
15 not up against the Morrison-Clark, but we are
16 attaching to it with a glass -- a series of
17 glass enclosed bridges that come across.

18 CHAIRPERSON MILLER: Where are
19 those bridges?

20 MR. JESSEN: I'm sorry.

21 CHAIRPERSON MILLER: That's okay.
22 Where are the glass bridges there? Can you

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1 indicate that?

2 MR. JESSEN: This is a bridge and
3 this is a bridge and these vertical lines that
4 you see are mullions with glass. This is
5 basically a glass bridge that goes between the
6 buildings and I can should you in plan. It'll
7 be a little bit more clear.

8 CHAIRPERSON MILLER: And what's
9 happening behind? Is that part of the
10 building behind?

11 MR. JESSEN: The -- yes, this one
12 shows, I think, maybe a little bit better
13 what's happening behind.

14 The new building, the addition
15 that we're focused on, is here. It goes back
16 and goes around the site. This building --
17 piece of the building goes down and stops
18 short of the carriage house and actually
19 bridges over the top of the carriage house.

20 This cutout, if you will, is an
21 extension of -- there's a beautiful open court
22 in the middle of the Morrison-Clark building.

1 People can go out and dine in nice weather.
2 We're extending that. We think that's a very
3 successful space and something that we want to
4 continue. So, we've notched the building out
5 to receive that and make it bigger.

6 CHAIRPERSON MILLER: So, it's the
7 only connection to the Morrison-Clark, the
8 glass bridges?

9 MR. JESSEN: That's correct and
10 when it does in plan and I'll show you the
11 plans in a moment, but it comes into the
12 Morrison-Clark right at the center corridor on
13 the floors between the rooms. So, we don't
14 even lose a room or have to reconfigure the
15 interior. We just have to put an opening in
16 the wall and continue the circulation path and
17 so, what happens is our circulation works in
18 a donut configuration and it really simplifies
19 and clarifies the circulation throughout. It
20 internally unites the building into one.

21 Is should say, however, there are
22 -- there were and have been serious challenges

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1 in making this building work on this site. We
2 are reusing -- we're retaining the Chinese
3 Community Church and the old parsonage and the
4 carriage house. They all have different floor
5 levels. It's a consideration how we, you
6 know, communicate.

7 There we're achieving Americans
8 with Disability Act requirements. We are
9 putting a lift in to bring the disabled into
10 the building and to get them to rooms that are
11 ADA accessible.

12 It would be a significant
13 challenge for any other use especially those
14 that are permitted. Elderly housing and child
15 day care center would come to mind in
16 particular. With the varying floors, they're
17 somewhat dangerous for elderly and for
18 children as well.

19 And just a few more comments about
20 use. We studied -- we looked at the other --
21 the permitted uses, a police station and a
22 firehouse and those kind of didn't seem

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1 feasible or practical on this particular site
2 in my opinion.

3 Residential sounded reasonable.
4 Particularly a condominium building like they
5 built next door or an apartment building and
6 I think that had -- was it Carr? Had they
7 been able to assemble this property into
8 theirs, they might have been able to pull it
9 off given the shape and size of the property
10 if it were combined, but they didn't and they
11 built right up to our property which leaves us
12 with a very confined, small footprint that has
13 a number of floor changes.

14 The most significant thing that we
15 found actually, tried to draw a plan for
16 residential units, there are no windows on
17 either side. Because this is the property
18 line, if somebody else purchased this
19 property, they wouldn't be able to put windows
20 there without, I suppose, some agreement from
21 the owner. But, they wouldn't want windows
22 there looking over the court and their rooms.

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1 You wouldn't be able to put
2 windows here and you wouldn't be able to put
3 windows on the other side and you would need
4 windows for ventilation and daylight. It's a
5 requirement in housing.

6 So, I don't think it would be
7 feasible to suggest that residential could go
8 here without windows.

9 Also, you couldn't get windows in
10 the front because of the arch if you retained
11 the building. You could get windows up the
12 front. You can get windows up the back, but
13 it's a very narrow and deep configuration.
14 You need to have the windows along the side
15 and you can't do that.

16 CHAIRPERSON MILLER: Could you
17 just explain again why you can't do that for
18 residential, but you can do that for the
19 hotel?

20 MR. JESSEN: Well, because by
21 combining it with the hotel into one lot or
22 technically I'm not sure what the legalities

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1 are, but --

2 MR. COLLINS: The legal part --
3 I'm sorry. The legal part, it's just not a
4 property line anymore.

5 CHAIRPERSON MILLER: Thank you.

6 MR. JESSEN: Does that answer your
7 question? There's also other -- other things,
8 physical things that are a challenge. If it
9 were a stand alone, let's say someone else
10 owned it and wanted to put another use in it,
11 it has no parking. There is no parking. You
12 might be able to fit a couple of spots in the
13 back off the alley perhaps. I'm not 100
14 percent certain there.

15 Oh, you know what? There would be
16 access, pinch point. You wouldn't be able to
17 get through.

18 If you try to do what we're doing
19 which is to convert the basement of the
20 Chinese Community Church into parking, you'd
21 have to bring a ramp in somewhere, probably
22 off of the alley in the back, but given how

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1 narrow the site is, that ramp would be so wide
2 you wouldn't get any parking spots.

3 We often have clients that want to
4 put parking in their buildings and their
5 buildings just aren't bigger enough in
6 footprint to get parking after you account for
7 the ramp.

8 In this case, because it's
9 combined with the hotel, we -- our plans use
10 the existing ramp that goes to the basement of
11 the Morrison-Clark where they park now. We're
12 using the existing ramp and all we have to do
13 is turn to the left, put a whole in the wall,
14 a small ramp down because remember the floor
15 levels are different and we have parking in
16 our building. You wouldn't be able to do that
17 if they were separate buildings unless you had
18 some complicated agreement I guess with the
19 owner.

20 You follow me? So, I think this
21 is the best use. It's the only feasible use
22 intuitively at least to me as an architect for

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1 this site.

2 I wanted to comment that we have
3 conceptual approval from HPRB. We don't only
4 just have conceptual approval, but we've
5 worked with them through the process. Many
6 meetings not just several, but more.

7 As well as ANC. Our approach with
8 the ANC in Logan's Circle was not to go and
9 show them the finished. I actually went there
10 with sketches and boards and we talked about
11 it because we had the opportunity to do that.
12 Again, we weren't maximizing necessarily the
13 site, but we wanted to be sensitive to the
14 site.

15 Certain things that I heard from
16 HPRB were the setback from the Morrison-Clark
17 which I explained. Also, the height. The
18 reason we're at the height we're at now is
19 because of composition considering the other
20 buildings and you can kind of get a sense of
21 that -- that here. Since the condo building
22 is much taller, we're at least 12-feet below

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1 our height limit and it steps down again and
2 architecturally and people at HPRB are
3 sensitive to that. It feels right on that
4 site.

5 So, really the design evolved
6 through many conversations with the
7 neighborhood folks, HPRB and our client's
8 wishes.

9 MR. COLLINS: Mr. Jessen,
10 referring to the plans, could you go through
11 the issues regarding the rear yard and the lot
12 occupancy and the roof structure please.

13 MR. JESSEN: Sure. Okay. Well,
14 this is the roof structure that we're talking
15 about in here. It's up against our property
16 line and it's meant by code to be set back at
17 a 1 to 1 ratio from the property line.
18 However, if we do that, we can't -- it doesn't
19 work with the circulation in the building. It
20 would be a very difficult pursuit to move that
21 over. Also, the roof is so narrow. I'm not
22 certain that we could get that of angle

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1 setback anyways. It's actually, as I said
2 before, below the height limit anyways.

3 The rear yard, we are -- right
4 now, there isn't a rear yard behind the
5 Morrison-Clark along the alley nor the
6 carriage house which is part of the -- kind of
7 the new site.

8 There is a portion of the area
9 that we're building new and filling a rear
10 yard. It's very narrow. It's not a
11 significant space. It's actually not a very
12 pleasant space.

13 We felt that preserving more of
14 the sanctuary was important in this case and
15 to fill in that rear yard versus to preserve
16 that rear yard and that was just kind of the
17 options that we can to in order to make the
18 rooms fit. We can't have rooms that are 6-
19 feet wide. There are certain -- certain space
20 that we need. We need to have. So, the
21 alternative was to reduce more of the
22 sanctuary.

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1 The sanctuary is the new lobby by
2 the way. When people come in off of L Street,
3 we're using that volume of space to greet
4 people. It's a pretty important space
5 historically, but also in how the building
6 greet patrons and we thought it was more
7 important to preserve that -- the rear yard.

8 Is there --

9 MR. COLLINS: If you were to
10 create a rear yard, how much of the existing
11 building would you have to demolish? Is about
12 19 feet or so you say?

13 MR. JESSEN: Well, I think it's --
14 I think we're about 19 feet.

15 MR. COLLINS: You'd have to
16 demolish 19 feet.

17 MR. JESSEN: Eighteen and a half.
18 Of the sanctuary.

19 MR. COLLINS: Of the existing
20 building to create a rear yard?

21 MR. JESSEN: Correct.

22 MR. COLLINS: Okay. And that

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1 space --

2 MR. JESSEN: It was important to
3 HPRB to keep as much of the -- you know, that
4 entire wall of the Chinese Community Church.
5 This is the existing wall. We're keeping the
6 wall. So, it was kind of a push and pull.

7 MR. COLLINS: And then the lot
8 occupancy is driven as you said I think by the
9 layout of the rooms around the courtyard.

10 MR. JESSEN: That's correct. The
11 lot occupancy now is 80 percent. Allowable is
12 75 percent. We're at 80 percent. We've not
13 changed -- changed it, but it has to do with
14 configuration of the site and we're pinned in
15 and not wanting too high. Going back to what
16 we heard from HPRB and felt ourselves, we
17 didn't want to add another floor to the
18 building.

19 MR. COLLINS: Okay. And the roof
20 structure, you are -- the setback is not met
21 on -- on which sides is it? The south and the
22 west sides?

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1 MR. JESSEN: East. This is the
2 east side over here.

3 MR. COLLINS: The east side abuts
4 the adjacent building.

5 MR. JESSEN: Yes. Correct.

6 MR. COLLINS: And that's all right
7 under zoning, but under -- so, it's the south
8 side and the west side that don't meet the
9 setback requirements?

10 MR. JESSEN: East and west.

11 MR. COLLINS: Let me ask the
12 question again. Is it the south and west
13 sides that don't meet the setback?

14 MR. JESSEN: Oh, that's correct.
15 I'm sorry.

16 MR. COLLINS: Yes.

17 MR. JESSEN: This side because
18 there are stair towers right here. You can
19 see it's defined by the shape. It's right on
20 the edge of the building versus it being
21 setback.

22 MR. COLLINS: And how --

1 MR. JESSEN: I apologize.

2 MR. COLLINS: -- and how tall is
3 the roof structure?

4 MR. JESSEN: Twelve feet. Yes.

5 MR. COLLINS: Ten.

6 MR. JESSEN: How much?

7 MR. COLLINS: The height of the
8 roof structure above the roof?

9 MR. JESSEN: Yes.

10 MR. COLLINS: Ten feet?

11 MR. JESSEN: Ten feet.

12 MR. COLLINS: And the height of
13 the parapet that goes around? Four feet?

14 MR. JESSEN: Four foot. Four foot
15 parapet.

16 MR. COLLINS: Okay. So, that
17 would in essence precludes views of the roof
18 structure itself from -- from vantage points
19 around the public space in front of the
20 building?

21 MR. JESSEN: Yes.

22 MR. COLLINS: Was that the

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1 purpose?

2 MR. JESSEN: Yes.

3 MR. COLLINS: Yes. Okay. Thank
4 you.

5 MR. COLLINS: HPRB, I wanted to
6 add -- I'm sorry. They did have a few
7 recommendations and I'm happy to say that on
8 their first one which was to -- originally, we
9 had this new addition more forward. We've
10 pushed that back and we've met their
11 recommendation.

12 Another recommendation they had
13 was to preserve the front steps of the Chinese
14 Community Church. Because before we were
15 changing them and adding a patio piece. We're
16 not going to do that. We're going to meet
17 their recommendation.

18 The third recommendation was to
19 relocate a service area that services the
20 Morrison-Clark. It's a bit of a ramp down,
21 access to the kitchen serving area below.

22 We're still in discussions with

1 them. We have a some work to do to find a
2 solution on this. It's not an easy one to get
3 to.

4 There is an alley in the back, but
5 it's fairly narrow. If you've been to the
6 site, you'll see you can't even get a truck
7 down that. So, we have some work to do on
8 that end, but we're still working with HPRB.

9 We need their staff approval. So,
10 we'll continue to work with them.

11 Is there anything else? Did you
12 have anything to add, Tony?

13 MR. COLLINS: Thank you.

14 MR. JESSEN: Thank you.

15 CHAIRPERSON MILLER: I have a
16 follow-up question on the windows issue. I'm
17 not sure whether it's for Mr. Vogel or Mr.
18 Collins. But, in general, I understand what
19 you're saying about you can't have windows on
20 the property line, but I think that goes to,
21 you know, if that building was used as a
22 residence and owned by another property owner

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1 and was a separate lot.

2 Just to follow this a little
3 further, if it's one owner in one lot, is
4 there a reason that you couldn't have that for
5 residences? I mean I know there are also
6 other disadvantages like -- that you may go
7 into like parking and whatever, but just as
8 far as the window issue goes.

9 MR. COLLINS: If it was one owner
10 and this was a unified project and those were
11 -- were dwellings as opposed to hotel rooms,
12 you could have windows.

13 CHAIRPERSON MILLER: Okay. Thank
14 you.

15 Mr. Vogel, I just have a -- this
16 is just a curiosity question because we're not
17 experts in historic preservation.

18 I'm just curious about is there a
19 real difference in character between the
20 Morrison-Clark Inn and the church with the
21 arch, you know, and how does that blend?

22 MR. JESSEN: We'll let Emily talk

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1 about that, but I would say very different and
2 to me, it's part of the excitement about the
3 project.

4 Not only the Chinese Community
5 Church, but also the old parsonage. Early
6 American brownstone.

7 Emily has the right words, but you
8 have three very different characters of
9 architecture and to me, that's exciting.
10 Because remember, it's a boutique, historic
11 inn. It doesn't want to be, you know, a
12 commercial hotel.

13 So, but instead of trying to
14 develop a new one that's -- was overstated, a
15 fourth one, we're trying to blend them
16 together in a more sensitive way. Does that
17 make sense?

18 CHAIRPERSON MILLER: Yes, and just
19 one other question for curiosity. With
20 respect to boutique hotels, we've had a couple
21 perhaps come before us, does the size matter
22 for instance. This is becoming a bigger hotel

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1 now.

2 MR. JESSEN: Okay.

3 CHAIRPERSON MILLER: But, what
4 makes it still a boutique?

5 MR. JESSEN: I don't know if
6 there's actually a size that governs that.
7 More character. Certainly smaller and the
8 sense of boutique being a little bit more
9 personal and interesting and smaller. I don't
10 think it's too big nor is it going to be --
11 portray itself as a commercialized kind of
12 hotel.

13 The rooms vary in size. They're
14 not just stamped out. There are some variety
15 of rooms and views and character in the space
16 and we are utilizing the historic fabric of
17 those other buildings, adding more interest to
18 the interior space as well. Again, more
19 boutique.

20 COMMISSIONER ETHERLY: If I could,
21 Madam Chair, I want to kind of stay with the
22 representations that are currently up for a

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1 moment.

2 I think I understand the rooftop
3 issue. So, I'm perhaps not in need of
4 revisiting the question that I believe Mr.
5 Collins asked in terms of the south and the
6 west.

7 The wall that's above the old
8 parsonage, that is -- behind that wall is
9 what?

10 MR. JESSEN: There is a stair at
11 that location.

12 COMMISSIONER ETHERLY: Okay. And
13 this may be -- this may go a little far afield
14 of what's actually before us. So, I just want
15 to highlight that off the bat. I'm not
16 looking to get into redesign, but just from
17 the standpoint of looking at some of the
18 aesthetics of it, in terms of the adjacent
19 condominium building, you are set back from
20 that -- those -- that set of four windows that
21 are on the next-door condominium building.

22 MR. JESSEN: Correct. Yes.

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1 COMMISSIONER ETHERLY: Was there
2 consideration given to any type of
3 articulation or treatment of that sheer wall
4 face above the old parsonage. Again, this is
5 a little bit far afield. So, you know, I'm
6 not looking to hold any feet to the fire here,
7 but I'm just kind of curious. From the street
8 level, is it your sense that that's a wall
9 that's not going to be within typical view for
10 pedestrians?

11 MR. JESSEN: That's correct. I
12 don't think it will be very visible.

13 COMMISSIONER ETHERLY: Okay.

14 MR. JESSEN: I think from quite
15 far back with the interruption of trees that
16 are in the park across the street other than
17 being --

18 COMMISSIONER ETHERLY: Okay.

19 MR. JESSEN: -- a few blocks away,
20 I don't think you're going to have a view to
21 that wall.

22 COMMISSIONER ETHERLY: Okay. And

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1 not being an architect by no stretch of the
2 imagination, I went worse and decided to
3 become an lawyer, any utility -- or any
4 utility to trying to articulate that wall in
5 anyway or it just wouldn't make sense? It
6 would just essentially be overkill or it just
7 would be lost because it isn't visible
8 necessarily from the street level?

9 MR. JESSEN: I think that's a good
10 point. It wouldn't be visible. Also, it
11 would be just for the sake of putting
12 articulation. It's a stair. You wouldn't
13 have windows. We could emulate some windows,
14 but that's not really kind of an historic
15 sensitivity and approach.

16 COMMISSIONER ETHERLY: Okay.

17 MR. JESSEN: It would be a little
18 contrived.

19 COMMISSIONER ETHERLY: Okay.

20 Okay. Thank you. That concludes my
21 questions.

22 MR. JESSEN: Okay.

1 COMMISSIONER ETHERLY: Thank you,
2 Madam Chair.

3 CHAIRPERSON MILLER: Okay. Any
4 other Board questions right now?

5 MEMBER DETTMAN: A couple of
6 questions, Madam Chair. I think they're best
7 pointed towards Mr. Collins.

8 One, my first question has to do
9 with parking and then, of course, my second
10 one has to do with what you suspect I'd ask
11 about roof structure.

12 Parking for historic resources,
13 2120.4, it looks to me like you might be
14 required to provide additional parking based
15 on the increase in gross floor area, the
16 percentage of increase in gross floor area as
17 well as, the number of parking spaces that
18 would result based on the amount of square
19 footage that's being added to the hotel and I
20 was just wondering if that's something you
21 looked at and --

22 MR. COLLINS: It is something that

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1 we looked at, Mr. Dettman. The plans that
2 were filed with the original application back
3 last summer would comply with 2120.4 because
4 the addition would not increase the building
5 by more than 50 percent.

6 During design development, the
7 building slipped just over that threshold. We
8 intend and expect to crank that so that the
9 addition is not more than 50 percent.

10 So, the numbers you have before
11 you are, in fact, the numbers, but those
12 numbers will be reduced --

13 MEMBER DETTMAN: Okay.

14 MR. COLLINS: -- so that the
15 building during the permitting phase does not
16 increase by 50 percent.

17 MEMBER DETTMAN: Okay. The second
18 question, you know you had mentioned that the
19 building as well as the penthouse combined,
20 the height of those two entities, are below
21 what's allowed as a matter of right in a
22 particular zoning district. I was just

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1 wondering especially with respect to 2510.1
2 about how basically nothing can violate the
3 Height of Buildings Act.

4 How does this project compare to
5 the provisions of the Height Act especially
6 with respect to the distance from exterior
7 walls and the one-to-one setback?

8 MR. COLLINS: Sure. The 1910
9 Height Act governs -- to the extent that it
10 governs roof structures above the permitted
11 height limit. The permitted height limit here
12 would be 90 feet. The building height is 78
13 feet and the roof structure itself is 10 feet.
14 So, the total building and roof structure
15 together is 88 feet.

16 MEMBER DETTMAN: Okay.

17 MR. COLLINS: So, it does not even
18 begin to impact on the 1910 Height Act --

19 MEMBER DETTMAN: Okay.

20 MR. COLLINS: -- level.

21 MEMBER DETTMAN: So, your reading
22 of that particular provision in the Height Act

1 is that the one-to-one setback does not kick
2 in until --

3 MR. COLLINS: Until --

4 MEMBER DETTMAN: -- had you
5 exceeded 90 feet?

6 MR. COLLINS: Under the 1910
7 Height Act would not kick in until after
8 you're at 90 feet.

9 MEMBER DETTMAN: Thank you.

10 MR. COLLINS: Thank you.

11 MR. JESSEN: Correction. I'm
12 sorry. I just needed to correct. The
13 dimension to the top of the roof structure is
14 78 feet 6 inches.

15 MEMBER DETTMAN: Okay.

16 MR. JESSEN: Not 88.

17 MEMBER DETTMAN: Still below 90.
18 Right? Thank you.

19 COMMISSIONER ETHERLY: Madam
20 Chair, if I could, I wanted to kind of come
21 back and I'll either ask for some guidance
22 from you, Madam Chair, as to whether or not

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1 it's the appropriate time to ask this
2 question, but as we get a little deeper into
3 this, this may be either definitely a Mr.
4 Collins question or maybe a Mr. Sher question.

5 Is I just want to make sure I'm
6 clear on understanding our conversation that
7 we may be heading into about use variance
8 versus area variance here. Because I'm still
9 not quite clear as to how we got to the use
10 variance piece. I think I see it, but I just
11 want to be sure I'm clear on that. So, at the
12 appropriate time, I just want to make sure we
13 kind of flag for slow Mr. Etherly today that
14 here's why we're in a use variance discussion
15 and not an area variance discussion. Thank
16 you.

17 MR. COLLINS: Thank you. May I
18 just clarify what I had said earlier on the
19 issue of the height. The submission sheet, 19
20 of 22, that is dated March 11 which we
21 submitted to the record today, shows that the
22 building height to the roof is 71 feet 9

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1 inches and that the top of the penthouse is an
2 additional 10 feet. So, it is 81 feet 9
3 inches not 88 feet. So, I just want to make
4 that clear for the record. Thank you.

5 CHAIRPERSON MILLER: So, I assume,
6 Mr. Collins, at some point in your
7 presentation maybe Mr. Sher or whatever will
8 be addressing Mr. Etherly's question about the
9 use variance.

10 MR. COLLINS: We have additional
11 witnesses to talk about that issue. So, at
12 the conclusion we can tie it all together.

13 CHAIRPERSON MILLER: Right. Okay.

14 MR. COLLINS: If there are no more
15 questions of Mr. Jessen, then, Ms. Eig, would
16 you please identify yourself and proceed with
17 your testimony?

18 MS. EIG: Good afternoon. I'm
19 Emily Hotaling Eig and I'm an architectural
20 restoring and preservation consultant with the
21 EHT Traceries.

22 I've been working on this project

1 for a while with RV Properties and the
2 architects.

3 I won't go into the history, but
4 it is in the submission that we did. The
5 history of the individual buildings, but just
6 briefly, the Morrison-Clark Inn which is the
7 two buildings that are farthest to the left
8 currently in the addition behind the main
9 building were probably constructed in the
10 1850s based on the architectural style though
11 there is no documentation per se that has been
12 located and landmark application for this did
13 not provide that. The addition was put on in
14 the 1980s.

15 But, the next building which is
16 the one all way to the right, the parsonage,
17 was one of three row houses built in 1890s and
18 they were constructed for the owner of the
19 property that is now the church when he tore
20 down houses and built a house for himself
21 there. Had a yard and then he built three
22 townhouses to -- row houses to, I assume, pay

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1 for his own house probably.

2 In 1956, the church which had been
3 actually been in the buildings there, they had
4 been worshipping in the buildings. Then in
5 1956, they got a demolition permit and tore
6 down the house, the free-standing house, and
7 had a new building constructed for their
8 church and use the remaining townhouse as
9 their parsonage. The church was built in
10 '57/'58. It was constructed to the design of
11 Chatelaine, Nolan & Gauger. Who the son of
12 Mr. Chatelaine is still in practice today.

13 The building is a distinctive
14 design, the Chinese Church and I really want
15 to get to focus on what is important here
16 which is the historic designations and how
17 this affects what's going on.

18 The Morrison-Clark itself is a
19 landmark. It is listed on the National
20 Register in 1991. It was on the inventory of
21 historic sites before that.

22 The area now is part of the Shaw

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1 Historic District which is listed on the
2 National Register as the Mount Vernon Historic
3 District. It has a different name in D.C.
4 Which is very unusual, but the case. So,
5 that's why it is like that.

6 The single row house, the single
7 remaining row house, is a contributing
8 building to that Shaw Historic District and
9 the landmark building would be considered a
10 landmark, but also is contributing to the
11 historic district.

12 The church, however, is not.
13 While the -- behind the church is a stable,
14 carriage house, that is contributing. The
15 church is not because of its late date.

16 However, as it is now 2008 and
17 buildings that are 50 years or more are
18 considered eligible for consideration for a
19 listing, the D.C. Preservation Office has told
20 us as we expected that they considered that
21 the church is eligible for a listing even
22 though it was non-contributing to the historic

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1 district. As an individual landmark, they do
2 believe that it is eligible.

3 They asked us and we, of course,
4 agreed to treat the church as if it was a
5 landmark and to deal with it as part of the
6 whole so that we have, in fact, four historic
7 buildings, the Morrison-Clark, the row house,
8 the church and the stable that is to the rear.

9 In terms of integrity, the stable
10 has the most trouble, but it is still
11 considered contributing because it has had all
12 of its window openings blocked up. It has
13 been connected to the church by a stair and we
14 actually don't even know what that face of
15 that building looks like at this time.

16 Whereas, the church is intact.
17 It's a very interesting facade. It's interior
18 is most interesting for the volume of the
19 sanctuary. There is actually no decorative
20 features that you would expect typically in a
21 church. If they were there, they were
22 removed.

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1 The row house is relatively in
2 tact and the opportunity here to make this all
3 work as we said a boutique hotel is really
4 quite a wonderful opportunity. Because the
5 church and the row house are connected because
6 they were used by the same owner and they are
7 connected at their foundation. The basements
8 open to that and then connected. So, they're
9 all sort of interwoven.

10 So, that to sell them separately
11 would require them to be disconnected which
12 someone would have to do and adds to the cost
13 of any rehabilitation that would be necessary
14 and as you might imagine, rehabilitating the
15 parsonage would be very expensive -- you know,
16 situation to do because of the building's
17 character and the fact that it has not been
18 maintained as it should have been over the
19 years. The church did not have the funds to
20 actually maintain the building as one would
21 like historic buildings to be maintained.

22 So, this opportunity for the hotel

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1 to actually come in and make use of this also
2 means that they would be restoring the
3 character of the exteriors. The conditions
4 would be upgraded to reflect well cared for
5 buildings as essentially buildings that have
6 been vacant for quite awhile and the --
7 fortunately, they work very well for the use.
8 For instance, even the ADA, there is an
9 existing door that is at grade in the churches
10 facade that can be used as the ADA entrance
11 which is a great and wonderful thing for us.
12 So, we don't have to face some of the ADA
13 requirements that often come in conflict with
14 historic preservation.

15 The rehabilitation will meet the
16 Secretary of Interior's standards because it
17 is part of -- all now part of this one
18 landmark project so to speak and it's also --
19 we'll all be and has been reviewed by the
20 Historic Preservation Review Board and its
21 staff so that there's a lot of attention to
22 the appearance of the exterior of this

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1 building and the new construction that will go
2 next to it and on top of it.

3 This also allows public access
4 into the buildings, the church because that
5 will become the lobby of the hotel and the row
6 house will be accessed from the church. The
7 connection in this case is a positive one
8 because it will connect the lobby to the other
9 building.

10 There is also the interior
11 courtyard that is a result of that -- I don't
12 know. If we could see a floor plan, I can
13 show you how that is going to work. Because
14 I think that that is considered a -- a very
15 strong amenity by the Historic Preservation
16 Community. That the green space will be
17 enhanced by this because there is a portion --
18 the rear of the -- a portion of the rear of
19 the church will be demolished, but is the
20 portion that holds the office and not
21 considered to have the important historic
22 character that the main volume does.

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1 And the -- if you just will show
2 us the floor plan, you can see the fact that
3 the space between the two building, the
4 Morrison-Clark and the church will become an
5 access to that courtyard. It will not be a
6 public park, but it will be a gated access.
7 People can go in and if they want to use the
8 restaurant or that they're guest of the hotel
9 and that it's not intended -- it's not going
10 to be gated -- locked, but it's going to be
11 gated is my understanding and you can see that
12 there's a large area that will be landscaped
13 then and as I said, the Historic Preservation
14 Review Board and its staff was quite
15 enthusiastic about the additional green space
16 that would be allowed in the middle of this
17 building complex now.

18 The design merits of this new
19 construction are also something that we are --
20 find very compatible and that they take
21 advantage of a situation that it's -- when you
22 have vacant buildings and in our city, we

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1 don't know what is going to be proposed and
2 the church could have been threatened by
3 someone who decided that they didn't -- it
4 wasn't designated and, therefore, they weren't
5 going to proceed to protect it.

6 But, in fact, the new design is
7 very sympathetic to the historic buildings.
8 It holds back off of the main block of the row
9 house. It is set back to be in alignment with
10 the Morrison-Clark on top of the church itself
11 and it is going to rehabilitate the cupola
12 that was destroyed by fire in 1894 that is on
13 top of the Morrison-Clark and basically will
14 result in a very positive experience in terms
15 of design preservation and I think that it's
16 this sort of unique confluence of events that
17 is going to allow this to happen if the use
18 variance would be issued to, in fact, allow
19 this to happen.

20 So, I think that through this use
21 change that the historic buildings will be
22 used again. They will be enjoyed again and

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1 that there will be an opportunity for many
2 more people to experience them and be focused
3 on them than they might have been otherwise.
4 Thank you.

5 MR. COLLINS: Madam Chair, I
6 neglected to offer Ms. Eig as an expert
7 witness. She has testified many times before
8 the Zoning Commission and I expect this Board
9 as well.

10 CHAIRPERSON MILLER: I'm sure
11 you've testified before the well.

12 MS. EIG: I have.

13 CHAIRPERSON MILLER: And we've
14 qualified you as an expert witness. So, I
15 don't see any issue with that. Okay.

16 MR. COLLINS: Thank you.

17 MS. EIG: Thank you.

18 CHAIRPERSON MILLER: I have a
19 quick question. So, the church is not
20 required to go before HPRB because it's not a
21 landmark and it's not contributing, but you
22 voluntarily are putting it before HPRB for

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1 review as if it were a landmark?

2 MS. EIG: Yes, if it were a
3 separate -- if it was not a -- if it was on
4 its own lot, it wouldn't have to go. If
5 there's an addition, it would be reviewed.
6 But, there is no protections there. If it
7 would be more -- trying to make sure that the
8 buildings around it would be protected. So,
9 we have voluntarily offered to protect it.

10 CHAIRPERSON MILLER: With respect
11 to protecting the church though, there's no
12 requirement right now.

13 MS. EIG: That is correct. There
14 is no -- there is no requirement to protect
15 the church right --

16 CHAIRPERSON MILLER: Right. Okay.
17 Thanks. Other questions? Okay. Thank you.

18 MR. COLLINS: The next witness is
19 Mr. Smart from Bolan Smart Associates and I
20 would like to offer Mr. Smart as an expert
21 witness as well. You have his résumé and he
22 has testified before the Zoning Commission

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1 many times as an expert witness.

2 MR. SMART: Yes, I'm Eric Smart
3 with Bolan Smart Associates. We've been based
4 in the District for over 20 years. We're real
5 estate economic advisors to the private and
6 public sector including the District of
7 Columbia.

8 I'm primarily here to try and
9 address the use-variance question and
10 specifically, we were asked to evaluate
11 economic feasibility of alternative permitted
12 uses and I look at that from three
13 perspectives. The -- you've heard a lot of
14 testimony concerning the challenges of this
15 site both from a marketing standpoint to -- to
16 somebody who could use it as it is or as it
17 might be modified and that's spoken a lot to
18 the limits to be able to market it for
19 alternative uses that are permitted or
20 conforming uses.

21 So, I'd like to add onto that
22 commentary to some degree. We've also looked

1 -- it's under Exhibit I which I'd like to be
2 able to refer to in your most recent full
3 package that was submitted. That we'll also
4 look at what a reinvestment in the site would
5 constitute under a matter-of-right scenario
6 and then finally, what would be a use that's
7 permitted, but would still come before the
8 likes of yourself to be able to maximize the
9 potential use of the site in seeking zoning
10 relief. So, those are the three scenarios.

11 I don't want to repeat what you've
12 heard before. Much of it was in our written
13 submission, but addressing the first question
14 of what are the use limitations that have
15 compromised what are the alternatives. the
16 site is not desirable for the majority of the
17 uses that are permitted. There is no evidence
18 in the neighborhood of support for those and
19 it's a constrained site you've heard with
20 respect to parking mid-block. Challenged
21 access is a nice word for it I'd say in terms
22 of getting back in there. So, those are the

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1 physical constraints.

2 I'd like to accent that the
3 sanctuary use is one that has encumbered the
4 site frankly. Because unless you find some
5 other identical user, you have a very
6 specialized use which was initially built and
7 then modified over the years for a very
8 specific use and that doesn't lend itself very
9 well to translation for other uses.

10 The historic preservation issues
11 as Emily just described are -- they loom is
12 the way we would look at it from how to
13 anticipate being able to tackle more major
14 redevelopment and that's not necessarily under
15 alternative use as is. But, someone
16 purchasing the property is having to take into
17 consideration even if they continue it for its
18 current -- in its current configuration what
19 other option is going to be down the road in
20 terms of this contemplated investment.

21 We summarized on, and I'll do it
22 for you, but on page 4 under Exhibit I, the

1 matter-of-right uses and some of them are
2 obviously pretty ridiculous by today's uses.
3 But, we can't find any that have any logic
4 associated with them. We've heard it from a
5 design standpoint. We've heard it from a --
6 how do you retain historic integrity
7 perspective and clearly, from a modern-use
8 standpoint, there are thresholds for parking.
9 There are thresholds for the other kinds of
10 elements which are summarized -- we attempted
11 to summarize under what's termed there as BSA
12 Table 1 on page 4 of the referenced Exhibit I.

13 Moving to what would you do with
14 it regardless from an investment standpoint,
15 we looked at the two renovations scenarios
16 which I introduced. The one taking a matter-
17 of-right position and the other one again I'll
18 get to.

19 We attempted to illustrate on page
20 5 of our prior referenced testimony, the
21 written elements, we illustrate some numbers.
22 We try and quantify a modest investment in

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1 terms of this property and what we'd be able
2 to recover benchmarked against what was paid
3 for and more importantly, benchmarked against
4 what it's assessed for. As you say, it's not
5 worth zero. It's worth something and what is
6 it going to be -- what's going to make sense
7 or what would motivate an alternative user or
8 investor or owner to find some other use for
9 this property unless -- and there's no
10 economic return. Then it would not be -- it
11 would remain unused.

12 The table -- I won't go -- you can
13 ask -- you'll ask any questions you wish, but
14 we try and point to some very modest
15 assumptions in terms of rehabilitating the
16 building. We have used a \$150 a square foot
17 for rehabbing the building and that produces
18 \$2.3 million of cost as an investment on top
19 of having the property as it stands today and
20 that's a fraction. That's half of what the
21 church evaluated in its own assessment of just
22 a rehab of what's there a number of years ago.

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1 So, we'd underscore that's very modest.

2 And then we say what would that
3 property be worth even to some undefined user
4 at the end of that exercise which would be a
5 minimum renovation and it wouldn't be economic
6 either for the present owners to redevelop it
7 for a speculative use or a prospective
8 alternative use or for somebody to come in and
9 purchase it facing this hurdle of the
10 acquisition cost and the renovations that
11 would be needed and I can't help but emphasize
12 how minimal we've used in this illustration
13 and it still produces a net negative from the
14 standpoint of what would constitute economic
15 feasibility.

16 Following that similar format on
17 pages 6 and 7, we've taken a look at the what
18 will you do if you tried to maximize the site
19 and pursued something that would require some
20 zoning relief. So, I wasn't planning on this,
21 but I'd like to go up to the -- to here
22 because it might -- it would be easier to show

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1 you what would -- could constitute -- does
2 this work? Okay. Could constitute the -- not
3 a use variance, but would -- in order to --
4 let me back up.

5 How can we make this economic?
6 Independent owners, how could we make it
7 economic in order to try and get some return
8 that would motivate a reinvestment not
9 confronting a use variance, but by necessity
10 requiring some zoning relief because there is
11 no proven or we don't think prospect of a
12 market as it would be if you didn't take on a
13 major redevelopment.

14 Now, how would we if we were not
15 -- if we were just taking this site before you
16 to make it economic without addressing the use
17 variance, it would residential. I think that
18 speaks for itself and we worked illustratively
19 I could put it that with the architects in
20 saying let's say we're going to maximize this
21 building. How could we do it?

22 Well, the footprints actually are

1 similar. We'd have to expect in order to --
2 we would assume here in order to achieve
3 zoning relief, we'd have to preserve some of
4 these elements. That there would be setbacks.
5 This happens to fit into the -- you know, the
6 windows that are -- were anticipated to be
7 retained on the other buildings.

8 So, what I'm getting at is the
9 envelope stays identical under the assumption
10 of what we think would maximize the FAR floor
11 area under a pursuit of zoning relief for
12 residential use.

13 I came up here because it -- we
14 took the assumption that you would actually
15 take the building to the maximum height, the
16 90 feet that could be contemplated. There may
17 be some marketing compromises because you
18 can't use the windows quite the same way. We
19 would think that -- we know we couldn't have
20 all of this enclosed because then the
21 courtyard wouldn't be the same.

22 So, what you'd end up with is a

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1 building that goes all the way up to match
2 this one next door under the maximum
3 assumption of can you achieve economic
4 viability and so, it would look not dissimilar
5 in terms of the envelope that you got there
6 and putting this back up here, it would be
7 basically this without the carriage and that's
8 what we figured with compromises in the
9 context of a floor plate you could generate 25
10 to 30 units, sufficient parking on the first
11 floor, the basement level, albeit with the
12 compromises of finding space sufficient to
13 offer some parking spaces to prospective users
14 whether they be condo sales or apartment.

15 And the principal compromise is
16 also from a feasibility standpoint the
17 constraints that you've heard many times over
18 now plus the limitation of being able to be
19 efficient with the space, the production of
20 the space, because it's a small footprint
21 still requiring the full core area of the
22 stairs and the elevators and which takes a big

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1 chunk out of what is economic. At least 25
2 percent of what would be the gross floor area
3 is lost and the net floor area is lost to
4 support the limited number of units per floor.

5 Now, shouldn't that perhaps offer
6 a higher value in another context perhaps.
7 If it was on the corner, if it wasn't a narrow
8 lot as this is, if it didn't have those other
9 deficiencies from a standpoint of
10 marketability, we could say yes, that wouldn't
11 fully -- you could capture back some sort of
12 enhanced appeal to the building by virtue of
13 smaller floor plate, fewer units.

14 But, we -- everything we look at
15 on this particular maximizing of the floor
16 area is still encumbered with or limited by a
17 lot of discounts, valued discounts from the
18 standpoint of being able to generate economic
19 value and you can see on the -- I think it's
20 BSA Table 3, if I go back here, we've
21 identified some assumptions following market
22 norms for construction for valuation in terms

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1 of product sale assuming the highest value in
2 this case would be achieved through
3 condominium and we come up with a net loss
4 which would not motivate the present owner or
5 another owner to go this route of trying to
6 maximize the building area under a non-use-
7 variance scenario.

8 So, in conclusion, we have
9 searched for alternative use within the
10 permitted range of uses and find that it's
11 unlikely that a fair and reasonable return
12 could be achieved for this or another property
13 owner given the assumptions which we've tried
14 to highlight here. Thank you.

15 MR. COLLINS: Can I just ask a
16 question of Mr. Smart? In your discussion,
17 you mentioned the ability to put some parking
18 in. You've heard Mr. Jessen's testimony about
19 the inability to put parking in. Do you have
20 an opinion on how much parking could be -- you
21 could put in for this 27-unit alternative?

22 MR. SMART: Being -- looking at

1 the economic side of things, we assume we can
2 maximize everything. So, I haven't respected
3 any architectural potential or design prospect
4 for doing this, but based on what we looked
5 at, representation of what could be achieved
6 in below grade, it was in the 10 or 12 spaces
7 in -- if you went the entire excavation of the
8 basement. It's less than that if you can't
9 push the footprint of the building to the
10 property edges and if -- and my understanding
11 is that that would achieve the -- depending on
12 how many units you had in the building, it may
13 or may not require zoning relief in terms of
14 achieving the ratio between required parking,
15 on-site parking and the units and that's
16 putting side the marketability concerns.

17 MR. COLLINS: And that does not
18 assume -- well, that does not take into
19 consideration the need to preserve the
20 carriage house and the significant buildings
21 on the site?

22 MR. SMART: No, it does not. Not

1 explicitly. No. It's taking a position of
2 maximizing the basement area.

3 MR. COLLINS: Thank you. My next
4 witness --

5 CHAIRPERSON MILLER: Can we --
6 let's just have a few follow up here. Because
7 once we go off to another subject, it will be
8 more difficult.

9 With respect to your Table 3 which
10 shows the various costs you estimate, don't
11 you assume a certain number of units to -- in
12 this? Because I see a price per unit. I mean
13 do you have to have a certain number of units
14 to make it work or no matter how many units
15 you have, it's really not going to work
16 because -- well, it's 27 units. Does that
17 mean it takes 27 units to make -- that's the
18 max you could do and even with the max, it
19 won't work?

20 MR. SMART: The square footage is
21 the primary driver of what you'll recover.
22 So, if there were fewer units, we think you

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1 would still get close to the same dollar
2 revenue and because you would still require
3 the same amount of circulation area, the core,
4 the elevator and stairwell and other support
5 space, it wouldn't make much different whether
6 you had 20 units or 35 units and with respect
7 to the cost of building the units and with
8 respect to the marketability of them.

9 So, granted, there is some
10 variance depending on how many kitchens you
11 put in and what kind of premium you get
12 because of the particular configuration of the
13 unit, but we have done here is we went through
14 and we looked at something that would be a
15 proxy for what we think a market would support
16 of one to two bedrooms, one and a half with
17 den kind of thing, on the order of 1,000 or
18 1100 square feet of rentable or saleable area.
19 So, that happens to work to 27. But, the
20 numbers would be very similar whether it was
21 30 units or 25 units.

22 CHAIRPERSON MILLER: Okay. And

1 with respect to your Table 1 matter-of-right
2 uses feasibility, you have a category that
3 says the feasibility is limited case-by-case.

4 I know that there wasn't another
5 church that wanted to purchase the property
6 according to the finding. So, that's an
7 option, but are there specific reasons that
8 like a museum wouldn't work or, you know, what
9 did you mean by that limited case-by-case?

10 MR. SMART: What we meant is that
11 any of these may be possible. They certainly
12 might be possible physically. The hurdle for
13 them is that they're case -- they're -- I'll
14 use the word case-by-case. They're
15 improbable, but we can't say they wouldn't
16 occur and that's where we had searched for
17 what would be the circumstances that would
18 attract let's take a museum for example.

19 That might be prospect. It's one
20 -- it's kind of the out of the blue. From an
21 investment standpoint, certainly the owners
22 couldn't count on that as their exit plan and

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1 that's why we say we can't exclude it.

2 The reason we think it's
3 improbable though is all the aforesaid
4 constraints. It's not got high visibility.
5 It's challenged from its physical
6 configuration, access and parking. It's not
7 in the mainstream for some uses.

8 So, a club could come along, but
9 then what they're facing. The prospect of
10 user of that nature, is they're saying we can
11 get arguably a better property with fewer
12 compromises for either the same price or less.

13 So, that's where in balance we
14 don't see much of a chance of a specialized
15 use of that nature coming along.

16 CHAIRPERSON MILLER: Okay. And
17 certainly, it was on the market and none of
18 those uses came along. Okay.

19 Are there questions?

20 VICE CHAIRPERSON LOUD: In Table
21 Number 2, I'm just curious as to why, I'm sure
22 there's a reason for this, the acquisition

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1 cost is not reflected?

2 MR. SMART: Well, the acquisition
3 cost is -- for the current owners is -- was
4 \$3.6 million in round numbers and the
5 assessment which benchmarks against a variety
6 of things is listed -- proposed investment for
7 2008 public record was over \$5 million and
8 those are the two line items in there. So,
9 the acquisition cost was 3.6 million or the
10 other way of putting it, if I could, is the
11 sales price.

12 So, I could go through trying to
13 explain this further if it's confusing.

14 VICE CHAIRPERSON LOUD: Well, just
15 -- okay. Bear with me just a little bit. I'm
16 trying to find --

17 MR. SMART: Okay, 3.8 I think I
18 have.

19 VICE CHAIRPERSON LOUD: It's 3.8.

20 MR. SMART: Is that a typo or was
21 it -- was it -- I'm sorry.

22 CHAIRPERSON MILLER: So, it's less

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1 the '06 Applicant purchase price. Is that --

2 MR. SMART: Three point eight or
3 three six. Three eight. I apologize. It was
4 three eight. So, the second row from the
5 bottom on the respective tables is the
6 Applicant's purchase price from -- that was
7 actually, if I could comment on that, early
8 2006. I mean it was closed and a contract
9 price from '05.

10 CHAIRPERSON MILLER: I'm sorry. I
11 thought we were waiting for Mr. Loud.

12 MEMBER OATES: Let me just --

13 CHAIRPERSON MILLER: Yes.

14 MEMBER OATES: -- let me just make
15 something clear for the record. Madam Chair,
16 you said that the property was sort of tested
17 for alternative uses because it was listed for
18 sale for six months, but indeed, the
19 Applicant's Exhibit I, page 3, notes that the
20 property was not formally listed as being for
21 sale.

22 Could you comment on that, Mr.

1 Collins?

2 MR. COLLINS: Page 3, I'd like to
3 refer to Mr. Vogel. Ask Mr. Vogel. It was
4 the --

5 MR. VOGEL: Forgive me. The
6 question is actually -- refers to page 3 here?

7 MEMBER OATES: Exhibit I --

8 MR. VOGEL: Right.

9 MEMBER OATES: -- page 3,
10 paragraph 3, market exposure.

11 MR. VOGEL: Right. Okay. That's
12 accurate what is said here. Well, not
13 formally --

14 MEMBER OATES: So, the property
15 was not listed for sale?

16 MR. VOGEL: Formally listed.
17 Right. But, discussed with this broker with
18 Long & Foster. Right.

19 MEMBER OATES: Thank you.

20 MR. COLLINS: Mr. Vogel, to your
21 knowledge, was there any other times --

22 MR. VOGEL: Actually, I'm sorry.

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1 There was -- what I did not mention in my
2 earlier testimony is in my discussions with
3 the church over those many years, there was
4 actually another opportunity they had for
5 another church. The one they actually
6 purchased, but the Corinthian Church at -- I
7 think that's 6th and I. I think it was at
8 least a year before or during all these
9 discussions that they were looking at
10 alternatives.

11 The Turner Baptist Church came up
12 for sale and that was at 5th and I, a block
13 away. It met the same requirements as the
14 Corinthian Church. In other words, it was a
15 church that the Chinese Community Church could
16 have moved right in. It was larger. It would
17 have met all their needs facility-wise.

18 And again at that time, they went
19 through a -- I'll say a softer process as far
20 as marketing their property for sale. They
21 didn't actually contact -- broker it, but I
22 know they had been in discussion with other

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1 churches and other uses and they just simply
2 weren't able to achieve a sales price that
3 would then enable them to move over to the
4 Turner Church.

5 And the Turner Church actually
6 became a synagogue, 6th and I synagogue.
7 Right and beautifully renovated. Again, it
8 did require some renovations there, but that
9 was just another point when they did try to
10 market -- well, explore sale possibilities of
11 the property.

12 CHAIRPERSON MILLER: Any other
13 questions? Okay. Mr. Collins.

14 MR. COLLINS: The final witness is
15 Mr. Steve Sher who's a witness in urban
16 planning and zoning and I'd offer Mr. Sher as
17 an expert witness as well.

18 CHAIRPERSON MILLER: And Mr. Sher
19 has testified several times before this Board
20 and been qualified as an expert witness by
21 this Board. So, you can assume he's qualified
22 as an experts today.

1 Welcome, Mr. Sher.

2 MR. SHER: Madam Chair, Members of
3 the Board, for the record, my name is Steven
4 Sher, the Director of Zoning and Land Use
5 Services with the law firm of Holland &
6 Knight.

7 You've heard a lot already and a
8 fair amount of what I had put together here
9 has been explained to you by others, but what
10 I want to try and do is sort of pull it
11 together at the end perhaps. So, and in so
12 doing, speak to Mr. Etherly's question earlier
13 about what kind of variances do we have here.

14 As the Board is aware, we have an
15 existing hotel and the proposal is to expand
16 that hotel into the two buildings that adjoin
17 it to the -- three buildings actually counting
18 the carriage house that adjoin it to the east,
19 construct an addition and wind up with one
20 hotel on the unified property.

21 The existing hotel was established
22 and the addition in the '90s approved when the

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1 property -- I'm sorry, in the '80s when the
2 property was zoned SP2 and a hotel was a use
3 permitted as a special exception at that time
4 in an SP2 district.

5 In January of 1991, the property
6 was rezoned from SP2 to DD-R-5-E. R-5-E is
7 essentially a residential multi-family zone.
8 The DD is the Downtown Development District
9 Overlay Zone.

10 A hotel existing in 1980 was a use
11 preestablished in an R-5-E District. However,
12 there is a special provision in the downtown
13 development district, 1706.19, which applies
14 only in the housing priority areas which says
15 a hotel established pursuant to a special
16 exception approval in an SP District shall be
17 deemed a conforming use in a DD-R-5 Overlay
18 District. So, notwithstanding that there are
19 a whole bunch of things that went on here, by
20 operation of 1706.19, the existing hotel is
21 deemed to be a conforming use.

22 The hotel shall continue to be

1 governed by the conditions that the BZA
2 established for it when it was approved and as
3 to the existing building, that is the case and
4 then it says enlargement or other changes
5 shall be governed by the variance provisions
6 of 3103.2. Now, 3103.2 is just the general
7 variance clause. All kinds of variances.

8 We have assumed for the purpose of
9 presenting this application that, in fact, the
10 variance to extend this hotel into those
11 adjoining buildings was a use variance.
12 Regulations don't quite say it's a use
13 variance. It says it's a variance.

14 I don't know. We just -- we erred
15 on the side of being most cautious and most
16 restrictive in our view of what kind of
17 variance it was. Hence, all the testimony you
18 had this morning and this afternoon about how
19 we meet the use-variance tests. But, it is
20 not inconceivable that you could decide it's
21 not a use variance. It's an area variance,
22 but we're here.

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1 If we met the test for a use
2 variance, then by inclusion, we've also met
3 the test for an area variance because it's
4 harder to prove a use variance than it is to
5 prove an area variance, undue hardship versus
6 practical difficulty. So, if we've proved the
7 one, then we've proved the other.

8 We also have a couple of variances
9 which I think are indisputably area variances,
10 i.e., the addition to an existing building
11 which exceeds the lot occupancy of the R-5-D
12 District which is 75 percent. We're 80
13 percent. We're not increasing or decreasing
14 that 80 percent, but we are putting an
15 addition on the building that's already over
16 the 75 percent lot occupancy. So, pursuant to
17 2001.3(a), we need a variance from that
18 provision.

19 And we need a variance from the
20 rear yard because as you can see on the site
21 plan, we are constructing a piece of building
22 against the rear lot line which we don't now

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1 have. It's now empty. So, that piece of the
2 building -- the carriage house is here now.
3 The existing Morrison-Clark building is here
4 now. Neither one of them have a rear yard,
5 but the addition which we're constructing to
6 fill in that and sort of make the whole donut
7 around the courtyard whole is -- doesn't have
8 a rear yard for itself and so, we need a
9 variance on the rear yard for that piece and
10 to construct an addition to a nonconforming
11 structure where the addition itself doesn't
12 comply with the rear yard requirements. So,
13 two sides of the same rear yard variance.

14 So, we have what we have deposited
15 as a use variance to extend the hotel use over
16 and two area variances, one on lot occupancy
17 in effect and one on the rear yard.

18 We also have relief required for
19 the roof structure and in that respect as Mr.
20 Collins and Mr. Dettman discussed earlier, our
21 building with the top -- to the top of the
22 penthouse is lower than the maximum height

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1 permitted on this site either by Zoning or by
2 the Act of 1910 and our building overall is
3 lower than the maximum permitted FAR that the
4 Zoning Regulations permit.

5 So, in fact, one could say that
6 that roof structure was, in fact, not a
7 penthouse. It was just mechanical equipment
8 and it's the top floor of the building and,
9 therefore, it doesn't have to set back at all,
10 but again, out of an abundance of caution,
11 we've called it the penthouse and because it
12 is the penthouse, Tony, we got that roof plan,
13 there are two places where that penthouse
14 doesn't meet the setback requirements and I'm
15 just going to illustrate them very quickly.

16 On the south facing wall of the
17 penthouse which overlooks the roof of the
18 townhouse here, the penthouse is right up
19 against the face of that wall and on the west
20 facing wall of the penthouse which overlooks
21 the courtyard but which is set back from this
22 varied line of the building below at its

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1 narrowest point is 3 feet 3 inches and thus,
2 the penthouse from the roof slab to the top of
3 the penthouse is 10 feet. So, if we had to
4 meet the one-to-one setback along that wall,
5 we would have to be 10 feet back. We're only
6 3 feet 3 back. So, that's the nature of the
7 relief that we've asked for.

8 And again, this wall says he
9 pointing to the wall on the west property
10 line, sorry, on the east property line is a
11 party wall with the condo that was constructed
12 next door. That building as you can see from
13 the models is higher than we are and our
14 penthouse is just going to sit wherever it
15 sits there. There is no setback required
16 under the current interpretations of the
17 regulations.

18 CHAIRPERSON MILLER: Could you
19 just clarify what you referenced oh, if this
20 is just mechanical equipment or something we
21 wouldn't need --

22 MR. SHER: If everything that's in

1 the penthouse whether it's an elevator
2 override, a stair tower or mechanical
3 equipment, if we just deemed that to be the
4 top floor of the building and said rather than
5 our building being 71-6 plus a 10 foot
6 penthouse, we just said we had an 81-6 foot
7 high building and this top floor of the
8 building isn't a penthouse, it's mechanical
9 equipment within the building, then we
10 wouldn't need to be set back and we counted
11 that space within the FAR of the building
12 which we have excess FAR that we're not using.
13 We're at 4.2, allowed to be 6. Then I would
14 be of the view that we would not need relief
15 on that penthouse.

16 Most of the time people come here
17 needing relief on a penthouse because they are
18 either (a) over the maximum permitted height
19 or (b) over the maximum permitted FAR and want
20 to take the .37 FAR credit for the roof
21 structures or general both.

22 In this case, we are neither. We

1 are below the permitted height and below the
2 permitted FAR. So, we could count that space
3 within the building and have a 4.3 FAR
4 building and an 81 foot 6 inch height as
5 opposed to a 4.2 FAR with a .1 FAR roof
6 structure and 71 foot height plus a 10 foot
7 penthouse.

8 CHAIRPERSON MILLER: Just to
9 understand your theory because I know you're
10 not -- you're not presenting that today, but
11 you're saying it wouldn't be a roof anymore.
12 It would be this top floor.

13 MR. SHER: I'm saying we -- there
14 would be a roof at -- let me get it precisely.
15 There would be a roof here and there would be
16 a roof that went around this point and this
17 would be a roof also, but this would be a roof
18 10 feet higher and there are lots of other
19 roofs at various levels in this building.
20 This would be just one more roof.

21 But, I think the key point in that
22 argument is that our penthouse, and I'm just

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1 going to call it a penthouse because that's
2 what we've said it is, is lower than the
3 maximum permitted height under either the
4 Zoning Regulations or the Act of 1910 and our
5 FAR including the FAR of the main building
6 plus the rather minimal amount that's in the
7 penthouse is still well below the permitted
8 FAR for the entire property and that goes to
9 the sort of lack of -- the substantial
10 detriment issues that you get to when you get
11 to the end of that whole test. Okay.

12 CHAIRPERSON MILLER: Yes, go
13 ahead.

14 MR. SHER: All right. Okay. So,
15 the standards for a use variance are -- well,
16 the standards for a variance is a three-part
17 test. That there has to be some exceptional,
18 extraordinary situation or condition of the
19 property that the strict application of the
20 regulations, and I'm going to combine this in
21 this case, either caused practical
22 difficulties (in the case of an area variance)

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1 or undue hardship (in the case of a use
2 variance) and that relief can be granted
3 without substantial detriment to the public
4 good.

5 In the presentations that we've
6 made so far, we have tried to distinguish
7 between those two sets of tests and you've
8 heard testimony from the architect, from the
9 economic consultant as to how the physical
10 conditions of the property, how the ability to
11 market that property and what you'd have to
12 pay for it and what it would cost to have to
13 renovate it to use it for any permitted
14 affectively make it impractical if not
15 impossible to put it to any permitted use with
16 a fair and reasonable return and I think in
17 that case, we have satisfied the burden for a
18 use variance.

19 The way I looked at this case in
20 an attempt to just sort of simplify all that
21 is if you looked at this property as a stand
22 alone which is what it was before it was

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1 purchased by this same owner, they are
2 actually separate lots at the moment, if you
3 looked at trying to use those buildings by
4 themselves, it is practically and reasonably
5 impossible to come up with a permitted use for
6 all of the reasons you've already heard.
7 You've got windows. You've got walls that
8 fall on lot lines. You've got inability to
9 get the parking other than through the little
10 narrow piece at the back of the building here
11 and then you -- by putting a ramp down in
12 there, you're basically wiping out your
13 opportunity to get a reasonably sufficient
14 number of parking spaces in there even if
15 that's not required parking. As a practical
16 matter, if you're going to put this building
17 to a practical use, you're going to have to
18 have some parking for it.

19 When you think about all the
20 circulation issues and all the other things as
21 a stand alone situation, those two buildings
22 don't work.

1 When you combine them and when
2 you're able to be assured that nobody's going
3 to build up on that lot line that your windows
4 can -- whether they're for hotel use or any
5 other use, that you can have windows on that
6 west-facing wall and they're code compliant
7 because they're no longer on a lot line, when
8 you can use the existing ramp that takes you
9 into the basement of the addition to the hotel
10 and then with a relatively small run get you
11 down below the floor into the basement of the
12 existing church property so that you can have
13 parking in there without having to come in
14 with its own separate ramp from the alley,
15 when you look at all of the other features
16 that are involved here and when you consider
17 that this is an addition to the existing hotel
18 that this becomes a single use on a single
19 property that you don't have to worry about
20 mixing use within the building, that you don't
21 have to worry about separate entrances for a
22 hotel, for a church, for an apartment house,

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1 you basically got one use in the one connected
2 donut buildings as he pointed to the left-hand
3 drawing on the top here, I believe that that's
4 the situation that demonstrates that that can
5 be done and, in fact, it is the only
6 reasonable and practical way to do that as
7 opposed to considering that as a stand alone
8 building.

9 With respect to the area
10 variances, I think we've gone over that I
11 think fairly exhaustively at this point.
12 They're are property related. They're design
13 related. They come about because of the
14 conditions of the site and because as Ms. Eig
15 stated, we're treating this basically as if
16 there were four historic buildings that we've
17 got to deal with. There are three -- there's
18 one landmark. There are two contributing
19 buildings and there's a fourth one that if you
20 propose to do anything with it like tear it
21 down, it would be a landmark before you could
22 walk in the door with a permit application.

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1 So, we're treating it as if there
2 were four historic buildings there and while
3 HPRB is an vigilant a guardian of historic
4 districts and historic preservation as there
5 is in any city, there is just very little we
6 can do that would put this in a position where
7 we could do this kind of a development without
8 these area variances. We can't take 19 feet
9 and 8 some odd inches off the backs of the
10 buildings to make them comply and if you had
11 to take 19 feet off the back of this building,
12 then you just basically wipe out the ability
13 to make that connection around that corner.

14 With respect to the roof
15 structure, we believe and I think this Board
16 agrees that that relief is through a special
17 exception not a variance. We think we have
18 met the test for special exception as set
19 forth in section 411.11. You've heard enough
20 about that. I don't think I need to go
21 anymore into that.

22 So, I will conclude by saying I

1 believe that through the totality of the
2 testimony and evidence we've presented, that
3 we have demonstrated that the application
4 meets the requirements of the regulations and
5 should be granted the relief which we request.
6 Thank you.

7 CHAIRPERSON MILLER: Could you
8 just touch upon with respect to the roof
9 structures, it probably was addressed earlier,
10 but why they have to be where they are and why
11 there's no detriment to any neighboring
12 property?

13 MR. SHER: Okay.

14 CHAIRPERSON MILLER: Or the view
15 from the street and --

16 MR. SHER: As you can see on the
17 roof plan, there are a variety of roof levels
18 for -- this is the floor plate J on the right-
19 hand easel here on the top. There are a
20 variety of roof levels throughout the project.
21 You got the existing roof level over the
22 oldest historic portion of the Morrison-Clark

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1 Inn. You've got the roof level above --
2 that's at the top of the addition to the north
3 of the inn. That was constructed back in the
4 '80s. Then you have the roof level over the
5 lower part of the church here. You've got the
6 roof level over the townhouse. Then you've
7 got the roof levels that -- that again -- this
8 is the roof structure, but you've got the roof
9 level that sits above the addition and you can
10 see that in the model photograph which is
11 behind one of the boards at the moment.

12 So, this is -- there is an
13 elevator core in here. There is a stairway
14 that gets you up to the roof and then there is
15 mechanical equipment and as pointed Mr.
16 Collins pointed out, we did submit a schematic
17 plan showing how all that equipment would fit
18 in that roof to demonstrate that there's not
19 a whole lot of space left over.

20 This wall of the -- of the
21 building to the east is basically a solid
22 wall. There are no windows in that wall

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1 facing that roof structure.

2 So, there's no detriment to
3 anything that occurs here and from the
4 practicalities of where you put that equipment
5 with relation to those various roof levels,
6 this is the one that gets you to the highest
7 point. So, that's where you put it.

8 CHAIRPERSON MILLER: Okay. Thank
9 you.

10 COMMISSIONER ETHERLY: And, Mr.
11 Sher, is there any impact relative to the
12 remaining -- the four windows on the adjacent
13 condo building from the standpoint of the
14 location of that roof structure?

15 MR. SHER: Not that I believe. I
16 think if you --

17 MR. COLLINS: Yes, I think that
18 maybe the architect might be able to talk
19 about that issue.

20 MR. JESSEN: We are preserving the
21 windows on the condominium building.

22 COMMISSIONER ETHERLY: Okay.

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1 MR. JESSEN: Both in the front and
2 in the back. Can you hear you? In the front
3 and in the back, we're preserving those
4 windows and their opportunity for ventilation
5 and daylight.

6 COMMISSIONER ETHERLY: Okay.

7 MR. JESSEN: The condominium
8 building as you can tell from this photograph
9 was designed envisioning a party wall.

10 COMMISSIONER ETHERLY: Okay.

11 MR. JESSEN: And that's what we're
12 doing.

13 COMMISSIONER ETHERLY: But, from
14 the standpoint of the location of the rooftop
15 structure, those windows are going to be in a
16 somewhat better position. I mean again I'm
17 not so concerned about it, but I just want to
18 make sure to kind of ask the question. Those
19 windows are going to be most certainly in a
20 better position to feel the affect --

21 MR. JESSEN: Okay.

22 COMMISSIONER ETHERLY: -- of the

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1 operation of that rooftop apparatus, but any
2 impact there would be minimal in your opinion.

3 MR. JESSEN: Correct. That's
4 correct.

5 COMMISSIONER ETHERLY: Okay.
6 Because the greatest possible setback would
7 conceivably benefit the owners or the users --
8 the utilizers of those windows I would hazard
9 a guess, but that's based on the belief that
10 there might be some adverse issue that needs
11 to be dealt with there. But, I think you're
12 clear in your testimony that no there isn't.
13 There wouldn't be. Okay.

14 And just to make sure I'm clear,
15 I'm coming back to Mr. Sher now. Just to make
16 sure I'm clear, Mr. Sher, it was the -- and
17 for Mr. Collins, it was the desire to or
18 thinking to err mostly likely on the most
19 restrictive reading of the regulations as it
20 relates to this question of use versus area
21 variance and that kind of more so dictated --
22 dictated the choice.

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1 Because I believe if -- and I know
2 we still have to get to the Office of Planning
3 report here. I believe the Office of
4 Planning's analysis was an use-variance
5 analysis and I'm getting an affirmative nod
6 from Ms. Brown-Roberts in that regard.

7 MR. COLLINS: You're correct. We
8 did analyze it in the most restrictive
9 interpretation as a use variance. Even though
10 as Mr. Sher pointed out, 1706.19 refers to a
11 variance as needed to increase the size of a
12 hotel, it calls the hotel a conforming use and
13 also that the section 1700.4 of the DD
14 Regulations which describe the DD Overlay says
15 as follows: "Whenever there are conflicts
16 between this chapter, chapter 17, and the
17 underlying zoning, R-5-E, the provisions of
18 the DD Overlay District shall govern."

19 So, that altogether still was not
20 clear to us. So, we erred on the side of
21 caution.

22 However, if the Board would like

1 to approve this as an area variance as opposed
2 to a use variance, we're certainly amenable to
3 that.

4 COMMISSIONER ETHERLY: Okay. And
5 just for the benefit of my colleagues, I'm not
6 quite certain yet where I am on that answer to
7 the particular question. I'm almost leaning
8 towards feeling that it's more so an area
9 variance because I don't believe the use is
10 necessarily in question here or being changed
11 in anyway, but I'm not sure how to answer the
12 question of it's an area variance to what?
13 Three fifty point four or one of the
14 provisions.

15 So, I'll just kind of leave that
16 open question out there, but I appreciate the
17 Applicant's decision to move with the more
18 restrictive reading just for the sake of
19 complete caution here.

20 Thank you, Madam Chair.

21 CHAIRPERSON MILLER: Mr. Collins,
22 could you just repeat which regulation you are

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1 referring to in deciding that you were going
2 to proceed as a use variance?

3 MR. COLLINS: Certainly. Section
4 350.4 is the regulation in the R-5-E zone, the
5 underlying zone, that allows a hotel in
6 existence as of May 12, 1980 or May 5th, 1980,
7 I don't have it in front of me, to exist but
8 not to expand.

9 Then you look at the DD
10 Regulations 1706.19 which allows a hotel
11 established pursuant to special exception
12 approval in an SP District which is this case
13 shall be deemed conforming, not nonconforming,
14 but conforming in the DD-R-5 zone. It shall
15 continue to be governed by the conditions of
16 the BZA and then it says finally, the last
17 sentence, "Enlargement or other changes shall
18 be governed by the variance provisions of
19 3103.2." It doesn't say use-variance
20 provisions. It doesn't say area-variance
21 provisions.

22 And then finally, we look at

1 1700.4 which says -- the last sentence of
2 which says "Whenever there are conflicts
3 between this chapter, chapter 17, and the
4 underlying zoning, R-5-E, the provisions of
5 the DD Overlay District shall govern." So,
6 what we have is that the DD regulations say
7 that expansion shall be governed by the
8 variance provisions and it doesn't say which.

9 The only thing that suggests use
10 variance is going back to the R-5-E provisions
11 which are overwritten by the DD.

12 So, in essence, we really don't
13 know and I don't think the Zoning Commission
14 -- certainly in their wisdom, they can -- they
15 think of a lot of things, but probably not
16 this situation. So, we erred on the side of
17 caution.

18 CHAIRPERSON MILLER: We've had
19 other cases where hotels have expanded that
20 were subject to similar kind of restriction.
21 You know, they were allowed, but they weren't
22 allowed to expand. Are you familiar with

1 those? Whether they were different from this
2 case.

3 MR. COLLINS: In the DD-R-5?

4 CHAIRPERSON MILLER: I'm not sure
5 they were in the --

6 MR. COLLINS: Okay. Well --

7 CHAIRPERSON MILLER: So, it's the
8 DD-R-5 that makes --

9 MR. COLLINS: This is really
10 particular for the DD-R-5.

11 CHAIRPERSON MILLER: Okay.

12 MR. COLLINS: If it were DDC-2-C,
13 it wouldn't -- this wouldn't -- we wouldn't
14 have this discussion. It's only the DD-R-5 or
15 the R-5 without DD certainly.

16 CHAIRPERSON MILLER: So, and did
17 you just decide it should you just to err on
18 the side of caution because you thought this
19 case could make that test or is there another
20 reason that you conclude that it should be use
21 versus area?

22 MR. COLLINS: Well, we believe the

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1 case did meet the test and felt comfortable
2 proceeding as a use variance.

3 However, we're happy to be
4 approved as an area variance.

5 CHAIRPERSON MILLER: Okay.

6 COMMISSIONER ETHERLY: I mean just
7 to come back to that discussion and again,
8 this might -- I mean it's an important
9 distinction, but maybe not necessarily one
10 that needs to be resolved today.

11 But, I'm perhaps inclined to -- I
12 mean Office of Planning said something that
13 was very I think important in their report and
14 that was that ultimately here there isn't
15 necessarily a conflict. I mean you can read
16 these provisions to reinforce one another and
17 it's on page 5 of the Office of Planning's
18 report where it reads the R-5-E District
19 requires BZA approval, yadda, yadda, yadda.
20 The regulations of the Overlay work in
21 conjunction with those of the underlying zone.

22 And I'm just wondering whether or

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1 not it's 350.4(d) that simply requires or
2 perhaps suggests that it's an area variance.
3 Because 350.4(d) is where you find the
4 restriction that the hotel -- the gross floor
5 area of the hotel may not be increased and the
6 land within the hotel, blah, blah, blah. I
7 mean is that where the expansion issue kind of
8 becomes -- the area issue becomes more of a
9 problem than perhaps, you know, taking a look
10 at 1706.19 and 1700.4.

11 Which I understand. I mean those
12 have to be read, but is it 350.4(d) that
13 creates the need for an area variance. Not a
14 use variance, but just an area variance.
15 Because you're looking to expand here.

16 MR. SHER: Well, there's always
17 the vaunted hybrid variance, but it -- I think
18 if we came in here and insisted it was an area
19 variance and proved the practical difficulty
20 and then the Board said no, it's a use
21 variance, we haven't met the test.

22 COMMISSIONER ETHERLY: Okay.

1 MR. SHER: If we came in here and
2 said it's a use variance and we proved it,
3 then if the Board says it's an area variance,
4 it doesn't matter.

5 COMMISSIONER ETHERLY: Right.

6 MR. SHER: So, we acted
7 accordingly.

8 COMMISSIONER ETHERLY: Understood.
9 Understood.

10 MS. MONROE: Can I weigh in?
11 Basically, you know, we can go -- fall back on
12 our well, it's certified. This is what was
13 requested. If the test is made, that's what
14 you can grant. If you want to grant lesser
15 relief, the area variance being say lesser
16 relief, that's fine.

17 I think it's better to err on the
18 side of caution particularly you don't have a
19 building permit yet and we don't want the ZA
20 saying oh, well, wait a minute. I read it as
21 a use variance. I mean then we're, you know,
22 in square one again.

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1 COMMISSIONER ETHERLY: And I'm
2 comfortable with that direction. Fine.

3 CHAIRPERSON MILLER: I think, Mr.
4 Etherly, also looking at 350.4, it can be read
5 as requiring a use variance because it says
6 that those -- the use is limited to the hotel
7 under those circumstances. So, then when you
8 go beyond those circumstances, it could be
9 argued that you would need a use variance.
10 Okay.

11 Any other questions? Okay. Why
12 don't we move to -- any other -- you're done
13 with your witnesses. Correct?

14 MR. COLLINS: That's it. Thank
15 you.

16 CHAIRPERSON MILLER: Okay. Thank
17 you. Wait. Sorry. I have one more question.
18 On the lot occupancy, I understand that, you
19 know, it's already nonconforming, but when you
20 put all the properties together, would there
21 still require a demolition in order to comply
22 with the 75 percent lot occupancy or does that

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1 influence the 75 percent figure once you put
2 the properties together?

3 MR. SHER: We are -- as Ms. Eig
4 referenced, we are removing parts of the rear
5 of the Chinese Community Church. So, when you
6 take that which is removed plus that which is
7 added, when you consider that on the whole
8 site, we are at the same overall lot occupancy
9 when we're done than when we started.

10 But, we are adding to the building
11 clearly. There's going to be 25,000 square
12 feet more or less more on this property when
13 we're done. So, it is an addition and
14 pursuant to 2001.3(a), you can only make an
15 addition if the building conforms with lot
16 occupancy. Because we don't conform with lot
17 occupancy, that's why we need the variance.

18 CHAIRPERSON MILLER: But, your
19 practical difficulty in conforming with lot
20 occupancy is?

21 MR. SHER: Well, again, it is the
22 design of the building, the need to connect

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1 around the back corner, the inability to take
2 more of the structure away than what we've
3 taken away to make that whole thing work.

4 MR. COLLINS: And just to answer
5 that, I believe that Mr. Jessen also talked
6 about the configuration of the rooms, the
7 minimum size requirements for the rooms that
8 face the courtyard.

9 MR. JESSEN: If we were to reduce
10 the -- try to get back down to 75, we would
11 have to demolish some of the historic portions
12 of the sanctuary space of the Chinese
13 Community Church.

14 CHAIRPERSON MILLER: Because you
15 need the rest of the rooms to make it viable?
16 I mean why would you have to demolish that?

17 MR. JESSEN: For the reasons that
18 they spoke of. To get the proper room size
19 and a connection at the back, we would have to
20 come forward and remove space at the back of
21 the Chinese Community Church. Is that clear?

22 CHAIRPERSON MILLER: Yes. Okay.

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1 Thank you. Okay. I guess we're ready for
2 Office of Planning.

3 MS. BROWN-ROBERTS: Good
4 afternoon, Madam Chairman and Members of the
5 Commission.

6 I am Maxine Brown-Roberts
7 representing the Office of Planning.

8 I think basically since the time
9 is going I'm going to stand on the record for
10 most of our report and -- but I -- there are
11 a few things, about two or three things, that
12 I wanted to address or just get our opinion on
13 the record.

14 The first thing is to contribute
15 to the discussion as to whether this is a use
16 or area variance. We discussed it and came to
17 the conclusion that it was to be addressed as
18 a use -- as a area variance.

19 We also had difficulty in
20 interpreting both section 350.4(d) and also
21 the regulation outlined for the DD Overlay
22 because we thought that there were -- there

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1 was a little conflict in both.

2 However, what we sort of fell back
3 on was in section -- in the R-5-E portion
4 where it sort of distinctly says that hotels
5 were basically not be expanded and so, that's
6 where we thought that was the higher threshold
7 and we will go that.

8 We could also see the argument
9 that the requirements of the DD Overlay is
10 sort of -- overrides the R-5-E, but I think
11 that's the -- we thought that going with the
12 most stringent regulation was best.

13 Let's see. Regarding the -- and I
14 think in our report we -- in the analysis, we
15 came to the conclusion that they were able to
16 meet the use variance request based on issues
17 such as the building not meeting the needs of
18 the church, the prohibitive nature of the
19 renovation, the lack of on-street parking --
20 on-site parking, the conversion of the church
21 residential use and the difficulty in selling
22 the project -- in selling the property.

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1 Regarding the roof structures
2 which is another major discussion here, we did
3 not address the roof structure to be included
4 in the height of the building and, therefore,
5 I sort of hesitate to address that here today.
6 So, just leave that alone.

7 Regarding -- as you see in our
8 report, we also had -- regarding the -- the
9 special exception in that we stated that we
10 thought that the application should be
11 addressed as a variance. We are aware -- the
12 Office of Planning is aware that the Board has
13 determined that the roof structure should be
14 addressed as a special exception. However, we
15 disagreed. We overtime have also analyzed it
16 as a special exception, but I think that
17 there's a discussion that has taken place and
18 we're past that.

19 But, we also want to point out
20 that although we analyzed it as a use -- as a
21 variance, we thing that the roof structure has
22 met the variance test in that the property is

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1 unique in that it's a combination of the three
2 buildings, the creation of a courtyard and the
3 limited flexibility to locate service
4 corridors in the building. This reduces the
5 area of the roof to accommodate the setbacks
6 and to serve the building.

7 We think that granting of a
8 variance for the setback would not impair the
9 public good or intent of the Zoning
10 Regulations and thinks that this setback will
11 also minimize the visual impacts from the
12 street.

13 Therefore, we recommend all the
14 variance requested by the Applicant.

15 Thank you, Madam Chairman.

16 CHAIRPERSON MILLER: Thank you. I
17 just want to follow up on Office of
18 Planning's, you know, change in position with
19 respect to 411, whether it's treated as a
20 special exception or variance.

21 Basically, this is a very recent
22 development that Office of Planning has taken

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1 that position and we've had a few cases where
2 the Board basically said well, it's been
3 treated as a special exception for over 30
4 years and so, it would be contrary to allow --
5 the Board's position to switch now and treat
6 it differently if circumstances aren't really
7 different, if we're just talking about
8 interpreting the regulation.

9 So, I guess my question is --
10 well, no. My statement then was this would be
11 for the Zoning Commission then to take a look
12 at. If we shouldn't be treating it this way,
13 then it's really up to the Zoning Commission
14 and they can make the change.

15 Is Office of Planning taking any
16 action to bring this issue to the Zoning
17 Commission?

18 MS. BROWN-ROBERTS: Not at this
19 time, but it is coming up in our zoning review
20 and it is on the list of things to clarify and
21 to have a wider discussion on.

22 CHAIRPERSON MILLER: Okay. Thank

1 you.

2 MS. BROWN-ROBERTS: Okay.

3 CHAIRPERSON MILLER: Other
4 questions for Office of Planning? Does the
5 Applicant have any questions for of planning?

6 MR. COLLINS: No, but I do want to
7 thank, Ms. Brown-Roberts for her cooperation
8 as we discussed this application. She was
9 very help of course.

10 CHAIRPERSON MILLER: I would also
11 want to comment that it's an excellent very
12 thorough report and that's why I don't think
13 we have two many questions plus all the
14 discussion we've we've had already on this
15 application.

16 Is the ANC here? I think I asked
17 that earlier, but just in case they came in.
18 All right. No one's here from the ANC.

19 Is there someone here who would
20 like to testify in support of the application?
21 Okay. Not seeing anyone. No, I do see you.
22 Come forward. I don't know whether you want

1 to speak in support or in opposition or
2 neutrally. You can -- you're the only person.
3 You can come forward.

4 Welcome and if you can give your
5 name and address for the record please.

6 MS. BUSENBURG: Good afternoon.
7 My name is Mary Busenburg and I'm a property
8 owner in the condominium that abuts the
9 Morrison-Clark proposed addition and I don't
10 know -- I'm not here in opposition certainly.

11 We've been very good friends and
12 good neighbors with the Morrison-Clark, but
13 I'm not certain that -- this is the first time
14 that I've had the opportunity really to take
15 a look at some of -- at the proposed changes
16 and there are some concerns about loss of
17 light on the west side of the building.

18 I believe the gentleman here said
19 that there would be no --

20 CHAIRPERSON MILLER: I don't think
21 the microphone's picking you up.

22 MS. BUSENBURG: I believe the

1 gentleman that testified on the end -- is it
2 Mr. --

3 MR. JESSEN: Jessen.

4 MS. BUSENBURG: Jessen. Testified
5 that there would be no impairment of windows
6 or view presently on the west side of the
7 Quincy Park Condominium. Is that correct?

8 MR. JESSEN: Along the west wall.
9 That's correct.

10 MS. BUSENBURG: Correct.

11 CHAIRPERSON MILLER: If you're
12 going to say something, you need to talk into
13 a microphone in order for the court reporter
14 to pick you up.

15 MR. JESSEN: We are adjoining our
16 addition to the west wall of the condominium
17 building. Currently, there are glass block
18 elements along that wall.

19 MS. BUSENBURG: Correct.

20 MR. JESSEN: But, no windows that
21 offer view or fresh air.

22 CHAIRPERSON MILLER: So, is there

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1 a certain amount of light that's being let in
2 now that will be blocked? Is that your
3 concern?

4 MS. BUSENBURG: Concern and I
5 understand that the view for the sixth to the
6 ninth floor will -- of L Street will no longer
7 exist.

8 MR. JESSEN: From which windows?

9 MS. BUSENBURG: I can certainly
10 provide a list of the specific units.

11 CHAIRPERSON MILLER: You know, I
12 think we can be a little flexible here and
13 maybe you can get an immediate response if you
14 want to describe to Mr. Jessen what you're
15 talking about.

16 MS. BUSENBURG: Well, first let me
17 clarify that I am an owner of a unit on the
18 other side of the building. Part of the
19 problem, and I spoke with Ms. Monroe earlier,
20 is that the law provides notice to be given --
21 sent out to condominium association and when
22 I looked at -- I requested and obtained this

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1 morning a copy of Exhibit I and on that
2 exhibit, it shows that notice was sent to
3 condominium association for 1001 L Street.
4 The name of the condominium is Quincy Park
5 Condominium.

6 The one across the street from us
7 further to the east is Quincy Court
8 Condominium Association. I see that's
9 identified in here.

10 So, I am not certain other than
11 the posted notice on the front that owners of
12 units affected by this change are aware of the
13 meeting. Because I'm a taxpayer and I did not
14 receive a notice. That's why I clarified with
15 her --

16 CHAIRPERSON MILLER: So, how are
17 you -- how are you aware of this proceeding?

18 MS. BUSENBURG: From the placard
19 on the front of the Morrison-Clark.

20 CHAIRPERSON MILLER: Okay. So,
21 was that in a fairly obvious place so that
22 others in the building --

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1 MS. BUSENBURG: Yes.

2 CHAIRPERSON MILLER: -- could have
3 seen that?

4 MS. BUSENBURG: They could have.

5 I --

6 CHAIRPERSON MILLER: So, you're --

7 MS. BUSENBURG: But, you know --

8 CHAIRPERSON MILLER: Okay.

9 MS. BUSENBURG: Excuse me for
10 interrupting, Madam Chairman. I'm not certain
11 that we're familiar with procedures to make
12 appearances or to file the paperwork necessary
13 and I'm hoping that, you know, people would go
14 to that effort if we would maybe sit down and
15 talk with our neighbors and find out just
16 exactly how some of the owners would be
17 impacted by the changes they anticipate.

18 So, I think what I'm really
19 requesting here is that we have an opportunity
20 to do that.

21 CHAIRPERSON MILLER: Mr. Collins,
22 did -- was there any attempt to show the plans

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1 to the neighboring condominium building?

2 MR. COLLINS: There were several
3 meetings where these plans were shown. The
4 ANC on several occasions. The Logan Circle
5 Community Association.

6 We did not go around, I don't
7 believe, to all of our individual neighbors
8 and knock on doors, but just let me say two
9 things.

10 In terms of the notice provisions,
11 the notice was provided in accordance with the
12 Board's regulations. The list of adjacent
13 owners and condominium associations is that
14 which is listed in the city's records and
15 that's what we used.

16 With regard to that specific
17 question about the units on L Street that
18 would lose windows, I believe that's probably
19 -- looking at the drawings, the boards, the
20 photos on the -- to our right here, to your
21 left sitting there, it does show that the
22 building as proposed will set back so that

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1 those -- those units on the top floors that do
2 have a west facing window, that window will
3 not be blocked.

4 John, you have to talk in the
5 microphone. John. John, talk in the
6 microphone.

7 CHAIRPERSON MILLER: You need to
8 get a microphone.

9 MR. JESSEN: Okay. The windows --
10 I think you might be referring to are on this
11 side here and --

12 MS. BUSENBURG: Yes.

13 MR. JESSEN: -- we are not
14 building in front of those windows.

15 MS. BUSENBURG: Okay.

16 MR. JESSEN: We're setting the
17 building back. All the way back to here. So,
18 we don't show the windows on this model, but
19 they're all in this area. You can see where
20 the line -- that's a material change on your
21 building.

22 MS. BUSENBURG: Right.

1 MR. JESSEN: All of the windows
2 are in here.

3 COMMISSIONER ETHERLY: And, Mr.
4 Jessen, as a follow-up and to give a little
5 more shape to this point, are there windows --
6 if I look at what is the second sheet on the
7 submittal was provided today and I realize you
8 may not have a copy of the submittal, but they
9 also do show windows towards the rear of the
10 neighboring condo building.

11 MR. JESSEN: Right.

12 COMMISSIONER ETHERLY: As you go
13 back along what would be your new roof line.

14 MR. JESSEN: They're glass block.

15 COMMISSIONER ETHERLY: Those are
16 also glass block as well?

17 MR. JESSEN: Those are glass
18 block. These are actually windows in the
19 front side.

20 COMMISSIONER ETHERLY: Okay.

21 MR. JESSEN: These are glass block
22 openings.

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1 COMMISSIONER ETHERLY: Those are
2 glass blocks. But, if you continue beyond the
3 glass blocks --

4 MR. JESSEN: Yes, I'm sorry.

5 COMMISSIONER ETHERLY: yes.

6 MR. JESSEN: Correct.

7 COMMISSIONER ETHERLY: If you
8 continue to the rear beyond that row of glass
9 block, are those windows that appear to be at
10 the rear --

11 MR. JESSEN: Yes.

12 COMMISSIONER ETHERLY: -- of the
13 -- what are the Quincy Park --

14 MS. BUSENBURG: Park.

15 COMMISSIONER ETHERLY: --
16 Condominiums, will those windows be affected?

17 MR. JESSEN: We are setting the
18 building back from those windows. We're
19 preserving those windows as well.

20 COMMISSIONER ETHERLY: Okay. And
21 it's not -- we're not able to see from the
22 photographic representation whether or not

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1 those windows are occurring only at the upper
2 levels of the Quincy Park. Are those windows
3 all the way from ground level up or is it just
4 like a set of two or so?

5 MR. JESSEN: All the way up.

6 COMMISSIONER ETHERLY: All the way
7 up. So --

8 MR. JESSEN: And the building will
9 be set back all the way up.

10 COMMISSIONER ETHERLY: Okay.

11 MR. JESSEN: Preserving all of
12 those windows.

13 COMMISSIONER ETHERLY: So, those
14 windows will still be open?

15 MR. JESSEN: Yes.

16 COMMISSIONER ETHERLY: I see.

17 MR. JESSEN: The only --

18 MS. BUSENBURG: And -- excuse me.

19 MR. JESSEN: Go ahead.

20 MS. BUSENBURG: There are also
21 patios and for the units on that side of the
22 building, that will be the only light source

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1 into their condominium. Because the hallway
2 runs the length of the building.

3 MR. JESSEN: Okay.

4 MS. BUSENBURG: So, that those to
5 the west only have that light source.

6 MR. COLLINS: If I can maybe ask
7 Mr. Jessen to address that. The windows, the
8 glass block windows are adjacent to a
9 corridor.

10 MR. JESSEN: Okay.

11 MR. COLLINS: But, as you get into
12 the area that you were talking about, Mr.
13 Etherly, there are windows that face south and
14 there are windows then facing west on those
15 corner units.

16 That area, if I may get into that.

17 COMMISSIONER ETHERLY: Please.

18 MR. COLLINS: That area is -- that
19 setback is actually on the property of the
20 condominium and that setback is there pursuant
21 to an easement. I have copies if you'd like.
22 I can hand them in and I've highlighted them

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1 to show you. There's a 3-foot-wide easement
2 for all purposes that the owner of the condo
3 gave to the church. So, the church's property
4 is built to its lot line back there on this
5 plan. There's a 3-foot setback that the condo
6 provided to the church for all purposes.
7 There's other areas where the condo provided
8 to the church easements only for access -- for
9 vehicular and pedestrian access, but in this
10 little 3-foot-wide area which is a court
11 niche. It is an easement for all purposes
12 meaning light and ventilation. So, that the
13 -- the church was allowed to build their
14 property line. That the condo gave the church
15 an easement for light and ventilation.

16 COMMISSIONER ETHERLY: Okay.

17 MR. COLLINS: It didn't go the
18 other way, but nonetheless, we are providing
19 -- we have -- there's this 3-foot-wide area.
20 The building code does not allow those --
21 those windows in the condo that face south to
22 be used for required light and ventilation

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1 because they face a 3-foot-wide court niche on
2 their own property.

3 MR. VOGEL: I just want to mention
4 one thing.

5 MR. COLLINS: Sure. Sure. Well,
6 that was the -- the easement was negotiated as
7 part of an alley closing --

8 COMMISSIONER ETHERLY: Okay.

9 MR. COLLINS: -- where the church
10 got 3 feet of the east/west alley on 6th with
11 east faced alley. The condo got 3 feet as
12 well, but they gave an easement to the church
13 for that purpose.

14 Well, the court -- yes, the condo
15 would not have been built without the alley
16 closing. But, in terms of easement, the
17 easement is in favor of the church.

18 Those windows could not be -- on
19 the condo that face south cannot be for
20 required light and ventilation under the
21 building code.

22 COMMISSIONER ETHERLY: So, let me

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1 just kind of phrase the question very -- just
2 very roughly and Ms. Brown-Roberts was kind
3 enough to indicate that on what is the third
4 page of your new submittal there is a slight
5 shot of kind of a little bit of the alley
6 context if you will back there showing some of
7 the windows and showing some of the small
8 balconies.

9 That's correct, Mr. Jessen. I'm
10 looking at the picture that's at the bottom in
11 that middle column. Yes, sir, right there.

12 Is that the side that we're
13 roughly about? Again, once you move from the
14 front of the Quincy Park Condominium to the
15 rear, is that beginning to -- is that the side
16 that we're talking about? Once you go past
17 that row of glass block buildings.

18 MR. JESSEN: It is, but it's a bit
19 deceiving because it appears that these
20 buildings are attached. There's actually
21 substantial gap between them.

22 COMMISSIONER ETHERLY: Three foot.

1 Is that where the 3-foot gap is?

2 MR. JESSEN: More -- more -- more
3 than that.

4 COMMISSIONER ETHERLY: Okay.

5 MR. JESSEN: And let me just try
6 to demonstrate on this floor plan. You're
7 seeing this corner.

8 COMMISSIONER ETHERLY: Okay.

9 MR. JESSEN: In this photograph,
10 the carriage house is here. So, this is the
11 carriage house.

12 COMMISSIONER ETHERLY: Okay.

13 MR. JESSEN: The corner of it is
14 quite far from the edge of that condominium.

15 COMMISSIONER ETHERLY: Okay. So,
16 if I'm one of the residents in that rear --

17 MR. JESSEN: Okay.

18 COMMISSIONER ETHERLY: -- what
19 will I see with the new addition? What would
20 I see with the new addition?

21 MR. JESSEN: From the windows that
22 go westward, you wouldn't be interrupted.

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1 You'll see a building over 3 feet away from
2 this window.

3 COMMISSIONER ETHERLY: Okay.

4 MR. JESSEN: That's the easement
5 that Mr. Collins was referring to.

6 COMMISSIONER ETHERLY: Okay. So,
7 but you would anticipate that there would be
8 some impact to light and -- to light at least.
9 I'm not necessarily trying to quantify it.

10 MR. JESSEN: Right.

11 COMMISSIONER ETHERLY: I'm not
12 trying to put you on the spot and box you into
13 a corner, but --

14 MR. JESSEN: Well, you're going to
15 get some daylight in there. It's not going to
16 be direct daylight that they enjoy right now.

17 COMMISSIONER ETHERLY: Okay.
18 Okay.

19 MR. JESSEN: But, it will defused
20 and so will we.

21 COMMISSIONER ETHERLY: Okay.
22 Okay. And I'm just trying to get a sense of,

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1 you know, giving some context to the comments
2 that were raised by you. I'm not necessarily
3 at a point where I'm saying, you know, brakes
4 or let's slow down, but I'm just trying to
5 kind of continue to amass the information
6 together on it. Okay. Thank you.

7 Thank you, Madam Chair.

8 CHAIRPERSON MILLER: Mr. Jessen,
9 before you set down, could you just show us
10 exactly where is that 3-foot easement that Mr.
11 Collins referenced?

12 MR. JESSEN: It's the dimension
13 between the back of our building --

14 CHAIRPERSON MILLER: Okay.

15 MR. JESSEN: -- and the shaded or
16 hatched area that represents the outline of the
17 condominium tower. This dimension.

18 CHAIRPERSON MILLER: It's -- the
19 white area is the easement?

20 MR. JESSEN: It's the white --

21 CHAIRPERSON MILLER: But, you're
22 not building in the easement.

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1 MR. JESSEN: Correct. Our
2 property line --

3 COMMISSIONER ETHERLY: Why is that
4 issue then if you're not building in the
5 easement area?

6 MR. JESSEN: I think the issue is
7 views and daylight.

8 COMMISSIONER ETHERLY: Because the
9 windows that are represented on the picture
10 that we just talked about --

11 MR. JESSEN: Here?

12 COMMISSIONER ETHERLY: Yes, sir.
13 Those windows would be reflected where on the
14 floor plate seat?

15 MR. JESSEN: Correct. Correct.
16 These windows and balconies are unobstructed
17 after --

18 COMMISSIONER ETHERLY: Okay.

19 MR. JESSEN: -- we're done with
20 the project if we go forward. Because they're
21 on this side.

22 COMMISSIONER ETHERLY: I see.

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1 MR. JESSEN: They look down the
2 alley.

3 COMMISSIONER ETHERLY: I see and
4 what's on the other side?

5 MR. JESSEN: On this side --

6 COMMISSIONER ETHERLY: Yes, sir.

7 MR. JESSEN: -- is -- do you see
8 the very top?

9 COMMISSIONER ETHERLY: Yes, sir.

10 MR. JESSEN: This small wall goes
11 all the way down to the ground and provides
12 ventilation windows along the side.

13 COMMISSIONER ETHERLY: Okay.

14 MR. JESSEN: All the way down.
15 That's where we will build up to our property
16 line.

17 COMMISSIONER ETHERLY: And when
18 you say ventilation windows, those are windows
19 that are open and operable for residents of
20 those units? So, those windows would have
21 some impact.

22 MR. JESSEN: We would have a

1 building -- our new building just over 3 feet
2 away from those.

3 COMMISSIONER ETHERLY: Got you.
4 Understood. Okay. Okay. Thank you.

5 Thank you, Madam Chair. Pardon
6 the interruption.

7 MR. JESSEN: I think the issue
8 was, if I may, as it began, was the views on
9 L Street which back to our model photograph --

10 COMMISSIONER ETHERLY: Are not
11 impacted.

12 MR. JESSEN: Completely behind
13 that.

14 COMMISSIONER ETHERLY: Got you and
15 I understand that. I'm -- I'm -- I've kind of
16 moved it a little bit beyond that particular
17 inquiry -- but, again, the testimony that was
18 being provided by the witness was helpful in
19 terms of kind of laying out some of the
20 overall impact and I'm just using the word
21 impact lightly. I'm not trying to
22 characterize it at this point. Thank you.

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1 Thank you, Madam Chair.

2 CHAIRPERSON MILLER: Go ahead.

3 Thank you, Mr. Etherly.

4 MS. BUSENBURG: We also have some
5 concerns about parking in the area and it's a
6 zone 2 now. In our building, we have 90
7 units, 75 parking spaces. Which means the
8 people who do have vehicles, 15 of those, have
9 to buy the small stickers and park on the
10 street.

11 Across the street from us on 10th
12 Street is another large condominium
13 association Quincy Court, 136 units. I'm not
14 certain of the number of the parking spaces.
15 It's built by the same developer. I might
16 just assume that they don't have 136
17 underground parking spaces.

18 And directly to the north is Mount
19 Vernon Plaza which is a huge apartment
20 complex.

21 There are also residences up and
22 down 10th Street that do not have garages

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1 attached. So, there's already significant
2 parking in the area.

3 In the case of -- will there be
4 like taxi zones where taxis can park or vans
5 for the hotel can park along L Street?

6 CHAIRPERSON MILLER: Is that a
7 question?

8 MS. BUSENBURG: It is.

9 CHAIRPERSON MILLER: Okay. But,
10 the inn has been in operation. So -- for a
11 long time. So, are you asking that because
12 you think that because of this addition that
13 they will then require that to occur even
14 though it hasn't occurred in the past?

15 MS. BUSENBURG: Well, because the
16 actual entrance -- even though there is a
17 front entrance on L Street, the actual
18 entrance used by most of the shuttle vans,
19 taxis is on 11th Street. That would change
20 with the new configuration.

21 CHAIRPERSON MILLER: Okay. We can
22 ask the Applicant to address that if you like.

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1 MS. BUSENBURG: Thank you.

2 CHAIRPERSON MILLER: Okay. Mr.
3 Collins, who do you want to address that
4 concern? Is there going to be a change with
5 respect to taxi stands or shuttle buses
6 because of the change with these plans?

7 MR. VOGEL: If there is a -- there
8 is a current designated -- is this on? The
9 current designated entrance to the Morrison-
10 Clark, Mr. Jessen mentioned that before where
11 the entrance to the Morrison-Clark now is on
12 11th Street. So, when this moves -- when the
13 entrance moves over to the L Street side
14 whatever was on the 11th Street side will then
15 go away, return to parking presumably and then
16 the same number of whatever that linear
17 footage roughly will just simply move over to
18 L Street. I'm just speaking approximately.
19 I'm not giving you any dimensions or anything.
20 I'm just saying approximately. So, in our
21 minds, it's a one for one exchange and a net
22 neutral effect on those issues.

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1 MS. BUSENBURG: Thank you.

2 CHAIRPERSON MILLER: Anything else
3 you want us to --

4 MS. BUSENBURG: No, not at this
5 time, but for clarification, do we still have
6 an opportunity to present something in writing
7 to the -- to you and your Board?

8 CHAIRPERSON MILLER: Well, it
9 depends what the Board decides to do at this
10 point. It would be late unless the Board, you
11 know, waives its rules and decides to keep the
12 record open if we found there was compelling
13 good cause to do that.

14 Were you aware of the ANC meetings
15 or anything like that? I mean because the
16 only reason that we would do that, I think, in
17 this case would go to whether there was not
18 adequate notice and what Mr. Collins said is
19 that they complied with all the notice
20 requirements, but -- and I understand
21 obviously they did the placard because you saw
22 that. But, if you want to say anything

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1 further with respect to that, we would
2 entertain it. But, I know that the community
3 organizations have weighed in and the ANC has
4 weighed in and so, I guess my question is
5 where you aware of those meetings?

6 MS. BUSENBURG: Well, I heard
7 after the fact that there was an ANC meeting
8 where the presentation was made, but I don't
9 know how notice is given to the residents as
10 far as -- I guess I'd have to ask the ANC
11 person how they notify all of the residents in
12 the area of these meetings number one.

13 No, I don't want to ask for a
14 variance. I don't want to delay things. I
15 just want to have a forum for residents to
16 express their concerns and it sounds like that
17 time frame has passed.

18 What does concern me a little has
19 nothing to do with the people here. Actually,
20 with you, is the way that I learned this
21 morning the law is written. That proper
22 notice means that you can send out a notice of

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1 this issue to -- addressed to a condominium
2 association at a particular address rather
3 than to the taxpayers who are located at that
4 address. So, maybe that's a concern that your
5 legal counsel can address in the future.

6 Thank you.

7 CHAIRPERSON MILLER: Okay. I mean
8 the other thing is our regulations attempt to
9 require notice by various means so that, you
10 know, if you don't get one, like for instance
11 you didn't -- may not have gotten an
12 individual notice, it just went to your
13 condominium association, that you would either
14 see the placard or you would get notice
15 through your ANC or other means.

16 So, I guess my only other question
17 to you is, though, you did get notice and you
18 did come and testify. So, I'm not sure what
19 your concern is about, you know, leaving the
20 record open.

21 MS. BUSENBURG: That I'm the only
22 one here out of 90 people and I don't think

1 that 89 other people aren't here because they
2 weren't interested.

3 CHAIRPERSON MILLER: Okay. You
4 don't know of anybody though in particular.

5 MS. BUSENBURG: I have an e-mail
6 here from one person who had some concerns
7 about how high would it be. Because at this
8 point, we didn't -- we weren't even aware of
9 that. How high. I mean I have an e-mail and
10 some parking questions.

11 CHAIRPERSON MILLER: Okay. I
12 hear. So, part of what you're saying is --

13 MS. BUSENBURG: Sorry.

14 CHAIRPERSON MILLER: -- you want
15 more information about the project.

16 MS. BUSENBURG: I'm not prepared.
17 I hear.

18 CHAIRPERSON MILLER: Right?

19 MS. BUSENBURG: Yes.

20 CHAIRPERSON MILLER: Okay. There
21 isn't anything more that you know of that you
22 would like to say. You're not even

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1 necessarily opposing it. You just would like
2 at least more information?

3 MS. BUSENBURG: Correct.

4 CHAIRPERSON MILLER: Okay.

5 MS. BUSENBURG: Thank you.

6 CHAIRPERSON MILLER: You're
7 welcome. Mr. Collins, do you have anything to
8 say with respect to that?

9 MR. COLLINS: Should I do it now
10 or in closing or --

11 CHAIRPERSON MILLER: Just with
12 respect to -- for instance, if the Board were
13 to proceed today, I mean we're going to see
14 what we're going to do, but would the
15 Applicant be willing to at least show the
16 condominium owners next door the plans
17 regardless of this proceeding?

18 MR. COLLINS: Well, certainly, we
19 want to cooperate with everyone. This has
20 been ongoing for a long time. We filed this
21 application back last summer and we went
22 through the process and provided all the

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1 required notices, met with the community
2 groups, did all -- you know, did the -- the
3 notices were sent out. The property was
4 posted. We have our hearing date. We've done
5 everything that we're required to do and I
6 don't mean any disrespect, but if people
7 didn't avail themselves of opportunities to
8 check into it or to do whatever, to come to
9 the meetings, to find out when the meetings
10 were, then that shouldn't be our burden.

11 We've done everything. We'd like
12 to get on. You know, it's been a long time.
13 We'd like to just get on with the application.

14 So -- yes, that's true actually.
15 The -- I'm sorry. What was -- what Mr. Vogel
16 reminded me of is that the ANC has a two-step
17 process. Before you go every time, they have
18 a development committee that you go to before
19 you go to the full ANC and we were at the
20 development committee twice and maybe three
21 times. They are very organized as he said and
22 so, we have -- yes, there several times.

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1 So, we were a total -- the ANC a
2 total of five or maybe six times. The Logan
3 Circle Community Association once, maybe
4 twice. The Historic Preservation Review Board
5 once. So, we've been there a number of times.
6 A number of different -- you know, a number of
7 different forums.

8 CHAIRPERSON MILLER: Okay. I hear
9 you. Okay. What I also want to say is I'm
10 sure the ANC has a copy of all of the plans as
11 well and they should have a copy of the
12 updated plans, the revised plans that you just
13 gave us today.

14 MR. COLLINS: That's correct.

15 CHAIRPERSON MILLER: So, any
16 community member can ask the ANC to see the
17 plans. Okay. And for assistance, I think in
18 understanding the plans.

19 All right. Is there anybody else
20 here who wishes to testify in this case?
21 Okay. Then any other questions? All right.
22 Then it's time for closing arguments.

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1 MR. COLLINS: Thank you. I think
2 you've heard a full and complete presentation
3 by the Applicant and all the witnesses here.
4 I just -- I do want to say a few things in
5 response to what was raised.

6 In terms of the concerns that were
7 expressed about the units on L Street losing
8 views, I think that Mr. Jessen explained in
9 detail about windows that do face west on the
10 upper floors of the condominium building to
11 the east will not be impacted by the building.

12 The windows that are on the south
13 facing wall at the back of the building of the
14 condominium building, the south facing facing
15 into our building that Mr. Jessen spoke about,
16 those are windows that in a building code are
17 not allowed to be used for required light and
18 ventilation.

19 So, to the extent they were built
20 by the condo there, they don't meet that
21 requirement for the requirement light.
22 They're put there on an easement that they

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1 granted to the church and we are the
2 successor's interest to the church. They put
3 the windows there.

4 They are not like at risk windows
5 because we can't build up to because that's
6 not our property. But, it -- they are at risk
7 in the sense that they are not windows for
8 required light and ventilation. They are
9 there because there's an opportunity to get
10 some light although it's -- it will be, you
11 know, lesser than the windows that are in
12 those same units that face west and look down
13 the alley that Mr. Jessen pointed to.

14 The notice was went properly. I
15 do have -- if you'd like, I have a copy of the
16 easement that was negotiated between the
17 developer of the condo and the church that
18 shows the easement. If you'd like, I can
19 introduce those to the record.

20 I'd also offer to introduce to the
21 record a case decided by the D.C. Court of
22 Appeals which I think you've seen in other

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1 hearings, other cases that I've introduced.
2 It's the case known as Hefazi H-E-F-A-Z-I v.
3 Stiglitz S-T-I-G-L-I-T-Z. It's from the D.C.
4 Court of Appeals 862 A 2nd 901 decided in
5 2004. This is one that stands for the
6 proposition that an abutting owner does not
7 have your prescriptive easement for light and
8 ventilation. That people take their light and
9 ventilation from their own property not from
10 neighboring properties unless there's an
11 expressed easement granted.

12 In this case, there was an express
13 easement granted to the church from the condo,
14 but not the other way and if you'd like, I can
15 hand those two documents in and I've
16 highlighted page 16 of the case and I've
17 highlighted the easement as well. Did I
18 misplace the easement? There.

19 As Ms. Bailey is handing them out,
20 the easement document is called -- across the
21 top, it says Easement and Covenant Agreement.
22 I've highlighted on page 2 of that document

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1 paragraph number 3 where it just -- that's the
2 meat of it. Describes the declaration of
3 easement which says and I'll read it. "Carr,"
4 that the developer of the condominium, "does
5 hereby grant an convey to the church for any
6 and all uses an exclusive perpetual easement
7 in the portion of the north half of the closed
8 alley which abuts the portion of the south
9 half of the closed alley statutorily to be
10 granted to the church" and then paragraph 7,
11 duration of easement, it says in perpetuity.

12 If you go a few more pages,
13 actually toward the last -- second to last
14 page of that document, I've -- which has a --
15 and I'm holding up and showing you it has the
16 map that shows the easement area with the
17 highlight -- with the arrows showing where the
18 easement area is that the developer of the
19 condo granted to the church.

20 The other case Stiglitz, I'm
21 sorry, Hefazi v. Stiglitz that is on page 16
22 where I've highlighted for you the language

1 the court stated there where they recognize
2 that the prevailing rule in the American
3 courts is that actual enjoyment of air and
4 light by an owner of a house is upon his land
5 only and that the owner of the adjoining lands
6 has submitted to nothing which actually
7 encroached upon his rights. So, no action can
8 be maintained to obstruct a view. What this
9 does is stamp the proposition that the
10 prevailing American law is that everyone takes
11 their light and air from their own property.
12 They do not get any prescriptive easement over
13 anyone else's property.

14 In this case, because the condo
15 developer chose to develop a building with
16 windows that are 3 feet from the property
17 line, he did so knowing that that was a
18 possible at risk window.

19 But, having said all that, I do
20 believe that we have addressed the concerns
21 that were raised by Ms. Busenburg in her
22 comments here.

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1 Parking in the area, that was an
2 issue that the ANC raised. Mr. Vogel spoke
3 about that. In fact, the ANC, one of the
4 reasons that they supported the hotel is
5 because in their view the hotel would have the
6 least amount of impact. Less even so than the
7 church which every Sunday comes and fills the
8 neighborhood. That is a big issue in that
9 neighborhood. There's a lot of churches. A
10 lot of Sunday congestion and they felt that
11 this situation where we are providing some
12 parking on the site more so than a residential
13 development could provide on this site with
14 less cars coming to the site.

15 In terms of height, we've
16 addressed that issue that Ms. Busenburg
17 raised. The building and the roof structure
18 together will be lower than the matter of
19 right. Lower than their building.

20 A forum, yes, we've spoken to the
21 ANC. The ANC has all these documents.

22 So, I do believe that we have

1 addressed all the concerns that have been
2 raised and we have a plan that is sensitively
3 designed and takes all these issues into
4 consideration.

5 So, with that, I thank you and ask
6 for your vote at the earliest possible time.

7 CHAIRPERSON MILLER: I have one
8 question for you. As a follow-up to your
9 discussion with Mr. Dettman about how you
10 wouldn't need a variance from the parking
11 requirements because you're going to be
12 tweaking your plans --

13 MR. COLLINS: Yes.

14 CHAIRPERSON MILLER: -- to have
15 less gross area. Is that it?

16 MR. COLLINS: Yes.

17 CHAIRPERSON MILLER: Okay. My
18 question is as a general rule we -- when we
19 grant an application, we do it in accordance
20 with the plans that are attached and so, I
21 guess in this case I'm -- I want to ask you,
22 you know, what's your opinion with respect to

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1 how this is treated, number one? Can they be
2 tweaked in the near term so that we have the
3 right plans or, number two, are you going to
4 be asking us for flexibility that we can
5 carefully craft -- that wouldn't affect the
6 zoning relief that you're seeking?

7 MR. COLLINS: Well, the plans --
8 actually all of the proposed construction
9 plans that are in the booklet that we
10 submitted with the pre-hearing statement are
11 all stamped with the same language that said
12 the interior layouts shown on the building
13 plans here in our schematic. Changes to the
14 layouts not affecting the exterior building
15 envelope may occur during design development
16 and permit drawings. Building plans are also
17 subject to final approval by the Historic
18 Preservation Review Board.

19 We would ask that in any -- if you
20 do grant approval that your approval would
21 allow flexibility on that language and also
22 flexibility to allow us to reduce the --

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1 certainly when you approve, you approve a
2 maximum and we could -- if we built less --
3 even though you approve a set of plans, if we
4 built less, my experience has been, one, we go
5 to the Zoning Administrator and he sees a plan
6 that shows less construction. He normally
7 does approve that.

8 But, we could ask for flexibility
9 to revise the plan as necessary to conform to
10 the requirements at 2120.4 so that no
11 additional parking would be required.

12 It was brought to my attention
13 that the square footage number that we
14 provided to you does include the roof
15 structure. So, if you approve it as a roof
16 structure special exception, then we can
17 eliminate that square footage and we may, in
18 fact, be below the number that 2120.4 would
19 impose upon us.

20 CHAIRPERSON MILLER: So, that
21 would just involve a calculation you would
22 need to make to see whether the -- you'd come

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1 within it. Correct?

2 MR. COLLINS: That we could make
3 and submit to you.

4 CHAIRPERSON MILLER: Okay.

5 MR. COLLINS: But, in any event,
6 possibly the flexibility that I discussed
7 would be -- and I'd be happy to submit draft
8 language in that respect to the staff.

9 CHAIRPERSON MILLER: All right.
10 Just give us a moment to see how we want to
11 proceed on the --

12 MR. COLLINS: All right. Thank
13 you.

14 CHAIRPERSON MILLER: Okay. We're
15 all a bit faint up here, but I think we're
16 going to deliberate today since it's all very
17 fresh in our minds and I think a very full
18 case has been presented. So, I guess I will
19 just start on the -- and then the others can
20 join in.

21 I think that the Applicant made a
22 very strong case here for an exceptional

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1 condition that exists starting with the fact
2 that these are four historical properties or
3 five historical buildings all being put
4 together for use.

5 And the exceptional condition, we
6 talk about different variances, but I think
7 the exceptional condition really can go to
8 both -- goes to both area variances and the
9 use variance. There are certain features here
10 that make it difficult for others to put it to
11 a different use and this is part of the use
12 variance, but, in fact, it was put out on the
13 market and no other purchaser came forward.
14 It has certain constraints in it in that it's
15 located in the mid-block. It's a narrow
16 property. There's I think minimal alley
17 access and that the whole preservation of
18 these various buildings and that gives rise to
19 various expenses and also less flexibility in
20 changing them for different uses.

21 With respect to the very specific
22 area variances, there was the rear yard one.

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1 It's already not in compliance. Most of the
2 buildings are not in compliance with the rear
3 yard. They don't have any. There's one piece
4 that the Applicant is filling in instead which
5 makes a lot more sense. Because to comply
6 with the rear yard requirements, there would
7 have to be demolition of historic properties
8 and that's not even really an option or a good
9 option and the flip side is that they're
10 providing more green space in the court area.

11 And with the lot occupancy, again,
12 it was -- 75 percent is required and they have
13 80 percent and we examined that as well. It's
14 already nonconforming and to conform, they
15 would have to they said today do some
16 demolition to offset some of the additions
17 that they're making to make this work with all
18 the connections and so, that's a practical
19 difficulty.

20 I think when they talked about the
21 use variance, it wasn't just that there was no
22 possible use and, in fact, perhaps it could be

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1 made -- the church could be reconfigured to be
2 used residentially, but it didn't work
3 financially and part of that test is that
4 there has to be a fair and reasonable return
5 on that and that's why they didn't get any
6 offers.

7 This is really actually a very
8 exciting adaptive reuse that the ANC has
9 supported, that Logan Circle Community
10 Association supports. It makes the most sense
11 as far as no substantial detriment. It makes
12 the most sense. It is near the convention
13 center. So, the use as a hotel works and it
14 has less adverse impacts than any other use
15 that we've been discussing because it doesn't
16 add more parking problems and, in fact, this
17 is the only use that would actually allow
18 parking to be increased because it's the same
19 owner.

20 And we didn't hear any testimony
21 that there were going to be adverse impacts
22 from increasing the number of guests that

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1 would come to this hotel because the other
2 uses that could go in here would actually, for
3 instance, residences would increase more
4 people, et cetera.

5 So, I think that's really just
6 kind of like a highlight. We heard an awful
7 lot today. Perhaps others can address
8 anything that I've missed. I'm sure I've
9 missed a lot at this point. It was a very,
10 very full and comprehensive record.

11 And we talked about, you know,
12 whether this is use or area variance and
13 decided at least at this point to go the
14 conservative route since the use provision
15 that it's under restricts it to a certain use
16 and any expansion requires variance relief.

17 COMMISSIONER ETHERLY: Madam
18 Chair, I'd like to associate myself with your
19 remarks as it relates to the analysis of both
20 a variance test and most certainly the special
21 exception relief.

22 Perhaps just for purposes of

1 clarification as we have been at this for
2 quite some time and rightfully so as it is a
3 complicated -- it's a complicated inventory of
4 relief being sought here.

5 What was -- did we resolve the
6 question of special exception versus variance
7 relief on the roof structure or --

8 CHAIRPERSON MILLER: You know
9 what? I actually only did the variance test.
10 I really didn't do the roof structure special
11 exception.

12 COMMISSIONER ETHERLY: Okay.
13 Okay. I'll just stick --

14 CHAIRPERSON MILLER: So.

15 COMMISSIONER ETHERLY: -- I'll
16 just stick with the variance test for now then
17 as we move through this very deliberately
18 again.

19 I think both on the use -- on the
20 use side and for the other area variance
21 relief, again I think you've hit all of the
22 key aspects as it relates to some of the

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1 critical challenges with respect to the
2 property itself in terms of both the existing
3 hotel and, of course, the church in the form
4 of the sanctuary and the old parsonage.

5 Clearly, there is a great deal of
6 consideration I believe that's been given
7 properly so to the preservation and respectful
8 preservation if you will of the existing
9 church structure both from an historic
10 standpoint and from the standpoint of
11 incorporating those two structures into the
12 existing hotel but doing it in such a way that
13 remains respective of the tradition.

14 I think with respect to the
15 conversation that we necessarily needed to
16 have regarding impacts to the -- to any
17 adjacent buildings, but in particular, our
18 discussion about the adjacent condominium, I
19 would share your points with respect to -- and
20 the points made by the Applicant with respect
21 to, one, the absence of impact on the windows
22 that are most directly nearest to L Street and

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1 then as we move to the rear of the property,
2 again you alluded to the discussion that we
3 had about the easements and about what's
4 happening the alley area. The Applicant was
5 correct to note that -- that there was clearly
6 an understanding, clearly an ongoing notice
7 here, if you will, with respect to the
8 eventual possibility that there could be
9 construction at the rear of that line by
10 virtue of the easement that was entered into
11 the record by the Applicant.

12 That being said, there will still
13 continue to be the availability of some light
14 and air and although that's not necessarily a
15 direct aspect of the test here, I think it's
16 important to have that discussion and the
17 testimony that was provided by the one
18 resident witness from the adjacent condominium
19 was indeed helpful in terms of ferreting out
20 some of the questions that I think needed to
21 be explored, but I think the record -- the
22 factual scenario here clearly supports

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1 nevertheless a favorable view with regard to
2 the variance test here and that important
3 final prong with respect to can the variance
4 relief be granted without substantial
5 detriment to the public good and without
6 substantially impairing the intent, purpose
7 and integrity of the zone plan.

8 And again, although I don't think
9 we need to necessarily answer this question in
10 painstaking specificity, but I think there is
11 a consistency with respect to the continuation
12 of the hotel use in this particular Overly
13 District and the underlying R District here.

14 So, I think as the Office of
15 Planning alluded to in its report, while there
16 might conceivably be some tension because of
17 that unresolved question of area versus use
18 variance, again, I think we're right to err on
19 the side of caution and follow the Applicant's
20 lead in answering this question on the side of
21 a use variance.

22 But, I think there is some

1 conformity and I think there's some
2 consistency by continuing to let this
3 excellent hotel use continue to flourish here
4 at this location.

5 That's all I have on the variance
6 side of the test, Madam Chair.

7 CHAIRPERSON MILLER: Thank you.
8 Does anybody else want to address the variance
9 test before we move into the special exception
10 for the roof structure?

11 Okay. I'll just start then and I
12 know that others will join in. In 411, they
13 are requesting a special exception because the
14 roof structure doesn't meet the setback
15 requirements and we had the discussion with
16 Office of Planning. Office of Planning saying
17 that they thought a variance is now required
18 and they analyzed this situation under the
19 variance test and found even under the
20 variance test that the Applicant met the
21 requirements for that.

22 Under the special exception test,

1 I believe that the Applicant certainly showed
2 that it was impracticable because of the
3 existing conditions in that, you know, there
4 are historic buildings that we're talking
5 about and that they had to place the penthouse
6 where it is and we really did not hear of any
7 -- any adverse impacts to -- affecting the
8 light or air of adjacent property. So, I
9 believe it meets that test as well.

10 Are there further comments on
11 that?

12 MEMBER DETTMAN: Thank you, Madam
13 Chair.

14 I just want to start off by
15 actually sort of congratulating the Applicant
16 on an amazing design and particularly in
17 overcoming some significant physical
18 constraints on this site and that being said,
19 express my support for the project, but
20 qualify it in a way given that, you know, I
21 tend to have a difference of opinion when it
22 comes to roof structures and setbacks than my

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1 colleagues do.

2 You know, the basis of my support
3 hinges on obviously the Height of Buildings
4 Act and NCPC's role in helping to enforce the
5 Height of Buildings Act and we've established
6 in the dialogue that we had with the Applicant
7 that the proposal is not only below what the
8 Zoning Regs allow, but also well below what
9 the Height of Buildings Act would allow and
10 though NCPC hasn't really taken an official
11 position on when the one-to-one setback would
12 kick in, I think staff is leaning towards and
13 certainly my reading is that when the building
14 and the penthouse is below the maximum
15 allowable height as allowed by the Act, that
16 one-to-one setback doesn't -- wouldn't kick in
17 at that point.

18 With respect to the special
19 exception versus the area variance argument,
20 you know, I fall on the side on DCOP when it
21 comes to that. I think it's appropriate to
22 analyze this as an area variance and I think

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1 the Applicant absolutely meets all three
2 prongs of the area variance test. I think it
3 was well established that the site has
4 significant physical constraints. Definitely
5 a lot of historic constraints and so, they
6 pass -- you know, they would pass the first
7 prong of that variance test.

8 So, once again, just expressing my
9 support for this project.

10 CHAIRPERSON MILLER: Mr. Etherly,
11 do you have further comments?

12 COMMISSIONER ETHERLY: No. No,
13 I'll just simply echo. I'm just struck by the
14 thought that this is not the first adaptive
15 reuse project that this Board has seen and
16 oftentimes, these types of projects I would
17 hazard a guess almost come as a series of
18 dominos. Because just by virtue of the fact
19 that you've made the decision to adaptively
20 reuse a project and preserve its historic and
21 architectural traditions and heritage, that
22 oftentimes is going to dictate further

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1 decisions down the line and I think clearly
2 the Applicant has indicated that those
3 decisions have been shaped very much by what
4 has to be -- the placement of the roof
5 penthouse is dictated very much in large part
6 by what's continuing to happen in terms of the
7 preservation of the original sanctuary and
8 parsonage buildings.

9 So, it is not by happenstance that
10 the roof structure is where it needs to be.
11 That is dictated by very important and
12 critical considerations here and I think that
13 is most certainly a part and parcel of
14 satisfying any special exception tests that I
15 could envision, but also as was alluded to by
16 Mr. Dettman. Most certainly would also
17 satisfy a variance analysis in this regard as
18 well.

19 Thank you, Madam Chair.

20 CHAIRPERSON MILLER: Okay.
21 Anything else? Okay. Yes, it looks like a
22 truly amazing project and I think that the

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1 Board would say more even if we weren't going
2 so late. So, why don't we move on this
3 application.

4 I would move to approve
5 application number 17729 of Morrison-Clark
6 Limited Partnership I and Morrison-Clark LP
7 pursuant to 11 DCMR Section 3103.2 and 3104.1
8 for a variance from the use provisions under
9 subsection 350.4(d), a variance from the
10 nonconforming structure provisions under
11 subsection 2001.3, a variance from the rear
12 yard requirements under section 404 and a
13 special exception from the roof structure
14 setback requirements under subsection 411.11
15 to allow the renovation and expansion of an
16 existing inn located at premises 1015 L
17 Street, N.W.

18 And I want to add that this motion
19 would be also with the condition that the
20 Office of Attorney General may add with the
21 assistance of language by the Applicant which
22 would provide some flexibility to reduce the

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1 gross floor area in order to comply with the
2 historic parking requirements. So, they
3 wouldn't need parking relief. So, that
4 language would be worked by the Office of
5 Attorney General.

6 COMMISSIONER ETHERLY: Seconded,
7 Madam Chair.

8 CHAIRPERSON MILLER: Okay. Any
9 further comments? All those in favor say aye.

10 (Chorus of Ayes.)

11 CHAIRPERSON MILLER: All those
12 opposed? All those abstaining?

13 MEMBER OATES: Abstaining.

14 CHAIRPERSON MILLER: And would you
15 call the vote please?

16 MS. BAILEY: The vote is recorded
17 as 4-0-1 to grant the application. Mrs.
18 Miller made the motion. Mr. Etherly second.
19 Mr. Loud and Mr. Dettman support the motion
20 and Mrs. Walker is abstaining and that's with
21 condition.

22 CHAIRPERSON MILLER: Thank you and

1 ask there's no party in opposition, this would
2 be a summary order.

3 MS. BAILEY: Thank you.

4 CHAIRPERSON MILLER: Okay.

5 MR. COLLINS: Thank you.

6 CHAIRPERSON MILLER: Okay. That
7 finishes the morning session. I think that
8 the afternoon session will be go much more
9 quickly, but the Board needs to take a break
10 at this point. So, I think that we will break
11 until 4:00.

12 (Whereupon, the hearing was
13 recessed at 3:26 p.m. to reconvene at 4:00
14 this same day.)

15

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1 any disruptive noises or actions in the
2 hearing room.

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

10 All persons planning to testify
11 either in favor or in opposition are to fill
12 out two witness cards. These cards are
13 located to my left on the table near the door
14 and on the witness table.

15 Upon coming forward to speak to
16 the Board, please give both cards to the
17 reporter sitting to my right.

18 The order of procedure for special
19 exceptions and variances is: One, statement
20 and witnesses of the applicant; two,
21 government reports including Office of
22 Planning, Department of Public Works, DDOT, et

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1 cetera; three, report of the Advisory
2 Neighborhood Commission; four, parties or
3 persons in support; five, parties or persons
4 in opposition; six, closing remarks by the
5 applicant.

6 Pursuant to Section 3117.4 and
7 3117.5, the following time constraints will be
8 maintained. The applicant, persons and
9 parties except an ANC in support including
10 witnesses 60 minutes collectively. Persons
11 and parties except an ANC in opposition
12 including witnesses 60 minutes collectively.
13 Individuals three minutes.

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

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

22 Nothing prohibits the Board from

1 placing reasonable restrictions on cross
2 examination including time limits and limits
3 on the scope of cross examination.

4 The record will be closed at the
5 conclusion of each case except for any
6 materials specifically requested by the Board.
7 The Board and the Staff will specify at the
8 end of the hearing exactly what's expected and
9 the date when the persons must submit the
10 evidence to the Office of Zoning. After the
11 record is closed, no other information will be
12 accepted by the Board.

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

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

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

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

8 The Board will made every effort
9 to conclude the public hearing as near as
10 possible to 6:00 p.m. If the afternoon cases
11 are not completed at 6:00, the Board was
12 assess whether it can complete the pending
13 case or cases remaining on the agenda.

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

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1 not proceed, now is the time to raise such a
2 matter.

3 Does the Staff have any
4 preliminary matters?

5 MS. BAILEY: Madam Chair, good
6 afternoon. Staff does not at this time.

7 CHAIRPERSON MILLER: Okay. Then
8 let's proceed with the agenda and would all
9 individuals wishing to testify today please
10 rise to take the oath.

11 MS. BAILEY: Would you please
12 raise your right hand? Do you solemnly swear
13 or affirm that the testimony that you'll be
14 giving this afternoon will be the truth, the
15 whole truth and nothing but the truth? Thank
16 you.

17 CHAIRPERSON MILLER: And would you
18 call the first case please?

19 MS. BAILEY: Madam Chair, it's
20 Application Number 17732 of Nancy McKeon
21 pursuant to 11 DCMR 3104.1 for a special
22 exception to allow a second floor rear

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1 addition to an existing one-family row
2 dwelling under section 223 not meeting the
3 open court requirements under section 406.
4 The property is zoned R-3 and it's located at
5 3422 N Street, N.W. It's also known as square
6 1221, lot 95.

7 CHAIRPERSON MILLER: Good
8 afternoon. You got it. Okay. Would you
9 introduce yourself for the record please?

10 MS. MCKEON: Yes, my name is Nancy
11 McKeon. I live at 3422 N Street, N.W. in
12 Washington.

13 This is my architect Ernesto
14 Santalla and he'll be making a presentation
15 for my application today.

16 CHAIRPERSON MILLER: Okay. Let me
17 just -- let me just --

18 MS. MCKEON: If that's okay.

19 CHAIRPERSON MILLER: Sure. Let me
20 just say this though that I know Mr. Etherly
21 and I saw your application, a different one,
22 years ago.

1 MS. MCKEON: Yes.

2 CHAIRPERSON MILLER: So, we're
3 familiar with the property and also I would
4 like to say that you made a very full
5 presentation in the filings and there doesn't
6 seem to be any issue of adverse impacts on
7 light and air of neighboring properties and it
8 appears that you fully fall within the
9 requirements of 223.

10 So, I would suggest that we don't
11 need a whole lot of convincing up here and if
12 there's anything you want to just show us
13 visually, you know, that see this is where the
14 addition and this is where the neighbor's
15 house is.

16 MS. MCKEON: Does this mean I can
17 go home?

18 CHAIRPERSON MILLER: Yes, just
19 about.

20 MS. MCKEON: Yes, just brief,
21 brief. Really.

22 CHAIRPERSON MILLER: And I know

1 you've been waiting a long time this
2 afternoon. So, we don't want to make you do
3 anything that's really not necessary.

4 MS. MCKEON: Yes, you guys looked
5 like you were going to faint from hunger.

6 CHAIRPERSON MILLER: Exactly.

7 MR. SANTALLA: I will proceed
8 immediately into the proposed addition which
9 is on top of the existing addition which was
10 granted the special exception for a
11 nonconforming open court. This is a
12 nonconforming site.

13 So, our existing addition which
14 you can see here in the photograph is a very
15 tall one-story because we're hiding light
16 monitors with a very tall parapet. So, we're
17 just -- we propose to extend that existing
18 one-story addition to expand an existing
19 second story bedroom and follow the lines of
20 the existing parapet and that is what we
21 requested a special exception for.

22 CHAIRPERSON MILLER: And why is

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1 there no adverse impact on any neighboring
2 property?

3 MR. SANTALLA: Light and air are
4 available. It's according to sections -- the
5 requirements of section 232.2.

6 Light and air are available to
7 neighboring properties. So, it's not unduly
8 affected. The privacy of use and enjoyment of
9 neighboring properties is not unduly
10 compromised.

11 The original -- the addition or
12 the original building as viewed from the
13 street, alley and other public way does not
14 substantially visually intrude upon the
15 character scale and pattern of houses along
16 the subject street frontage. It is on the
17 rear. So, it's not visible from the front.

18 And we have provided the
19 appropriate graphical representations.

20 MS. MCKEON: If I may just say one
21 thing, along the side where this extension is
22 going is the courtyard, but there's also a 10-

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1 foot alley. The walk, like a walking
2 easement, I don't know technically if it's
3 really an alley, but that provides a lot of
4 buffer on the west side and the lots are very
5 deep and we face -- the back of the house
6 faces south and so, light just streams in and
7 there's nothing keeping it from other
8 properties to my left or right.

9 CHAIRPERSON MILLER: And we
10 received in the record a letter of support
11 from Robert Luskin at 3422 N Street. Where is
12 that property in relation to --

13 MS. MCKEON: No. No. No, he's 34
14 -- he's on Prospect.

15 CHAIRPERSON MILLER: Oh.

16 MS. MCKEON: He backs onto the
17 alley. He's one of the many, many people I
18 had to send notices to.

19 CHAIRPERSON MILLER: You're at
20 3422 N Street.

21 MS. MCKEON: Yes.

22 CHAIRPERSON MILLER: I'm sorry.

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1 Now, where did I see that? Okay. Can we see
2 where that is with these pictures or no?

3 MS. MCKEON: No.

4 MR. SANTALLA: No.

5 MS. MCKEON: Across another 15-
6 foot alley on the back.

7 MR. SANTALLA: And then he's on
8 Prospect.

9 CHAIRPERSON MILLER: Okay. That's
10 fine. There is no indication that anybody's
11 light and air is adversely affected?

12 MS. MCKEON: No.

13 CHAIRPERSON MILLER: Okay.
14 Anything else you want to add at this point?
15 I don't think you need to really, but okay.
16 Why don't we go to the Office of Planning?
17 Mr. Jackson.

18 MR. JACKSON: Good afternoon,
19 Madam Chair and Members of the Board.

20 My name is Arthur Jackson. I'm a
21 Development Review Specialist for the District
22 of Columbia Office of Planning. I'm here to

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1 answer questions about the Office of Planning
2 report.

3 We'll stand on the record and if
4 you have any questions, please let me know
5 what they are and I'll respond to them
6 accordingly.

7 CHAIRPERSON MILLER: Okay. I
8 think it's a very full report. I don't have
9 any questions. Does anybody else have any
10 questions on Office of Planning's report?

11 And does the Applicant have a copy
12 of Office of Planning's report?

13 MS. MCKEON: I do.

14 CHAIRPERSON MILLER: Okay.

15 MS. MCKEON: Got it by e-mail.

16 CHAIRPERSON MILLER: And do you
17 have any questions for the Office of Planning?

18 MS. MCKEON: No, not really.

19 CHAIRPERSON MILLER: Okay. Is the
20 ANC here on this case? Is anyone here to
21 testify either in support or opposition to
22 this application? Okay. Any further remarks

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1 you would like to state? You don't need, but
2 just in case, you have that opportunity

3 MS. MCKEON: Thank you.

4 CHAIRPERSON MILLER: Any further
5 questions by the Board? No, this is really a
6 very straightforward case. So --

7 MS. MCKEON: I was hoping so.
8 We'd like to thank you for your time anyway.

9 CHAIRPERSON MILLER: Well, you did
10 a very thorough job, you know, in your
11 application as well. So.

12 MS. MCKEON: Well, I want to say
13 something. I was going to wait until you said
14 yes or no before I said this, but I have to
15 say that my experience with BZA has been very,
16 very positive.

17 There's still the problem of
18 applying for something if you don't know you
19 need a variance or a thing. You may go in
20 Georgetown or someplace historical. You may
21 go a year getting permission and then all of
22 a sudden run into the zoning thing.

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1 In this case I knew I had a
2 problem and I knew I had to -- and so,
3 therefore, everything -- the communication was
4 terrific from -- I mean everybody. Sheila in
5 the front. I mean everybody was really,
6 really fabulous, but I just thought you should
7 know that.

8 In fact, I was like walking up to
9 people last week when I was here to make sure
10 that -- to look over my file and I was like
11 walking up and graduating people. I just felt
12 it was a very positive -- you know, it's
13 bureaucratic, you know, but there's a reason
14 for that and I just felt like it was very
15 good. Thank you.

16 CHAIRPERSON MILLER: Well, thank
17 you. We think the Office of Zoning personnel
18 are great as well, but it's always nice to get
19 that feedback and Office of Planning, too.

20 So, okay. Then I would move
21 approval of Application Number 17732 of Nancy
22 McKeon pursuant to 11 DCMR 3104.1 for a

1 special exception to allow a second floor rear
2 addition to an existing one family row
3 dwelling under section 223 not meeting the
4 open court requirements under section 406 at
5 premises 3422 N Street, N.W.

6 COMMISSIONER ETHERLY: Seconded,
7 Madam Chair.

8 CHAIRPERSON MILLER: Okay. I just
9 briefly want to say that, you know, Mr.
10 Etherly and I did visit this originally when
11 there was the special exception application
12 for the first addition and so, I had an
13 opportunity to see that there weren't any
14 adverse impacts on the light and air of
15 neighboring properties at that point and at
16 this point, it's just going one story higher
17 and the same appears to be so. That's there
18 no impact on the light and air available to
19 the neighboring properties. Nobody's privacy
20 is being affected.

21 You meet the requirements. You
22 fall under the 70 percent lot occupancy. I

1 think we can also rely on the analysis of the
2 Office of Planning that went through all the
3 criteria to show that you met 223 and there's
4 no opposition in the case and there is support
5 by one of the neighbors. So, I -- you know,
6 I -- there's no question in my mind that this
7 meets 223.

8 Does anybody have any other
9 comments? Not hearing any, all those in favor
10 say aye.

11 (Chorus of Ayes.)

12 CHAIRPERSON MILLER: All those
13 opposed? All those abstaining? And would you
14 call the vote please?

15 MS. BAILEY: Madam Chair, the vote
16 is recorded as 5-0-0 to grant the application.
17 Mrs. Miller made the motion. Mr. Etherly
18 seconded. Mr. Loud, Mr. Dettman and Mrs.
19 Walker support the motion.

20 CHAIRPERSON MILLER: Thank you and
21 there's no party in opposition. So, this will
22 be a summary order. So, you should be

1 receiving it very quickly and so, best of luck
2 in your addition. Thank you.

3 We're ready for the next case when
4 you're ready to call it, Ms. Bailey.

5 MS. BAILEY: Application Number
6 17731 of Barbara Chambers Children's Center
7 pursuant to 11 DCMR 3104.1 for a special
8 exception to allow the continued operation of
9 an existing child development center under
10 section 205, The property is zoned R-5-B and
11 it's located at 1470 Irving Street, N.W.,
12 square 2672, lot 881.

13 CHAIRPERSON MILLER: So, whenever
14 you're ready you can introduce yourselves for
15 the record.

16 MR. HUGHES: Thank you, Madam
17 Chair. Good afternoon.

18 For the record, my name is Dennis
19 Hughes with the law firm of Holland & Knight.

20 Joining me this afternoon are Ms.
21 Maribel Ventura Torres representing the
22 Barbara Chambers Children's Center. She's the

1 Director of the Center and at the far right,
2 is Mr. Dahn Warner of Key Urban Real Estate
3 who is -- he's a development consultant for
4 the Center. Yes.

5 We appear before you this
6 afternoon requesting special exception
7 approval pursuant to sections 3104 and 205 of
8 the Zoning Regulations to continue the current
9 and longstanding use of the property at 1470
10 Irving Street, N.W. as a child development
11 center. The Barbara Chambers Children's
12 Center has been at that location since 1972.

13 Section 205 of the Zoning
14 Regulations permits child development center
15 use in an R-1 District by special exception.
16 Uses permitted as special exceptions in R-1
17 are likewise permitted in the R-5 Districts
18 and this property is zoned R-5-B.

19 As the Board's aware, special
20 exception uses are pre-deemed appropriate for
21 applicable zoning district as long as certain
22 enumerated conditions are satisfied. We

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1 believe that with our pre-hearing statement
2 and the testimony you'll hear this afternoon
3 if the Board is so inclined that we meet those
4 tests.

5 And so, backing up a little bit
6 before I proceed further, I want to confirm
7 the Board has received our pre-hearing
8 statement which was filed on February 26.
9 That sets forth the Applicant's position with
10 respect to compliance with the requirements of
11 the Zoning Regulations and it also includes a
12 few items as exhibits that I'd like to just
13 review very briefly.

14 CHAIRPERSON MILLER: Okay. We
15 have received it.

16 MR. HUGHES: Okay. The first is
17 the Board's most recent special exception
18 approval from 2002. That's at Exhibit D of
19 the statement.

20 Also, a letter from the Zoning
21 Administrator indicating no zoning violations
22 at the property. That's at Exhibit F of the

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1 statement and we have a memorandum from the
2 D.C. Department of Health, the Health
3 Regulation and Licensing Administration Child
4 and Residential Care Facilities Division
5 recommending that the application be granted.
6 That's at Exhibit G.

7 And finally, a resolution of the
8 D.C. Council authorizing issuance of revenue
9 bonds in support of the renovation of the
10 center which is something Mr. Warner will
11 discuss very briefly in a moment and then
12 beyond that statement, I'd like to confirm the
13 Board's received a few other items.

14 One being the report of the Office
15 of Planning dated March 4th which recommends
16 support of the application. It looks like Mr.
17 Jackson is here on behalf of the Office of
18 Planning.

19 I want to take a very quick moment
20 to address an item there sort of out turn.
21 Just so we don't get confused, we're
22 requesting approval of a child development

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1 center. There's some reference in that report
2 of an adult education program and that's not
3 being requested nor contemplated for the
4 center. It's just child development center.

5 I'd also like -- I think Ms.
6 Bailey is circulating a letter or a memo from
7 the Department of Transportation that we
8 received just today indicating no objection to
9 the application and the Board should also be
10 in receipt a letter and resolution from
11 Advisory Neighborhood Commission 1A supporting
12 the application.

13 So, I'm sorry to throw all that at
14 you, but that's our record as far as I am
15 aware.

16 CHAIRPERSON MILLER: We were
17 wondering about the adult education program
18 which is referenced in Office of Planning
19 report, but not your application per se.

20 MR. HUGHES: Right. Correct.

21 CHAIRPERSON MILLER: Is that
22 something that has been offered but will not

1 be offered or is that just a mistake?

2 MR. HUGHES: I believe it was
3 contemplated. Ms. Ventura Torres can get to
4 it in just a moment if I'm not accurate, but
5 it was something that was contemplated at the
6 last hearing and maybe -- I think Mr. Etherly
7 was the only Board Member that was present for
8 that hearing. Contemplated but not actually
9 put into place and so, it's not -- the
10 property doesn't have a certificate of
11 occupancy for that use. It's not licensed for
12 that use and that's not what's being
13 requested.

14 So, I want to just very briefly
15 proceed with the testimony of Ms. Ventura
16 Torres and Mr. Warner and if you have -- then
17 if you have any questions of us, we'd be
18 pleased to answer. Otherwise, that's our
19 case.

20 Thank you. Ms. Ventura Torres.

21 MS. VENTURA-TORRES: Yes. Hi.

22 Good afternoon. My name is Maribel Ventura

1 Torres and I am the Director of the Barbara
2 Chambers Children's Center.

3 I have been in this position since
4 1991 and we have served in -- in other
5 community of Mount Pleasant, Adams Morgan and
6 Columbia Heights since 1968.

7 The Barbara Chambers Children's
8 Center was remained after the founder passed
9 away, you know, in 1982. Before the center
10 was named Columbia Road Children's Center and
11 we served four programs. We have a preschool
12 program ages 2½ to 5 and we have pre-k
13 incentive program which is a new initiative
14 from the city ages 3 to 5. We have before and
15 after care ages 4 to 11 and we have also
16 extended hours up to 10:00 p.m., you know, for
17 families that want to achieve educational
18 goals or GED or computer training.

19 If you have any other questions.

20 CHAIRPERSON MILLER: What's the
21 last thing you were mentioning? The extended
22 hours program.

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1 MS. VENTURA-TORRES: Is extended
2 hours program.

3 CHAIRPERSON MILLER: What do you
4 offer? What are the hours and what do you
5 offer?

6 MS. VENTURA-TORRES: Is from 6:00
7 to 10:00 p.m.

8 CHAIRPERSON MILLER: Six to 10:00,
9 what happens?

10 MS. VENTURA-TORRES: Well, this
11 program is for families who want to return to
12 the school, you know, or for teen mothers that
13 want to have their GED or computer training.

14 CHAIRPERSON MILLER: Is this the
15 adult education? Is this different from adult
16 education?

17 MS. VENTURA-TORRES: Is different
18 because these are children care.

19 CHAIRPERSON MILLER: Okay.

20 MS. VENTURA-TORRES: It's after-
21 school hours.

22 MR. HUGHES: This is --

1 CHAIRPERSON MILLER: This is for
2 children.

3 MR. HUGHES: It's not for
4 training --

5 CHAIRPERSON MILLER: You take care
6 of the children while the adults are somewhere
7 else learning?

8 MS. VENTURA-TORRES: Yes. Okay.

9 CHAIRPERSON MILLER: Okay. Okay.
10 Thank you. So, when does the day begin? How
11 early in the morning?

12 MS. VENTURA-TORRES: Seven in the
13 morning.

14 CHAIRPERSON MILLER: Seven. So,
15 it goes from 7:00 to 10:00?

16 MS. VENTURA-TORRES: Yes.

17 CHAIRPERSON MILLER: Okay. Monday
18 through Friday?

19 MS. VENTURA-TORRES: Monday
20 through Friday, year round. We close only on
21 Federal holidays.

22 CHAIRPERSON MILLER: Have you had

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1 any complaints from neighbors about any
2 issues?

3 MS. VENTURA-TORRES: No.

4 CHAIRPERSON MILLER: Okay. And
5 the last order had some conditions. Have they
6 all worked for you? Have you had any problems
7 with any of your conditions?

8 MS. VENTURA-TORRES: No.

9 COMMISSIONER ETHERLY: Thank you
10 very much, Madam Chair.

11 Ms. Ventura Torres, very nice to
12 see you again. Welcome back.

13 MS. VENTURA-TORRES: Yes.

14 COMMISSIONER ETHERLY: I didn't
15 necessarily expect that I would still be
16 around when you guys would come back --

17 MS. VENTURA-TORRES: Yes.

18 COMMISSIONER ETHERLY: -- for your
19 -- to see us again, but indeed good to see you
20 again.

21 My first question is for Mr.
22 Hughes and it's just a follow up on the

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1 Chair's inquiry. Is there any proposed change
2 in the conditions that you're seeking on
3 behalf of your client from the initial order
4 16817A?

5 MR. HUGHES: Mr. Etherly, the only
6 change that we're requesting is that the
7 approval be for a period of not less than ten
8 years.

9 COMMISSIONER ETHERLY: Okay.

10 MR. HUGHES: And Mr. Warner -- I'd
11 like to if I might unless you have other
12 questions introduce Mr. Warner and explain
13 what is kind of behind that. There's some
14 significant renovation contemplated for the
15 property. It involves -- I don't want to
16 steal his thunder, but it goes into the notion
17 of there's a lot of investment here and we
18 think that to come back -- there needs to be
19 some confidence that this is going to continue
20 to be a child development center for at least
21 that period of time to justify the expenditure
22 of the funds.

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1 COMMISSIONER ETHERLY: Okay.

2 MR. HUGHES: So.

3 COMMISSIONER ETHERLY: Okay.

4 Thanks.

5 MR. WARNER: So, my name is Dahn
6 Warner and I'm a consultant for the Barbara
7 Chambers Children's Center and I'm also a
8 resident of Mount Pleasant just near the
9 center and I wanted to highlight two occasions
10 where the District of Columbia has
11 demonstrated significant commitment to this
12 project.

13 One, in August, the Barbara
14 Chambers Children's Center received \$2.7
15 million in taxes and bond financing in order
16 to undertake a significant renovation of their
17 facility and that, of course, required full
18 council approval in the prior month and more
19 recently, we have received an initial interest
20 from DHCD to add an additional \$2 million to
21 that budget and we're currently awaiting the
22 loan committee meeting with DHCD and both of

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1 those -- both the loan backed up by the taxes
2 and bond financing as well as DHCD financing
3 will have terms in excess of 25 years of
4 repayment and we also intend for our
5 significant renovation to allow the center to
6 operate efficiently and very well for the next
7 30-plus years. So, again, those two incidents
8 illustrate commitment and also strength in our
9 request for a longer period of renewal.

10 The prepayment will exceed the
11 five years by a lot. So.

12 COMMISSIONER ETHERLY: And if I
13 may, Madam Chair, for you, Mr. Warner, is it
14 the case, therefore, that financing
15 requirement dictate a certain period of kind
16 of -- I don't want to say guaranteed
17 operation, but is there a financing aspect to
18 the argument about the terms such that the
19 zoning question needs to be, what's the word
20 I'm looking for, stable for a particular
21 period of time?

22 MR. WARNER: That's right. That's

1 right. I mean the -- like I said, the term of
2 the loan is 25 years which exceeds our
3 request, but the assurance that we'd like to
4 give to the funding organization is that we
5 will be -- we will be in full operation for,
6 you know, a significant time period after the
7 renovation is completed which will take
8 approximately, you know, 9 months.

9 COMMISSIONER ETHERLY: Okay. And
10 the revenue bond component, that would be the
11 exhibit that's included in the pre-hearing
12 submission at -- what is that? Tab F. I
13 always get confused. Do you call it what's in
14 front of the tab or what's behind the tab?
15 But, it's the -- it's resolution 17-308 of the
16 Council of the District of Columbia dated July
17 10th, 2007.

18 MR. WARNER: That's correct.

19 COMMISSIONER ETHERLY: Okay. And
20 was -- Mr. Hughes, was there a submittal with
21 respect to the DHCD consideration or any
22 documentation on that?

1 MR. HUGHES: I don't have any.

2 COMMISSIONER ETHERLY: Okay. And
3 I'm fine with that. I don't require it, but
4 let me make sure I understand.

5 You've -- the center has
6 approached DHCD and DHCD has given preliminary
7 approval?

8 MR. WARNER: Correct. We
9 participated in an RFP that DHCD put out. We
10 were approved to go forward to the
11 underwriting phase and we've been in weekly
12 contact with them providing documentation they
13 requested so that we can move forward to the
14 loan committee at which time they'll provide
15 hopefully a full commitment to fund.

16 COMMISSIONER ETHERLY: Okay.

17 MR. WARNER: And we have every
18 reason at this point to believe that that will
19 be successful.

20 COMMISSIONER ETHERLY: Okay.

21 MR. WARNER: Yes.

22 COMMISSIONER ETHERLY: Okay.

1 MR. WARNER: I also wanted to
2 mention that in support of our DHCD proposal,
3 Council Member Graham wrote a letter of
4 support for us for that occasion.

5 COMMISSIONER ETHERLY: Okay. I
6 think it would definitely be helpful, but I'm
7 -- again, I'm not necessarily, you know,
8 inclined to hold anything up for submittal of
9 these documents, but if any of my colleagues
10 are interested, it might be helpful just to
11 supplement the record with them. But, again,
12 I don't think it's absolutely necessary.

13 We were provided a copy of the ANC
14 1A report and the only reason I reference it
15 right now is I wanted to ask either Mr. Hughes
16 or Mr. Warner or Ms. Ventura Torres was there
17 any discussion at the ANC level specifically
18 about the term -- the 10-year term that you're
19 seeking?

20 MR. WARNER: We didn't discuss the
21 term specifically. We actually were
22 requesting at that time a 5-year renewal and

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1 it is the ANC who suggested that we extend it
2 to 10 years --

3 COMMISSIONER ETHERLY: Okay.

4 MR. WARNER: -- just as an
5 administrative efficiency I believe.

6 COMMISSIONER ETHERLY: Okay.

7 Thank you. Thank you, Madam Chair.

8 CHAIRPERSON MILLER: We have heard
9 like in connection with schools in particular
10 who are doing construction that sometimes
11 because of the loan, they need a long term and
12 I don't know if there's anything further that
13 you know about the loan requirements that
14 would cause us to, you know, go beyond 10
15 years. You know, 15 years or so.

16 MR. WARNER: They haven't insisted
17 on that, but it would certainly be convenient
18 if it matched the 25-year term of the tax
19 exempt bond backed loan. They have not
20 requested -- they have not requested that
21 though.

22 CHAIRPERSON MILLER: How is that

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1 exactly connected? Say you have a 25-year
2 term on your loan or whatever and you have to
3 move in 15 years, what would happen? Do you
4 know?

5 MR. WARNER: Well, they have a
6 lien on the property. So, they would collect
7 their funds that way.

8 CHAIRPERSON MILLER: Okay. So,
9 it's --

10 MR. WARNER: At the sale of the
11 property.

12 CHAIRPERSON MILLER: And it's tied
13 to the property. It's not just tied to the
14 operation of the center. Right?

15 MR. WARNER: Correct.

16 CHAIRPERSON MILLER: Okay.

17 MR. WARNER: Correct.

18 CHAIRPERSON MILLER: In all the
19 years of operation, have there been complaints
20 that you've had to address and -- or just --
21 or there just haven't been complaints?

22 MS. VENTURA-TORRES: No. No

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1 complaining I don't think.

2 CHAIRPERSON MILLER: So, and
3 that's over 30 years. Is that right? Okay.

4 MS. VENTURA-TORRES: Forty. We'll
5 be 40 this May.

6 CHAIRPERSON MILLER: Forty.

7 MR. WARNER: It's really
8 considered by most in the neighborhood as a
9 tremendous asset and it's a very nice balance
10 on Irving Street across from the DC USA
11 complex. It's really across the street from
12 that. So, it's -- it seems like it's a
13 community asset.

14 CHAIRPERSON MILLER: Okay. Any
15 other questions? Anything else before we go
16 to the Office of Planning?

17 MR. HUGHES: Only --

18 CHAIRPERSON MILLER: Okay.

19 MR. HUGHES: Sorry about that.
20 Very small items that I've already submitted
21 to Ms. Bailey just to supplement the record
22 further.

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1 One of the first criteria in 205
2 is, pardon me, is that the center will be
3 capable of meeting all applicable code and
4 licensing requirements. We have the letter
5 that we supplied that there's no zoning
6 violations.

7 We also have a certificate of
8 occupancy, the current certificate of
9 occupancy, and the current license for child
10 development facility just so that the Board is
11 aware that we comply with that criteria and
12 no. No, ma'am, that's it.

13 CHAIRPERSON MILLER: Okay. Why
14 don't we go to Mr. Jackson with the Office of
15 Planning then.

16 MR. JACKSON: Good afternoon
17 again, Madam Chair.

18 My name is Arthur Jackson. I'm a
19 Development Review Specialist for the District
20 of Columbia Office of Planning.

21 I will briefly summarize the
22 Office of Planning's report. Again, I would

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1 like to stand on the record, but just to
2 reiterate that the Office of Planning supports
3 the approval of a 10-year extension of the
4 existing special exception.

5 The Applicant's testimony appears
6 to reflect the fact that the standards of the
7 requirements that were on the previous --
8 previously placed on this operation are still
9 in force and I also note I'm not sure if you
10 mentioned the letter from the child and
11 residential care facility supporting this
12 application. That came in December.

13 So, with that, the Office of
14 Planning again stands on the record, but
15 recommends approval of this 10-year extension
16 and we're available to answer questions.

17 CHAIRPERSON MILLER: Could you
18 comment on your point regarding avoid drop
19 offs on Irving Street? I don't see that
20 there's a condition that relates to that.
21 Does there need to be or do you want to
22 elaborate on that? That's with respect to

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1 section 205.3 objectionable traffic and/or
2 safety conditions.

3 MR. JACKSON: Well, I think this
4 was considered with regard to potential
5 conflicts between this use and DC USA across
6 the street. I don't have any additional
7 background on this, but I would note that the
8 Department of Transportation recommended
9 approval without any additional conditions I
10 believe and in light of that, I think we would
11 defer to Department of Transportation since
12 they would have been -- additional analysis of
13 the potential impacts of the operation and
14 particularly since this has a track record of
15 operating onsite and in this location and that
16 their additional knowledge is probably -- we
17 defer to them on a recommendation on that
18 issue.

19 CHAIRPERSON MILLER: Okay. I'm
20 just looking at the Department of
21 Transportation memorandum dated March 10th,
22 2008 that just was passed out to us a few

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1 minutes ago and it does say that you -- that
2 the Applicant has a parking area that's well
3 maintained and that the drop-off operation
4 doesn't create any unsafe traffic conditions.

5 That, in fact, the Applicant
6 redesigned the parking area to provide drop
7 off and pick-up area on the subject site in
8 lieu of Irving Street.

9 So, I mean I think I would agree
10 with your that it sounds like they're doing
11 the right thing. They don't need a condition
12 because they're doing it and it's working.

13 Would you -- it sounds like the
14 Applicant is agreeing with that. Is that
15 correct?

16 MR. HUGHES: That's correct. The
17 vehicular pick up and drop off are through the
18 parking lot and the alley and pedestrian --
19 some pedestrian drop off and pick up is from
20 the main entrance on Irving Street because
21 it's the -- there's a very close proximity to
22 the Metro station from there.

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1 MR. WARNER: If I may, we have a
2 survey that indicates that about 60 percent of
3 the students are transported by Metro also
4 alleviating that problem.

5 CHAIRPERSON MILLER: Sixty percent
6 are transported by Metro?

7 MR. WARNER: It's one block away
8 from it.

9 CHAIRPERSON MILLER: Do you have a
10 survey about how many are in the neighborhood
11 who walk to the facility?

12 MS. VENTURA-TORRES: Yes, 80
13 percent live in the neighborhood.

14 CHAIRPERSON MILLER: Oh.

15 MS. VENTURA-TORRES: Eighty
16 percent of the students.

17 CHAIRPERSON MILLER: Eighty
18 percent --

19 MS. VENTURA-TORRES: Yes.

20 CHAIRPERSON MILLER: -- walk?

21 MS. VENTURA-TORRES: Yes, walk to
22 the center. Yes. Yes, because they were to

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1 walk, you know, and when they come back from
2 work, they -- they don't use car or they don't
3 have car. They use the public transportation,
4 you know.

5 CHAIRPERSON MILLER: Okay. So,
6 you don't have many cars coming to the center
7 in any event. Is that right?

8 MS. VENTURA-TORRES: A few. A few
9 cars, you know, come, but they do in the
10 parking lot of the center.

11 CHAIRPERSON MILLER: Okay. Any
12 other questions from the Board?

13 MEMBER DETTMAN: Not really a
14 question, but an observation. I'm looking at
15 the C of O that was just handed to the Board
16 which looks like it was issued in August of
17 '06 and under description, it says 130
18 children, 21 staff members, but if you refer
19 to the 2002 order from the BZA, it says 150
20 students and 31 staff members. So, I don't --
21 if the Board grants this relief, I assume that
22 you're going to have to go and get a renew C

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1 of O? It might be just something to raise
2 with DCRA to make that --

3 MR. HUGHES: That's correct. We
4 are asking for the continuation of the
5 approval for 150 students and 31 staff. Yes.

6 MEMBER DETTMAN: Right. Right.
7 So, it just looks like the C of O needs to be
8 corrected.

9 MR. HUGHES: And a lot of that has
10 to do with expansion within the building once
11 the renovations are completed that are being
12 -- Mr. Warner talked about the financing, but
13 yes. Thank you for pointing that out.

14 CHAIRPERSON MILLER: Well, why
15 does the Certificate of Occupancy say 130?

16 MR. WARNER: May I clarify on
17 that? So, were not contemplating on
18 expansion, but the third floor of the facility
19 does not have proper sprinklers at this point
20 and part of our renovation is going to address
21 that building code discrepancy or deficiency
22 and after that point, we intend to apply for

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1 an increased C of O number.

2 CHAIRPERSON MILLER: Okay. I mean
3 the way the condition reads right now, it
4 shall not exceed 150 and it goes back to the
5 order from 5 years ago. So, what number have
6 you been using? I mean how many children are
7 enrolled?

8 MR. WARNER: Well, currently,
9 there are 130 enrolled and that's limited by
10 the building code deficiencies on the upper
11 floors which we are addressing as part of this
12 renovation. So, we know that -- yes, we're
13 limited by the C of O and not by this.

14 CHAIRPERSON MILLER: I see. So,
15 did you have 150 before and then you had these
16 problems so you scaled back to 130?

17 MS. VENTURA-TORRES: No, we have
18 never had 150. We have -- at the beginning,
19 we have 80. Then increased to 96. Then up to
20 130.

21 CHAIRPERSON MILLER: Okay. But,
22 you want to have 150?

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1 MS. VENTURA-TORRES: Yes, when the
2 -- you know, being the renovation take place

3 CHAIRPERSON MILLER: Okay. What's
4 the renovation going to do?

5 MR. WARNER: We're adding
6 sprinklers throughout the building, an
7 elevator system for accessibility and an
8 improved kitchen and generally updating the
9 building which hasn't been updated in quite
10 some time.

11 CHAIRPERSON MILLER: Okay. So,
12 you're not enlarging the building. You're
13 just renovating.

14 MR. WARNER: Everything within the
15 current envelope.

16 CHAIRPERSON MILLER: I have a
17 question for the Office of Planning actually.

18 Do you have an opinion on the term
19 question with respect to -- certainly, we've
20 seen 10 years. So, I don't think that's an
21 issue, but with respect to a larger term going
22 up to 25 years for instance which has been

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1 thrown out, do you have an opinion on that?

2 MR. JACKSON: Well, since you
3 asked, the -- we've had a number of
4 applications. I've come before you with
5 several applications that were related to
6 existing uses. I think in both cases -- well,
7 one was an office use on 14th Street and the
8 other was an existing shopping -- a commercial
9 grocery store on Connecticut Avenue.

10 In each case, the use had been in
11 place for over 30 years and had continued --
12 been in continuous use, had not expanded and
13 did not anticipate expanding and in those
14 cases, the applicants were requested an open
15 term on the application with the thinking that
16 the current circumstances would not change.
17 However, if they were to expand, they've have
18 to come back and that if the long term -- in
19 both cases, the long-term possibility of the
20 use changing was somewhat limited in that one
21 institution had purchased -- recently
22 purchased the building and wanted to maintain

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1 and, of course, Safeway's not going anywhere.

2 So, in those two instances, the
3 Board felt that an open-ended term was
4 reasonable.

5 I would think -- I would advise
6 that in this case this application, an
7 existing child care center that has been in
8 existence more than 30 years, that consistent
9 uses and apparently have used the building to
10 its capacity and now are going to actually
11 expand, renovate the building to use it to the
12 extent that they've already been approved, the
13 park -- the site's already parked and it's not
14 like the need for child care will go away,
15 would be a good candidate for the same type of
16 treatment.

17 CHAIRPERSON MILLER: Yes, I'm not
18 sure how this is too different from schools at
19 this point where there is an established track
20 record and established need and no complaints
21 in 30 years. That's a big thing.

22 MR. JACKSON: And I think the

1 other thing is the characteristics of the
2 students themselves. It's not like they're
3 going to go into high schools and actually be
4 driving themselves to child care. They will
5 always be the same age and the same capacity.
6 So, it's that the -- the characteristics of
7 the use should not change over time.

8 CHAIRPERSON MILLER: Thank you.
9 Others questions? Okay. Does the Applicant
10 have any questions for the Office of Planning?

11 MR. HUGHES: No, ma'am.

12 CHAIRPERSON MILLER: You do have a
13 copy of the Office of Planning report?

14 MR. HUGHES: We do.

15 CHAIRPERSON MILLER: Okay. I
16 don't believe the ANC is here, but are they?
17 Okay. Anybody else here in the audience
18 wishing to testify in support or opposition?
19 Yes, please come forward.

20 There you are. Okay. Would you
21 identify yourself for the record and give your
22 address please?

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1 MS. VALDES: Yes, good afternoon.
2 My name's Nelly B. Valdes. I live in 6312 7th
3 Street, N.W., Washington, D.C. and the zip
4 code is 20011.

5 My name's Nelly B. Valdes and I
6 live in Brightwood, D.C. I work as an
7 administrative assistant in a number of
8 organizations in Washington, D.C. I live in
9 Ward 4 and I'm a mother of three who is
10 expecting her fourth child.

11 My third child Juanita Beatriz
12 Valdes who is three years old has been at
13 Barbara Chambers Children's Center known as
14 BCC since October of 2006. I am here to
15 testify in support of the Barbara Chambers
16 Children's Center because I believe that more
17 children should have access to the type of
18 quality pre-k I found in the BCC program.

19 The teachers at BCC work closely
20 with the students and their main purpose is to
21 involve the parents. I have had the
22 opportunity to participate in several field

1 trips such the Baltimore Aquarium, a farm in
2 Virginia and several others. I helped to
3 chaperon my daughter's classmates.

4 I have enjoyed being with my
5 daughter and the other students on these field
6 trips and I would like to encourage other pre-
7 k programs like BCC to do the same because the
8 most important issue in the education of a
9 child is the participation of the parents.

10 I also participate in every single
11 parent meeting with have with the teacher at
12 BCC. Ms. Sonja Vasquez, my daughter's
13 teacher, meets the parents -- meets with the
14 parents to update us and show us the portfolio
15 or how our daughter -- what she is -- what she
16 is learning.

17 My daughter has grown
18 educationally since she is starting this
19 program. Now she knows the numbers from one
20 to 15 and is going to learn 16 to 25. She has
21 learned to recognize the first letter in her
22 first name and every time we are in the car

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1 and she sees signs and going to her first
2 initial, she says "Look, mommy, is the letter
3 J like Juanita and Julianne." She also has
4 stated to identify the colors which she was
5 having a hard time to do before.

6 The BCC is different from other
7 programs because it has a parking lot where
8 you can drop -- drop off or pick up your kids
9 and don't cause any traffic in the
10 neighborhood and it's also close to buses and
11 Metro lines.

12 I had so much trouble finding
13 child care for my daughter before. I found
14 BCC.

15 I went to D.C. Village 1 and 2
16 because my first children went to D.C. Cares.
17 They were my first priority to help Juanita's
18 education, but they were full and the waiting
19 list was a year long.

20 I also went to CentroNia, but the
21 waiting period was for more than 2 years.

22 I went to many other places. I

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1 also went to Rosemount Center where they put
2 her in waiting list for over a year and a
3 half. They called me around 6 weeks ago to
4 ask me if I want to continue having her in the
5 waiting list. But, I told them I already
6 found an excellent place for her. I had hard
7 time finding pre-k for Juanita and I was
8 forced to bring my daughter to work -- to my
9 work place for more than 2 months until I
10 finally found BCC.

11 I want to thank the BZA members
12 for their -- a special to BZA Chairwoman for
13 holding this public hearing.

14 CHAIRPERSON MILLER: Thank you
15 very much.

16 MS. VALDES: You're very welcome.

17 CHAIRPERSON MILLER: Other
18 questions?

19 COMMISSIONER ETHERLY: No
20 questions, Madam Chair. I'll just simply --
21 I'd like to thank Ms. Valdes for taking the
22 time to be here with us today. Of course, the

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1 Applicant and yourself have been incredibly
2 patient and with three young people of your
3 own and, of course, being employed, we know
4 it's not easy for citizens to be down here
5 everyday taking the time. So, you thanked us
6 for holding the hearing and the Chairman
7 especially, but thank you for being here.

8 MS. VALDES: Thank you so much.

9 CHAIRPERSON MILLER: Thank you and
10 I just want to echo Mr. -- oh, I really am
11 echoing. It is important for the Board to
12 hear from someone who actually is a user or
13 beneficiary of the center not just from the
14 Applicant. So, thank you very much for coming
15 down.

16 MS. VALDES: Thank you so much to
17 you.

18 CHAIRPERSON MILLER: I don't see
19 anybody else in the audience. So, are there
20 any further remarks that the Applicant has?

21 MR. HUGHES: Madam Chair, I don't
22 think we have any additional testimony or

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1 documents to provide you, but we would I guess
2 at this time in summary request the Board's
3 approval. If the Board is so inclined, a
4 bench decision today.

5 I'm looking back at the order for
6 16817A and the conditions and Mr. Etherly had
7 asked if we had any objection to those
8 conditions, we're certainly agreeable to all
9 the conditions that apply to the time, the
10 number of students and staff and so forth.

11 There's -- the last condition 8
12 talks about the lighting of the parking lot in
13 accordance with the site plan which was
14 Exhibit 45 to an old case. That lighting has
15 been installed. So, I don't know that that
16 would be necessary to reference again here
17 without confusion since the Exhibit 45 is to
18 an earlier file.

19 And then the other item just sort
20 of following on to what Mr. Jackson noted, we
21 would certainly be delighted if the Board
22 would allow for the approval to be open ended

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1 and with the obvious understanding that should
2 there be any expansion or any other change not
3 consistent with this approval that the
4 Applicant would return to the Board.

5 And that concludes our
6 application. Thank you very much.

7 CHAIRPERSON MILLER: Thank you. I
8 think the conditions are even more important,
9 you know, if we're talking about a longer term
10 or no term. So, you know, in looking them
11 over, I just wanted the Board to discuss some
12 of them and the Applicant to weigh in.

13 But, I think what's missing from
14 this -- from these conditions are like the age
15 of the children. We often put that in for a
16 child development center or a school and my
17 understanding is -- I think from the papers is
18 that the age is from infant to 14. Is there
19 any chance that that's going to change or is
20 that an accurate description?

21 MR. HUGHES: May I answer that?
22 Is that all right? It certainly wouldn't

1 extend beyond that window. That's not the
2 current contemplation. I think it's actually
3 narrower than that at the moment, but similar.
4 With the number of students, the flexibility
5 to keep within that infant to 14 is what is
6 sought by the Applicant.

7 CHAIRPERSON MILLER: Yes, again, I
8 think there's a discrepancy between the
9 application and the certificate of occupancy.

10 MR. HUGHES: The certificate of
11 occupancy and the license both reference I
12 believe 2 or 2½ to 11 years of age and that's
13 the current -- that's what I -- I guess I was
14 alluding to. That's the current population of
15 the student body, but we're requesting the
16 flexibility to go within -- beyond that to the
17 parameters we just mentioned, infant to 14 if
18 that's acceptable.

19 CHAIRPERSON MILLER: Have you had
20 children beyond the parameters? I mean have
21 you had infants? Have you had 14 year olds or
22 is this something totally new that would be

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1 added?

2 MS. VENTURA-TORRES: We have in
3 the past, you know, we have infant in
4 1995/1996, but due to the -- you know, the
5 code -- the building code regulation, we were
6 code and the 14 years old, yes, we have one
7 who is 12 right now, but he mentally has
8 problems, you know, Downs Syndrome. So, the
9 license require, you know, to have them up to
10 18 years old. Is the license they issue.

11 CHAIRPERSON MILLER: Okay. No,
12 I'm just saying the licensing you have to have
13 up to 18, but you're not going to have him
14 there beyond --

15 MS. VENTURA-TORRES: No.

16 CHAIRPERSON MILLER: -- 14?

17 MS. VENTURA-TORRES: No. No. No.
18 No.

19 MR. WARNER: I believe the license
20 provides an exception for children with
21 special needs and --

22 MS. VENTURA-TORRES: Okay.

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1 MR. WARNER: -- waives that -- the
2 upper age limit.

3 CHAIRPERSON MILLER: Okay. But, I
4 -- you know, if we put in an age range here,
5 you know, you'd be in violation of the order
6 if we said up to 14 and then, in fact, a child
7 is 18. So.

8 MR. HUGHES: Madam Chair, the
9 definition of child development center I
10 believe up to -- maybe including 15 years of
11 age. So, I'm not sure how we reconcile an
12 exception to a health license and I don't
13 know. I'm not -- that's not my area of focus.
14 So, I couldn't explain what that exception
15 provides, but what I'm hearing is that a
16 mentally disabled child is --

17 MS. VENTURA-TORRES: Disabled.
18 Yes.

19 MR. HUGHES: -- is considered --

20 MS. VENTURA-TORRES: Well, at this
21 time, you know, in 40 years, we never had, you
22 know, a child, you know, older than 14 years

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1 old. So, they leave, you know, at the age of
2 12/13.

3 CHAIRPERSON MILLER: Okay. I'm
4 just saying. You know, we're talking about
5 putting in a new condition and I -- I don't
6 want to put a new condition on that's going to
7 hurt some child, you know.

8 But, it sounds like you're -- you
9 don't believe that the child will be there
10 beyond 14 anyway.

11 MS. VENTURA-TORRES: No.

12 CHAIRPERSON MILLER: Okay.
13 Because that's what you requested in the
14 application.

15 MS. VENTURA-TORRES: Okay.

16 CHAIRPERSON MILLER: We're looking
17 at the definition of child development center
18 and it speaks to 2 years or older. So, I
19 think that we would only be authorized to
20 authorize it for 2 to 15.

21 MR. WARNER: We're not requesting
22 any younger than 2.

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1 CHAIRPERSON MILLER: Okay.

2 MR. HUGHES: That's fine.

3 CHAIRPERSON MILLER: Okay.

4 MR. HUGHES: And I think that's a
5 product, a fairly recent text amendment. So.

6 CHAIRPERSON MILLER: Right.

7 Right.

8 MR. HUGHES: That's fine and that
9 wasn't the case when -- that wasn't the
10 definition when the center was last here for
11 approval, but we appreciate that change.

12 CHAIRPERSON MILLER: Okay. I mean
13 I just noticed -- this was just brought to my
14 attention as well.

15 So, I don't know. I mean I'm just
16 going to ask my Board Members also since it's
17 the age -- the parameters for the age of a
18 child development center are set here, do we
19 really even need to put that in the order?

20 COMMISSIONER ETHERLY: I would
21 almost be inclined to say no. I mean to an
22 extent this is not germane to the Applicant's

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1 case, but I'm kind of wondering well, what
2 have we been doing with all these infants up
3 to this time in terms of where they fall, you
4 know, in the Zoning Regs.

5 But, to answer your question,
6 Madam Chairman, I would probably be inclined
7 just to stay away from the specificity of the
8 age range. I mean I think the point is well
9 taken, but given the track record of the
10 Applicant, given the fact that every -- every
11 other aspect of the application appears to
12 very much be in order, I wouldn't suspect that
13 the Applicant tomorrow will seeks to bring in
14 junior high schoolers and start caring for
15 them. Not to be flip about. I mean again
16 it's a very important question.

17 But, I'd perhaps be comfortable
18 with just simply leaving it unspecified. I
19 think clearly the Applicant is demonstrating
20 on the record through all their submissions
21 that there's a specific age range that they're
22 dealing with and there is the added check of

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1 the additional licensure requirements through
2 other facets of the District of Columbia
3 government to kind of police and property
4 oversee that component of the Applicant's
5 operations.

6 CHAIRPERSON MILLER: Let me just
7 clarify with the Applicant then. The request
8 in the application for infant to 14 or
9 whatever, was that -- that was done before the
10 text amendment or you weren't aware of the
11 text amendment?

12 MR. HUGHES: The latter.

13 CHAIRPERSON MILLER: Okay. Okay.

14 COMMISSIONER ETHERLY: In the
15 Applicant's health regulation administration
16 license for a child development facility, a
17 copy of which was included in one of the
18 submittals, I'm not sure if it was attached to
19 Exhibit 19, but that also does specify ages 2½
20 through 11 years of age as being the age range
21 and this is a license that is -- was issued on
22 the 13th of December 2007 and expires on

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1 December 12th, 2008.

2 CHAIRPERSON MILLER: Okay. Good.
3 So, we won't add that in. Unless other Board
4 Members feel otherwise. Okay.

5 The hours of operation are the
6 same, 7:00 to 10:00. No problem with
7 condition number 2? I just wanted --

8 MR. HUGHES: That's correct.

9 CHAIRPERSON MILLER: Okay. The
10 number of children shall not exceed 115. Is
11 that an enrollment number? Is that onsite
12 number or both? You know what I mean?

13 MR. HUGHES: The 1-5-0?

14 CHAIRPERSON MILLER: Yes.

15 MR. HUGHES: That is -- what were
16 the options? Enrollment or onsite?

17 CHAIRPERSON MILLER: Right or
18 both.

19 MS. VENTURA-TORRES: Right now,
20 it's 130.

21 MR. HUGHES: But, that's the
22 completely enrolled.

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1 MS. VENTURA-TORRES: Yes.

2 MR. HUGHES: That's inclusive
3 morning, day and --

4 MS. VENTURA-TORRES: And in the
5 morning, yes and the evening. Yes.

6 CHAIRPERSON MILLER: Is that an
7 enrollment number?

8 MR. HUGHES: Yes.

9 MS. VENTURA-TORRES: Yes.

10 MR. HUGHES: That's correct.

11 CHAIRPERSON MILLER: So, the
12 number of children enrolled shall not exceed
13 150. We sometimes have had issues with that,
14 but that's why we need to be clear. Okay.

15 Okay. The only other condition
16 that I would have a question about would be
17 the lighting of the parking lot. I know that
18 Mr. Hughes said that -- we certainly don't
19 need to make a reference in accordance with
20 this old exhibit, but is there a reason to
21 take it out or should we leave it in? That
22 the parking lot shall be lighted. Is it

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1 lighted all evening, on weekends? When is it
2 lighted?

3 MS. VENTURA-TORRES: All the time.

4 CHAIRPERSON MILLER: All the time.

5 That's a security issue?

6 MS. VENTURA-TORRES: No.

7 CHAIRPERSON MILLER: I mean it
8 would probably read then the parking lot shall
9 be lighted at all times.

10 MS. VENTURA-TORRES: All the time.

11 CHAIRPERSON MILLER: But, is that
12 -- in the daytime it's lighted?

13 MS. VENTURA-TORRES: No, during
14 the night, but 5:00, all the -- all the
15 lights, you know, go on.

16 CHAIRPERSON MILLER: Sorry. I
17 missed that.

18 MS. VENTURA-TORRES: By 5:00 p.m.,
19 you know, during --

20 CHAIRPERSON MILLER: From 5:00
21 p.m. on?

22 MS. VENTURA-TORRES: Yes. Okay.

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1 Yes.

2 MR. WARNER: They're on timers.
3 They go on at 5:00.

4 CHAIRPERSON MILLER: Okay. Even
5 daylight savings time they go on at 5:00?
6 Yes, that's a good idea. Okay. We have a --
7 we have a suggestion that it be lighted from
8 sunlight to sunrise. We don't want to, you
9 know, be encouraging these, you know,
10 environmentally bad activities. Okay. From
11 sunset to sunrise.

12 Okay. Anything else? Any other
13 comments before the Board deliberates?

14 MR. HUGHES: No, ma'am.

15 CHAIRPERSON MILLER: Okay. Okay.
16 Why don't we discuss this under a motion? I
17 would move approval of Application Number
18 17731 of Barbara Chambers Children's Center
19 pursuant to 11 DCMR Section 3104.1 for a
20 special exception to allow the continued
21 operation of an existing child development
22 center under section 205 at premises 1470

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1 Irving Street, N.W. as conditioned by this
2 meeting to be discussed.

3 COMMISSIONER ETHERLY: Seconded,
4 Madam Chair.

5 CHAIRPERSON MILLER: Okay. This
6 is a child development center that's been
7 operating in this neighborhood for close to 40
8 years is what I've heard without any
9 complaints and it's, in fact, serving needs of
10 the neighborhood as well as the city at large
11 and the standards in particular for a child
12 development center is set forth in 205 and
13 205.1 allows the Board to approve a child
14 development center in a residential zone
15 subject to those provisions that follow under
16 205.

17 They need to meet the applicable
18 code and licensing requirements of the
19 District of Columbia and I believe we have
20 evidence in the record that they have been and
21 continue to.

22 There are to be pursuant to 205.3

1 no objectionable traffic and/or safety
2 conditions. We do have a letter or a memo
3 from DDOT supporting the application and we
4 discussed how they have their own drop-off
5 area on the property that's been working well.
6 There have been absolutely no complaints.
7 Most of the population either walks from the
8 Metro or walks from the neighborhood. There
9 are a few cars, but they're well accommodated.

10 And 205.4 provides for off-street
11 parking and in this case, the Office of
12 Planning says that it's -- well, the
13 requirement is one space for four teachers and
14 that the center provides 13 spaces which
15 exceeds the number that they need.

16 And 205.5 addresses area impacts.
17 There have been no complaints at all which is
18 really wonderful to hear because that is often
19 the issue in our child development cases.
20 That they encroach upon the neighborhood with
21 noise or traffic or parking and that's not the
22 case here.

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1 So, and, in fact, I think this --
2 this is also an unusual case in that it has
3 great support from the D.C. government, from
4 the Council, from DHCD. It's getting loans
5 for renovation. So, it looks like a plus
6 plus.

7 I would be of the opinion that
8 after 40 years of operation in the
9 neighborhood with no complaints, it's serving
10 the community well. That there wouldn't be a
11 reason to put a term on this anymore.

12 Often a term is used because we
13 need to watch an operation or if there's going
14 to be changing circumstances and I don't see
15 any really changing circumstances that would
16 affect this case and, in fact, it's -- they
17 have renovations tied to a 25-year loan. So,
18 I think that, you know, the changes that are
19 going to happen are that the place is going to
20 improve.

21 It's got the support also of ANC
22 1A. The Office of Planning obviously.

1 So, we did discuss the conditions
2 also. So, I guess I've recommended that we
3 don't term it and that the number of children
4 refer to the number of children enrolled.
5 That the number of children enrolled shall not
6 exceed 150 and then we talked about changing
7 the parking lot lighting hours to say from
8 sunset to sunrise so that it's only being lit
9 in the dark.

10 Other comments?

11 VICE CHAIRPERSON LOUD: Just a
12 really brief clarification. I agree with
13 everything that you just said, but the
14 Applicant I think has been at this location
15 since 1972. I just didn't want it -- didn't
16 want anyone to think that we -- we opened the
17 term because they had been there for 40 years.
18 So, it's closer to I guess 35 years or
19 something like that. Thirty-five/36. Small
20 correction, but important in terms of our
21 support for an open term.

22 CHAIRPERSON MILLER: Okay. And

1 also, you know, I kind of jumped over the
2 conditions and I want to make sure nobody has
3 any questions about it. It really is
4 incorporating the conditions from the last
5 order minus the term and adding enrollment to
6 the number of children and then changing the
7 lighting time period and no reference anymore
8 to that old Exhibit 45.

9 All right. Any other comments?

10 Okay. Then all those in favor say
11 aye.

12 (Chorus of Ayes.)

13 CHAIRPERSON MILLER: All those
14 opposed? All those abstaining? And would you
15 call the vote please?

16 MS. BAILEY: Madam Chair, the vote
17 is recorded as 5-0-0 to grant the application.
18 Mrs. Miller made the motion. Mr. Etherly
19 seconded. Mr. Loud, Mrs. Walker and Mr.
20 Dettman supported the motion.

21 CHAIRPERSON MILLER: Thank you and
22 this will be a summary order as there's no

1 party in opposition.

2 So, you should be getting your
3 order fairly quickly.

4 MR. HUGHES: Thank you very much.

5 CHAIRPERSON MILLER: Thank you.

6 MS. VENTURA-TORRES: Thank you.

7 CHAIRPERSON MILLER: Ms. Bailey,
8 do we have anything else on the agenda for
9 this afternoon?

10 MS. BAILEY: That's it, Madam
11 Chair.

12 CHAIRPERSON MILLER: Okay. Then
13 thank you and this hearing's adjourned.

14 (Whereupon, the hearing was
15 concluded at 5:12 p.m.)

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