

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment  
441 4th Street, N.W.  
Washington, D.C. 20001

PUBLIC MEETING AND PUBLIC HEARING  
November 30, 2010  
9:36 a.m. through 2:22 p.m.

Second Floor Hearing Room, Suite 220 South  
Washington, D.C. 20001

Board Members

Meridith Moldenhauer - Chairperson  
Nicole Sorg - Vice Chairperson  
Jeffery L. Hinkle - NCPC  
Michael G. Turnbull - Architect  
Greg Selfridge - Zoning Commission  
Clifford Moy - Secretary  
Beverley Bailey - Office of Zoning  
Mary Nagelhout - Office of the Attorney General  
John Nyarku - Office of Zoning

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

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# 1 PROCEEDINGS

2 CHAIRPERSON MOLDENHAUER: This meeting  
3 will please come to order good morning ladies and  
4 gentleman. This is the November 30, 2010, Public  
5 Meeting of the Board of Zoning Adjustments for  
6 the District of Columbia. My name is Meridith  
7 Moldenhauer, Chairperson, joining me today to my  
8 right, Jeffrey Hinkle, Representative of the  
9 National Capital Planning Commission and to my  
10 left Nicole Sorg, Vice Chairperson and Mayoral  
11 Appointee. Copies of today's meeting agenda are  
12 available to you and are located to my left in  
13 the wall bin near the door. We do not take any  
14 public testimony at our meetings unless the Board  
15 asks someone to come forward. Please be advised  
16 this proceeding is being recorded by a court  
17 reporter and is also being webcast live,  
18 accordingly we must ask you to refrain from any  
19 disturbing noises or actions in the hearing room.  
20 Please turn off all cell phones and beepers at  
21 this time. Mr. Secretary do we have any  
22 preliminary matters?

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1                   SECRETARY MOY: Not for the two decision  
2 cases this morning Madam Chair.

3                   CHAIRPERSON MOLDENHAUER: Then let's  
4 proceed with the agenda.

5 **Application No. 18135**

6                   MR. MOY: Yes, good morning Madam  
7 Chairperson, Members of the Board. The first of  
8 the two applications for Board action is  
9 Application No. 18135 of W2007 100 K Street  
10 Realty, LLC, pursuant to 11 DCMR 3104.1 for a  
11 special exception from the parking requirements  
12 under Section 2108 and a special exception from  
13 the roof structures set-back requirements under  
14 Sections 411 and 770.6 to allow the development  
15 of an office building with ground floor retail  
16 use in the C-3-C District that premises 100 K  
17 Street, N.E., the property is in Square 713, Lot  
18 50 in the air rights above Lot 49. As the Board  
19 will recall on November 16, 2010, the Board  
20 completed public testimony, closed the record and  
21 scheduled its decision on November 30<sup>th</sup>, the Board  
22 requested that the applicant submit additional

1 information to supplement the record. The  
2 applicant has filed Madam Chair, and that post-  
3 hearing document dated November 22, 2010, is  
4 identified as "Exhibit 36". The Board is to act  
5 on the merits of the requested special exception  
6 relief and that completes the Staff's briefing  
7 Madam Chair.

8 CHAIPERSON MOLDENHAUER: Thank you very  
9 much Mr. Moy, I'm not going to turn to Ms. Sorg  
10 to start us off on our deliberations on the  
11 merits.

12 VICE CHAIR SORG: Thank you Madam Chair,  
13 so as we discussed and heard in the testimony  
14 last week there's two main issues in this case  
15 and I can I think quickly go through them. First  
16 the parking relief which we saw the requirement  
17 here is 114 spaces and the applicant is asking  
18 for that to be reduced to 94 spaces. In  
19 testimony we, while we don't have any letter in  
20 the record I think still from DDOT, we heard from  
21 the applicant that they've been working closely  
22 with DDOT regarding programmed spaces in the

1 building as well as other transient oriented  
2 development qualities. Also we heard that the  
3 project is close to two Metro Stations as well as  
4 several bus routes, so I think the, we can easily  
5 support the relief from parking in my opinion.  
6 The second issue which we spent most of our time  
7 on thinking about and the last hearing was the  
8 requested relief from the roof structure set-back  
9 requirements. Here they proposed 12 feet for a  
10 requirement that's 18' 6", the requirement  
11 hinges, the issue here I think hinges on the  
12 requirement that roof structures be set-back from  
13 exterior walls by a 1 to 1 ratio and as the  
14 applicant stated that we can look for  
15 clarification and that definition from a few  
16 recent cases including the appeal 17109 which  
17 they mention, you know, and showing that this is,  
18 you know, a party wall and therefore the  
19 requirements for the set-back are not applicable  
20 when we look at the maximum possibility for  
21 density on the adjacent lot. In addition to that  
22 the applicant has shown the design and the

1 materials to be used on that at risk wall, façade  
2 and those are sort of, are in keeping with I  
3 think the design of the rest of the building  
4 envelope. So in that issue I think I would also  
5 be in favor of granting that relief. A couple of  
6 other things to mention that the project does  
7 have the support of OP and a resolution from ANC  
8 6-C which is our "Exhibit No. 26" as well I think  
9 there's indications that historic preservation  
10 doesn't see any issues with the project and it's  
11 proximity to the railroad. As well two other  
12 issues that I think are important, the project  
13 is, I think, designed to be, and the applicant  
14 plans to certify it as lead gold(ph sp) which I  
15 think is something that we want to support as  
16 well as development in the area of NOMA.

17 CHAIRPERSON MOLDENHAUER: Thank you very  
18 much I think that you fully encapsulated all the  
19 different issues that we had in this case, I  
20 think that the applicant's supplemental  
21 submissions that we requested addressed our  
22 concerns on that north facing wall and so with

1 that I would support your conclusions but I'll  
2 see if there's any additional deliberation.

3 Seeing none then is there a motion?

4 VICE CHAIR SORG: Sure thank you Madam  
5 Chair, I would submit a motion to grant relief  
6 for Application No. 18135 for special exception  
7 relief from the number of parking spaces required  
8 under 2101.1 and special exception for the roof  
9 structure set-back requirements of 770.6.

10 CHAIRPERSON MOLDENHAUER: Motion is made  
11 is there a second?

12 MR. HINKLE: Second.

13 CHAIRPERSON MOLDENHAUER: Motion has been  
14 made and seconded all those in favor say aye.

15 CHORUS: Aye.

16 MR. MOY: Yes Staff would give vote of,  
17 well first of all Madam Chair there's an absentee  
18 vote from another participant on the application  
19 Mr. Turnbull and his absentee ballot vote is to  
20 approve such conditions as the Board may impose  
21 so that would give a final vote of 3 to 0 to 1,  
22 this is to approve the application on the motion

1 of Ms. Sorg, seconded by Mr. Hinkle and also in  
2 support of the motion Ms. Moldenhauer. Final  
3 vote of 3 to 0 to 1 with Mr. Turnbull's absentee  
4 vote.

5 CHAIRPERSON MOLDENHAUER: Thank you very  
6 much and seeing as there is no opposition we'd  
7 like to waive our requirements and ask for a  
8 summary order to be issued.

9 MR. MOY: Very good, thank you.

10 CHAIRPERSON MOLDENHAUER: Thank you.

11 MS. BAILEY: Excuse me is that vote 4 to  
12 0 to 1?

13 MR. MOY: Yes it would be 4 to 0 to 1,  
14 thank you Ms. Bailey.

15 **Application No. 18137**

16 MR. MOY: The next and last case for  
17 Board action is Application No. 18137, this is  
18 Chipotle Mexican Grill pursuant to 11 DCMR 1533.1  
19 and 3104.1, this is for a special exception to  
20 establish a fast-food restaurant under Section  
21 733 in the NOPD, the Naval Observatory Precinct  
22 Overlay Districts/C-2-A District at premises 2338

1 Wisconsin Avenue, N.E. (Square 1300, Lot 815).  
2 Again on November 16, 2010, the Board completed  
3 Public testimony, closed the record and scheduled  
4 it's decision on November 30<sup>th</sup>, the Board  
5 requested that additional information from the  
6 applicant to supplement the record, that post-  
7 hearing document was filed and entered into the  
8 record, logged into the record on November 19'  
9 2010, identified in your case folders as "Exhibit  
10 No. 32", the Board is to act on the merits of the  
11 special exception relief, and that completes the  
12 Staff's briefing Madam Chair.

13 CHAIRPERSON MOLDENHAUER: Thank you very  
14 much Mr. Moy, this case is before us as indicated  
15 for 733 relief and we have reviewed the case  
16 under that standard initially all incorporate  
17 OP's report and their analysis but initially O.P.  
18 indicated that they were not able to make  
19 recommendation, however based on the hearing and  
20 testimony at the hearing the O.P. seemed to  
21 indicated that based on statements by the  
22 applicant in regards to the trash that they would

1 be more inclined to approve the application and  
2 then I'll also note that we have received  
3 additional submissions our "Exhibit No. 32",  
4 which specifically addressed those issue and I  
5 find have resolved any concerns that I had in  
6 regards to how the layout would occur in regards  
7 for the trash and dumpsters and how they would be  
8 able to locate the three dumpsters in that area  
9 and satisfy the standards under 733. In addition  
10 to that I can just quickly go through, I'm not  
11 going to go through all the different standards  
12 but under 733 there are multiple factors, these  
13 are outlined in O.P.s report which we went  
14 through in regards to approving this application  
15 and I feel that the applicant has satisfied all  
16 of those issues and addressed the only concern  
17 which was the issue of the trash, and they also  
18 provided sufficient testimony in regards to the  
19 fact that any neighboring properties would not be  
20 impacted negatively based on the fact that there  
21 is some sloping on the rear of that property  
22 where potentially adjacent property owners would

1 be able to look on to that area and I don't think  
2 that, that's going to be an issue, following the  
3 submissions and supplemental information on  
4 reviewing the record, based on that I think that  
5 the applicant does satisfy 733 and in addition to  
6 that I'd like to just note that the ANC is in  
7 support of the application, we also have a letter  
8 from the National Capital Planning Commission,  
9 based on the fact that this is in the Naval  
10 Observatory Overlay District and that they have  
11 no concerns or no issues with approval of the  
12 application as well. So based on that I would  
13 recommend approval but I'll first ask any other  
14 Board members have any additional discussions or  
15 deliberations on the matter? Seeing none, then I  
16 will submit a motion. I'll submit a motion to  
17 approve Application No. 18137 for Chipotle  
18 Mexican Grill, pursuant to 11 DCMR 1533.1 and  
19 3104.1 for a special exception to establish a  
20 fast food restaurant under Section 733 in the  
21 Naval Observatory Overlay District at premises  
22 2338 Wisconsin Avenue, N.W. A motion has been

1 made is there a second?

2 VICE CHAIR SORG: Second.

3 CHAIRPERSON MOLDENHAUER: A motion has  
4 been made and seconded, all those in favor say  
5 aye.

6 CHORUS: Aye.

7 MR. MOY: Madam Chair again on this  
8 application Mr. Turnbull was also a participant  
9 in this application and he also submitted an  
10 absentee ballot vote and his absentee vote is to  
11 approve with such conditions as the Board may  
12 impose, so that would give a total vote of 4 to 0  
13 to 1, this is on motion of the Chair Ms.  
14 Moldenhauer to approve the application for the  
15 special exception relief, seconded by Ms. Sorg,  
16 also support of the motion Mr. Hinkle, no other  
17 Board Members participating, again the final vote  
18 of 4 to 0 to 1.

19 CHAIRPERSON MOLODENHAUER: Thank you very  
20 much Mr. Moy and with no opposition in this case  
21 I would also like to waive our requirements and  
22 request a summary order.

1                   MR. MOY: Very good, very well, thank you  
2 Madam Chair.

3                   CHAIRPERSON MOLDENHAUER: Thank you, and  
4 that concludes then our morning meeting and I  
5 will begin our morning session for hearings.

6 **Morning Hearing Session:**

7                   CHAIRPERSON MOLDENHAUER: This hearing  
8 will please come to order good morning ladies and  
9 gentleman, this is the November 30, 2010, Public  
10 Meeting of the Board of Zoning Adjustments for  
11 the District of Columbia. My name is Meredith  
12 Moldenhauer, Chairperson, joining me today to my  
13 right is Jeffrey Hinkle, Representative of the  
14 National Capital Planning Commission, to my left  
15 is Nicole Sorg, Vice Chair and Mayoral Appointee,  
16 and joining us shortly will be Greg Selfridge,  
17 Zoning Commissioner, from the Zoning Commission.  
18                  Copies of today's meeting agenda are available  
19 to you and are located to the left in the wall  
20 bin near the door. Please be advised this  
21 proceeding is being recorded by a court reporter  
22 and is also being webcast live. Accordingly we

1 must ask you to refrain from any disturbing  
2 noises or actions in the hearing room. When  
3 presenting information to the Board please turns  
4 on and speak into your microphone first stating  
5 your name and home address. When you are  
6 finished speaking please turn off your microphone  
7 so that your microphone is no longer picking up  
8 sounds or background noise. All persons planning  
9 to testify either in support or in opposition are  
10 to fill out two witness cards these cards are  
11 located to my left on the table near the door and  
12 on the witness tables. Upon coming forward to  
13 the Board please give both cards to the court  
14 reporter sitting to my right, the order of  
15 procedures for special exceptions and variances  
16 are as follows: 1. Statement and witness of the  
17 applicant and applicant. 2. Parties and persons  
18 in support 3. Parties and persons in opposition.  
19 4. Government reports including the Office of  
20 Planning and Department of Transportation and  
21 other relevant agencies. 5. Reports from the  
22 ANC. 6. Rebuttal and closing statements of the

1 applicant. Pursuant to Section 3117.4, and  
2 3117.5, the following time constraints will be  
3 maintained; the applicant appellant persons and  
4 parties except an ANC in support including  
5 witnesses will be given permitted 60 minutes  
6 collectively to present its case. Apelles's  
7 persons and parties except an ANC in opposition  
8 including witnesses will be given 60 minutes  
9 collectively. Persons testifying whether in  
10 support or in opposition will be given three  
11 minutes and organization will be given 5 minutes.

12 These time constraints do not include cross  
13 examinations, or questions from the Board. Cross  
14 examination of witnesses is permitted by the  
15 applicant and parties. The ANC within which the  
16 property is located is automatically a party to a  
17 special exception or variance case. Nothing  
18 prohibits the Board from placing a reasonable  
19 restriction on cross examination including time  
20 limitations, limitations on the scope. The  
21 record will be closed at the conclusion of each  
22 case except it will remain open for any materials

1 specifically requested by the Board. The Board  
2 and the staff will specify at the end of each  
3 hearing exactly what is expected and the date  
4 when the person's material must be submitted to  
5 the Office of Zoning. After the record is closed  
6 no other information will be accepted by the  
7 Board. The Sunshine Act requires that the public  
8 hearing on each case be held in the open before  
9 the public. The Board may consistent with its  
10 rules and procedures and the Sunshine Act enter  
11 into Executive Session during or after a public  
12 hearing on a case for purposes of reviewing the  
13 record or deliberating on a case. The decision  
14 of the Board contested cases must be based  
15 exclusively the public record to avoid any  
16 appearance to the contrary the Board requests  
17 that persons present not engage the members of  
18 the Board in conversation. Please turn off all  
19 beepers and cell phones at this time as to not  
20 disturb these proceedings. At this time the  
21 Board will consider any preliminary matters,  
22 preliminary matters relate to whether a case

1 should or will be heard today such as a request  
2 for postponement, continuance or withdrawal or  
3 whether proper or adequate notice of a hearing  
4 was given. If you are not prepared to go forward  
5 now please let me know and if the Board should  
6 believe that we should postpone the proceeding  
7 now is the time to raise such a matter. Mr.  
8 Secretary do we have any preliminary matters?

9 MR. MOY: No major ones although there is  
10 a potential for a preliminary matter in the  
11 second case 18141, and that's it Madam Chair.

12 CHAIRPERSON MOLDENHAUER: Okay, thank  
13 you, then all individuals wishing to testify  
14 before the Board if you'll please stand and Ms.  
15 Bailey will administer the oath.

16 MS. BAILEY: Please raise your right  
17 hand, do you solemnly swear or affirm that the  
18 testimony that will be given today will be the  
19 truth the whole truth and nothing but the truth?

20 **Application No. 18140**

21 MS. BAILEY: Madam Chair, Members of the  
22 Board, good morning, the first Application is No.

1 18140, is the application of Jeffrey S. Nestler,  
2 and is pursuant to 11 DCMR, Section 3103.2 for a  
3 variance to convert a one family semi-detached  
4 dwelling to a flat, that's a two unit dwelling.  
5 The application is under (Subsection 320.2) it is  
6 located in the D-R-3 District at premises 2119 R  
7 Street, N.W., (Square 2514, Lot 23).

8 CHAIRPERSON MOLDENHAUER: The applicant  
9 please step forward to the table.

10 MR. NESTLER: Good morning Madam Chair,  
11 and Members of the Board, my name is Jeffrey  
12 Nestler; my address is 2119 R Street, N.W. in the  
13 District, 20008. I'm here as an applicant for an  
14 area variance to convert my dwelling, which is a  
15 one family dwelling into a two unit flat under  
16 Section 3103.2 and Section 320.2. When I  
17 purchased the property a few months ago from the  
18 prior owners I was informed by the prior owners  
19 that when they purchased the property in 1976, it  
20 had already been converted into a two unit flat,  
21 they continued operating the single family house  
22 as a two unit flat for the past 34 years having a

1 tenant in the basement at all times. I've since  
2 purchased the property and would like to continue  
3 renting out the basement and using the property  
4 as a two unit flat and propose no structural  
5 changes at all to the unit and no change in the  
6 use that's been happening on the property for the  
7 past 34 years. I have several letters in support  
8 of my application from several of my neighbors  
9 and as far as I can tell no opposition at all  
10 from anyone in the neighborhood. The Office of  
11 Planning is also recommended favorable action on  
12 my application. The property itself is unique in  
13 that I'm in an R-3 District and I'm surrounded on  
14 all sides by properties none of which are single  
15 family residences.

16 CHAIRPERSON MOLDENHAUER: As you start  
17 getting to the standard let me ask you some  
18 questions. You, this is a self certified  
19 application and you submitted an application for  
20 an area variance. When we review this  
21 application we would find that it's more of a use  
22 variance and so if maybe you can talk on the

1 issue in regards to why you found that it was an  
2 area variance and not a use variance? I think  
3 that right now in our review that this is a  
4 chance in use from a single family to a flat or a  
5 multi-use building. That would create a higher  
6 standard rather from an area variance which is  
7 practical difficulty standard to a use variance  
8 which is undue hardship and undue hardship  
9 requires that we confirm that there's no self  
10 imposed hardship and even though obviously you  
11 didn't create this situation, you did buy it  
12 knowing that this was a preexisting challenge and  
13 I think that there's some other ways that we can  
14 discuss this but I first want to talk about, you  
15 know kind of if you still think that's it's an  
16 area variance how you get to that argument versus  
17 a use variance and then from there we'll kind of  
18 talk a little bit more about maybe what are some  
19 of the other ways to look at this case, because I  
20 think that under a use variance standard this is  
21 going to be a very, very challenging case to  
22 satisfy.

1                   MR. NESTLER: I understand Madam Chair;  
2 I've spoken with the Office of Planning about the  
3 area variance and use variance standard and  
4 differential if I may defer to the Office of  
5 Planning to first apply to the matter.

6                   CHAIRPERSON MOLDENHAUER: We can turn to  
7 Ms. Brown-Roberts to kind of talk about that as  
8 well, but at the same time just so you  
9 understand as the applicant there are times where  
10 we disagree with the Office of Planning and  
11 Office Planning may view something as an area  
12 variance but we come down as the final arbiters  
13 of the zoning rights and determining that it is a  
14 use variance but I think that we can, we'll jump  
15 out of sequence here so that way and I'll kind of  
16 turn to OP for them to answer the question. Did  
17 you guys look at this as a use variance and if so  
18 why did you come to the conclusion in your view  
19 that this was an area variance?

20                   MS. BROWN-ROBERTS: Yes, good morning  
21 Maxine Brown-Roberts from the Office of Planning.  
22 We did take a look at that when we saw the

1 application come in and we made a call over to  
2 OHA and got a definition that said that it should  
3 be reviewed as an area variance. Stating that  
4 the use is still a residential use and then in  
5 relation to the area it's the building itself  
6 that is sketching the variance but the use  
7 remains the same it's still a residential use  
8 whether it's, the use is not changing in this  
9 case, so that was our understanding.

10 CHAIRPERSON MOLDENHAUER: Okay we  
11 discussed this a little bit this morning in  
12 regards to whether the use is, you know whether  
13 you have the larger categories of use,  
14 residential, commercial, industrial or whether  
15 the use is single family, flat, apartment multi-  
16 dwelling unit and then commercial and then so on  
17 and so forth. I think that the way I view it is  
18 not a matter of, you know, I think it's an issue  
19 of whether your talking about a single family to  
20 a, not this case, you have to review the issues  
21 as it would effect any case, a 500 unit apartment  
22 building, well obviously the density you know I

1 think is going to be different and thus would  
2 affect whether or not we review this as a use  
3 variance or an area variance. I think that you  
4 can't, it's a hard gray line, I mean don't you  
5 see that line, in other words if you just say  
6 it's maintained as a residential use then it's  
7 area variance versus a use variance?

8 MS. BROWN-ROBERTS: Yeah but, no.

9 CHAIRPERSON MOLDENHAUER: So even if this  
10 was an application, and obviously as I said this  
11 is not this factual situation here but we have to  
12 view it as it would apply in any situation. If  
13 this was a building that was going from, you  
14 know, a smaller R-3 to then a 300 unit building  
15 that that would still be considered just an area  
16 variance, it wouldn't be required to go to a  
17 higher standard as a use variance?

18 MS. BROWN-ROBERTS: I'm not sure; I think  
19 that would be a different case.

20 CHAIRPERSON MOLDENHAUER: I see that we  
21 have to apply the rules uniformly whether it's a  
22 use variance or an area variance in any of the

1 situations and you have to determine, you know,  
2 what is a use variance, does a use variance  
3 change potentially in the larger categories,  
4 residential, commercial, industrial, or is it a  
5 change in the use in general versus change single  
6 family to then potentially flat or flat then to  
7 multi-family, whether you went from a two unit to  
8 a three unit. I think that maybe we've had even  
9 some recent cases where we had a two unit to a  
10 three unit and we applied the use variance test  
11 and I'd like to kind of look to some of my Board  
12 Members to see if they're in agreement with me  
13 that this application would fall under the use  
14 variance in the Board view of this?

15 MR. SELFRIDGE: Madam Chair not to  
16 expound on what you said but I think I'm in  
17 agreement, to me it seems like a use variance, I  
18 understand that there's different ways to look at  
19 it and unfortunately it doesn't seem to be a  
20 bright line, but I think that this is a use  
21 variance and that's where I would come down on  
22 it.

1 CHAIRPERSON MOLDENHAUER: Any other Board  
2 Members like to.

3 MS. SORG: Thank you Madam Chair, I agree  
4 as well and I think that you know we can still  
5 look at each of these cases on a singular basis  
6 and so you can see that there are extenuating  
7 circumstances in this case as well that might go  
8 to a use variance, I don't know. So I think in  
9 essence I agree with you as well.

10 CHAIRPERSON MOLDENHAUER: So I think that  
11 what I'm hearing from the other Board Members as  
12 well is that we would be applying the use  
13 variance standard for a case like this. That  
14 being said we would have to apply the undue  
15 hardship standard versus practical difficulty and  
16 as I indicated in the question of self imposed  
17 hardship stating that you were aware that it was  
18 a flat in an R-3 Zone makes the case  
19 exceptionally challenging to satisfy, I'm  
20 definitely sympathetic because I feel in a  
21 situation like this we have a lot of right now  
22 the zoning commission is going through a rewrite

1 and we're talking about how maybe we can correct  
2 things like this in the future because it's  
3 commendable that your coming forward to try to  
4 create a legal unit when potentially obviously  
5 for the last 20 some odd years the prior owner  
6 was simply just, you know, looking the other way  
7 and continuing on and that's where unfortunately  
8 you know we see some challenges but what I want  
9 to do is I want to propose some potential  
10 alternatives and then give you the opportunity to  
11 either request maybe a postponement to review  
12 some of these other alternatives if you don't  
13 want to and you want to continue forward we can  
14 do that today but I kind of want to go through  
15 some options that you may have. One would be  
16 reviewing the option of an area variance under  
17 202.10 which articulates that you're permitted to  
18 have an accessory apartment building but it says  
19 that you're only allowed to have an accessory  
20 apartment building in a single detached home. So  
21 what you need to do is in my view I would review  
22 that as saying you're looking for an exception or

1 relief from the single detached home section,  
2 that that actually physically has to do with the  
3 building versus the use because a single detached  
4 home can be a single house and multiple family  
5 house, what have you. So that you would then be  
6 looking for an area variance for that section of  
7 202.10. Another option would be is to go and  
8 review some of the other matter-of-right uses  
9 that could potentially be applied to the basement  
10 dwelling. I don't know if that would obviously  
11 fit your use but it would be something that maybe  
12 recommended in regards to home occupancy, matter-  
13 of-right uses, art studios, other ways that maybe  
14 you can use that property in conformity with the  
15 R-3 Zone, I think that B&B's other things to that  
16 effect are permitted as a matter-of-right I would  
17 recommend to take a look at those as well. I  
18 think that if you look at some of the alternative  
19 options or maybe you can obtain a special  
20 exception under 202.10 and then a area variance  
21 from one of those or two of those conditions,  
22 that may be a way around having to try to satisfy

1 I think an uphill battle for a use variance in  
2 this type of case.

3 MR. NESTLER: Thank you Madam Chair, with  
4 regard to the use variance versus the area  
5 variance standard I understand that there is some  
6 sort of a fuzziness in terms of what the standard  
7 is and I understand the commissions position at  
8 least my thinking on the matter was that from a  
9 single family home to a flat I understand your  
10 position Madam Chair that you could talk about  
11 the large categories versus the smaller  
12 categories and it's hard to draw the line but  
13 perhaps a way to draw the line would be to say  
14 from a single family house to a two unit flat is  
15 still under the area variance category because  
16 you're really not changing the density of the  
17 property very much at all, whereas you go to a  
18 larger to a higher density from a two unit flat  
19 to a multi-unit family to an apartment complex  
20 they you're really getting into sort of different  
21 uses whereas if you walk around the neighborhood,  
22 at the least the neighborhood where I'm in, in

1 Kalorama and DuPont single family houses and  
2 flats co-exist and sort of at least from  
3 outwardly appearance look exactly the same and so  
4 that to me at least would be an area variance and  
5 a way to move forward under the area variance  
6 standard and I understand the Zoning Commission  
7 is undergoing a rewrite so I just want to throw  
8 that out there and see if that would get any  
9 support from the Board today?

10 CHAIRPERSON MOLDENHAUER: I appreciate  
11 that and I see your point, I think that, you  
12 know, just in regards to when we look at cases I  
13 think it's better for us to make a clear line  
14 distinction whereas it's all uses, any change in  
15 a use in general would then require a use  
16 variance versus trying to parcel it out because  
17 then every applicant would want us then to take  
18 on a case, which we do case by case analysis but  
19 I think that it just creates more of a challenge  
20 than the applicant may not know exactly what  
21 they're going to get into if we have a more  
22 strict application of the rules then applicants

1 know exactly what they're going to expect when  
2 they come before the Board.

3 MR. NESTLER: I understand.

4 MR. SELFRIDGE: Madam Chair I'd just like  
5 to add I think you've provided some good  
6 suggestions here, some good guidance. Kind of  
7 stepping back from what you said I have a hard  
8 problem with the application all together. I too  
9 commend Mr. Nestler for coming forward and am  
10 very sympathetic to this case. Hopefully  
11 something that can be addressed maybe through the  
12 zoning rewrite in terms of finding easier ways to  
13 address some of these issues. Even on an area  
14 variance I think this, I have a hard time getting  
15 there just based on what's in front of us today  
16 regardless of whether I want to I just think it's  
17 hard to get there.

18 CHAIRPERSON MOLDENHAUER: And I think  
19 that's something that we would have to take a  
20 look at upon potential review or if you take the  
21 time to go back and look at it. I think that the  
22 issue of the PEPCO Electrical and the issue of

1 the layout I find potentially more persuasive but  
2 I think there's also non-relief options out there  
3 versus trying to obtain a relief from the Board.  
4 Lets do this, I think, let me look to the  
5 applicant to see what you would like to do I mean  
6 obviously we've provided some recommendations but  
7 it's your option either you can go forward today  
8 under an use variance or what we can do is we can  
9 provide you with a short period of time however  
10 much you need to go back, we can postpone the  
11 hearing and you can potentially maybe either come  
12 back to us with a revised relief that your  
13 seeking potentially maybe bolstering some of the  
14 elements under the issue of potentially maybe  
15 bringing in some other factors in order to  
16 satisfy the second prong if you do seek an area  
17 variance under another standard. What would you  
18 be looking to do at this point?

19 MR. NESTLER: I would appreciate the  
20 Board's suggestion to go back and look at the  
21 special exception for under 202.10 and look for  
22 special exception for the semi-detached dwelling

1 and then look for an area variance under that  
2 standard. I would appreciate a short  
3 postponement for that Madam Chair. Before we get  
4 to that point I do have a neighbor here today who  
5 came to testify favorably and in order to not  
6 inconvenience him in the future I would  
7 appreciate the Board to allow him to testify here  
8 today so that we don't have to inconvenience him  
9 in the future.

10 CHAIRPERSON MOLDENHAUER: Absolutely, I  
11 appreciate you pointing that out. What we can do  
12 is then if the applicant rests at this point in  
13 time for your statements we'll then turn to any  
14 individuals in the audience either in support or  
15 opposition and if they are present if they could  
16 come forward to the table. You can introduce  
17 yourself and then we'll give you three minutes.

18 MR. SABA: Good morning my name is  
19 Raymond Saba, I live at 2224 R Street, I would  
20 like to point out that R Street in Sheraton  
21 Kalorama is only two very short blocks and if you  
22 permit me I would like to give you a little bit

1 of the present condition on these two blocks. On  
2 my block I am the only owner who lives on that  
3 block, there are two properties they are all  
4 rentals and there are multiple apartments in  
5 them. I am quite confident they have not been  
6 before this Board to get the proper legal  
7 documents to have them as apartments. I have  
8 three other properties on my block that are two  
9 that are derelict and one that is empty for the  
10 last seven years that I have been there. On his  
11 block there is one property right across the  
12 street from him that has been repossessed by the  
13 bank and there are three other properties that  
14 are empty. If you pass by them, the trash, the  
15 parking is a nightmare; I really commend Mr.  
16 Nestler and his wife that they are coming in here  
17 to do something that others have not. Everyone  
18 around the neighborhood that I have spoken to is  
19 in his support. Almost every other house within  
20 two blocks they have apartments and we have lots  
21 of students from Georgetown and George Washington  
22 University and I am quite confident no one has

1 come before this Board to have it legally made.  
2 I'm speaking not only on my behalf but at least  
3 six other neighbors I have spoken to we would  
4 like you to really consider the quality of our  
5 life on these two blocks. We would love to see  
6 neighbors. The city has planted trees and quite  
7 frankly no one on these blocks take care of them.

8 I have hired people with 500 feet hoses to water  
9 the trees, he's the first one I see working on  
10 the sidewalk. I would be very grateful if you  
11 consider that, thank you very much.

12 CHAIRPERSON MOLDENHAUER: Thank you very  
13 much for coming down today I appreciate your  
14 testimony and we do recognize all those factors  
15 and I appreciate that. Is there anybody present  
16 today just so if they are, from the ANC for this  
17 case? Seeing none then typically we obviously go  
18 to the Office of Planning but what we'll do is we  
19 will postpone this based on this current hearing.

20 How long do you think, Mr. Nestler would you  
21 need to go back, review the zoning regs and come  
22 back with a supplemental?

1                   MR. NESTLER: Three weeks should be  
2 sufficient Madam Chair.

3                   CHAIRPERSON MOLDENHAUER: Okay so three  
4 weeks would then put us right smack into the  
5 holiday season so we will then try to see if we  
6 can squeeze you, we've got two appeals; it looks  
7 like the next day would be on the 11<sup>th</sup>, January  
8 11<sup>th</sup>. Mr. Selfridge right now you're not on the  
9 calendar but would you be willing to maybe sign  
10 on so that you can continue with this case.

11                  MR. SELFRIDGE: I'm sure I'm available.

12                  CHAIRPERSON MOLDENHAUER: Would that be  
13 convenient for the applicant?

14                  MR. NESTLER: Is that the next recent  
15 appointment? I only ask Madam Chair, my wife is  
16 due on January 11<sup>th</sup>, so I'm just a little hesitant  
17 to make a plan on that day and have to cancel at  
18 the last minute, I'm sure the Board would not  
19 appreciate that.

20                  CHAIRPERSON MOLDENHAUER: I understand  
21 that too well. Okay we could squeeze you in,  
22 we've got three cases but we could probably

1 squeeze you in the morning on the 4<sup>th</sup>.

2 MR. NESTLER: Okay.

3 MR. SELFRIDGE: Well I'd certainly like to  
4 sit on this case again so let me talk to Mr. Hood  
5 and see if we can make some arrangements and I'm  
6 certainly sympathetic to the family issues as  
7 well, so I'm sure we can work something out.

8 CHAIRPERSON MOLDENHAUER: Perfect, okay  
9 wonderful I appreciate that. Mr. Moy I think we  
10 now have the afternoon of the 14<sup>th</sup> open don't we  
11 or are we still not going to, December 14<sup>th</sup> we  
12 were going to do something but now we're just  
13 going to be in January.

14 MR. MOY: I was going to suggest because  
15 we have the room if the applicant can...

16 CHAIRPERSON MOLDENHAUER: That's a lot  
17 quicker to the 14<sup>th</sup> it doesn't give you as much  
18 time but do you think that would be sufficient  
19 and that way...

20 MR. NESTLER: Yeah December 14<sup>th</sup>.

21 CHAIRPERSON MOLDENHAUER: Okay, so why  
22 don't we do 1 o'clock, you'll be the only case in

1 the afternoon for the 14<sup>th</sup>.

2 MR. NESTLER: Thank you Madam Chair.

3 CHAIRPERSON MOLDENHAUER: Thank you very  
4 much, so we'll schedule that then for 1 o'clock  
5 on December 14<sup>th</sup>.

6 MR. NESTLER: Is there a time by which  
7 the Board would appreciate receiving my  
8 supplemental submission?

9 CHAIRPERSON MOLDENHAUER: Since it's so  
10 late why don't we give you until, I would say the  
11 morning of the 13<sup>th</sup> and that way we can get it  
12 electronically to the staff so we have to get it  
13 to the Office of Zoning preferably by let's say  
14 10 a.m. on the 13<sup>th</sup>.

15 MR. NESTLER: Okay.

16 CHAIRPERSON MOLDENHAUER: So then we're  
17 going to postpone this case until the afternoon  
18 session of December 14<sup>th</sup> leaving the record open  
19 for any additional materials from the applicant  
20 until 10 a.m. on the 13<sup>th</sup> of December.

21 MR. NESTLER: Thank you Madam Chair.

22 CHAIRPERSON MOLDENHAUER: Thank you. You

1 can call the next case.

2 **Application No. 18141**

3 MS. BAILEY: Madam Chair the next case is  
4 Application 18141 it's the application of Jubilee  
5 Housing, LLC, pursuant to 11 DCMR Section 3103.2  
6 for a variance from the floor area ratio  
7 requirements under (Subsection 771.2) to allow  
8 additions to an existing building for office use,  
9 the property is zoned C-2-B it's located at 2448  
10 18<sup>th</sup> Street, N.W. (Square 2551, Lot 42).

11 CHAIRPERSON MOLDENHAUER: Good morning if  
12 the party starting on my right would like to  
13 introduce themselves for the record please.

14 MS. GROEN: My name is Katie Groen I work  
15 as a consultant to Jubilee Housing.

16 MR. KNIGHT: My name is Jim Knight; I'm  
17 the Executive Director of Jubilee Housing.

18 MR. SCHMECK: Ron Schmeck with Square 134  
19 Architects, we're the architects.

20 CHAIRPERSON MOLDENHAUER: Okay one  
21 preliminary matter, Mr. Schmeck I know that  
22 you've submitted documentation you and your firm

1 on behalf of the applicant in this case. One  
2 thing we don't have in our record is a letter of  
3 authorization for you?

4 MR. SCHMECK: I'm sorry I don't know what  
5 that is.

6 CHAIRPERSON MOLDENHAUER: It would be a  
7 letter of authorization, authorizing you to  
8 represent the applicant and the power to bind the  
9 applicant on behalf of this case.

10 MR. SCHMECK: Is that something we can  
11 get to you at a later date?

12 CHAIRPERSON MOLDENHAUER: Yes it is or we  
13 could waive our requirements if the applicant,  
14 Mr. Knight would on the record simply orally  
15 testify to that.

16 MR. KNIGHT: I gladly do so and I  
17 apologize for the oversight.

18 CHAIRPERSON MOLDENHAUER: Not a problem,  
19 okay so then we will waive that requirement and  
20 we can move forward. I think that you know  
21 obviously we've reviewed the record and I think  
22 that there are some concerns that we have with

1 this application. If you can address some of the  
2 issue in regards to, I know that OP had mentioned  
3 that there was a change in regards to who the  
4 tenant would be for this property so you can  
5 address that. Then go through and maybe the  
6 architect, maybe you can touch on some of the  
7 issues as to why the ADA compliance is required  
8 and then how that creates an exceptional  
9 circumstance in regards to the configuration and  
10 the need to expand the non-conformity in regards  
11 to FAR. So I'll turn back to you as the  
12 applicant.

13 MR. KNIGHT: Okay I'll speak to the  
14 proposed tenant or use of the property if that's  
15 okay. Just a little bit of background, Jubilee  
16 Housing develops and manages affordable housing  
17 in the neighborhood, in the Adams Morgan  
18 Neighborhood as well as providing services to  
19 residents through our own staff and programming  
20 and through a series of partners with Sister Non-  
21 profits in the neighborhood. So as we saw the  
22 property available for sale it was on foreclosure

1 option and we moved swiftly sort of within our  
2 partner community to identify some perspective  
3 uses and determine whether it was appropriate to  
4 try to purchase the property. We did do that  
5 with an initial development plan of attempting to  
6 keep its existing character of part residential  
7 and part retail and we spent some months trying  
8 to assemble a successful project that would  
9 combine affordable housing and retail use. For a  
10 number of reasons some of which will be spoken to  
11 by Ron in a moment that proved to be a difficult  
12 plan to succeed under. So we then came up with  
13 another use that is the subject of this  
14 application that would use the space as the home  
15 headquarters for one of our affiliates and in  
16 this case the application was made anticipating  
17 that Jubilee Jobs a sister non-profit that does  
18 job placement as it's mission would be the  
19 tenant. Subsequent to our filing their plans  
20 have changed and so we are rethinking who will be  
21 our partner in the property whether that's as  
22 tenant or however. What I know to be able to say

1 today is that as long as Jubilee Housing is  
2 involved with the property that the tenant and  
3 the use would be consistent with our social  
4 purpose and would be serving low and moderate  
5 income earners one way or another through the use  
6 of that property. (Recording missed this  
7 question) I'm hesitant to speculate too much on  
8 what that end use would be at the moment because  
9 we have some work to do to rethink that.

10 CHAIRPERSON MOLDENHAUER: I understand  
11 that's one of the reasons why we ask that because  
12 it is, you don't know what type of potential use  
13 will go into the space and obviously one of the  
14 things that we're considering and the reasons why  
15 that question is very relevant here is because  
16 under specific case law we are permitted to  
17 potentially not hold the applicant to as high of  
18 a standard in regards to reviewing the standard  
19 for satisfying this case. If you are a non-  
20 profit organization using the property in  
21 conjunction with your programmatic needs. Now  
22 if, you know, your indicating that obviously you

1 would use it for something related to the  
2 programmatic needs of Jubilee, one of the things  
3 that we were discussing was obviously if it's  
4 created as an office space and you're going to  
5 use it simply as an administrative headquarters  
6 which may obviously be connected but is not  
7 specifically associated with the non-profit  
8 organization or is not doing the services of the  
9 n on-profit but rather doing administrative  
10 supplemental services that are associated with  
11 the need to run a program like that, that may or  
12 may not satisfy our requirement in order to look  
13 more leniently on the first and second prong of  
14 the task. Now, that being said we were  
15 discussing that there are some cases which would  
16 permit a application of that standard at the same  
17 time based on the fact that there's a required  
18 proximity to the services required and as you  
19 indicated in the application and now today that  
20 you are focused specifically on the Adams Morgan  
21 Community and that it maybe something that either  
22 through the rest of this application or at a

1    later date you may want to provide more  
2    information on, especially considering how much,  
3    I think right now the case is a little weak on  
4    some of the other prongs and maybe your architect  
5    will speak on that but it may need that  
6    correlation in the programmatic aspect in order  
7    to try to push you beyond the standard to satisfy  
8    and to get the approval. So I'm just going to  
9    put that out there.

10                   MR. KNIGHT: I appreciate that and if I  
11    could just add that the proposed use in the  
12    application that Jubilee Jobs would use it as a  
13    headquarters it was not on 100% administrative  
14    use, they would have had their service space  
15    there as well. If we were to take that as our  
16    headquarters as you propose we do more than  
17    manage property, we do more than develop property  
18    we provide services ourselves and one of the  
19    characteristics of the property that is appealing  
20    to us would be a service location. Without yet  
21    knowing the specifics of who that end use tenant  
22    would be it would be consistent with our work and

1 with our partners work that it not be a solely  
2 administrative site that whatever the service  
3 delivery that the organization exists for that  
4 would be part of the use of the site.

5 CHAIRPERSON MOLDENHAUER: Can you maybe  
6 just expound upon what you mean by services and  
7 obviously in relation to Jubilee and any other  
8 correlating agencies that you work with.

9 MR. KNIGHT: So just to be clear under  
10 our own umbrella as an independent 501C3, we  
11 operate programs in addition to affordable  
12 housing such as after school programs that are  
13 often located in our multifamily properties,  
14 adult education such as GED, English as a second  
15 language, a number of sort of ancillary services  
16 that support the residents of the housing. We  
17 also have a network of partner non-profits that  
18 have sort of grown out of sort of a collective  
19 spirit in the neighborhood and they are  
20 independent non-profits that have their own  
21 services, like Jubilee Jobs, jobs placement  
22 organization. Jubilee Jumpstart Daycare

1 Organization, Columbia Road Health Services,  
2 Primary Healthcare Organization. So in our  
3 network of providers there are most every human  
4 service need is covered by one of those groups  
5 and we would expect that one of those groups  
6 would be the ultimate user of the property.

7 CHAIRPERSON MOLDENHAUER: Thank you, I  
8 don't have any other questions specifically for  
9 you Mr. Knight at this time. Do any other Board  
10 Members? Seeing none we will turn to the  
11 architect.

12 MR. SCHMECK: I'll more specifically  
13 address your first two questions. In terms of  
14 the provision for an elevator essentially this  
15 building is in very poor condition and no matter  
16 what we would do we are going to end up effecting  
17 more than 50% of the area which would put us into  
18 a level III renovation, a level III renovation is  
19 very similar to new construction and based on  
20 that anything four stories you need to have an  
21 elevator, the elevators required by code. It's  
22 also available for ADA use. The sort of second

1 question is somewhat related in that, you know,  
2 this is a fairly narrow and small footprint  
3 building and once you put in the required egress  
4 stairs and the required elevator, that alone is  
5 about 1,000 square feet per floor which creates a  
6 real hardship in terms of getting these floors to  
7 work and so that's why we're A. Asking for an  
8 increase in the allowable non-residential FAR and  
9 also that's why we're asking for an increase at  
10 both the second floor where we're extending the  
11 second floor a little bit to pick up some square  
12 footage and then also the addition at the fourth  
13 floor which is the start of what becomes the  
14 secondary stair that goes all the way down  
15 through the building.

16 CHAIRPERSON MOLDENHAUER: If you could  
17 touch a little bit more on I guess why the, I  
18 guess previously this was residential and  
19 commercial, correct? So if you could touch-on  
20 why that continued layout was no longer feasible  
21 to satisfy the matter-of-right requirement for  
22 residential and non-residential FAR.

1                   MR. SCHMECK: The existing building as  
2 constructed is not compliant. The stairs are  
3 well, are the required widths are just not  
4 required I mean you just can't do it and so the  
5 locations of the stairs the stairs need to be  
6 completely rebuilt. It's a four story building,  
7 at one point you were allowed to have a walk-up  
8 with four stories and some type of fire escape  
9 out the back, that's no longer required by code,  
10 so no matter what the use of the building is in  
11 this renovation you would be required to have the  
12 two new stairs and the elevator.

13                   CHAIRPERSON MOLDENHAUER: You need the  
14 elevator as well or just the two stairs?

15                   MR. SCHMECK: You would need the elevator  
16 as well; it's a four story building, yes.

17                   MR. KNIGHT: May I add just briefly  
18 you've probably already gathered this but by  
19 putting the elevator and the two stairs into the  
20 footprint the useable retail space on the ground  
21 level is diminished substantially and makes a  
22 retail use much more difficult.

1                   CHAIRPERSON MOLDENHAUER: What's the  
2 total square footage on that first floor with the  
3 elevator?

4                   MR. SCHMECK: With the elevator the, this  
5 is the first floor shown here, you have the  
6 elevator and the stair and the stair actually  
7 comes down right about here so you're probably  
8 talking at first floor about 150 square feet here  
9 and here.

10                  CHAIRPERSON MOLDENHAUER: So was that  
11 150?

12                  MR. SCHMECK: I should add that this is  
13 150 square feet under the non-residential use, or  
14 you know, office use if this becomes retail the  
15 big difference is you would have to have an  
16 elevator lobby that would separate the tenants of  
17 the building and in that case you'd have to take  
18 that elevator lobby towards the middle of the  
19 building to get to the elevator which would take  
20 a lot of space, you know 200 to 300 square feet.

21                  CHAIRPERSON MOLDENHAUER: I'm sorry where  
22 were you indicating was 150?

1                   MR. SCHMECK: The elevator and the stair  
2 and we have this on our chart too, it's egress  
3 it's 142 square feet, now what we're not showing  
4 is if this was a mixed use scenario you would  
5 have to provide an elevator lobby all the way  
6 back to the elevator and this was in respond to  
7 Office of Planning, their one desire was that we  
8 could try to get the elevator as far away from  
9 the front of the building so that if there was  
10 future use of a retail space there would be room  
11 for that, so under a mixed use scenario this all  
12 becomes essentially elevator lobby back to  
13 approximately here.

14                   CHAIRPERSON MOLDENHAUER: I appreciate  
15 that; I think I was actually asking for the total  
16 square foot useable on that first floor which I  
17 think is like 960?

18                   MR. SCHMECK: 960 is useable yes.

19                   CHAIRPERSON MOLDENHAUER: Do any other  
20 Board Members have any other questions? Does the  
21 applicant have any additional information that  
22 they would like to provide to the Board?

1                   MR. KNIGHT: I don't know if this is the  
2 time that we express our gratitude for support  
3 from the ANC or if that's clear enough from the  
4 record.

5                   CHAIRPERSON MOLDENHAUER: Later on in the  
6 hearing I'll actually see if there's anybody  
7 present from the ANC and reference that as well,  
8 but thank you. If there's nothing further from  
9 the applicant you also will have opportunities at  
10 closing remarks. What we'll do now is we'll  
11 indicate if there's anybody in the audience in  
12 support or in opposition of the case? Seeing  
13 none then what we'll do is we'll turn to the  
14 Office of Planning for their report.

15                  MS. THOMAS: Good morning Madam Chair,  
16 Members of the Board, Karen Thomas with the  
17 Office of Planning. The Office of Planning is  
18 recommending approval of this variance request to  
19 increase the FAR for office use only and in this  
20 mixed use building. We will (INAUDIBLE) to come  
21 to some use of a plan that recognizes that retail  
22 space would be very difficult to work in this

1 situation. We believe that the properties  
2 physical dimensions and code requirements for a  
3 four story building present an exceptional  
4 practical difficulty for the applicant. We in  
5 support of this application as presented at this  
6 time, thank you.

7 CHAIRPERSON MOLDENHAUER: Thank you very  
8 much; do any Board Members have any questions for  
9 the Office of Planning?

10 MR. SELFRIDGE: It's probably a question  
11 for the applicant but I just want to understand  
12 something, four story needs and elevators that is  
13 a requirement?

14 MS. THOMAS: That is a code requirement.

15 MR. SELFRIDGE: Okay, like I said I  
16 didn't understand, and then the two forms of  
17 egresses well regardless of fire suppression all  
18 that's required.

19 MS. THOMAS: That is required and we  
20 worked with the applicant to try to bring, to  
21 present this design where the elevators and the  
22 stairs are together as best as we could, so that

1 in the future potentially they could probably use  
2 some of this space for retail, for ground floor  
3 retail. It did use up a large amount of the  
4 space including the elevators and the additional  
5 stairs to the rear.

6 MR. SELFRIDGE: Thank you.

7 MR. HINKLE: Just to be clear Ms. Thomas,  
8 you're satisfied with the layout with the ground  
9 floor in terms of how it could be used for retail  
10 in the future potentially?

11 MS. THOMAS: Well we worked it as best  
12 as we could, we tried moving it every which way  
13 to sort of accommodate and look at how the future  
14 uses could pain out and I think the applicant try  
15 his best, this was probably the best arrangement  
16 that was presented.

17 MR. HINKLE: Thank you.

18 CHAIRPERSON MOLDENHAUER: Thank you, you  
19 indicate that the ANC 1-C is in support but we  
20 don't have any actual letter of support did you  
21 speak with somebody, how you were informed of  
22 that, do we have maybe somebody present to

1 address that issue.

2 MS. THOMAS: We did gather, we didn't  
3 have a report but we did speak with the applicant  
4 and one of the members told us that the ANC was  
5 in support.

6 CHAIRPERSON MOLDENHAUER: Okay thank you,  
7 then if there's any questions from the applicant  
8 for the Office of Planning? You can just put that  
9 on the record verbally I would appreciate that.

10 MR. KNIGHT: Sorry no questions for us.

11 CHAIRPERSON MOLDENHAUER: Thank you very  
12 much and at this point in time then we'll turn to  
13 a report from ANC 1-C if there's anybody in the  
14 audience?

15 MR. WEAVER: Hi how you're doing, my name  
16 is Brian Weaver I'm the Single Member District 1-  
17 C-03 which is where this property is located and  
18 ANC 1-C on November 3<sup>rd</sup>, voted 6 to 0 in support  
19 of this variance. We went through many of the  
20 same debate that you guys are having at the  
21 moment particularly around the elevator use, the  
22 four stories. The reality about this space is

1 that it's been abandoned for six years, it's gone  
2 through several different ownerships, it's been  
3 blighted property during that entire time,  
4 Jubilee is the first for profit or non-profit  
5 that's come forward with any sort of feasible  
6 plan to actually do something with the property.

7 I think that there were definitely some  
8 questions that we asked Mr. Knight and the  
9 architects in regard to the protections that we  
10 feel about 18<sup>th</sup> Street that aren't being addressed  
11 about the mixed use residential and commercial.  
12 To be perfectly honest Jubilee is the only group  
13 that's come forward, we actually, we tend to  
14 support them whenever they seek any sort of  
15 variances looking for ways to expand their non-  
16 profit because elements of losing affordable  
17 units within the Adams Morgan and Ward 1,  
18 Jubilee's become like a necessary partner for all  
19 of Ward 1, and so we were happy to support this,  
20 but it definitely is a hard pill to swallow  
21 because I think that you're definitely seeing the  
22 change of two, several properties on 18<sup>th</sup> Street

1 and the one thing I can say for Jubilee is that  
2 they came forward to ask for the variance where  
3 many of the (INAUDIBLE) establishments that are  
4 on 18<sup>th</sup> Street just do it and it's easier to get,  
5 or ask for forgiveness than receive approval.

6 CHAIRPERSON MOLDENHAUER: Thank you very  
7 much Mr. Weaver. We don't have a copy of the ANC  
8 report in our record. Do you know if that's  
9 going to be submitted to us anytime soon?

10 MR. WEAVER: Yeah, I actually don't know  
11 I had a conversation from the architects from  
12 yesterday and that's why I came down today, I  
13 tried to reach the Chair a few times and the  
14 minutes I can provide, but I don't have the  
15 report, the report went to the chair and vice  
16 chair and I've been unable to get the report from  
17 them but I will track them down today and get a  
18 copy of it to the BZA.

19 CHAIRPERSON MOLDENHAUER: I appreciate it  
20 because I'm sure as you're aware and I don't know  
21 if the applicant is aware we cannot give your  
22 testimony great weight without having a specific

1 written resolution or letter from the Chair of  
2 the ANC 1-C as a whole. Obviously I appreciate  
3 you coming down it's very important for use to  
4 hear what's happened and the fact that you have  
5 these discussions and these issues were kind of  
6 tossed around and discussed and you still  
7 determined to approve it 6 to 0, however I can't  
8 give that great weight without having the written  
9 letter which satisfies our requirements  
10 indicating that there was a duly noticed meeting,  
11 a corum present and that you voted to support the  
12 application.

13 MR. WEAVER: Okay we'll get you a copy of  
14 that today.

15 CHAIRPERSON MOLDENHAUER: Okay thank you,  
16 we can probably give you a little more time than  
17 that, but early is always better, so I appreciate  
18 that. That being said do any other Board Members  
19 have any questions for Mr. Weaver? Seeing none,  
20 thank you very much for coming down. Then at  
21 this point in time what we can do is we can turn  
22 back to the applicant for closing remarks.

1 MR. KNIGHT: I would like to make one and  
2 then ask the architect to make another if that's  
3 okay. I don't have command over the technical  
4 merits as he does and I will just try to say from  
5 a lay perspective that we thoroughly investigated  
6 the mixed use, use and ran into hardship, after  
7 hardship, after hardship in the various scenarios  
8 we considered and essentially in sort of again,  
9 lay speak when you add the two stairs and the  
10 elevator that is required under either use you  
11 carve up the available space in such a way that  
12 you have bad housing and you have bad retail,  
13 neither works well. So this adapted plan came  
14 after scores of revisions to original thinking  
15 and then partnership with the Office of Planning  
16 and represents our best effort to have a use that  
17 fits our mission, our social purpose as well as  
18 then leaves the property for whatever next use in  
19 the future might take it that is as close to, I  
20 think, the original intention as possible.

1 in terms of the difficulty that a mixed use  
2 scenario provides, we talked about it on the  
3 first floor and essentially as I was trying to  
4 indicate for a mixed use scenario you have to  
5 have a common elevator lobby and so although this  
6 gets eaten up in sort of circulation and then the  
7 same problem occurs on the upper floors in that  
8 this obviously is a design for the office non-  
9 residential use, however if additional  
10 residential uses were planned for these upstairs  
11 floors, you have to have a common corridor  
12 connecting the two stairs and the elevator and  
13 it's impossible to layout the floors for  
14 residential use with the new stairs and the new  
15 elevator and that's the same essentially on each  
16 floor, same thing on the top floor, you know, for  
17 a multi-tenant use, not that every floor would  
18 need to be divided but any floor that would need  
19 to be divided which you would need to do under  
20 mixed use scenario, you know, you need to provide  
21 access between the stairs and the elevators.

22 CHAIRPERSON MOLDENHAUER: And creating a

1 I guess a four story, a three unit would not  
2 satisfy, I mean having one unit on each floor,  
3 that way, that one unit had access to both the  
4 floor and each staircase?

5 MR. SCHMECK: If you did a unit you could  
6 do a unit on each floor but you would still need  
7 to provide a common corridor because the elevator  
8 access would only be on one floor and you'd be  
9 bringing everybody through. If you put a unit on  
10 each floor you could do that, you could put one  
11 unit on each floor and your common, the only  
12 place that you would have a common lobby would  
13 essentially be on the first floor, so yes you  
14 could do residential on each floor, in this case  
15 you would just basically lose most of the first  
16 floor in getting there. Does that answer your  
17 question?

18 CHAIRPERSON MOLDENHAUER: And you looked  
19 at that, and that wasn't feasible?

20 MR. SCHMECK: We looked, the problem is  
21 with doing the mixed use when we started the  
22 retail we sort of could make fit under different

1 scenarios but the retail, we couldn't get a  
2 retail tenant because we could only provide for  
3 them, you know not even 800 square feet, and most  
4 of it was sort of towards the back because the  
5 front was egressed to get up to the building, and  
6 that was our original thing, and the retail space  
7 just did not work under the mixed use scenario.

8 CHAIRPERSON MOLDENHAUER: Okay do any  
9 other Board Members have any other questions.

10 MR. SELFRIDGE: I guess there's a fall to  
11 that then, then ultimately what we're talking  
12 about is just getting rid of the retail probably  
13 forever, there's talk about potentially reverting  
14 back and a future use but ultimately this design  
15 is probably going to make it obsolete, even  
16 moving forward for future owners.

17 MR. SCHMECK: Well yes, the only other  
18 option is if it were all to become retail for  
19 example if it became some type of shop where you  
20 have something on the ground floor and it's  
21 retail all the way up, that would be the retail  
22 scenario that would work.

1 CHAIRPERSON MOLDENHAUER: Any other  
2 questions from the Board Members. I actually  
3 have one for, I don't know who can answer this  
4 question but in looking at this potentially as a  
5 confluence of factors to satisfy some of the  
6 standards you indicated that this building is in  
7 such disrepair that you would definitely need to  
8 have a substantial renovation of the building  
9 which then would require these ADA compliance  
10 trigger some of these issues. Can you elaborate  
11 on exactly, I guess sometimes we have applicants  
12 that will try to argue conflict of factors and  
13 one of the conditions is the disrepair of the  
14 building at the time that they acquired it and  
15 usually they will provide more substantial  
16 information as to, I heard a little bit of  
17 testimony to the fact that, the stairs, I guess  
18 the rise was not to code, but are there other  
19 factors that you could maybe elaborate on in  
20 regards to the current condition of the building  
21 at the time of acquisition that go towards this  
22 issue of conflict of factors of the necessity not

1 just the desire, but the necessity to do the  
2 substantial renovation that would trigger ADA?

3 MR. SCHMECK: I have the existing floor  
4 plans here, probably one of the conditions in the  
5 existing building is currently the way that its  
6 set up is this is a retail space as you can see  
7 in this photograph here and it actually there's a  
8 line straight through the building that basically  
9 prevents the two portions from being joined and  
10 so right now there's a separate apartment that's  
11 here and here, and here and then on the fourth  
12 floor it's just an open, you can see this was an  
13 apartment on both the third and the fourth floor.

14 All of these, these stairs, in addition to them  
15 not being compliant I mean their not even, they  
16 don't have railings, they're falling apart, I  
17 mean there's no way to sort of restore them to  
18 the existing without having to take them down and  
19 once you get to the point where your over 50%  
20 then your into level three.

21 CHAIRPERSON MOLDENHAUER: Are the stairs  
22 structurally unstable?

1                   MR. SCHMECK: The ones, these are very  
2 close and these ones in the back are structurally  
3 unstable, it's maybe 24 inches and the stairs  
4 are, and yes they are structurally unstable.

5                   CHAIRPERSON MOLDENHAUER: So the rear  
6 stairs are structurally unstable?

7                   MR. SCHMECK: Yes.

8                   MR. KNIGHT: As you noted Madam Chair we  
9 may not have made the case fully as to existing  
10 conditions and again if I'm moving away from the  
11 technical merits it's not on purpose. The  
12 interior condition of the property it is unusable  
13 currently, the roof has not held water out for  
14 quite sometime, what is the top floor kitchen  
15 floor it's easy to put ones foot all the way  
16 through it. The stairs that are being reference  
17 in the back fall down under you when you walk on  
18 them, so there is a level of disrepair from a  
19 practical standpoint no matter what your use  
20 would be that once you begin to remediate those  
21 issues you climb towards 50% very quickly whether  
22 you intend to change the floor plan or not.

1 CHAIRPERSON MOLDENHAUER: Thank you that  
2 does help I appreciate that. I don't have any  
3 other questions at this time; do any other Board  
4 Members have any questions for the applicant?  
5 Seeing none, then if there are no additional  
6 closing comments what we'll do is, what we  
7 probably want to do is review this case a little  
8 bit more and set a date for decision. What I  
9 will do, would Board Members wish to leave the  
10 record open for any additional supplemental  
11 information or do we think that we received  
12 everything that we need?

13 MR. SELFRIDGE: Was there a written ANC  
14 report?

15 CHAIRPERSON MOLDENHAUER: No we're still  
16 waiting for that as well yes.

17 VICE CHAIR SORG: I think that we've  
18 heard a lot of testimony but it couldn't hurt to  
19 get some of that other documents adding some  
20 supplemental.

21 CHAIRPERSON MOLDENHAUER: Wonderful, then  
22 I will leave the record open for the applicant if

1 they wish to obviously it's always recommended  
2 potentially to put some of these issues that  
3 obviously you've heard us inquire about and ask  
4 questions in writing into a supplemental report,  
5 that way we can review that prior to our  
6 deliberation.

7 MR. SELFRIDGE: Madam Chair if I may  
8 specifically I think there was some general talk  
9 about the problematic uses in the future, I think  
10 that would certainly be helpful if that could be  
11 flushed out a little bit more when we're  
12 deliberating on this, if it's possible, it may  
13 not be possible, but it sounds like there's kind  
14 of a common thread there that maybe be able to be  
15 kind of firmed up.

16 CHAIRPERSON MOLDENHAUER: Yes absolutely  
17 so I think maybe what we would be looking for  
18 would be some additional written information on  
19 the programmatic needs, future tenants, things of  
20 that effect, also maybe some documentation and  
21 some additional listing of these confluence and  
22 factors in regards to the condition of the

1 building at the time of acquisition and how that  
2 required the renovation to the level where ADA  
3 was required and you had indicated that you had  
4 looked at all of these different options and you  
5 had hurdle after hurdle, maybe just outlining  
6 that a little bit more I think would obviously be  
7 beneficial. That being said Mr. Moy for some  
8 reason I can't find my calendar I had when we  
9 talked about the last case, so what would be, we  
10 can set this for decision next week if that gives  
11 the applicant enough time to pull together the  
12 materials, if not we can set it for a later  
13 decision date but that may push you into January.  
14 I'll let the applicant make that decision.

15 MR. KNIGHT: Can we have 20 seconds to  
16 confer it so happens I leave town tomorrow. May I  
17 just ask this question I think we can cover the  
18 technical merits pretty easily within the week  
19 time period, what would be harder to advance  
20 significantly is sort of the end use or  
21 programmatic dimension and if there's a real  
22 desire for that to be substantially more

1 developed then I think the one week period may  
2 not be enough time.

3 CHAIRPERSON MOLDENHAUER: Well I think  
4 that you can only make business decisions so  
5 quickly and I think that obviously whatever you  
6 can elaborate on would be helpful but to force  
7 you to try to make a specific decision as to, you  
8 know, with the tenant or what the end use would  
9 be I don't think is reasonable. I think that we  
10 would as Mr. Selfridge was saying any additional  
11 elaboration in writing about that or your  
12 intentions and you know whatever your promises of  
13 your intentions I think would be helpful as well.

14 So what we'll do is we'll give you a week to  
15 pull this together and we'll have a deadline of  
16 close of business on the 8<sup>th</sup> that way we can get  
17 this for our records in time to review and we'll  
18 have the decision set for the 14<sup>th</sup>.

19 MR. KNIGHT: Thank you.

20 CHAIRPERSON MOLDENHAUER: So the record  
21 will be left open for additional materials  
22 including the ANC so any materials would need to

1 be received by the 8<sup>th</sup> of December, thank you.  
2 What we'll do is we'll call the next case we can  
3 let the applicants come forward and sit down and  
4 we'll hear them in a moment.

5 **Application No. 18138**

6 MS. BAILEY: The last case of the morning  
7 is Application 18138 it's the application of St.  
8 Paul's Episcopal Church and it's pursuant to 11  
9 DCMR Section 3104.1 for special exceptions to  
10 allow private school and a child development  
11 center that's 120 students ages 2.5 thru 12  
12 years, and 18 regular staff members. The  
13 applicant applied for relief under Sections 205  
14 and 206, the property is Zoned R-3 it's located  
15 at 210 Allison Street, N.W. no new construction  
16 is proposed for this project and the (Parcel No.  
17 111/037). Madam Chair if I'm not mistaken the  
18 name of the applicant is St. Paul's Rock Creek  
19 Parish even though I did say Episcopal Church  
20 but the correct name is St. Paul's Rock Creek  
21 Parish.

22 CHAIRPERSON MOLDENHAUER: If all the

1 parties at the table would like to introduce  
2 themselves.

3 MS. BRAY: Thank you Madam Chair my name  
4 is Kinley Bray with the Law Firm of Arent Fox and  
5 with me today, on behalf of St. Paul's Rock Creek  
6 Parish and Christian Family Montessori School  
7 the applicant in the case today. With me to my  
8 left is Rosemary Sullivan, Pastor at St. Paul's,  
9 to my right is Wendy Shenk-Evans, Director of  
10 CFMS, Ellen McCarthy with Arent Fox, and also in  
11 the room are Gary Baker with Realco CFM's  
12 consultant, Bill Halsey with St. Paul's Rock  
13 Creek Church and our Traffic Consultants Osbourne  
14 George and Associates and Terry Davis with  
15 Osborne George's Office.

16 CHAIRPERSON MOLDENHAUER: Thank you a  
17 preliminary matter that we have in this case is a  
18 request for party status by a Marion O. Williams  
19 is Ms. Williams present in the audience today,  
20 seeing that she's not present obviously then she  
21 will lose her ability to request party status but  
22 we will still consider her letter and the issues

1 that she brought up in our hearing and we'll ask  
2 the applicant to potentially address some of  
3 those as we move forward. That being said I'll  
4 turn to the applicant to start the presentation  
5 and I think some of the issues, I think the case  
6 is very straight forward and we don't need to  
7 hear maybe all the different issues in regards to  
8 requirements for CDC but I think some of the  
9 issues that are going to be most prominent in our  
10 discussion are responses to the DDOT report that  
11 we've received, and I believe that there's a  
12 representative, yes we have somebody sitting with  
13 us today from DDOT that will address those  
14 concerns and at the same time Ms. Williams  
15 brought up concerns about traffic, so I think if  
16 you want to tailor some of the presentations to  
17 those issues that would be greatly appreciated.

18 MS. BRAY: We'd be happy too, as a  
19 preliminary matter I'd like to have Ms. McCarthy  
20 and Mr. George qualified as experts, their  
21 resumes were submitted with the applicants pre-  
22 hearing statement and they've both testified

1 before this Board in the capacity of any expert  
2 in planning and zoning for Ms. McCarthy and Mr.  
3 George as an expert in transportation planning  
4 and traffic engineering.

5 CHAIRPERSON MOLDENHAUER: Thank you, and  
6 I've reviewed those resumes and I'll just confirm  
7 the other Board Members have as well and as we  
8 have certified both individuals previously we  
9 will do so again today. We can move forward,  
10 thank you.

11 MS. BRAY: Thank you, well in an effort  
12 to be brief I'll simply state that St. Paul's is  
13 an 86 acre enclave in upper north west and is  
14 currently zoned R-3, it contains within it's  
15 boundaries a cemetery a church, a parish hall, a  
16 service building and a gate house which is used  
17 for offices. It's historically had a school on  
18 the campus and we're here asking for approval of  
19 a private school and CDC in order to accommodate  
20 120 students ages 2.5 to 12 years in both a  
21 Montessori School format and before and after  
22 care. We've asked for both special exceptions

1 under 205 and 206 of the zoning regulations.  
2 With that introduction I'd like to turn it over  
3 to the Revered Rosemary Sullivan, Pastor of St.  
4 Paul's Rock Creek Parrish.

5 MS. SULLIVAN: Thank you very much it's a  
6 privilege to be here, thank you for listening to  
7 us, I'll be as brief as a preacher can be. The  
8 St. Paul's Rock Creek was established in 1712 as  
9 a place of prayer, the gift of 100 acres was made  
10 by John Bradford in 1719, and the current acreage  
11 is 85 because sometime in the life of the  
12 District of Columbia New Hampshire Avenue ran  
13 past the church and took some of the land so by  
14 exercising imminent domain. Persons have been  
15 being buried at St. Paul's since sometime in the  
16 18<sup>th</sup> Century and in the mid 19<sup>th</sup> Century Congress  
17 declared our cemetery a public cemetery which  
18 simply meant that the land could be used for  
19 public burials and we have over 44,000 persons  
20 buried here many of whom are long time city  
21 residents and have played a part in the history  
22 of our nation and in our city. St. Paul's Center

1 where the school will be located, we hope and  
2 pray, was built in 1926, the older part of the  
3 building which someone can point to I'm sure. In  
4 the space that was added where you see CFMS  
5 building that was new space added in about 2004,  
6 and that includes large classrooms with exits to  
7 a play area so some of that is already in place  
8 and has been used for Sunday School, for  
9 neighborhood groups, karate classes met there for  
10 a very long time and the D.C. Boys Choir also  
11 rehearses in our facility. We are very happy to  
12 have the possibility of partnership with the  
13 Christian Family Montessori School because their  
14 mission and our mission are consistent with one  
15 another and that is to serve the community and in  
16 addition our parish church quite honestly has too  
17 much building for the size of our parish and we  
18 welcome the living among the dead. At one of the  
19 ANC hearings one of the persons who was listening  
20 all of a sudden said you mean your going to have  
21 a school in the middle of a cemetery, I said yes  
22 of course there's been people coming and going

1 from that cemetery forever and it will add a new  
2 demission to our life and so we're happy about  
3 that. We have as I mentioned been in touch with  
4 the surrounding community and been present at two  
5 ANC meetings, one where there was a quorum and I  
6 believe you have received something for the  
7 record the other we went to twice and there was  
8 no quorum but I've spoken to all the chairs of  
9 four different ANC's and they've all indicated  
10 their support. Currently the community uses our  
11 space for walking dogs and just hiking and  
12 enjoying what we consider a beautiful environment  
13 that we have developed over time. I have spoken  
14 directly actually to Mrs. Williams who said to be  
15 well, it will be teenagers, I said well no there  
16 are no teenagers, she said oh, okay, well we they  
17 walk and throw candy wrappers, I said well I  
18 don't think so because some of the children are  
19 so little the parents will always accompany and I  
20 don't think there will be any problem on Allison  
21 Street. So we had a nice conversation and perhaps  
22 that's why she hasn't come today. At any rate we

1 look forward to this new chapter at St. Paul's  
2 and having the building prepared for the school  
3 so thank you for listening to us.

4 MS. BRAY: Our next witness is Wendy  
5 Shenk-Evans, Director of Christian Family  
6 Montessori School.

7 MS. SHENK-EVANS: Hi thank you, Christian  
8 Family Montessori School was founded nearly 30  
9 years ago by a group of young parents who wanted  
10 their children to have a Montessori Education,  
11 being people of modest means they wanted the  
12 school to be affordable for them and for other  
13 low and moderate income families therefore the  
14 school has always driven to keep tuition low and  
15 we offer need based financial aid. The founders  
16 also wanted the school to reflect the diversity  
17 of the surrounding community and offer religious  
18 education reflective of their Catholic tradition.  
19 The Montessori philosophy incorporates a strong  
20 emphasis on care for the environment, as young as  
21 three years of age children at our school learn  
22 to sweep the classroom, clean up spills and water

1 plants, this early practice of care for the  
2 environment grows and expands as they grow older  
3 so older students sweep the hallways of the  
4 school, plant flowers to make the outdoor  
5 environment more beautiful for all and take  
6 responsibility for cleaning up litter in the  
7 neighborhood. Families that send their children  
8 to our school chose our school in part because it  
9 gives children real experience in being stewards  
10 of their immediate environment and of the larger  
11 environment of the world around them. Likewise  
12 since its inception the school has always had  
13 strong parent involvement in the form of a co-op  
14 with parents repairing the facility, building  
15 furniture, cleaning the school every Saturday and  
16 contributing in countless ways to the daily  
17 operation of the school. The parent co-op also  
18 makes possible our mission of affordability  
19 enabling us to keep tuition low by not having to  
20 hire paid staff for the many jobs that parents  
21 do. CFMS has four multi-age classrooms serving  
22 children ages 2.5 through sixth grade. Our

1 enrollments fluctuate between 85 and 100 students  
2 and we're currently open from 8 to 3. For the  
3 past 7 years we've been looking for a new  
4 location for the school while parents and staff  
5 have worked hard to make our current building  
6 habitable there are many issues including  
7 crumbling ceilings, a failing heating system, a  
8 lack of green space and an inability to provide  
9 on site after care which is so critical for the  
10 working families we serve. The facility at St.  
11 Paul's is a perfect fit for our program needs and  
12 will allow us both to remain affordable to low  
13 and moderate income families and to provide all  
14 day care for our students. We will have the same  
15 four multi-age classrooms and anticipate our  
16 enrollment to average between 90 and 100 students  
17 each year. Our hours of operation will be from 8  
18 a.m. to 6 p.m. with occasional evening meetings  
19 or special events. Teachers will arrive before 8  
20 a.m. student arrival will be spread out between 8  
21 and 9 a.m. some students will arrive between 8  
22 and 8:30 for before care, students not coming to

1 before care will arrive between 8:30 and 8:45 and  
2 still others will trickle in late between 8:45 to  
3 9 o'clock and beyond. Parents are expected to  
4 walk their children to the front door of the  
5 school where they are greeted by a staff member  
6 who shakes their hand. Student dismissal will be  
7 spread out over the course of the day depending  
8 on the age of the child and the family's  
9 aftercare needs. Preschool age children who are  
10 not using aftercare will be dismissed at 11:45,  
11 children in Kindergarten through sixth grade who  
12 are not using after care will be dismissed at 3  
13 and children using aftercare can be picked up  
14 anytime between 3 and 6. Parents will park and  
15 walk to the front door of the school and enter to  
16 receive their children.

17 MS. BRAY: Wendy can I just interrupt you  
18 for a moment, can you identify on the site plan  
19 here the aerial photograph of the site where both  
20 teachers and staff will park and where parents  
21 will park?

22 MS. SHENK-EVANS: So staff parking will

1 be in this lot and parent parking will be in this  
2 lot.

3 MS. BRAY: And parents will be expected to  
4 park and walk their children in is that correct?

5 MS. SHENK-EVANS: Correct. The school is  
6 very supportive of DDOT's desire to encourage  
7 carpooling and alternate forms of transportation,  
8 long before it was encouraged so prominently by  
9 environmental organizations and local governments  
10 families in our school have routinely walked to  
11 school, arrived on bike and shared carpools.

12 Attention to how you affect the world and the  
13 sustainability of the planet is in keeping with  
14 our family's values as well as the schools  
15 approach to encourage care for the environment  
16 whether the environment is the classroom or the  
17 planet. In addition or our commitment to caring  
18 for the earth it is in the schools best interest  
19 to enroll children from the neighborhoods  
20 immediately surrounding the school which in of  
21 itself will significantly reduce traffic. This  
22 is consistent with our history, recent surveys

1 show that approximately 22% of our families  
2 reside within our local zip code with an  
3 additional 40% residing within contiguous zip  
4 codes. One of the defining characteristics of  
5 our school community is our expectation of heavy  
6 parent involvement; I mentioned our parent co-op  
7 and many of the jobs require parents to be at the  
8 school on weekly basis. They are also expected  
9 to observe in their child's classroom and have  
10 two parent teacher conferences a year, and  
11 experience has shown us that families who live  
12 far away from the school tend not to stay  
13 enrolled for the course of the program, therefore  
14 as part of our admissions process we proactively  
15 discourage families who live far away from even  
16 touring much less applying to the school. We've  
17 begun outreach efforts in order to attract  
18 students from the immediate area by having an  
19 information table present at two community events  
20 at St. Paul's and by disseminating information  
21 about CFMS on neighborhood list serves we've  
22 established a board committee that's dedicated to

1 creating and implementing a neighborhood outreach  
2 and marketing plan. We already have applications  
3 from four perspective students who live in the  
4 20010 and 20011 zip codes and we have another  
5 five families from the St. Paul's neighborhood  
6 who are scheduled for a tour of the school which  
7 is the first step in our admissions process.

8 While we were preparing this application to the  
9 BZA we polled our students and their families  
10 about their current modes of transportation and  
11 that data overwhelmingly shows that the majority  
12 of our families aren't coming to school by car  
13 caring one child we therefore disagree with  
14 DDOT's report which concludes that the school  
15 will rely heavily on single occupancy vehicles,  
16 in fact the results of our questionnaire showed  
17 that currently without any incentives for  
18 carpooling and without any transportation  
19 management plan of any sort 2/3 of our students  
20 walk, bike or carpool. These results confirm my  
21 personal knowledge of how our families get to and  
22 from school, one of the advantages of being a

1 small school is that we are able to know our  
2 families well. I greet parents and children at  
3 the door each morning when they arrive so I know  
4 how many of our families are carpooling, walking  
5 or biking and how few are coming in single  
6 occupancy vehicles. When I go through our  
7 student roster I see that we have just 24  
8 students or 26% of our current student population  
9 that go to and from school as the only student in  
10 the car. We believe that in addition to the high  
11 level of carpooling already present in our school  
12 community the transportation management plan that  
13 we are adopting will further increase carpooling  
14 and alternative forms of transportation and that  
15 our measures address DDOT's concerns, we have  
16 added a section on transportation to our parent  
17 handbook, the section indicates that we want to  
18 encourage carpooling and reduce our impact on the  
19 environment in the local neighborhood. We've  
20 committed to distributing lists each year of  
21 current families grouped by zip code so that it's  
22 easy for families who might not already know one

1 another to find other families with whom they  
2 could carpool. Also in the parent handbook is  
3 information regarding crosswalks, traffic signals  
4 and stop signs in the neighborhood along with a  
5 link to DDOTs safe routes website. In addition  
6 St. Paul's currently has a policy which prohibits  
7 bike traffic within their grounds and they have  
8 agreed to allow bike traffic and install bike  
9 racks in order to enable our students, parents,  
10 and staff to bike to and from school. We  
11 understand from our consultants that having a  
12 transportation management plan coordinator is  
13 critical to the success of this plan and for that  
14 reason I'm committing to serve as the school's  
15 transportation coordinator. I take the  
16 responsibility seriously and I've been serving in  
17 that role in our present Mt. Rainier location. I  
18 believe that the close interaction with parents  
19 and students in the small school environment in  
20 the Montessori tradition will ensure the  
21 effectiveness of the transportation plan at our  
22 St. Paul's location. Our school community looks

1 forward to having a positive impact on our new  
2 neighborhood as we have had on Mt. Rainier  
3 neighborhood for the past 30 years. We're eager  
4 to cooperate with local civic organizations and  
5 city agencies to be attentive to the care of this  
6 neighborhood in the same way that we have done in  
7 the past, thank you.

8 MS. BRAY: I'd like to call our next  
9 witness, Osborne George, our transportation,  
10 planning and traffic engineering expert.

11 CHAIRPERSON MOLDENHAUER: Before we get  
12 to Mr. George I just have a couple of questions  
13 to clarify with Ms. Evans, you say that currently  
14 you have 85 to 100 that you would be looking for  
15 90 to 100 but the application says 120, the  
16 application is still for 120 not 100 okay  
17 perfect, I just want to make sure we have our  
18 numbers correct. Next you talked a lot about the  
19 current number of parents and children that walk  
20 from your current Mt. Rainier, MD location but  
21 are you planning on keeping, are you planning on  
22 abandoning those families, I'm sure you're not,

1 I'm sure those families really like the program  
2 and their going to want to come from that  
3 location to the new location so how, while that  
4 area is close by its not that close and their  
5 probably not going to be able to bike how do you  
6 think that's going to effect the likelihood of  
7 carpooling and gaining access to this new  
8 location?

9                   MS. SHENK-EVANS: I think for me it's  
10 more of an indication of the fact that we attract  
11 a population from within the immediate community  
12 of our schools and so while the first year that  
13 we move we may have people coming from Mt.  
14 Rainier because that's where our hub has been,  
15 that our outreach efforts are going to make it so  
16 that our hub moves into the St. Paul Community,  
17 so for me those numbers are kind of an indication  
18 of what is likely to happen when that population  
19 shifts. I think that the folks that are in Mt.  
20 Rainier they've already been asking me for  
21 carpool lists and things like that, so those  
22 folks are planning on carpooling over.

1 CHAIRPERSON MOLDENHAUER: So especially  
2 in regards to the DDOT issue and traffic concerns  
3 it really would be a one two year progression or  
4 maybe even longer, maybe obviously we can talk to  
5 some of the traffic experts a little more about  
6 that, but I'd like to hear maybe more about the  
7 progression and how the initial effects maybe  
8 with the reality that your going to have a  
9 majority of your existing students and parents  
10 coming from further away driving for at least the  
11 first couple of years that this school would be  
12 running prior to developing new children in the  
13 community which would take time obviously if you  
14 need availability, you know those open spaces,  
15 I'm assuming that people will want to keep their  
16 children at the facility, so maybe it's a good  
17 question and we're leading into that next.

18 MR. GEORGE: Good morning Madam  
19 Chairperson and Members of the Board, for the  
20 record I'm Osborne George and I've provided two  
21 cards to your reporter. As I start I would like  
22 to remind myself of your admonition to be brief

1 and to address the issues primarily that have  
2 been raised by the DDOT staff and their report.  
3 In summary let me say that we performed an  
4 extensive analysis to address the city's  
5 requirement as spelled out in Sections 205 and  
6 206 of the Zoning Regulations. We engaged DDOT  
7 throughout the process and I believe there's  
8 considerable agreement as far as the schools  
9 impact of our being able to meet the requirements  
10 of those sections. First of all there is  
11 complete agreement regarding the fact that the  
12 proposed use will not create or exacerbate  
13 congestion or other traffic problems within the  
14 area. There's an agreement that the proposed use  
15 will not cause cueing or any time of parking  
16 problems on the adjacent streets indeed as I will  
17 tell briefly the site is quite unique with its  
18 extensive onsite roadway network and its parking.  
19 I believe the primary areas of disagreement are  
20 the fact that the schools transportation  
21 management plan is not sufficiently robust and I  
22 think know one could argue with DDOT as far as

1 the objectives, as far as minimizing traffic on  
2 the roadway network, as far as complying with the  
3 city's policies and guidelines with respect to  
4 sustainability and the environment. I would like  
5 to point out that the institutional use such as  
6 the CMFS faces several key constraints as far as  
7 having a robust TMP plan. First of all the ages  
8 of the children, you have kids from 2.5 years to  
9 12 years and those being a father of 5 myself  
10 there are significant constraints as far as  
11 carpooling and so on with respect to carpool  
12 seats and those types of issues. The hours of  
13 operation is an issue as you've heard arrival and  
14 departure is considerably spread out because of  
15 the age group some children come in by 8:45 and  
16 leave by 11:30, some come in by the 8:45  
17 timeframe and leave by 2:30 and there's that  
18 extended aftercare program which goes from 3  
19 o'clock until 6 o'clock. In order to address the  
20 specific issues which DDOT had raised we've  
21 prepared a series of exhibits and I'd like to run  
22 through them briefly, I think a picture tells a

1 thousand words and I think this will be very  
2 helpful in me taking the Board through the city  
3 situation. First of all referring to what I've  
4 termed hearing "Exhibit No. 1", we show the  
5 existing location of the site, it's really just  
6 across the District line here, Eastern Avenue  
7 right on Rhode Island Avenue and this is what I  
8 would call perhaps the more typical situation  
9 with schools they're right on the roadway,  
10 parents park on the street and walk into the  
11 school. This is the proposed location from which  
12 you've heard about from several of the speakers  
13 before me, but one thing I'd like to point out  
14 from here this is perhaps the same general area  
15 and indeed as we went through the schools zip  
16 code data for the current patronage there are  
17 some parents, not many, some staff, some parents  
18 who live in the host zip code here 20011 and some  
19 of the surrounding area. You've already heard  
20 from Ms. Wendy Shenk-Evans that large numbers  
21 well over, I think it's approximately 25% of the  
22 students live within the immediate zip code area

1 here which is 20712 and another 40% live within  
2 the surrounding zip codes, so again just pointing  
3 out the context from the map. A number of  
4 students live within the adjacent areas of the  
5 District here. This is the site, I think you've  
6 seen an exhibit similar to this I'd just like to  
7 run through it, Webster Street runs east-west  
8 here, the Webster Street gate is here, Rock Creek  
9 Church Road runs in a generally north south  
10 direction and of course as context you've already  
11 heard of the historic designation of the site to  
12 the south is the Soldiers and Airman's Home which  
13 is also historic, here is another historic  
14 property, the National Cemetery associated with  
15 Soldiers Home. As a context I would like to  
16 point out that this is an area that has been  
17 extensively studied by DDOT, you notice a number  
18 of the roadways here are one way, you notice that  
19 they all have, all of the internal intersections  
20 have multi-way stop signs so that no traffic  
21 flows through the area even on 4<sup>th</sup> Street they all  
22 stop, everybody stops. This is part of the

1 traffic calming measures that the city has  
2 introduced. One of the things that I will talk  
3 about briefly is the fact that Webster Street and  
4 the DDOT report addresses the Webster Street  
5 access was previously two way in both directions  
6 as part of that neighborhood study and traffic  
7 calming DDOT you notice and I'd like to just  
8 emphasize this Webster Street is one way west  
9 bound it becomes two way east bound at the point  
10 that it intersects Rock Creek Church Road, I'll  
11 talk more about that as we go forward. There are  
12 other traffic calming devices, there are speed  
13 humps along Allison Street which is the secondary  
14 gate into the site, there are also rumble strips  
15 and other traffic calming device along Rock Creek  
16 Church Road. Ms. Wendy has already pointed out  
17 the efforts that the school would make to transit  
18 their bus stops in close proximity to this gate,  
19 here the Webster Street gate as well as to  
20 Allison Street. It's also important to note that  
21 there are bold signs here restricting any truck  
22 or heavy vehicle access so I think that makes

1 this location less encumbered in terms of traffic  
2 operations. As far as the vehicular access  
3 patterns we were quite aware of DDOTs emphasis on  
4 pedestrian circulation from the previous slide we  
5 are showing you that all of the area streets are  
6 amenable to pedestrian movements, there's a nice  
7 walk along this drive, I don't know if there's a  
8 name for it that Rosemary, Ms. Sullivan might  
9 mention but there's a nice walk almost a walk in  
10 the park. Students would cross here we have a  
11 highlighted crosswalk here; they would walk  
12 around here to the back. Coming along Allison  
13 Street again clear pavement where students or  
14 staff would walk and into the site here. I'd  
15 like to talk a little bit now since part of  
16 DDOT's concern was Webster Street access I'd like  
17 to point out that again Webster Street you notice  
18 the sign new traffic pattern, this was recently  
19 introduced by DDOT making this two way west bound  
20 and east bound. This area is quite flat so  
21 vehicles stopped at this point can see all the  
22 way through the intersection. There's a 50

1 second signal cycle here and that's unique  
2 typically DDOT cycles it's intersection  
3 (INAUDIBLE) are roughly 100 seconds, this is very  
4 brief primarily to break the traffic flow for  
5 pedestrians crossing at this location, it has a  
6 corollary effect which is quite positive in that  
7 it breaks the flow of traffic coming along Rock  
8 Creek Church Road and I'll just emphasize that  
9 North Capital runs north south along here. So  
10 this is sort of a collector roadway, it's not  
11 your major thoroughfare posted at 25 mph pretty  
12 much calm neighborhood traffic situation. Ms.  
13 Shenk-Evans mentioned the current mode splits  
14 that the school is experiencing in Mt. Rainier  
15 and again I'd like to highlight, currently only  
16 1/3 of the 69 families come to school with one  
17 child per vehicle and I think this is indeed, you  
18 know, quite outstanding and remarkable. So we've  
19 got 2/3 that use either walk or bike or use  
20 multiple occupant vehicles in accessing the site.  
21 Those figures are in your record and again I  
22 don't need to go further here. What I'd like to

1 point out here is DDOTs recommendation, first of  
2 all this current traffic pattern along Webster  
3 Street is two-way, this was changed possibly two  
4 to three years ago it used to be one-way west  
5 bound so that there would be no vehicles exiting  
6 here. DDOT changed it whether on an experimental  
7 basis or so I'm not sure. Traffic accidents or  
8 crashes are very low we have the record from DDOT  
9 for the past four years, they range between 0 and  
10 3 accidents per year at this location and that  
11 includes the Webster Street at Rock Creek Church  
12 Road. I's like to state that one accident is too  
13 much, but 0 and 3 is really, really typical of  
14 pretty much any intersection that you'll find.  
15 There has a been a moderate increase there over  
16 the last two years the accidents have raised  
17 between 2 and 3 per year and DDOT has said well  
18 maybe it was not a good idea to have this two-  
19 way, had a study done by the Safety and  
20 Operations Division and I understand the  
21 recommendation is that while it is not a major  
22 issue it is perhaps desirable to revert this to

1 one-way. What that would do is eliminate any  
2 turns from here, as a traffic engineer and as a  
3 professional I would say that having spent  
4 perhaps several hours observing this over this  
5 past several months there's nothing unsafe about  
6 the location for the reasons that I give, low  
7 traffic volumes, good site distance, we've  
8 highlighted here that from a vehicle coming to  
9 this point and wishing to turn left or right  
10 there's a good site distance of over 200 feet.  
11 This is well above the standards that the ITE and  
12 Federal standards require considering the  
13 moderate speeds of traffic along this roadway.  
14 There's another factor that helps to mitigate the  
15 safety concern the roadway's fairly wide, there  
16 are two lanes in this direction, this roadway is  
17 18 feet wide, this section, I should say the  
18 westbound section between the center line and the  
19 curb is 18 feet wide typically that accommodates  
20 two lanes of traffic, while it's not striped for  
21 two lanes it in effect functions as two lanes and  
22 indeed as I think Mr. Louis Booker of DDOT will

1 testify there are number of lanes within the city  
2 within the central employment area that are 9 and  
3 10 feet wide so here you've got what is in effect  
4 two 9 foot lanes here it's even wider 20 feet, so  
5 what happens here is that a vehicle wishing to  
6 turn right into the site are to turn and go west  
7 along Webster Street effectively gets into the  
8 right lane and through traffic continues along  
9 the road. It operates well based on my  
10 observations in the field, it operates well based  
11 on DDOTs accident statistics and again as a  
12 traffic engineer I'm sensitive to the fact that  
13 one accident is too much but two or three, zero  
14 to three in the last three or four years does not  
15 raise an issue of significant safety concern.

16 One other aspect the school proposes that all  
17 traffic would come from the east turn into the  
18 site, they would also come from the west and the  
19 south and turn here, this is facilitated by the  
20 geometry of the roadway, this is 22 feet wide as  
21 I indicated here a vehicle wishes to turn left  
22 here would be out of the path of a vehicle

1 continuing east so there is what is termed in the  
2 industry a bypass lane and its almost, I hate to  
3 use the word because it doesn't exist, it's  
4 almost an ideal situation for a relatively low  
5 volume traffic situation. Madam Chair you raised  
6 the issue of the current traffic patterns with  
7 most of the patrons coming from the east so Ms.  
8 Bray can go back to perhaps the neighborhood  
9 traffic pattern, this perhaps is the best slide  
10 to illustrate the issue, along here and I  
11 apologize that we didn't show from North Capital  
12 Street at Hawaii Avenue intersection which we did  
13 analyze and have had extensive discussions with  
14 DDOT at the present what we've done even though  
15 we've fast forwarded in our projections to 2013,  
16 we analyzed what we assumed would be the worst  
17 case scenario in other words if we look at the  
18 zip code, the demographic residential information  
19 currently there's approximately 40% of the  
20 traffic that would come from the east and use  
21 that intersection, we increased it to 60% as part  
22 of a sensitivity analysis to see whether it would

1 have a significant impact on that intersection,  
2 North Capital Street is a major arterial so I  
3 don't think it's a major issue for the Board as  
4 far as the community impacts but we did look at  
5 that and in our analysis we assumed that 60% of  
6 that traffic would come through via the Webster  
7 Street Gate the remaining 40% would turn in here.

8 What do those numbers translate to, as you've  
9 heard from Ms. Shenk-Evans this school currently  
10 has between 85 and 95 students, they are applying  
11 for 120 but the expectation is that the  
12 operational number would be (INAUDIBLE). So we  
13 have a built in factor of safety in our  
14 projections, that computes to approximately 30  
15 vehicles turning right here and the remaining 24  
16 approximately turning left here those are small  
17 numbers but they compute to two to three vehicles  
18 per minutes when you consider the traffic signal  
19 which we did spend considerable time discussing  
20 how that effects operation here we think that  
21 this arrangement would work quite well to allow  
22 students to get in and to get out, they would

1 then be dispersed throughout the community  
2 perhaps many of them using the signal light  
3 intersection to get out of this street or many of  
4 these roadways to get onto the adjacent streets  
5 leaving the site. One final part I'd like to  
6 underscore, based on the schools hours of  
7 operation they only impact the morning peak hour  
8 between 8 to 9, the bulk of the students would  
9 leave the site between 2:30 and 3 which is well  
10 outside the afternoon peak hour and there would  
11 be the stragglers, the aftercare students perhaps  
12 about 30 spread out between 3 o'clock and 6  
13 o'clock which they impact on the roadway would be  
14 negligible. I don't believe I adhere to your  
15 admonition perhaps I was more lengthy than I  
16 needed to in which case I apologize Madam Chair  
17 but I think (INAUDIBLE) than you.

18 CHAIRPERSON MOLDENHAUER: Thank you very  
19 much. Any further testimony?

20 MS. BRAY: We do have Ms. McCarthy here  
21 who I'd like to have just run very briefly  
22 through, particularly the two standards that

1 relate to traffic in both 205 and 206, Ms.  
2 McCarthy has I think some additional photographs  
3 in the presentation which might help illustrate  
4 the layout of the site and facilitate the Boards  
5 discussion on the traffic issues.

6 MS. MCCARTHY: Good morning Madam Chair,  
7 Members of the Board, my name is Ellen McCarthy  
8 for the record I have 35 years of planning  
9 experience and I'd like to talk today about the  
10 specifically the Planning and Zoning issues with  
11 regard to this case briefly. Briefly you're  
12 familiar with the overall standards for special  
13 exception, harmony with the zoning regs and map  
14 and no adverse impact on neighborhood property.  
15 With regard to the comprehensive plan the map  
16 shows that this area is basically open space and  
17 moderate density housing. When we talk about a  
18 proposed use of the school that's pretty  
19 consistent if you have a residential area and you  
20 have open space that a school use would be  
21 consistent here particularly since you've had  
22 this institutional use here since 1719 and it has

1 had a school as a part of the landscape. With  
2 regard to harmony with the zoning map and regs  
3 the areas are three single family residential,  
4 churches and public schools are a matter of right  
5 uses this is not a public school it is a private  
6 school but as such it's certainly consistent in  
7 harmony with the zoning regulations and map in  
8 terms of the character and impact of the school.

9 In addition I think it's just important to  
10 remember that a Montessori School particularly  
11 one which has a very large proportion of it's  
12 students in preschool is very consistent with the  
13 needs of the District the desire of incoming  
14 Mayor Gray to make sure that we focus on  
15 providing universal access to preschool for our  
16 children and in addition the operations help  
17 support the church which as Reverend Sullivan  
18 indicated has a set of infrastructure and  
19 buildings that are larger than what is needed. I  
20 think all you have to do is look at the map to  
21 see that it's pretty hard for this to have  
22 adverse impacts on neighboring property, it is

1 really quite self contained and it's buffered by  
2 the adjacent uses, you've got two cemeteries, Ft.  
3 Totten Park, Catholic University Athletic Fields  
4 and a set of very low density single family  
5 neighborhoods all of which are protected if you  
6 know you've ever tried the short as I attempted  
7 to do once or twice all of these are protected by  
8 a very complex series of traffic calming measures  
9 relating to making these streets one-way so that  
10 it is not easy if you're frustrated on North  
11 Capital Street or Missouri to decide to cut  
12 through these neighborhoods that is unlikely to  
13 happen more than your first or second try because  
14 you realize that it's very difficult to get  
15 through there because of the series of one-way  
16 streets. So there is very little likelihood of  
17 adverse impact both because of just the setting  
18 and the nature of the buffers around it but in  
19 addition to that with the traffic management plan  
20 you've got a very small enrollment, less than 100  
21 students or even up to 120 with a very low rate  
22 of single occupant vehicle use, you've got a

1 traffic pattern in Webster and out Allison that  
2 as Mr. George has indicated keeps any traffic  
3 congestion from occurring outside the site and  
4 it's really important to remember in relation to  
5 some of the contentious private school cases  
6 we've had, Edmund Burr, GDS, Sidwell Friends, St.  
7 Patrick's, where the issues have been cueing and  
8 access because the school has to rely on streets  
9 that are outside it's campus in this case  
10 basically all of the action is inside the gate in  
11 terms of dropping off cueing and there is a  
12 commitment as you've heard from the director to a  
13 substantial emphasis on promoting alternative  
14 votes, the preponderance of people who live close  
15 to the existing school in relation to the  
16 concerns that you raised Ms. Moldenhauer, I think  
17 translate into a very easy supply of potential  
18 carpoolers because you have so many people living  
19 within a short distance of the school, so even  
20 though they will now not be the walkers it should  
21 be easy to organize them in that transitional  
22 period to carpoolers. I won't go into detail

1 unless you would like under cross questioning  
2 about the special conditions for 205 and 206  
3 because I think the Office of Planning report did  
4 that quite well but it basically documents how  
5 well those conditions are met pointing out that  
6 as we saw in the map about how self contained the  
7 property is, that the nearest residential is more  
8 than 500 feet away from the boundaries of the  
9 school and there is such sufficient room within  
10 the school boundaries for cueing and parking.  
11 There is no school within 1000 feet of the  
12 property so we certainly easily meet the special  
13 conditions in 205 and 206. Though it is  
14 certainly in harmony with the general purpose and  
15 intent of the R-3 Zone it's definitely not likely  
16 to impact adjacent neighboring property both  
17 because of the way the school conducts itself and  
18 the buffers within the neighboring area. The  
19 center certainly meets all the code requirements  
20 and there is a letter from the superintendent of  
21 education so indicating it's definitely located  
22 as to not create objectionable traffic

1     conditions. With the parking spaces, more than 50  
2     parking spaces on site for faculty and staff it  
3     more than meets the requirements of Chapter 21 of  
4     the Zoning Regulations and it is located such  
5     that there will be no impact in terms of noise,  
6     activity, play or whatever on any of the  
7     neighboring property. So I would sum it up by  
8     saying that in my professional opinion it meets  
9     all of the standards for the granting of the  
10    special exception for private school and child  
11    development center, thank you.

12                   CHAIRPERSON MOLDENHAUER: That concludes  
13    the applicant's testimony?

14                   MS. BRAY: It does, we'd like to reserve  
15    some time for rebuttal to the extent that is  
16    necessary after DDOT presents its report but  
17    beyond that, that concludes our presentation.

18                   CHAIRPERSON MOLDENHAUER: Thank you; do  
19    any Board Members have any questions for any of  
20    the applicant or applicant's witnesses?

21                   MR. HINKLE: Yeah thank you Madam Chair,  
22    I think this question is for Mr. George; Allison

1 Street is two-way in that location is that  
2 correct? What's to keep people from entering the  
3 school site off of Allison Street versus using  
4 the Webster Street Gate?

5 MR. GEORGE: I think the, I would perhaps  
6 answer and then ask Ms. Shenk-Evans to help me.  
7 I think the school has a tradition of co-opting  
8 its community into adhering its rules and  
9 regulations, it's an issue we raised with them  
10 and Ms. Shenk-Evans indicated that they would  
11 perhaps monitor the situation and have practices  
12 in place to deal with people who made them so.

13 MS. SHENK-EVANS: Yeah we're prepared to  
14 in addition to educating our families on what the  
15 traffic circulation needs to be to monitor that  
16 on a regular basis to make sure everybody is  
17 complying and then if for some reason there were  
18 problems on a regular basis with compliance then  
19 we would institute some kind of fine system to  
20 make sure that people understood that they need  
21 to comply with that.

22 MR. HINKLE: Okay, my next two questions I

1 might be jumping the gun here because I would  
2 like to hear from DDOT, but DDOT did discuss the  
3 use of the Rock Creek Park Road Gate versus the  
4 Webster Street Gate and that's question number  
5 one and number two have you considered using the  
6 Webster Street Gate or the Rock Creek Church Gate  
7 for both ingress and egress to avoid traffic on  
8 Allison Street all together?

9                   MS. BRAY: Just to clarify Mr. Hinkle  
10 there is no gate at Rock Creek Church Road at  
11 this point but I'll let Mr. George answer the  
12 question, the main gate is Webster Street it's  
13 know I think as the Rock Creek Church Gate but  
14 there is no current entrance where DDOT has  
15 suggested it at Harwood Road.

16                   MR. GEORGE: I don't have anything to add  
17 to that, there's no entrance there, the existing  
18 Webster Street entrance has been in place for  
19 well over 40 years and I believe in my testimony  
20 I address the current functioning and operational  
21 efficiency of that gate and it's my opinion that  
22 it will continue to function in that way in the

1 future. Mr. Hinkle it's relevant to know that  
2 while Harwood Road is located here I think you  
3 are referring to this as the Rock Creek Church.  
4 This is one-way so in effect there would be no  
5 traffic coming from here of course, people could  
6 come in here but it does not provide nearly the  
7 type of direct connection that perhaps it  
8 historically would be presumed to provide  
9 (referring to map or PowerPoint presentation).  
10 As you know this was until quite recently a two-  
11 way roadway DDOT upgraded the entire North  
12 Capital Street corridor and made several changes  
13 in the area as part of those changes that road  
14 was made one-way.

15 MR. HINKLE: Thank you.

16 MR. BRAY: Mr. George this is a follow up  
17 question have you looked at what would be  
18 required in order to reopen that gate and is it  
19 feasible from a traffic planning standpoint?

20 MR. GEORGE: There would be several  
21 things that would be required outside of the  
22 administrative permitting process, the signal

1 would have to be reconfigured, some of the poles  
2 are in the way, and we haven't looked at it in  
3 detail but the traffic controllers that may need  
4 to be moved around on the ground conduits and  
5 things like that. In terms of cost having not  
6 (INAUDIBLE) this situation in detail I would say  
7 that typically the magnitude cost for a new or  
8 reengineered signal could be in the vicinity of  
9 120 to 150 thousand dollars so in addition to  
10 whatever other costs associated with that change.

11 MR. HINKLE: Okay, have you looked at  
12 using Webster Street gate for the ingress and  
13 egress to the site?

14 MR. GEORGE: The answer is yes we have  
15 looked at it, we think that the traffic volumes  
16 are so small relatively speaking that it would  
17 function effectively for some of the reasons that  
18 I gave in my description. The school felt that  
19 having the one-way in bound and one-way out bound  
20 would function more effectively as far as the  
21 drop offs, the processing if you might of the  
22 children coming in and leaving. As in most

1 situations there are several options and I don't  
2 think it would, and having that as both inbound  
3 and outbound I assume your also implying that the  
4 Allison Street Gate could be used for some egress  
5 in other words you'd have inbound and outbound at  
6 both gates, I think it would work based on the  
7 volumes we're talking about it would work.

8 MR. BRAY: Mr. George what's the width of  
9 the Webster Street Gate?

10 MR. GEORGE: It is approximately 18  $\frac{1}{2}$   
11 feet wide.

12 MS. BRAY: Is that wide enough for  
13 ingress and egress if that were to be the only  
14 access point?

15 MR. GEORGE: As the only access point  
16 yes.

17 MS. SULLIVAN: Mr. George just to say  
18 it's a car and a half wide and anytime we have a  
19 funeral the funeral has to come all the way in  
20 and then everybody has to go out at one time, It  
21 creates a congestion within the gate, not on the  
22 street but within the gate because you have to

1 wait for one car to come in and one car to go  
2 out, it's a very old gate.

3 CHAIRPERSON MOLDENHAUER: So right now  
4 the recommended traffic pattern would be in  
5 Webster, out Allison?

6 MR. GEORGE: Yes.

7 MR. HINKLE: Okay, thank you.

8 CHAIRPERSON MOLDENHAUER: Are there any  
9 other questions for any of the individuals with  
10 the applicant? Seeing none then I'll turn to see  
11 if there's any individuals in the audience in  
12 support of in opposition of this case. Seeing no  
13 one then what we'll do is we'll turn to the  
14 Office of Planning and DDOT but why don't we  
15 start off with DDOT since obviously they probably  
16 have more questions.

17 MR. BOOKER: Good afternoon my name is  
18 Lewis Booker I'm a transportation planning with  
19 DDOT. Unfortunately or fortunately I did not  
20 draft this report and the two staff members who  
21 worked pretty closely with the applicants were  
22 unavailable to attend but we have had some

1 subsequent meetings with the traffic consultants  
2 and internal meetings and I wanted to way in on  
3 some of the comments that were ongoing. As far  
4 as the traffic operations Mr. George pretty much  
5 spelled out the benefits of the current  
6 operations on Rock Creek Church Road, Harwood  
7 Road is one-way the existing signal provides a  
8 gap for traffic heading west bound, so traffic  
9 entering the site if they were to make a right  
10 turn at the Webster Street Gate they would  
11 provide some gaps for vehicles entering the site  
12 and also for vehicles making a left turn from  
13 Rock Creek Church Road and based on our report I  
14 think the major concern for us is not the  
15 operations of the school itself but the  
16 operations of the intersection of Webster and  
17 Rock Creek Church Road. I'm not sure if you can  
18 pull of the slide that shows the street  
19 configuration it actually shows the gates but the  
20 problem is, the design of the roadway, you can  
21 see Rock Creek Church Road east bound the Webster  
22 Street has east bound as well and our concern is

1 vehicles making a left from Webster into the site  
2 and also from Rock Creek Church entering the  
3 site. If two vehicles were to do the same  
4 movement at the same time that's a conflict and  
5 it doesn't, it really is not the schools  
6 responsibility to address this situation this is  
7 a DDOT concern and as Mr. George has stated our  
8 safety division is looking at this intersection  
9 and the recent changes we made and we might have  
10 to make some additional changes, I just want to  
11 reiterate the problem is two vehicles could make  
12 a left hand turn into that driveway both from  
13 Rock Creek and both from Webster and there's  
14 really no traffic signage that restricts that  
15 conflict, there's not signage on Rock Creek  
16 Church Road that says no left turns which we  
17 would allow but the problem is Webster Street can  
18 also make a left turn, so that situation I'd say  
19 that's more internal to DDOT safety concern that  
20 we're going to have to analyze. As far as the  
21 Rock Creek Church Gate that was mentioned in the  
22 previous study that was something that the

1 applicant would investigate, we encouraged that  
2 change however looking at the design of the gate  
3 the cost would be fairly substantial, there's two  
4 existing traffic signals there that would have to  
5 be relocated, low cost estimate for that would be  
6 150,000 dollars each just to relocate those  
7 signals, you'd have to apply for a permit from  
8 the public space committee that would have to be  
9 approved for the curb cut itself and the curb  
10 would have to be removed, the gutter would have  
11 to be removed, catch basins would have to be  
12 removed and also the existing fence, the historic  
13 fence of the church would have to be cut and I'm  
14 not sure how that would impact the overall site.

15 So in conclusion I think DDOT would more  
16 encourage the applicant to use existing  
17 entrances, the Allison Street and the Webster  
18 Street entrance and if we could work with the  
19 applicant further to develop a more comprehensive  
20 circulation plan where perhaps the vehicles could  
21 enter from the Allison Street side instead of  
22 circulating around and making a left hand turn

1 into Webster Street.

2 CHAIRPERSON MOLDENHAUER: So is it DDOTs  
3 position that they still would recommend or  
4 prefer Allison Street as being the primary entry  
5 point? It sounded like you just said that?

6 MR. BOOKER: I'm not sure that was our,  
7 no our opinion was that we should move everything  
8 to Rock Creek Church Road, the DDOT position is  
9 that we should use existing entrances and develop  
10 a more comprehensive circulation plan where if  
11 students are arriving from the west they can  
12 utilize the Allison Street entrance. What we  
13 strongly discourage is left hand turns into the  
14 Webster Street existing gate.

15 CHAIRPERSON MOLDENHAUER: So, I'm just  
16 trying to make sure I understand what your  
17 position is. You're saying that you'd want to  
18 see entry from both Allison and Webster trying to  
19 reduce any left hand turns from Webster that way  
20 individuals that are on the east side of the  
21 school have access from Allison, west side of the  
22 school. Would you see any concerns of that and

1 we had a letter from one woman concerned about  
2 Allison Street and creating too much, I guess,  
3 congestion on those neighborhood roads, would you  
4 see that potentially creating a problem?

5 MR. BOOKER: I could see that creating a  
6 problem however during this transition phase  
7 you're expecting a large percentage of the  
8 students coming from Mt. Rainier coming east of  
9 the school so I'm expecting most of the kids  
10 arriving by vehicle to arrive North Capital and  
11 points east.

12 CHAIRPERSON MOLDENHAUER: Does the Board  
13 Members?

14 MS. SORG: I have one question to follow  
15 up on what you were talking about earlier with  
16 Webster Street, I thought we found in Mr.  
17 George's testimony is Webster Street from most of  
18 the way between New Hampshire Avenue one way west  
19 bound is that right, so does that, how does that  
20 play into your concern about the left hand turns,  
21 because...

22 MR. BOOKER: Well they make left hand

1 turns, if you could look at the site it's from  
2 Rock Creek Church Road, not from Webster Road,  
3 it's vehicles from Rock Creek Church Road.

4 MS. SORG: Right but if your indicating  
5 that your concerned about a conflict between  
6 people making a left from Webster Street and  
7 people making a left from Rock Creek Church Road  
8 at the same time that was my understanding of  
9 what you're saying. But my question is how  
10 likely is it do you think that people will be  
11 making a left hand turn from Webster Street  
12 because most of that street seems to be west  
13 bound?

14 MR. BOOKER: Very, very unlikely, very  
15 low, and as Mr. George says the crash numbers are  
16 very low but one accident or one incident is too  
17 much and we have to design to make sure that we  
18 make the road safe.

19 CHAIRPERSON MOLDENHAUER: Any further  
20 Board questions for Mr. Booker? Seeing none  
21 thank you, does the applicant have questions for  
22 Mr. Booker?

1                   MS. BRAY: We do, Mr. Booker you  
2 mentioned that DDOTs major concern is if two  
3 vehicles would attempt to make a left hand turn  
4 into the site from Webster and from Rock Creek  
5 Church Road but there's a stop sign at Webster is  
6 there not?

7                   MR. BOOKER: Yes.

8                   MS. BRAY: So combined with the statement  
9 that there is a low likelihood of vehicles  
10 turning left in the first place does that temper  
11 your concern at all?

12                  MR. BOOKER: Somewhat because yeah the  
13 vehicles on Rock Creek Church Road have the right  
14 of way.

15                  MS. BRAY: Could DDOTs concern be address  
16 by simply restricting left turns either with  
17 signage from DDOT installed at Rock Creek Church  
18 Road and Webster and from outreach and signage on  
19 St. Paul's campus? So effectively the entrance  
20 would operate in a right turn in, right turn out  
21 only fashion?

22                  MR. BOOKER: That's something we would

1 consider I would have to check with staff on  
2 that, but if that was the case that would  
3 restrict left turns into your driveway, correct?

4 MS. BRAY: That's right, I mean the  
5 applicant is willing to talk about that with DDOT  
6 but I think the concern is that the signage would  
7 also have to come from DDOT and be installed on  
8 the surrounding road network and not be just  
9 signage on St. Paul's.

10 MR. BOOKER: Yes, I concur DDOT would have  
11 to provide the signage and work with you.

12 MS. BRAY: And would DDOT generally be  
13 supportive of that kind of change or is that  
14 something that you can speak too.

15 MR. BOOKER: I'm not a traffic operations  
16 expert but I think we would be supportive and we  
17 are responsible for providing the signage.  
18 Unfortunately I don't know the results of the  
19 safety analysis that was recently conducted for  
20 the intersection.

21 MS. BRAY: And finally I heard you say  
22 that this really isn't the schools

1                   responsibility it's more an issue of how the  
2                   surrounding roadway operates is that correct?

3                   MR. BOOKER: Yes, that intersection  
4                   conflict.

5                   MS. BRAY: So in your opinion would the  
6                   additional traffic, the minimal additional  
7                   traffic as Mr. George stated that it would be  
8                   added in association with a special exception  
9                   should it be approved. Would that create any  
10                  change in the way that the surrounding road  
11                  network operates that is would there be an  
12                  adverse impact directly related to the  
13                  special exception?

14                  MR. BOOKER: There wouldn't be an adverse  
15                  impact or objectionable traffic conditions  
16                  based on the break because of the current  
17                  traffic light on Harwood Road it provides a  
18                  break, so vehicles can actually make a left  
19                  hand turn using the gap in traffic.

20                  MS. BRAY: Okay thank you very much Mr.  
21                  Booker.

22                  CHAIRPERSON MOLDENHAUER: At this point

1       in time we'll turn to the Office of Planning  
2       for their report.

3                    MR. MORDFIN: Good afternoon I'm Stephen  
4                    Mordfin with the Office of Planning and the  
5                    subject application is in conformance with  
6                    the provisions of the zoning regulations to  
7                    permit a child development because the Office  
8                    of the State Superintendent of Education has  
9                    recommended granting of the application and  
10                  indicated that licensure would be based on  
11                  the child development facilities regulations.

12                 Twelve off street parking spaces are  
13                 required and 20 are proposed in excess of the  
14                 minimum requirement. The outdoor playground  
15                 would face the cemetery and be located at a  
16                 minimum of 500 feet from the nearest  
17                 residence minimizing any adverse impact to  
18                 nearby properties, no offsite player is  
19                 proposed, the Office of Planning is unaware  
20                 of any other child development center within  
21                 1000 feet of the location. Also the DDOT  
22                 comments indicate that the issues that were

1 brought up in the DDOT report dated November  
2 23<sup>rd</sup> can be worked out between the applicant  
3 and DDOT also the application is in  
4 conformance with the requirements of Section  
5 206 for the private school because adequate  
6 parking would be provided and the use would  
7 be unlikely to become objectionable because  
8 of it's location within the cemetery and 500  
9 feet away. Therefore the Office of Planning  
10 recommends that the application be approved  
11 and be found in conformance with provisions  
12 of Sections 205 and 206 of the Zoning  
13 Regulations, thank you.

14 CHAIRPERSON MOLDENHAUER: Thank you very  
15 much, do any Board Members have any questions  
16 for the Office of Planning, seeing none, does  
17 the applicant have any questions for the  
18 Office of Planning?

19 MS. BRAY: We do not, thank you.

20 CHAIRPERSON MOLDENHAUER: Thank you,  
21 thank you very much and then what we'll do is  
22 we'll turn back to the applicant for any

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1 closing remarks.

2 MS. BRAY: Thank you Madam Chair, I'll be  
3 very brief. I think as you've heard today  
4 from our experts Ms. McCarthy and Mr. George  
5 that the applicant meets the requirements for  
6 both a private school and child development  
7 center, the use would be in harmony with the  
8 surrounding uses in conformance with the  
9 zoning regulations and zone maps and would  
10 not have any adverse impact on surrounding  
11 properties. With respect to the use of  
12 Allison Street the school and the church have  
13 been quite careful to devise a circulation  
14 plan which would have the least amount of  
15 impact on the most residentially, with the  
16 surrounding street that is the most  
17 residential in character by having traffic  
18 exit through Allison Street only and in doing  
19 so that keeps the parking lot in a one-way  
20 circulation pattern which minimizes conflicts  
21 on the site and therefore would create no  
22 objectionable traffic situation either on or

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1 off the site. As you heard DDOTs concerns  
2 can be assuaged by possible changes to their  
3 own road network and that the applicant  
4 itself does not pose an objectionable impact  
5 on the surrounding road network or traffic  
6 conditions on the site. We believe we've met  
7 the tests for special exception and encourage  
8 the Board if it should so desire to approve  
9 the special exception today and we would  
10 request a bench decision, thank you.

11 CHAIRPERSON MOLDENHAUER: Thank you I  
12 actually just realized that I did jump over  
13 something, the ANC reports and I see that in  
14 the OP documentation they indicated that a  
15 resolution was submitted and finalized after  
16 September 16<sup>th</sup> meeting but we don't have a  
17 copy of that resolution, I'm seeing counsel  
18 agreeing that they may not have a copy as  
19 well. Is anybody present procedurally from  
20 ANC 4-C? Seeing no one present today I'll  
21 ask the applicant if they were present at  
22 that meeting on September 16<sup>th</sup> and if so we

1 can just hear some oral proffer as to what  
2 occurred to confirm that was in support but  
3 obviously we won't be able to give any great  
4 weight.

5 MS. BRAY: I'll state for the record that  
6 ANC 4-C is actually not the ANC in which this  
7 property is located this property is located  
8 within ANC 4-D and 4-D met and on two  
9 occasions failed to have a quorum present and  
10 there was no vote taken, in fact the first  
11 meeting was cancelled for the lack of quorum  
12 but ANC 4-C we did reach out that this, I  
13 wish I had the map in front of me because  
14 it's very telling to see where this property  
15 is and the fact that it is designated for  
16 open space we're surrounded by four different  
17 ANC's, ANC 5A, 5C, 4C and 4D and so we  
18 reached out to all of those and 4C did hold a  
19 meeting in September we were all present  
20 there was a quorum present and I believe they  
21 passed unanimously a resolution in support,  
22 there were lots of questions from the

1       community and it was an extraordinarily well  
2       attended meeting, I'd just like to state for  
3       the record I'm very impressed by ANC 4-C  
4       there were probably 75 or 80 people in the  
5       room and it's a very active community. They  
6       were supportive and it was my understanding  
7       that they had submitted a resolution but I  
8       don't see it in my notes either we can  
9       certainly follow up with them if you'd like?

10                   CHAIRPERSON MOLDENHAUER: I think  
11       especially considering the traffic issues and  
12       obviously if there is an ANC letter of  
13       support even though it's not the property or  
14       the ANC within which the property is located  
15       it is the adjoining ANC so what I'll do I  
16       recommend that we probably leave the record  
17       open to see if we can't obtain that letter  
18       since there is one out there I'd like to have  
19       that in our record and then we'll set the is  
20       for deliberation on December 14<sup>th</sup> which I  
21       think is the day that we scheduled the other  
22       morning hearings for and that will give the

1           applicant time to get us the documentation  
2           from ANC, lets say you can get that to the  
3           Office of Zoning by close of business on  
4           December 8<sup>th</sup>.    We will schedule this for  
5           decision on December 14<sup>th</sup>.   Is that convenient  
6           for the applicant?

7           MS. BRAY:   That would be fine for the  
8           applicant.   Madam Chair is there anything  
9           else the Board needs on or before that date  
10           from the applicant in order to decide the  
11           case?

12           CHAIRPERSON MOLDENHAUER:   I don't see  
13           anything further that I would require from  
14           the applicant I think that there was a  
15           thorough briefing of the traffic issues so I  
16           don't see any additional information so that  
17           would be all, thank you.   That would conclude  
18           this hearing and that would conclude our  
19           morning hearing and we will reconvene at  
20           1:15.

21

22           Afternoon Session

1 CHAIRPERSON MOLDENHAUER: This meeting  
2 will please come to order good morning ladies and  
3 gentleman, this is the November 30, 2010, Public  
4 Meeting of the Board of Zoning Adjustments for  
5 the District of Columbia. My name is Meredith  
6 Moldenhauer, Chairperson, joining me today to my  
7 right is Jeffrey Hinkle, Representative of the  
8 National Capital Planning Commission, to my left  
9 is Nicole Sorg, Vice Chair and Mayoral Appointee,  
10 and to her left is Michael Turnbull,  
11 Representative of the Zoning Commission. Copies  
12 of today's meeting agenda are available to you  
13 and are located to the left in the wall bin near  
14 the door. Please be advised this proceeding is  
15 being recorded by a court reporter and is also  
16 being webcast live. Accordingly we must ask you  
17 to refrain from any disturbing noises or actions  
18 in the hearing room. When presenting information  
19 to the Board please turns on and speak into your  
20 microphone first stating your name and home  
21 address. When you are finished speaking please  
22 turn off your microphone so that your microphone

1 is no longer picking up sounds or background  
2 noise. All persons planning to testify either in  
3 support or in opposition are to fill out two  
4 witness cards these cards are located to my left  
5 on the table near the door and on the witness  
6 tables. Upon coming forward to the Board please  
7 give both cards to the court reporter sitting to  
8 my right, the order of procedures for special  
9 exceptions and variances are as follows: 1.  
10 Statement and witness of the applicant and  
11 applicant. 2. Parties and persons in support 3.  
12 Parties and persons in opposition. 4.  
13 Government reports including the Office of  
14 Planning and Department of Transportation. 5.  
15 Reports from the ANC. 6. Rebuttal and closing  
16 statements of the applicant. Pursuant to Section  
17 3117.4, 3117.5, the following time constraints  
18 will be maintained; the applicant appellant  
19 persons and parties except an ANC in support  
20 including witnesses will be given permitted 60  
21 minutes to present its case. Apelles's persons  
22 and parties except an ANC in opposition including

1       witnesses will be given 60 minutes collectively.  
2       Persons testifying whether in support or in  
3       opposition will be given three minutes and  
4       organization will be given 5 minutes. These time  
5       constraints do not include cross examinations, or  
6       questions from the Board. Cross examination of  
7       witnesses is permitted by the applicant and  
8       parties. The ANC within which the property is  
9       located is automatically a party to a special  
10      exception or variance case. Nothing prohibits  
11      the Board from placing a reasonable restriction  
12      on cross examination including time limitations,  
13      limitations on the scope. The record will be  
14      closed at the conclusion of each case except it  
15      will remain open for any materials specifically  
16      requested by the Board. The Board and the staff  
17      will specify at the end of each hearing exactly  
18      what is expected and the date when the person's  
19      material must be submitted to the Office of  
20      Zoning. After the record is closed no other  
21      information will be accepted by the Board. The  
22      Sunshine Act requires that a public hearing on

1 each case be held in the open before the public.  
2 The Board may consistent with its rules and  
3 procedures and the Sunshine Act enter into  
4 Executive Session during or after a public  
5 hearing on a case for purposes of reviewing the  
6 record or deliberating on a case. The decision  
7 of the Board contested cases must be based  
8 exclusively the public record to avoid any  
9 appearance to the contrary the Board requests  
10 that persons present not engage the members of  
11 the Board in conversation. Please turn off all  
12 beepers and cell phones at this time as to not  
13 disturb these proceedings. At this time the  
14 Board will consider any preliminary matters,  
15 preliminary matters relate to whether a case  
16 should or will be heard today such as a request  
17 for postponement, continuance or withdrawal or  
18 whether proper or adequate notice of a hearing  
19 was given. If you are not prepared to go forward  
20 now please let me know and if the Board should  
21 believe that we should postpone the proceeding  
22 now is the time to raise such a matter. Mr.

1     Secretary do we have any preliminary matters?

2                    MR. MOY: Not for this afternoon session

3     Madam Chair.

4                    CHAIRPERSON MOLDENHAUER: Thank you then  
5     all individuals wishing to testify please stand  
6     and Ms. Bailey will administer the Oath.

7                    MS. BAILEY: Please raise your right  
8     hand. Do you solemnly swear or affirm that the  
9     testimony that you'll be giving this afternoon  
10    will be the truth the whole truth and nothing but  
11    the truth.

12    Application No. 18144

13                   MS. BAILEY: Madam Chair good afternoon,  
14    the first case is Application 18144 it's the  
15    application of the National Indian Gaming  
16    Association and it's pursuant to 11 DCMR Section  
17    3129.7 for the approval of modifications to plans  
18    approved by the BZA pursuant to Order No. 17985  
19    and pursuant to 11 DCMR Section 3103.2 for a  
20    variance from the parking space accessibility  
21    requirements under (Subsection 2117.4) to allow  
22    the installation of a car lift to provide access

1 to the required parking spaces where a building  
2 devoted to a non-profit organization use in the  
3 CAP/R-4 District, the property is located at 224  
4 2<sup>nd</sup> Street S.E. (Square 762, Lot 7).

5 CHAIRPERSON MOLDENHAUER: Good afternoon  
6 if the parties would please introduce themselves  
7 for the record.

8 MR. COLLINS: Good afternoon my name is  
9 Christopher Collins with the Law Firm of Holland  
10 and Knight and seated to my left is Kyrus Freeman  
11 our office, to my right is Rich Markus of Markus  
12 Architects, Mark Van Norman who was Executive  
13 Director of the National Indian Gaming  
14 Association was expected to be here and he has  
15 been called away on another matter, but Angelica  
16 Molina is here available to answer any question  
17 at the end of our presentation. This is an  
18 application for modification of plans and a  
19 variance to allow an access to the garage by way  
20 of a car lift rather than a ramp. The  
21 application was originally heard on November 3<sup>rd</sup>  
22 of last year for a special exception and four

1 variances to allow the expansion of the existing  
2 non-profit use in a historic landmark in the  
3 CAP/R-4 Zone. This application was approved by  
4 bench decision on that day and that's shown as  
5 "Exhibit No. C" to our prehearing statement. On  
6 July 16<sup>th</sup> we submitted some proposed modifications  
7 of plans and these were principally due to issues  
8 raised during the historic preservation review as  
9 well as issues raised during code review. On  
10 September 21<sup>st</sup> the Board reviewed that request and  
11 determined that the modification required a  
12 public hearing so we filed this application for  
13 the modification of plans plus the variance from  
14 Section 2117.4 to allow the garage lift instead  
15 of the ramp that was previously approved by  
16 variance under Section 2117.8 C-2. Rich Markus  
17 will describe the modifications of the plans and  
18 the car lift, in terms of the variance that we're  
19 requesting the Board has previously determined  
20 that the site is affected by an exceptional  
21 situation or condition and that it is an historic  
22 landmark and the court of appeals has ruled that

1 historic landmarks are by their very nature  
2 exceptional.

3 CHAIRPERSON MOLDENHAUER: Mr. Collins can  
4 I jump in here, just so for your record we will  
5 are able to take record of the fact that we've  
6 already determined that the first two prongs have  
7 been met based on the prior task and our prior  
8 order and so for purposes of this hearing while  
9 we did determine there needs to be a full hearing  
10 on this matter it is not a minor modification all  
11 we will be though reviewing will be the third  
12 prong of the test in regards to this aspect since  
13 you've already determined that it is an  
14 exceptional circumstance and the second prong  
15 based on practical difficulty, so that kind of  
16 shortens and compresses everything I think, so I  
17 wanted to jump in there and make sure that was  
18 clear.

19 MR. COLLINS: I appreciate that, the  
20 third prong of the test I think will be  
21 satisfied as you will see I also want to note as  
22 to the third prong of the test that the

1 comprehensive rewrite of the zoning regulations  
2 that's being undertaken by the zoning commission.  
3 (INAUDIBLE) has proposed that car lifts being  
4 permitted as a matter of right and we have  
5 support of the Office of Planning for this  
6 application as well as the ANC. So with that I  
7 will turn it over to Rich Markus to describe the  
8 variance, the modifications and describe the car  
9 lift.

10 MR. MARKUS: Thank you my name is Rich  
11 Markus I'm the architect. In front of you we  
12 handed out an additional packet today and all the  
13 drawings are the same there's just some  
14 additional dimensions on there and then the last  
15 two pages were different they're the same  
16 information but we added something just to  
17 describe the previous ramp a little bit that's  
18 these two pages it's 401 and 400, and I'll just  
19 explain that just a little bit. Previously we  
20 had tried to fit a ramp in this application and  
21 we weren't able to and I'll explain that in just  
22 a second. This is the site, this is second

1 street, there's an alley in the back that wraps  
2 around and comes through it's actually you can  
3 drive two ways through it, the access to the  
4 actually they park inside here now and the access  
5 to that is through a central garage door and our  
6 access to the garage the new garage under ground  
7 is through the same spot there's a central door  
8 garage and they will actually access that the  
9 same exact way. What we've found was when we  
10 tried to fit a ramp in and because of structural  
11 concerns and all of the other historic issues  
12 that we're trying to line up the floors of the  
13 existing building and not going taller then  
14 making it subservient to the existing historic  
15 building, everything kind of pushed it down in  
16 the garage had to go deeper than we originally  
17 thought and on A401 there's a gray shaded area  
18 which shows the ramp and how long it would have  
19 to be in order for it to work properly and there'  
20 also on A400 there's a garage plan there's a  
21 shaded area that would have to be the ramp,  
22 that's actually showing the actual width that

1 it's supposed to be which would be 24 feet but  
2 the length is the ramp down and you can see if  
3 the car had to go this far then there are  
4 actually eight parking spaces down here and you  
5 wouldn't be able to access any of the spaces and  
6 you can't actually park on a slope of this degree  
7 so the more we just looked at it, it just didn't  
8 work and so that's when the idea of the car lift  
9 came in so the plan is to have the same exact  
10 entry from the alley that we had before but  
11 instead of going down a ramp you enter into the  
12 car lift in this central bay which is existing so  
13 that view from the alley is exactly the same,  
14 then you come down into the garage you drive out  
15 and then you can park into the garage parking.  
16 There are some other modifications that we had to  
17 do because of the garage and some of the  
18 equipment and other modifications as we've been  
19 going through some code compliancy issues,  
20 there's some minor modifications on the interior  
21 mostly down here in the garage there are some  
22 little changes but it's all interior on the upper

1 floors I could go into that if you have  
2 questions. All of that's inside and that's the  
3 main difference between what you have now and  
4 what we had previously.

5 MR.COLLINS: Can you just briefly  
6 describe the relocation of the access stair and  
7 how that drove a lot of the upper floor  
8 modifications?

9 MR. MARKUS: Sure, previously in the  
10 version that was approved last year the stair was  
11 in the front and here was the main space and it  
12 goes up three stories, in the modifications the  
13 egress stair there's a few different issues with  
14 DCRA and how it had to be separated from there's  
15 another stair up front and the separation, it had  
16 to end up back here the proportions of the  
17 meeting space and proportions of the overall  
18 design got changed a little bit but the stair  
19 ended up here so the three story stair is here  
20 and then the stair down to the garage we actually  
21 moved back into here so this goes down to the  
22 main level and then once you get down to the

1 garage you see it doesn't go down into the garage  
2 that way we're able to maintain these parking  
3 spaces. Then the egress stair for the garage is  
4 here so when you actually use this lift you drive  
5 into it here you can actually access the garage  
6 by walking down into here, pick up your car and  
7 then park down here.

8 CHAIRPERSON MOLDENHAUER: Thank you,  
9 anything further from the applicant?

10 MR. COLLINS: No.

11 CHAIRPERSON MOLDENHAUER: Just one  
12 question I have would be a question of can you  
13 address any potential impacts in regards to  
14 cueing since obviously one car will be able to go  
15 into the lift versus a ramp where you can have  
16 multiple cars kind of lined up on the ramp  
17 internal to the property versus on the, in the  
18 back alley way?

19 MR. COLLINS: Yes I was sort of  
20 anticipating that question and we have Angelica  
21 Molina from the National Indian Gaming  
22 Association.

1                   MS. MOLINA: We have about currently 10  
2 employees and we do have staggered arrival times  
3 for everyone so in the morning we have about 2  
4 probably 3 employees who arrive at 9 and then a  
5 couple more at 10 and so that's basically how the  
6 office goes, there's staggered arrival and  
7 departure for us and not everyone drives so that  
8 should hopefully answer the question as far as  
9 cueing in the alley way.

10                  CHAIRPERSON MOLDENHAUER: If somebody  
11 does have a doctors appointment arrives late or  
12 somebody else has to arrive early for picking  
13 someone in the afternoon do you think that back  
14 alley way will be sufficient to cue a couple of  
15 cars is there a lot of use of that back alley way  
16 currently?

17                  MS. MOLINA: There's I don't want to say  
18 there's minimal use, there are deliveries here  
19 and there but for the most part throughout the  
20 day when we're coming and going we're typically  
21 able to get in and out pretty easily. It's  
22 actually wide enough that if there's a vehicle

1 parked there's access around it, so that's been  
2 our experience.

3 MR. COLLINS: The plan does show it's a  
4 20 foot wide alley at that location and we do  
5 have a if you would like to know about it a  
6 little bit more we have Jess Kim who is from  
7 Leeway Daly Architects who can talk about the  
8 time it takes to operate the lift.

9 CHAIRPERSON MOLDENHAUER: Yes that would  
10 be interesting thank you.

11 MS. KIM: Good afternoon my name is Jess  
12 Kim, Architect. For the car lift how long it  
13 takes to operate full cycle someone will be  
14 driving up to the back alley getting out of the  
15 car pushing the button the door will open it  
16 takes about 5 seconds or so the door will open in  
17 7 seconds and then you will walk back while the  
18 door is being open and you will drive in maybe  
19 that will take about another 5 seconds or so and  
20 the door closes in 12 seconds it will go down to  
21 the garage level that takes 8 seconds and then  
22 the door will open, opening door takes 7 seconds

1 and then while the car is traveling the door is  
2 being opened you are walking down the steps you  
3 will get your car and drive out, door closes  
4 again and car moves back to the street level, all  
5 together it takes about 69 seconds.

6 CHAIRPERSON MOLDENHAUER: Thank you  
7 that's helpful. Do any other Board Members have  
8 any questions for the applicant?

9 MR. TURNBULL: Just with the modification  
10 to putting in the elevator does the height at all  
11 change of the old garage, I know your tearing  
12 down, your keeping some and your building new, is  
13 there any change in height?

14 MR. MARKUS: With the new configuration  
15 no, there's actually an open car lift so it's not  
16 an enclosed cab like you would have here so it  
17 doesn't need the clearance that a cab would need,  
18 so we've gotten it to the same height that it was  
19 previously.

20 MR. TURNBULL: I noticed in your  
21 submittal the HPO letter where they talked about  
22 some instances they were concerned about heights

1 and...

2 MR. MARKUS: That was specifically in the  
3 previous version it was substantially higher  
4 because we were using a cab type elevator but now  
5 it's a lift so we've actually gone back to the  
6 exact same that we had originally, in the  
7 original solution.

8 MR. TURNBULL: Okay, now you're going to  
9 be excavating from lot line to lot line for the  
10 garage? Foresee any issues with neighbors  
11 properties, your right up there I'm just  
12 wondering what kind of impact are you looking at?

13 MR. MARKUS: We have met with both owners  
14 on both sides and in the original submission  
15 there's a letter from the south neighbor and then  
16 the north neighbor we actually met with and we  
17 discussed it and he's actually an architect and  
18 he understood the issues about it so we don't  
19 foresee any problems.

20 CHAIRPERSON MOLDENHAUER: Any other Board  
21 questions? Seeing none I'll look to the audience  
22 to see if there's any individuals in support or

1 in opposition of this case? Seeing none we'll  
2 now move to the Office of Planning.

3 MR. JESICK: Thank you Madam Chair,  
4 Members of the Board my name is Matt Jesick the  
5 Office of Planning is recommending approval of  
6 the application as the Board noted we feel that  
7 the first and second parts of the variance test  
8 are met, in regard to the third part of the  
9 variance test we feel that there will be no  
10 detriment to the public good or to the intent of  
11 the zoning regulations. The garage has a very  
12 limited capacity only eight vehicles maximum  
13 could park in the garage so we felt there was not  
14 much danger of cueing into the alley. We also  
15 contacted the District Department of  
16 Transportation and they indicated that they would  
17 not have an objection to the switch from a ramp  
18 to a lift, so we feel that the lift would provide  
19 adequate and safe access to the parking garage so  
20 again we are recommending approval of the  
21 application but I'd be happy to take any  
22 questions.

1                   CHAIRPERSON MOLDENHAUER: Thank you do  
2 any Board Members have any questions? Seeing  
3 none, does the applicant have any questions?

4                   MR. COLLINS: No.

5                   CHAIRPERSON MOLDENHAUER: Okay, thank you  
6 then and we'll move on to reports from the ANC,  
7 is anybody present from ANC 6-B? Seeing no one  
8 I'll indicate that we have our "Exhibit No. 25"  
9 which is dated November 9<sup>th</sup> indicating that ANC 6-  
10 B met at a regularly scheduled and properly  
11 noticed meeting on July 13, 2010, with a quorum  
12 present and voted 9 to 0 to support the  
13 modification for the zoning order to include the  
14 zoning relief necessary to accommodate a car lift  
15 in lieu of a ramp. So that letter satisfies the  
16 requirement and would be given great weight. Now  
17 what we'll do is we'll turn back to the applicant  
18 for any closing remarks.

19                   MR. COLLINS: We thank you for your time  
20 and we think we've answered all the questions,  
21 and we respectfully request your favorable  
22 decision, thank you.

1 CHAIRPERSON MOLDENHAUER: Thank you, then  
2 at this point in time we'll conclude our hearing  
3 and we will enter into deliberation. I will  
4 start us off, we have a case before us which is  
5 coming before us for a modification this case was  
6 previously approved by us in 2009, Case 17985 and  
7 now the issue is the applicant is seeking to  
8 replace an initial ramp with a car lift and so we  
9 will review the application as indicated during  
10 the hearing we will incorporate our prior  
11 analysis of the property finding that that  
12 provides sufficient precedent for us to find that  
13 this property does satisfy the first and second  
14 prong of the variance test that the property is  
15 unique and exceptional and that there does create  
16 a practical difficulty, that being said the  
17 modification then focuses solely on the third  
18 prong in regards what impact does this have on  
19 the neighboring community. I think that we've  
20 heard sufficiently from the applicant; 1. The  
21 practical difficulty of being able to obtain a  
22 ramp versus the convenience and the necessity of

1 having a car lift in this location the number of  
2 spaces that would be lost and I think that by  
3 losing those spaces it would actually create more  
4 of an impact on the community by creating more on  
5 street parking rather than by permitting this  
6 relief and permitting a car lift scenario where  
7 your then going to continue to have eight  
8 vehicles for this facility and for the employees  
9 that work and staff members that work at this  
10 site. That being said I think that there were  
11 Office of Planning is in support, the ANC is in  
12 support and I see no reason why this application  
13 should not be approved, I'll open up the floor to  
14 any further deliberations from any other Board  
15 Members. Seeing none, then I will submit a  
16 motion, a motion to approve application of  
17 National Indian Gaming Association pursuant to 11  
18 DCMR 3129.7 to approve a modification to plans  
19 approved by the BZA pursuant to order No. 17985,  
20 pursuant to 11 DCMR 3103.2 for a variance from  
21 parking space accessibility requirements under  
22 (Subsection 2117.4) to allow the installation of

1 a car lift to provide access to the required  
2 parking spaces for a building devoted to a non-  
3 profit organizational use in the R-4 District at  
4 224 2<sup>nd</sup> Street, S.E. A motion has been made is  
5 there a second?

6 MS. SORG: Second.

7 CHAIRPERSON MOLDENHAUER: Motion has been  
8 made and seconded all those in favor say aye.

9 CHORUS: Aye.

10 MR. MOY: Staff would record the vote as  
11 4 to 0 to 1, this on the motion of the  
12 Chairperson Ms. Moldenhauer to approve the  
13 request for modification on a 3129.7 and variance  
14 relief from parking space access under 2117.4.  
15 Seconded motion the Vice Chair Ms. Sorg, also in  
16 support of the motion Mr. Hinkle and Mr.  
17 Turnbull, no other Board Members participating,  
18 again the final vote is 4 to 0 to 1.

19 CHAIRPERSON MOLDENHAUER: Thank you very  
20 much Mr. Moy seeing that there's not opposition  
21 we would request that our requirements be waived  
22 and a summary order be issued.

1                   MR. MOY: Very good, thank you.

2                   **Application No. 18145**

3                   MS. BAILEY: The second case of the  
4 afternoon is Application 18145 it's the  
5 application of Dix Street Corridor Revitalization  
6 Partners, LLC for a modification of the project  
7 approved by BZA Order No. 18037 pursuant to 11  
8 DCMR Section 3104, 3129.7 and 3103.2 for special  
9 exception for the construction of a multi-family  
10 house and development under Section 353 (Section  
11 2516.4) and variances from the parking  
12 requirements under (Subsection 2101.1, 2115.1,  
13 2115.4 and 2115.10) and variance from the  
14 building lot control requirements under  
15 (Subsection 2516.4) to allow the renovation and  
16 construction of a new residential building in the  
17 C-2-A and R-5-A District. The property is  
18 located at 405-407 Dix Street, N.E. 400-414  
19 Eastern Avenue, N.W. and 61<sup>st</sup> Street N.E. It's  
20 also known as (Square 5260, Lots 2, 17-19, 28 and  
21 806).

22                   MR. UTZ: Good afternoon Members of the

1 Board my name is Jeff Utz, I'm with Goulston &  
2 Storrs, we are the land use council for Dix  
3 Street Revitalization Partners, LLC., the  
4 applicant in the BZA Application No. 18145.  
5 Thank you for the opportunity to appear before  
6 you this afternoon and the consideration of our  
7 application. As you know this case relates to an  
8 application for a modification to BZA Order  
9 18037, in order to construct 63 residential units  
10 instead of the prior approved 60 residential  
11 units and slightly reshape one building which is  
12 building 8 on our site plan. As a result of  
13 widening a portion of the alley. The project is  
14 located at 400-414 Eastern Avenue and 405-407 Dix  
15 Street, N.E. all of these spots are in Square  
16 5260. Originally the applicant submitted its  
17 request for a minor modification to the BZA by  
18 letter on July 16, 2010, and at the BZA September  
19 21, 2010, public meeting the BZA determined that  
20 a new hearing was required since the modification  
21 requires new areas of relief. The original BZA  
22 Order approved special exception relief to

1 Section 3531.1 and 2516.1 an area variance relief  
2 from Sections 2101.1, 2115.1, 2115.4, 2115.10 and  
3 2516.4. The previous approval for the property  
4 under BZA Order 18037 approved the same types of  
5 relief as that which we are requesting in this  
6 modification request. Under case 18145 the case  
7 before you here, the applicant requests  
8 modification to the special exception relief  
9 under Section 353.1 which relates to the  
10 construction of multi-family buildings in the R-  
11 5-A Zone District and area variance relief under  
12 Section 2101.1 for the number of required parking  
13 spaces and then finally slight modifications to  
14 the Section 2516.4 relief required for the  
15 theoretical lot section relating to open area and  
16 set back requirements for those theoretical lots.

17 CHAIRPERSON MOLDENHAUER: Mr. Utz can I  
18 just as you a quick question? I think in  
19 reviewing the documentation there may also need  
20 to be relief under 2516.6B in regards to means of  
21 vehicular ingress and egress to any principle  
22 building should be 25 feet in width I think that

1 the application currently indicates that the  
2 width of the vehicular access is only 20 feet  
3 wide.

4 MR. UTZ: Right, I believe we dealt with  
5 that in our statement that we submitted on the  
6 24<sup>th</sup> of September.

7 CHAIRPERSON MOLDENHAUER: It's not listed  
8 on your front cover page.

9 MR. UTZ: We did not request relief for  
10 that section, but perhaps I can look at that and  
11 come back to you later and answer that.

12 CHAIRPERSON MOLDENHAUER: That will be  
13 fine. Just as you start going through everything  
14 I'm not sure if you were privy to the earlier  
15 discussion on the prior case but it was a similar  
16 situation where we were here for a medication for  
17 a full hearing but where we had already reviewed  
18 some of the variance factors in the initial case  
19 and just so for your reference obviously we will  
20 be incorporating our prior order and decision as  
21 precedent for the first two prongs so the focus  
22 of the hearing will simply be on the third prong

1 and that way you can limit any of your  
2 presentation to that aspect of impacting the zone  
3 plan and the public in identifying those areas  
4 that were going to be modified.

5 MR. UTZ: Okay, thank you, so with that  
6 in mind I would just like to explain a little bit  
7 about what the modification relates to  
8 specifically kind of how we got here although  
9 I'll pass it off to some other folks to describe  
10 that a little more. There are two areas the  
11 inclusion of three additional townhouse units all  
12 located in what we've been calling phase one  
13 which would alter some of the open space  
14 requirements around three of the buildings on the  
15 projects theoretical lots and then secondly the  
16 slight reconfiguration of building 8 on it's  
17 theoretical lot due to modification of the site  
18 plan that the Department of Fire and Emergency  
19 Rescue requested during the case currently before  
20 the D.C Council to close and then dedicate the  
21 portion of the alley here and that was actually  
22 approved last week at that legislations first

1 reading and they will have it's second reading  
2 shortly. With that in mind I could go through  
3 the nature of the relief sought and actually  
4 detail the side yards, front yards, rear yards  
5 and such building by building if you'd like me  
6 to, that is in our statement as well.

7 CHAIRPERSON MOLDENHAUER: Yeah it's in  
8 your statement I think what you could probably do  
9 is simply point out on the diagram I think I see  
10 some of the modifications and how that effects  
11 it, I think that might be a more efficient manner  
12 since we have gone through your statements  
13 already and reviewed all of the changes and  
14 modifications that are being requested.

15 MR. SADOWSKI: Hi I'm Kevin Sadowski with  
16 the Applicant Dix Street Corridor Revitalization  
17 Partners, and Jeff will point to the two areas on  
18 the map that really are, that indicate the areas  
19 where we're seeking modification. The first is  
20 basically the courtyard or we have units that are  
21 basically outlined in red at this point, those  
22 are the proposed new units and new unit layouts

1 underneath those you can see a black outline  
2 which is a footprint of the previous footprint of  
3 the units. Essentially the photo to the left  
4 there shows the existing units, the buildings  
5 that exist on the site today and were going to be  
6 converted into townhouse units and were  
7 incorporated in the previous BZA approval, we  
8 have since taken a look at those units from a  
9 marketing and a construction standpoint and in  
10 agreement with the District of Columbia Deputy  
11 Mayor's Office we together determined it would be  
12 best to demolish those buildings. When we  
13 demolish those buildings we looked at the  
14 practical layout of the units in terms of widths  
15 and depths and whatnot and we looked at basically  
16 we came up with a 20 foot wide footprint for the  
17 units that flanked the sides of the horseshoe and  
18 we looked at a 16 foot wide footprint for the  
19 unit that is essentially at the bottom of the  
20 horseshoe if you will. So long story short that  
21 led us to increasing the unit count in that area  
22 by three units which helped us offset the

1 demolition cost and offset the cost of new  
2 construction and we felt that it was a win-win  
3 for us and the District of Columbia it basically  
4 gives us a project that's much more marketable  
5 it's better units for the end purchasers etc,  
6 etc. So that's the first section of modification  
7 that we're seeking. The second is a modification  
8 as Jeff had mentioned to the building No. 8 and  
9 that was a result of us processing the alley  
10 closure proposal and the FEMS folks whose felt  
11 that the turning radius was a little tight there  
12 for their fire truck to make it through the alley  
13 and then into the site so we needed to pick up a  
14 few inches there and we basically reduced the  
15 footprint of that building to accommodate that  
16 larger turning radius that we needed. I think in  
17 a nutshell that's the modification to the relief  
18 that we're seeking from a non-technical  
19 standpoint.

20 MR. UTZ: So relating to the actual third  
21 prong of the variance test that you just  
22 reference we believe there will be no harm to the

1 public good or the zone plan which will result  
2 from this modification application. Development  
3 of 63 units instead of 60 units will not  
4 unnecessarily crowd this site it actually, we  
5 think, it probably a step towards creating a bit  
6 more of a vibrant community here. This proposed  
7 development will be in a scale that's consistent  
8 with the bulk of the surrounding properties and  
9 the surrounding buildings. In fact we think this  
10 project is a type of well designed townhouse  
11 community that the Zoning Regulations are  
12 intended to foster. The project maximizes  
13 livable space and green open space still, while  
14 proving the proper amount of access and service  
15 space throughout the site. Granting these  
16 additional variances for the theoretical lots  
17 relating to side yard, rear yard, lot occupancy  
18 and FAR will have no impact on neighbors or  
19 future residents of this project as there is  
20 already significant buffering between the  
21 internal and external buildings. The project has  
22 25% as green space once it's constructed it has

1 19,600 square feet of open space. We also  
2 believe that the variance related to the  
3 additional three units and the parking won't have  
4 the zone plan, instead this will allow for a more  
5 efficient use of the property and a greater  
6 amount of the property to be devoted to green  
7 space. Specifically relating the amount of  
8 parking provided, the project includes an  
9 appropriate amount of parking for the residents  
10 and the visitors and guests. A significant  
11 portion of the surrounding streets including the  
12 adjacent street segment on Dix Street and Eastern  
13 Avenue allow the residential permit parking, the  
14 RPP permits. As a result there will not be any  
15 adverse impact on the availability of parking  
16 spaces in the adjacent neighborhood. Also  
17 importantly the property is well served by public  
18 transportation and the Capital Heights Metro  
19 Station is three blocks or about a third of a  
20 mile due south of the property and there are  
21 seven bus lines that are in this immediate  
22 vicinity as well including a stop immediately

1 adjacent to the property by UA Bus Line. That  
2 concludes our discussion of the third prong of  
3 the variance test. I would like to turn it over  
4 to Kevin Sadowski the representative of the  
5 applicant to talk a little bit more about the  
6 relations with the community and some other  
7 aspects of the project, thank you.

1   their tenancy. We have continued, we've had  
2   discussions with the Kids Are Us Too tenant  
3   previously and we are still very committed to  
4   finding a place for the business in the  
5   neighborhood, the previous landowner Mr. Fabrizio  
6   had indicated he would even be interested in  
7   purchasing a building in the neighborhood and  
8   rending it, we have other folks in the  
9   neighborhood who are interested in helping us.

10   It's a process though and we will not be in a  
11   position to start work on that phase of the  
12   project for probably at least 12 months so our  
13   thought was that we would close on the property,  
14   keep the wheels turning talking to the  
15   neighborhood and see how things develop over the  
16   holidays here and into the early part of next  
17   year. Regarding the Skips Liquor facility I've  
18   had ongoing discussions with the tenant there, we  
19   had extensive discussions in the spring and have  
20   recently talked as recently as today in the  
21   hallway. We have open discussions there to  
22   hopefully relocate that business in the

1 neighborhood as well. I've had extensive one on  
2 one meetings with the commercial property owner  
3 that owns the property across 61<sup>st</sup> Street from  
4 Skips Liquor and Mr. Lowe is interested in  
5 possibly relocating the Skips Liquor Store into  
6 his facility, so again this is all part of the  
7 process and the wheels are turning on all of  
8 that, that is the extent of my update.

9 CHAIRPERSON MOLDENHAUER: Thank you,  
10 anything further from the applicant?

11 MR. UTZ: Nothing further.

12 CHAIRPERSON MOLDENHAUER: Thank you; do  
13 Board Members have any questions for the  
14 applicant or any of the witnesses? Seeing none,  
15 then at this point in time I will ask if there is  
16 any individuals in the audience in support or in  
17 opposition if there are they should come down. I  
18 will just ask you guys just nod your head, was  
19 everybody sworn in?

20 MS. BAILEY: Please raise your right  
21 hand, do you solemnly swear or affirm that the  
22 testimony that you'll be given will be the truth,

1 the whole truth and nothing but the truth.

2 CHAIRPERSON MOLDENHAUER: Okay good  
3 afternoon, each of you will be provided three  
4 minutes to testify and what we'll do is we'll  
5 start of to my left and will then work our way  
6 down, so you can introduce yourself saying your  
7 name and then you will be provided three minutes.

8 MS. JAMES: Hello, I'm Bernadette James  
9 owner and operator of Kids R People Too, we were  
10 not include on the new development that's coming  
11 to the Dix Street Corridor nor were we informed  
12 Francis Fabrizio, that's the person that we rent  
13 from, he did not inform us, we found out just  
14 yesterday that he had since sold the buildings to  
15 the developers. I am a lease holder and I have  
16 five years left on my lease and I'm just between  
17 a rock and a hard place, I have 200 children  
18 there that I service and I've never seen, what is  
19 your last name, sorry?

20 MR. SADOWSKI: Mr. Sadowski, but I believe  
21 you've met with a few of my partners from time to  
22 time.

1 MS. JAMES: I haven't heard from any of  
2 your partners.

3 CHAIRPERSON MOLDENHAUER: Okay this is  
4 not going to be a dialog back and forth this is  
5 an opportunity for you're...

6 MS. JAMES: I would just like to know do  
7 they plan to include these 200 children and 400  
8 parents that have to go back and forth to work  
9 they will be out of child care, my children will  
10 be displaced, my business will go under, I  
11 haven't heard anything. I also lease from Mr.  
12 Lowe, I have a building where Mr. Lowe is the  
13 gentleman that he spoke of that is directly  
14 across the street from the building that they  
15 plan to knock down and he has not said anything,  
16 I had given him their number because he wanted to  
17 know what was going on in the area, so this is  
18 new to me as well. I don't think it's fair I'  
19 mean we're going to deal with Mr. Fabrizio in a  
20 separate matter because we did have first right  
21 of refusal in the lease in our contract, I'd just  
22 like to know what they plan to do.

1 CHAIRPERSON MOLDENHAUER: Well I  
2 appreciate you coming down, the point of this to  
3 talk about of this hearing today to talk about  
4 these changes and they were pointing out the  
5 changes unfortunately this application has  
6 previously been approved. So I guess my question  
7 would be based on your understanding and your  
8 familiarity with the location do you see any  
9 problem or are you concerned at all with the  
10 changes or modifications that are being requested  
11 today.

12 MS. JAMES: When it comes to my business  
13 yes I see problems, the buildings that are  
14 Eastern Avenue they need to come down and housing  
15 needs to go up there because they've been vacant  
16 for years and I've lived in that area all my life  
17 so that would be a plus for a community there but  
18 when you start to push out small business owners  
19 and not inform them, and just like he spoke of  
20 the public transportation, my parents use that  
21 same transportation to transport their children  
22 to and from the childcare facility. It would be

1 great for Eastern Avenue but it would be great  
2 for the new community to have childcare as well  
3 we're currently under accreditation and we offer  
4 a lot to the community.

5 CHAIRPERSON MOLDENHAUER: I definitely  
6 agree with that and I appreciate you coming down,  
7 if that's everything then I'm going to turn to  
8 your right and allow the gentleman to your right  
9 to present, thank you very much Ms. James.

10 MR. MENGISTEAL: Good afternoon my name  
11 is Teuolde Mengisteal I own Skips Liquor Store in  
12 that block and I had some contact with Mr.  
13 (INAUDIBLE) and even though he offered some  
14 relocation I still don't have anything for money  
15 or written form or otherwise of how we're going  
16 to. The first phase does not effect me in any  
17 way but the second phase calls for demolishing of  
18 my business and I have no where to go even though  
19 I have a license and I've been just offered that  
20 I can be located one block from there but there  
21 is nothing formal and I would just like to know  
22 exactly what's going on, plus I have an option on

1 my lease that is first to buy the property and  
2 that has not been exercised and the developer  
3 just bought the property without my knowledge  
4 that this is, I have not extended my rights to  
5 buy the property, so if there is any way the  
6 second phase, you say this is not really the  
7 place to voice that concern but I'd still like to  
8 work with the developer that the location is  
9 everything to us, we employ people from the  
10 community, I have employees that have been  
11 working there forever so if there is anyway he  
12 can accommodate us we can go from there, that's  
13 all I can say for today.

14 CHAIRPERSON MOLDENHAUER: Thank you very  
15 much for coming down.

16 MS. TOLLIVER: My name is Kimberly  
17 Tolliver I'm the Director at Kids Are People Too,  
18 I've been there for about seven years, myself and  
19 Ms. Jane we were here for the last hearing but  
20 what I heard today from the modifications correct  
21 me if I'm wrong, but they were saying they wanted  
22 to get rid of 407 and 405, our facility occupies

1 407 and 409 which means they would be demolishing  
2 half of the daycare center which is still leaving  
3 us with just the other half, also the alley that  
4 they are trying to close, our children utilize  
5 that alley they have the buggies that they carry  
6 that is the only way for them to get out and  
7 play, exercise their muscles and everything, they  
8 utilize that back alley to go around so for that  
9 to close you know that's beyond us, because they  
10 have no way to get those buggies through the  
11 facility through the front entrance so that would  
12 pretty much be Xing out their time to be  
13 outdoors, that would just cut that time out.  
14 Also Ms. James she talked about the bus line, the  
15 same seven bus lines that this gentleman here  
16 spoke about, a lot of our parents they are  
17 underprivileged so to speak so those bus lines,  
18 those seven lines they use, which a lot of  
19 facilities don't offer, a lot of facilities you  
20 got to walk, block and block to get your children  
21 where they need to be but we're there with those  
22 same seven bus lines accommodating those 200

1 children, 400 parents. Like Ms. James and the  
2 gentleman here they haven't even been given an  
3 option their rent to own, that haven't even been  
4 discussed, I see this gentleman here in the  
5 black, I don't know names, I'm not good with  
6 names, I've seen him a couple of times in a  
7 community but he's never come into the daycare,  
8 I'm not sure how far him and Ms. James have went  
9 if at all but he's in the community but he never  
10 comes to the facility and says ok this is what  
11 we're doing today but they will come him and his  
12 developers they sit out front, they just point at  
13 the building, no one comes in, no one discusses  
14 anything and someone is always there to do that  
15 with but I'll see them and sometimes I'll peak  
16 out and say can I help you with anything, most of  
17 the time I don't get a response and I'm sitting  
18 there trying to figure out what's going on  
19 because we have our privacy that we have to  
20 maintain with our children and they are there in  
21 the front and they don't discuss anything.  
22 That's just my point of it all but I don't see

1 where they should feel in their right minds to  
2 displace 200 children that is just beyond me,  
3 those children they come to us for a safe haven,  
4 they are there everyday just about and for them  
5 to want to displace these children is beyond me  
6 and also they up their units from 60 to 63, why  
7 not reduce their units and make their parking  
8 within their facility instead of demolishing what  
9 was already there inside the community.

10 CHAIRPERSON MOLDENHAUER: Thank you for  
11 coming, I just want to address some of the points  
12 and I appreciate all three of you coming down.  
13 As I indicated already to Ms. James unfortunately  
14 we have only a limited jurisdiction here today.  
15 We are only reviewing the modification so I  
16 really cannot speak in depth as to phase we did  
17 hear a lot of your concerns last time, and this  
18 Board only has certain jurisdictions over zoning  
19 issues if you have other legal issues you have  
20 to another venue which is appropriate, I can't  
21 advise you to which location to go but I would  
22 say do that, obviously I think I said last time

1 at the last hearing we always encourage  
2 developers to work with the community and to make  
3 sure that especially child development, caring  
4 for children is especially important. They need  
5 to ensure to hopefully make sure that's continued  
6 in the community and we do approve CDCs all the  
7 time and so we do see the need for those  
8 especially in regards to the access points. But  
9 unfortunately we can't address that issue today  
10 because of the limited aspect of our hearing, but  
11 I do appreciate everyone coming down. At this  
12 point in time we'll turn to the Office of  
13 Planning for their report.

14 MR. COCHRAN: Thank you Madam Chair, again  
15 focusing on just the requested modifications.  
16 O.P. is recommended that you approve the  
17 modifications that were noted in our report of  
18 September 14<sup>th</sup>, the additional three units and  
19 what results from that, the altered Section  
20 2615.4 relief for buildings 2, 4, and 6. The  
21 changes in relief needed for the yards lot  
22 occupancy and FAR for those units and the

1 additional parking relief that's needed because  
2 there would be 63 rather than 60 units but still  
3 57 parking spaces. There are a couple of things  
4 that have come up today also. Because of the  
5 changes in building 8 just for the record I would  
6 like to note that it would actually require less  
7 lot occupancy relief that it had previously  
8 required. I'm happy to address Section 2516.6 if  
9 you wish but I thought I could easily wait until  
10 after the applicant addresses that if the  
11 applicant chooses to, that's the relief that you  
12 brought up today.

13 CHAIRPERSON MOLDENHAUER: Yes, obviously  
14 if you feel that you've reviewed it and you  
15 concur that that relief is necessary I would like  
16 to hear OPs opinion on that.

17 MR. COCHRAN: Not only feel that it's  
18 necessary we also feel that it would be entirely  
19 appropriate to grant it. The Department of  
20 Transportation has extensively reviewed the site  
21 plan, even I believe last week the applicant was  
22 meeting with the Department of Fire and Emergency

1 Services both DDOT and fire and emergency  
2 services that work closely with the applicant on  
3 this and found no problems with the reduced width  
4 for egress and OP certainly isn't going to second  
5 guess those departments on this at least.  
6 Finally because it was raised earlier about the  
7 affordability requirements even though it has no  
8 bearing on the relief, I would like to note that  
9 there are changes that the applicant has made in  
10 conjunction with the Deputy Mayors Office to the  
11 distribution of household AMIs and it is actually  
12 making the units more affordable than they had  
13 been in earlier versions, I've included a  
14 supplementary report if you wish to accept that,  
15 it goes into detail for the record but there's no  
16 need to consider it for the relief. That  
17 concludes our testimony.

18 CHAIRPERSON MOLDENHAUER: Thank you very  
19 much and I appreciate you noting that, that's  
20 always a factor especially in regards to the  
21 third prong even though we should only count  
22 aspects that adversely effect the public good and

1 typically we're not permitted to consider things  
2 that are benefiting the public good but I do  
3 appreciate that. Referencing your report and  
4 your oral testimony regarding the decreased  
5 average medium income for the units. Do any  
6 Board Members have any questions for the Office  
7 of Planning, seeing none thank you. Does the  
8 applicant have any questions?

9 MR. UTZ: No we don't.

10 CHAIRPERSON MOLDENHAUER: Okay, thank you  
11 very much at this point we'll move on. I will  
12 move on to anybody present today from ANC 7-C?  
13 Seeing no one present in the audience from ANC 7-  
14 C all reference that we have our "Exhibit No. 27"  
15 which was dated October 15<sup>th</sup> and received in our  
16 office November 15<sup>th</sup> indicating that the ANC  
17 submits a letter of support where they had a  
18 meeting on October 14<sup>th</sup> which is a duly noticed  
19 and regularly scheduled meeting in which a quorum  
20 was present, four or more elected ANC members  
21 were in attendance and that they've voted  
22 unanimously to support the application in regards

1 to the modification. That letter satisfies our  
2 standards and will be receiving great weight.  
3 That being said we'll turn back to the applicant.  
4 To address I think perhaps two things and then  
5 closing remarks. One would be the need for  
6 additional relief and then two would be similar  
7 concerns of the neighbors. As I indicated to  
8 them, we are aware of the limited nature but at  
9 the same time I feel that we're looking at the  
10 third prong as regards to impact. You are  
11 dealing with that and I would like to hear some  
12 response to that.

13 MR. UTZ: Relating to the first point that  
14 you just brought up about the 2516.6 relief  
15 potential, that is something that we addressed in  
16 our initial statement way back when we submitted  
17 our application for 18037, it's kind of buried in  
18 there, I don't know if you all have this. It's  
19 "Exhibit 5" on page 12, in there we describe, we  
20 go through all of 2516 and kind of describe the  
21 way that we either need the standards of Section  
22 2516 or require relief from the individuals

1 standards, and when we describe that Section we  
2 do acknowledge it's a bit tighter in there budget  
3 defer to that last sentence of Section 2516.6  
4 which allows the Board to modify this requirement  
5 to find a lesser width or diameter will be  
6 compatible with and will not likely have an  
7 adverse effect on the present character and  
8 future development of the neighborhood. The it  
9 also says provided that the board shall give  
10 specific consideration to the spacing of  
11 buildings and the availability of resident guest  
12 and service parking, so we feel that, that  
13 section, that portion of the project that's what  
14 we've been calling the private alley, it's kind  
15 of a sideways Z it hasn't changed in this  
16 modification from what was approved earlier and  
17 we kind of worked on the diameter and the access  
18 issues of the private alley as the Office of  
19 Planning was referencing. So we think that it's  
20 kind of the ideal width for both safely and  
21 aspect concerns but also making it seem like a  
22 cohesive community that's kind of united on one

1 parcel. We would obviously defer to your  
2 judgment about whether we need relief or whether  
3 simply acknowledging that last sentence in  
4 Section 2516.6 would be sufficient for that  
5 section.

6 CHAIRPERSON MOLDENHAUER: I think that we  
7 have the ability to waive that requirement under  
8 Section 2516.6D your referencing Section D.  
9 However I think in order for us to waive it I  
10 would think procedurally that the applicant would  
11 have to request that we waive that same as though  
12 they are asking to waive it under Section D or  
13 asking for relief under Section B.

14 MS. MONROE: Can I interject, I think the  
15 word is not waive I think the word is modify and  
16 so I think what they're saying, and I think you  
17 can do it is I think your widest one is 20 feet,  
18 there's 18 and 20 okay and it's supposed to be  
19 25, so the Board is entitled after looking at  
20 certain no adverse effect on the present  
21 character and future development you can allow 20  
22 feet as a modification of the required 25, I

1 don't think it needs to be waived and it's not  
2 really new relief then, the relief would be  
3 necessary but you would be modifying it to allow  
4 them to have what they're offering if you so  
5 desire.

6 CHAIRPERSON MOLDENHAUER: Let me just as  
7 a procedural question. I don't believe that we  
8 specifically addressed this per'se in the order  
9 so I think that if we do as a Board, and I see  
10 you shaking your head, feel that it's necessary  
11 we would actually have to call that out today and  
12 indicate that we are permitting this modification  
13 under 2616.6D.

14 MS. MONROE: Right and it specifically  
15 says your modifying it because you believe it  
16 will be compatible with and will not be likely to  
17 have an adverse effect on the present character  
18 and future development of the neighborhood and  
19 the Board shall give specific consideration of  
20 spacing of buildings, availability of rest guest  
21 and service parking which is what Mr. Utz just  
22 said. Specifically what it says so you should

1 have perhaps a little bit of deliberation on  
2 those aspects if you think there will be no  
3 adverse effect and you know, you looked at the  
4 parking availability, space of the buildings and  
5 you feel this is fine and you can modify it, I do  
6 think you should address it because it's a new  
7 area of relief and maybe the applicant wants to  
8 address it a little bit.

9 CHAIRPERSON MOLDENHAUER: I think that it  
10 would be appreciated if you would just go through  
11 some of those aspects talking about parking  
12 availability, the adverse impact and  
13 compatibility in addition to the other point that  
14 I had asked, thank you.

15 MR. UTZ: The site plan is such that the  
16 design is to make a cohesive community design,  
17 basically have as much of a community feel as  
18 possible but also have the access and safety  
19 concerns addressed, in order to allow garbage  
20 trucks and fire trucks and things to get down  
21 that particular access way. Also obviously the  
22 cars for the residents that are parking in there,

1 having portions of the is private alley being  
2 less than 25 feet doesn't disallow any access  
3 that we've been able to find or that DDOT or Fire  
4 and Rescue has been able to identify and it also  
5 doesn't disallow any additional parking in that  
6 area of the project all of two of the townhouses  
7 have individual garages and access to get into  
8 them is not compromised by this slightly narrower  
9 condition, and also related to this narrowed  
10 condition is it just one small part of the  
11 private alley it's not actually the whole thing.

12 I believe most of the alley is 20 feet at the  
13 pavement but then it's actually wider than that,  
14 its I believe 4 feet wider on each side of the  
15 paving so there is a great deal of kind of  
16 latitude allowed by this design and as it stands  
17 now there is parking for the guests and there is  
18 also kind of intended to be the guest parking  
19 then also in the adjacent streets there's  
20 residential permit parking this RPP parking and  
21 several of the immediately adjacent segments of  
22 streets. As we've been reviewing since we've

1 kind of started this case and the site planning  
2 there's quite a bit of availability there on the  
3 street parking spots. So again we don't think  
4 that kind of slightly narrower condition to that  
5 private alley would compromise the ability to  
6 park residents and guests.

7 MR. SADOWSKI: Hi I can speak to the  
8 community a little bit and the commercial  
9 tenants. Our company is comprised of several  
10 members and one member is the Beulah Community  
11 Improvement Corporation which is run by Pastor  
12 Turner and he and his organization have ownership  
13 of quite a bit of property in the neighborhood  
14 and he is the pastor at the Beulah Baptist Church  
15 two and a half blocks away. He's very involved  
16 in the community, he actually has a few pieces of  
17 property that we've looked at for possible  
18 relocation spaces for Ms. James but we, I and he  
19 and our other partners are Urban Matters, LLC and  
20 Ray Nicks is the principle for urban matters and  
21 Ray is equally committed to the community as well  
22 and again we're working hard, and I know Ray has

1 met with Ms. James on a few occasions as has  
2 Pastor Turner. We are committed to trying to  
3 keep her facility in the neighborhood because we  
4 know that daycare for children is an essentially  
5 community service for the neighborhood as well as  
6 the liquor store because the liquor store also  
7 sales convenience items, has the lottery and it's  
8 a community gathering place as well and we're  
9 hoping that he an move into a larger space that  
10 would enable him to offer some more items maybe  
11 some convenience type of items some small grocery  
12 items and things like that. Our partnership has  
13 actually responded to an RFP recently from the  
14 DHCD and we're trying to acquire more property in  
15 the neighborhood. I know the Urban Matters folks  
16 have also responded to another RFP a few blocks  
17 away from DHCD and Pastor Turner, as I said,  
18 through Beulah Community owns several pieces of  
19 property in the neighborhood, he's trying to  
20 build a senior center two and a half blocks a  
21 way. We're very committed to the neighborhood,  
22 it's what we're there for, and that's why Pastor

1   Turner and Urban Matters and we came together two  
2   years ago to do this. Again things have not been  
3   worked out with the commercial tenants yet and  
4   that's really a result of timing and we now own  
5   the property and now it's time to really dig in  
6   and start seeing as the pieces start to come  
7   together what we can find for them and what we  
8   can do, so that's all I can say is we're putting  
9   forth our best effort and again we committed to  
10   the community and the community services.

11                   CHAIRPERSON MOLDENHAUER: Thank you, I  
12   just know it's disconcerting to some degree, we  
13   heard a lot of these same concerns back in March  
14   and you hear someone come forward again for a  
15   modification you hope by then after all this time  
16   that things have kind of been worked out or  
17   people have been able to sit down and talk and I  
18   think that's something that we just always  
19   encourage. It's great to see development, I was  
20   happy to hear Ms. James even acknowledge that  
21   seeing a new building there would obviously be  
22   very positive for the neighborhood but we always

1 encourage the developers to work with the  
2 neighborhood. So that being said is there any  
3 other questions for the applicant?

4 MR. TURNBULL: I just had one how far  
5 away did you say they might be relocated?

6 MR. SADOWSKI: We're working to keep  
7 everybody close to the project, I know, you know  
8 proximity to his current location is important  
9 and visibility is important for a liquor store  
10 and for Ms. James for her facility I know staying  
11 in that neighborhood where folks have access to  
12 public transportation is important to her, so  
13 that's what will be considered as we try to help  
14 everybody relocate.

15 MR. TURNBULL: Okay thanks.

16 CHAIRPERSON MOLODENHAUER: Any other  
17 questions from Board Members? Seeing that  
18 there's no further questions are there any final  
19 remarks?

20 MR. UTZ: We don't have anything further;  
21 we appreciate the opportunity, thanks.

22 CHAIRPERSON MOLDENHAUER: Thank you, then

1 at this point in time we'll conclude this hearing  
2 and I think if everyone's ready I think what  
3 we'll do is enter into deliberation and I will  
4 start us off. This case is before us for a  
5 modification from a prior BZA Order that was  
6 approved back in March 2010, we had reviewed this  
7 case it's a two phase development the  
8 modification is focus simply on one phase in  
9 which the applicant is reconfiguring based on  
10 demolition of a building the number of units or  
11 number of townhouses that can be created in this  
12 area and based on that are seeking a number of  
13 different variances and relief. I'm not going to  
14 go through all of them since there is a variety  
15 of them, some of them are increases and some of  
16 them are less relief than is required but what  
17 I'll do is I'll incorporate in our record the  
18 analysis provided by the Office of Planning which  
19 is a very through and very well detailed analysis  
20 in regards to what previously existed on the  
21 project and how that relief is being changed  
22 especially referencing the table number one on

1 the last page, page number five where it goes  
2 through and it identifies the lot area, lot  
3 width, lot occupancy, FAR, rear yard, front yard,  
4 side yard, height and parking and identifying  
5 those areas which are being changed or modified  
6 in this modification request. In addition to  
7 that you know, we'll also include references to  
8 Section 2516.6 and indicate that the applicant  
9 has in my view, I will see what other Board  
10 Members indicate, has satisfied the standard and  
11 has indicated that there is reason to provide  
12 this modification to that section seeing that  
13 there is adequate and compatible width provided  
14 for access and there's no issue in regards to  
15 negative impacts and in regards to parking. That  
16 being said the applicant has shown that these  
17 modifications while there's a whole bunch of  
18 little things here and there I don't find that  
19 they are having any negative impact on the  
20 community or the public or the Zoning Plan. In  
21 addition to that I appreciate comments from the  
22 community and the concerns of some of the

1 commercial tenants however as I inform them the  
2 majority or the issues their raising regarding  
3 Phase two and we've already approved the  
4 application we're simply looking at the issues  
5 before us today which is a modification, however  
6 as stated to the applicant we strongly encourage,  
7 you know, the CDC and I'm sure the new residents  
8 of this affordable housing program would probably  
9 benefit from having a child development center  
10 nearby or in the building. That being said we  
11 also have ANC approval and that is going to  
12 receive great weight. I would be in support of  
13 this application for modifications is thee any  
14 additional deliberation from any other Board  
15 Members.

16 MS. SORG: Thank you Madam Chair I would  
17 just add that I'm in agreement with your analysis  
18 and I think that you've laid out all the issues  
19 completely. I would just add that it seems to me  
20 mainly here the applicant is requesting relief  
21 only to a greater to a lesser degree from  
22 constraints that were existing and addressed in

1 the original application aside from the 2516.6.

2 CHAIRPERSON MOLDENHAUER: Thank you, and  
3 I think there are some additional relief that is  
4 being sought that's required a new hearing but I  
5 think I see no issues before us today. I think  
6 that as I indicated earlier we are incorporating  
7 the prior order in regards to the first and  
8 second prong. That being said I think we're  
9 ready for a motion, if I see no additional  
10 comments from Board Members, motion to approve  
11 Application of Dix Street Corridor Revitalization  
12 Partners, LLC for a modification of the project  
13 approved by BZA Order 18037 pursuant to 11 DCMR  
14 3104.1, 3129.7 and 3103.2 for a special exception  
15 for construction of a multi-family housing  
16 development under Section 30353 and a variance  
17 for parking requirements under Section 2101.1,  
18 2115.1, 2115.4 and 2115.10 and a variance in the  
19 building lot control requirements under  
20 (Subsection 2516.4) and a relief from 2516.6D and  
21 to allow the renovation of construction of a new  
22 residential building in a C-2-A and R-5-A

1 District of the premises 405 and 407 Dix Street,  
2 N.E. Motion has been made, is there any second?

3 MR. TURNBULL: Second.

4 CHAIRPERSON MOLDENHAUER: Motions been  
5 made and seconded all those in favor say aye.

6 CHORUS: Aye.

7 MR. MOY: Staff would record the vote as  
8 4 to 0 to 1; this is on the motion of the  
9 Chairperson Ms. Moldenhauer to approve the  
10 application per the Sections as sited, Second by  
11 Mr. Turnbull, also in support of the motion, Ms.  
12 Sorg, and Mr. Hinkle. Again the final vote to  
13 approve is 4 to 0 to 1.

14 CHAIRPERSON MOLDENHAUER: Thank you very  
15 much Mr. Moy and seeing that we had no parties in  
16 opposition we did have some individuals in  
17 opposition I would recommend that we waive our  
18 requirements and request a summary order.

19 MR. MOY: Very good thank you Madam Chair.

20 CHAIRPERSON MOLDENHAUER: Thank you. We  
21 can read the last case for the day and the  
22 parties can step forward.

1    **Application No. 18095**

2                    MS. BAILEY: Application No. 18095 this  
3                    is the application of Ronald McDonald House  
4                    Charities of Greater Washington D.C and it's  
5                    pursuant to 11 DCMR Section 3104.1 for special  
6                    exception under Section 215 to operate a  
7                    religious group residents for 96 persons under  
8                    Section 215, the property is Zoned R-1-B it's  
9                    located at 1326 Quincy Street, N.E., (Square  
10                  3968, Lot 17).

11                  CHAIRPERSON MOLDENHAUER: Good afternoon,  
12                  if the parties would like to introduce themselves  
13                  for the record.

14                  MR. SULLIVAN: My name is Marty Sullivan  
15                  I'm with Sullivan Styles and Barros.

16                  MOTHER MARY: I'm Mother Mary of the  
17                  Incarnate Word. My legal last name is Batta.

18                  CHAIRPERSON MOLDENHAUER: Mr. Sullivan as  
19                  you are aware this is going to be a limited  
20                  hearing just addressing the issue of a term and  
21                  so I'll turn to you for the applicants  
22                  statements.

1 MR. SULLIVAN: Thank you, just briefly I  
2 would just, as the Board knows and I stated as my  
3 main point in my motion a condition imposed must  
4 be based upon reliable proactive and substantial  
5 evidence in the record as a whole. I'm not aware  
6 of any evidence that would tend to suggest any  
7 likelihood at all of any adverse effects on the  
8 use of neighboring properties. We certainly  
9 appreciate the opportunity to be here today to  
10 speak to that and to provide some additional  
11 testimony. Maybe if we could ask the Board for  
12 some guidance on this point, if there are  
13 specific concerns whether they be parking,  
14 traffic or noise then perhaps we could direct our  
15 testimony specifically to those concerns.

16 CHAIRPERSON MOLDENHAUER: The Board,  
17 terms are different than conditions, terms don't  
18 have to be specifically based on any specific  
19 aspect in the record as your alleging, they are  
20 merely a factor of the Boards analysis of the  
21 case as a whole and finding that there are some  
22 factors that may possibly unknown at the current

1 time and may evolve, such as the neighborhood  
2 evolving over a period of time or of the  
3 operation of a facility evolving over a period of  
4 time. Factors in this case as was on the  
5 previous record that currently the Ronald  
6 McDonald and then the order here is a smaller  
7 order and made up of a few women, a few nuns and  
8 for this local order, the facility though is  
9 quite large and they are hoping obviously to grow  
10 and that is an unforeseen factor as to how that  
11 growth can effect the neighborhood. I think that  
12 was some of the reason behind the term  
13 previously. If you'd like to make arguments as  
14 to factors as to why we should consider other  
15 aspects or other specific facts that you can  
16 present as new facts in regards to the term,  
17 that's really why we're here but in regards to my  
18 review of the record and my review of the zoning  
19 requirements and zoning laws. Terms are  
20 different than conditions; conditions are made to  
21 mitigate specific facts in the record where terms  
22 are identified based on the Boards determination

1 as what would be adequate to potentially account  
2 for unforeseen conditions.

3                   MR. SULLIVAN: For the record I must  
4 disagree terms I think are absolutely conditions  
5 I don't think there's any support to my knowledge  
6 for the proposition that terms are not conditions  
7 that are subject to the requirement under the  
8 National Black Child Case. Typically and the  
9 reason why I cited the case in my motion was to  
10 show that typically when there is a term limit  
11 conditions it almost always it's a child  
12 development center and typically its to address a  
13 real potential impact, I know they use the term  
14 potential unforeseen impact I think that's an  
15 unfortunate oxymoron but what they intended to  
16 say and what is born out in the transcript of  
17 that case 16911 was that they had significant  
18 concerns and specific concerns about the number  
19 of children, there were 61 children it's a day  
20 care center, it was a community center, there's  
21 the real potential there for an impact. I guess  
22 I'd like, I don't understand or accept the

1 proposition that there's the ability for the  
2 Board to just levy a condition of a term limit  
3 without any support for that, but I maybe wrong  
4 on that I'm not aware of that at all. To say  
5 that you could enter a term limit on anything,  
6 and I would point out too in that case that I  
7 cited they did have a motion for reconsideration  
8 went from three years to ten years even in that  
9 case with a child development center. The  
10 additional testimony that we could also provide  
11 is it does present an exceptional burden on the  
12 order. Their purchasing this property not  
13 renting it, they've searched for this property  
14 which is perfect for them for a number of years,  
15 up to 10 years for this particular property.  
16 They will have residence that will be living here  
17 for a term of years. It creates a certain amount  
18 of instability and uncertainty and at any rate, I  
19 mean if it's the number of residence we're happy  
20 to address lowering that number we hadn't done  
21 that before because I even asked the ANC Single  
22 Member District Representative, how is that

1 number are you comfortable with that number  
2 because we could go lower if you want and he said  
3 absolutely not, no body's expressed any concern  
4 about the number of residents, so your fine with  
5 that number. That being said we're happy to do  
6 that if that's the concern. We'd much rather not  
7 have a time limit and go with a slightly lower  
8 number perhaps 85 or 80 residence. If you would  
9 like to hear some testimony on the potential  
10 burdens on the order, Mother Incarnate Word can  
11 address that point.

12 CHAIRPERSON MOLDENHAUER: This is your  
13 case our Board has already made a decision in my  
14 view this is a case if you want to put on  
15 additional witnesses or testimony that's  
16 obviously something that you have the right to  
17 do, you have a period of time at this hearing.  
18 The purpose of this hearing is simply for you to  
19 provide potentially new facts, new evidence in  
20 addition to your motion that we should consider  
21 that would support a motion for reconsideration.

22

1 MR. SULLIVAN: Okay I think we will go  
2 ahead and present some testimony for what it's  
3 worth. Again I don't think there's any evidence  
4 on the record to support the term limit, so I  
5 don't know what will add to that but we're happy  
6 to present some additional testimony and would  
7 hope that the Board would see that the burden  
8 that this would be on the order and how we have  
9 met the conditions under the special exception  
10 which are only two by the way that we not  
11 adversely effect the use of neighboring  
12 properties and that our parking is adequately  
13 provided and spaced, we think we've proved that  
14 pretty convincingly. Mother Incarnate Word will  
15 present a short testimony, thank you.

1 what I understand having a term limit on this  
2 approval would mean that in five years we would  
3 have to come back and pay for a new application  
4 and new lawyers fees and things if that sort.  
5 That will be the first difficulty, the money that  
6 we receive goes for all of our expenses, health  
7 insurance to support our foreign missions things  
8 like that, so any money that we have to take away  
9 from the needs of our sisters and the needs of  
10 our mission is obviously a sacrifice. In the  
11 second place eventually we hope to make some  
12 modifications to the building in order to meet  
13 the needs of our sisters. Previously it was a  
14 seminary and now it's a residence for the Ronald  
15 McDonald House, so we will need to modify things  
16 a little bit to have some spaces that are  
17 appropriate for our sisters and it's kind of hard  
18 to make those kinds of plans in the future if  
19 we're not sure if we're going to have the  
20 permission to be there with as many people as we  
21 would see in the future that we would like to  
22 have there. As far as impacting the community

1 most of the activities that we carry out happen  
2 on site at the House of Formation for the sisters  
3 so they study and they have classes inside the  
4 building. The professors come to give classes  
5 there and the sisters that reside there also give  
6 classes. We don't need vehicles for each sister  
7 obviously, we use vans and the eight vehicle  
8 limit is more than sufficient for our number of  
9 people. We don't all travel everyday to a  
10 different place. Like I said most of the  
11 activities happen on property. When we met with  
12 the ANC the community didn't seem to have any  
13 problem with us using the building as a convent.  
14 I don't know if there's anything specific that I  
15 can answer.

16 CHAIRPERSON MOLDENHAUER: Thank you, do  
17 any Board Members have any questions.

18 MR. TURNBULL: Maybe not a question just  
19 a comment, I think my biggest concern is what  
20 we've done with any kind of an organization in  
21 your similar situation is that you have a special  
22 exception whether it's a child care or whatever,

1 there is an unexpected piece of how this  
2 organization works and I think for us to have the  
3 ability whether it's 96 or 85 on a site I think  
4 there is a degree of uncertainty as to how the  
5 organization fits in, not taking anything away  
6 from what your order does, I think there is just  
7 a question as to what that impact might be, so I  
8 think even the ANC in their letter said 10 years,  
9 I'm just saying there is an uncertainty of how an  
10 organization is going to work on a site and I  
11 think that's why we put a term limit on it so  
12 people can come back and revisit how an  
13 organization is doing and how it impacts the  
14 neighborhood, it's very simple.

15 MR. SULLIVAN: I understand that and I  
16 appreciate that and I see the need for that in  
17 many cases, there's just not a regulation for  
18 that. The ANC the only reason they suggested 10  
19 is they were trying to be helpful they didn't  
20 suggest that until after the Board had already  
21 put the 5 on it. Originally they approved  
22 without conditions other than the 96 residents.

1 I would like to offer an alternative condition  
2 and its' one that I think we expected to be in  
3 the order but it's not. The limit the vehicles  
4 because if there's any impact it's got to come  
5 from the vehicles and the traffic and we're happy  
6 to submit to an absolute 8 vehicle limit, there's  
7 13 parking spaces there and that will suffice no  
8 matter what the number goes to. Again we rather  
9 lower the number than have this unknown out there  
10 and on the issue of whether or not you have the  
11 ability to put a term limit on it, I'm happy to  
12 brief the issue at the risk of dragging this out.  
13 We do have an order and we're moving forward to  
14 get a certificate of occupancy under that order,  
15 so it won't really effect us time wise but if you  
16 would like me to brief that issue and come back  
17 and revisit it again, I feel pretty strongly  
18 about that obviously. I do understand your  
19 concerns I just wish there were some other  
20 solution other than such a short time limit that  
21 really handicaps what from all appearances should  
22 be a use that fits right into the neighborhood,

1 as the ANC said they really appreciate these  
2 types of uses in this neighborhood and they would  
3 like to see them be there and stay there.

4 CHAIRPERSON MOLDENHAUER: Just too kind of  
5 address that point and your option, I mean  
6 obviously the whole Board needs to deliberate  
7 just to talk off the cuff. My concern is that  
8 not just the parking, you may say the parking is  
9 going to be the issue. Lets' not give a term  
10 limit and (INAUDIBLE). One of the reasons why I  
11 feel strongly about a term limit is because you  
12 don't know what's going to happen. I cannot  
13 right now foresee what may happen it maybe the  
14 parking issue, it maybe another issue, that is  
15 one of the reasons why we sometimes give these  
16 terms and I understand the applicants concerns on  
17 this. However I don't see that it creates too  
18 much of a burden especially if the applicant is a  
19 great neighbor and there are no problems then  
20 what happens is and there's no changes that would  
21 drastically effect how this works then you come  
22 back in 5 years and it's a very seamless process

1 and hopefully at that point, in my view I would  
2 rather give a 5 year term limit now, allow for  
3 the operation to get going, for the community  
4 potentially to evolve in any way in that  
5 relationship with this applicant and then come  
6 back and say okay, everything is going smoothly  
7 maybe we don't need any term limits, maybe  
8 they'll put a really long term limit on it. Then  
9 at that point your good to go versus saying, you  
10 know having more of a tentative condition for  
11 such a long period of time like 10 years and then  
12 you have to come back after 10 years and say okay  
13 well now we've kind of been in this stall  
14 patterns in regards to renovations or things of  
15 that effect for ten years. I'd rather put a  
16 period of time where you can get operations  
17 underway, see how things are working, and I  
18 personally don't feel comfortable with just  
19 addressing the parking because one of the reasons  
20 why I feel term limits are something the Board  
21 has authority to apply to any application if they  
22 seem fit is because of the uncertainty. I may

1 think that parking is an issue today but it maybe  
2 something 6 months from now it maybe something  
3 else 2 or 3 years from now. I may not be able to  
4 identify that specifically but I don know we have  
5 some unforeseen issues in regards to the  
6 operation in regards to how this will run with  
7 the neighborhood. That being said I'll turn back  
8 to the applicant for any potential closing  
9 remarks or any other questions from the Board  
10 Members. Seeing no questions from Board Members,  
11 you obviously will go through the rest of the  
12 procedures for this hearing if there are any but  
13 I'll turn back to you for any other comments.

14 MR. SULLIVAN: Thank you, again I've  
15 stated already so I don't need to beat it to  
16 death but I'm not aware of the difference between  
17 a condition that has a term limit and a condition  
18 that doesn't have a term limit. I'm also not  
19 aware of any regulation that provides that the  
20 Board can levy a term limit. I would also want  
21 to just say for the record, there are many  
22 special exception cases that don't have a terms

1 limit, the high majority of them. In comparison  
2 if this case doesn't merit that what case does?  
3 The other thing is, while it may be true that a  
4 special exception renewal might be a smooth case  
5 in five years. We don't know who's going to be  
6 sitting on the Board, we don't know what the  
7 atmosphere is going to be and lenders and grant  
8 providers and contributors don't necessarily make  
9 decisions based on whether or not something might  
10 happen in five years particularly when they're  
11 lending on a 30 year mortgage or a 20 year  
12 mortgage or their contributing to something they  
13 think is going to be there long term. That's it,  
14 again I'm happy to brief that issue if we want to  
15 fully vett the issue of whether or not a term  
16 limit is a condition otherwise I would just  
17 request that the Board either modify this  
18 condition to make it more palatable and  
19 reasonable or just to specifically state in the  
20 record that there was no substantial evidence to  
21 support a condition but that a term limit is not  
22 a condition and that way we'll know how to

1 address that, at that point, thank you.

2 CHAIRPERSON MOLDENHAUER: Thank you, then  
3 seeing that we're having a full hearing on this  
4 matter I'll ask if there's any individuals in the  
5 audience in support or in opposition of the case.

6 Seeing none present we'll move on to see if  
7 there's any comments from government agencies  
8 such as the Office of Planning. Seeing that they  
9 did not provide a supplemental report for this  
10 issue specifically there is nothing in that  
11 regard and we'll continue on. We didn't have any  
12 reports from the ANC and I'd ask if anybody is  
13 present from ANC-5-A seeing no one in the  
14 audience I'll reference that we do have "Exhibit  
15 No.37" which is dated November 19<sup>th</sup> and received  
16 in our office on November 22<sup>nd</sup> which indicates  
17 that the ANC had a duly noticed meeting and that  
18 on November 17<sup>th</sup> in which a quorum was present and  
19 that they voted to submit this letter of support  
20 7 to 0 to 0 indicating that they would request  
21 that this exception be approved with a period of  
22 a 10 year rather than a 5 year limit and so that

1 being said I will turn back to the applicant for  
2 any closing remarks.

3 MR. SULLIVAN: I would say the same thing  
4 I said last time.

5 CHAIRPERSON MOLDENHAUER: At this point  
6 in time this hearing will be concluded, I'm just  
7 going to consult with my Board Members for a  
8 moment. Okay thank you just for that quick  
9 recess. What we've decided is that we're going  
10 to set this for decision for a later date and we  
11 will permit the applicant to brief the issue that  
12 there is potential more need for further legal  
13 analysis in regards to briefing whether the  
14 Board, or to what authority the Board has the  
15 right to issue terms or conditions. If the  
16 applicant feels has been stated on the record  
17 that they disagree with the way the Board is  
18 currently viewing the distinction between terms  
19 and conditions or viewing how we previously  
20 reached our decision on that issue. That being  
21 said...

22 MS. MONROE: Madam Chair I just want to

1 weigh in since the ANC is a party are they  
2 allowed to say, I wasn't to sit on this regional  
3 case.

4 CHAIRPERSON MOLDENHAUER: There's no  
5 other parties and the ANC is in support so I  
6 don't think it's relevant. So what we'll do is  
7 we will put this on decision for January 11, so  
8 we'll provide until January 4<sup>th</sup> for the record to  
9 remain open for any potential briefs provided by  
10 the applicant and then we'll have this for  
11 decision on January 11<sup>th</sup>.

12 MR. SULLIVAN: Excuse me just a point of  
13 clarification. Can I limit the brief to just  
14 that issue of the term limits and the conditions.

15 CHAIRPERSON MOLDENHAUER: Absolutely I  
16 think that this should be just a legal points and  
17 authorities of addressing potentially what  
18 authority the Board has or does not have in  
19 regards to issuing term limits and in your  
20 opinion or based on the law what support we would  
21 need or be required to have.

22 MR. SULLIVAN: Well okay, I don't know if

1 you want it that in the open, or just address  
2 this case.

3 CHAIRPERSON MOLDENHAUER: This is a  
4 general issue and so if it's something, whatever  
5 is decided here is a summary order but at the  
6 same time people would be able to record and  
7 review this.

8 MR. SULLIVAN: Thank you.

9 CHAIRPERSON MOLDENHAUER: So you are  
10 clear as to the time and the deadlines? So at  
11 this point that concludes this hearing and the  
12 record is left open for limited purposes as  
13 already stated and this concludes today's  
14 hearings.

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