

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY
MARCH 5, 2013

+ + + + +

The Regular Public Hearing
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
NICOLE SORG, Vice-Chairperson
S. KATHRYN ALLEN, Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, FAIA, Commissioner
(AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

JOHN NYARKU, Zoning Specialist
STEVEN VARGUS, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER

STEPHEN GYOR

BRANDICE ELLIOTT

KAREN THOMAS

MAXINE BROWN-ROBERTS

MATT JESICK

ELISE VITALE

**The transcript constitutes the
minutes from the Public Meeting held on March
5, 2013.**

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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10:36 a.m.

MEMBER MOY: Okay. The first case before the Board then is 18509. This is the Application of Angela Desmond, pursuant to 11 DCMR 3104.1. This is for a special exception for a rear addition to an existing one-family detached dwelling under Section 223, not meeting the side yard requirements under Section 405, in the R-1-B District at premises 4735 Tilden Street, N.W. (property located in Square 1528, Lot 51).

CHAIRPERSON JORDAN: Thank you, Mr. Moy. Would you please identify yourself?

MR. VOGT: David Vogt, on behalf of the owner.

CHAIRPERSON JORDAN: We do have that letter? Okay. And, in relation to the property, what relationship do you have to the property?

MR. VOGT: The builder.

CHAIRPERSON JORDAN: The builder?

1 Okay. Okay. Mr. Vogt, we have reviewed the
2 record in this matter. And we're pretty
3 comfortable with the filing and the need for
4 the requested relief has been shown through
5 the documents previously filed, and through
6 the representation made by the ANC and the
7 Office of Planning and DDOT, that this is
8 something that was supported and we give great
9 reference -- deference to those things.

10 You have the opportunity to make a
11 presentation, if you want. But, right now, we
12 don't have any questions that we need you to
13 answer. And, historically, people have put
14 their foot in their mouth. But certainly, you
15 have the opportunity to do that, or you can --
16 we can waive past that point and we can go to
17 the Office of Planning and continue with the
18 hearing.

19 MR. VOGT: I'm good.

20 CHAIRPERSON JORDAN: Okay. Good.
21 Then let's turn to the Office of Planning and
22 see if there's anything additional that you

1 need to add to the report that's already
2 written that we've already read.

3 MR. GYOR: Good morning, Mr.
4 Chairman and Members of the Board, Stephen
5 Gyor with the Office of Planning. The Office
6 of Planning supports the Applicant's request
7 for relief and rests on the record. Thank
8 you.

9 CHAIRPERSON JORDAN: Does the
10 Board have any questions for the Office of
11 Planning? You've got a question for the
12 Office of Planning? Does the Applicant have
13 any questions of the Office of Planning?

14 MR. VOGT: No, I don't.

15 CHAIRPERSON JORDAN: Okay. Is
16 anyone here from DDOT on this matter? We do
17 have a letter -- Exhibit 23 in our files --
18 where the Department of Transportation has
19 reviewed the plans and has issued their letter
20 of no objection to the plan and the request.
21 Is there anyone here from ANC-3D? ANC-3D? We
22 do have a letter from ANC-3D -- Exhibit 22 --

1 who has given their support for the requested
2 relief, and to which we would give great
3 weight. Okay. Is there anyone in the
4 audience wishing to testify in support of this
5 application? Anyone wishing to testify in
6 support of the application? Anyone wishing to
7 testify in opposition to the application?
8 Anyone in opposition? Going once. Going
9 twice. Okay. Then we would normally turn it
10 back to the Applicant for some type of
11 rebuttal or closing. But we don't believe
12 it's necessary. Do you?

13 MR. VOGT: No. I just have seven
14 letters from the surrounding neighbors with no
15 objections.

16 CHAIRPERSON JORDAN: Okay. That
17 was a good one. So then we will then close
18 this hearing, based upon the evidence already
19 deduced in the record in the file to this
20 point. Is the Board ready to deliberate?

21 MEMBER SORG: Yes.

22 CHAIRPERSON JORDAN: Okay. Then I

1 would move that we grant the relief requested
2 by the Applicant in this matter.

3 MEMBER SORG: Second.

4 CHAIRPERSON JORDAN: Motion made
5 and seconded. Any unreadiness? Seeing none,
6 all those in favor signify by saying aye.

7 ALL: Aye.

8 CHAIRPERSON JORDAN: Those
9 opposed, nay. The motion carries. Mr. Moy?

10 MEMBER MOY: Yes, sir. Staff will
11 record the vote as four to zero. This is on
12 the motion of Chairman Jordan, to approve the
13 application. Seconding the motion was Ms.
14 Allen. Also in support of the motion, Mr.
15 Turnbull and Vice-Chairperson Sorg and Mr.
16 Hinkle is not present, participating today.
17 So again, the motion carries four to zero, Mr.
18 Chairman.

19 CHAIRPERSON JORDAN: Thank you.
20 Okay. We have summary. You know that. No we
21 want a floor order on this -- no, a summary
22 order, please.

1 MEMBER MOY: Thank you, sir. The
2 next application before the Board is
3 Application Number 18510. This is the
4 Application of Robert A. Johnson, pursuant to
5 11 DCMR 3104.1. This is for a special
6 exception for a detached garage addition at
7 the rear of an existing one-family row
8 dwelling under section 223, not meeting the
9 lot occupancy requirements under section 403
10 in the R-4 District at premises 721 10th
11 Street, N.E., property located at Square 959,
12 Lot 806.

13 For the record, Mr. Chairman, we
14 do have a letter --

15 CHAIRPERSON JORDAN: Definite
16 addition order?

17 MEMBER MOY: No. This is a letter
18 of testimony from the Capitol Hill Restoration
19 Society which is dated March 4th but was
20 handed to me this morning for the Board.

21 CHAIRPERSON JORDAN: What it is,
22 we don't know. You said that to say -- oh, we

1 don't have it -- do I have it?

2 MR. TEASS: I have it right here.
3 I can pass it up to the Board.

4 CHAIRPERSON JORDAN: Well, let's
5 -- first, would you identify yourself?

6 MR. TEASS: Good morning. My name
7 is Will Teass with Tectonics Architecture. I
8 am here on behalf of the Client, Robert
9 Johnson, representing him as his architect.

10 CHAIRPERSON JORDAN: Did we get an
11 authorization letter on this matter? We did
12 get it late? Okay. All right. Good. Thank
13 you. This is another matter in which we've
14 examined the file and believe that there has
15 been sufficient showing for the necessity for
16 the relief granted. One question, what kind
17 of cars are you putting in this garage?

18 MR. TEASS: Is that an official
19 response?

20 CHAIRPERSON JORDAN: No. That's
21 okay. But I believe that there is enough in
22 the record to support and we found nothing in

1 opposition to this. So you have the right to
2 do a presentation. As you may have heard just
3 recently here. Or you can waive what you need
4 to say, unless the Board has some other
5 questions for you.

6 MR. TEASS: I can -- I will waive
7 my presentation, this morning.

8 CHAIRPERSON JORDAN: Does the
9 Board have any questions?

10 ZC COMMISSIONER TURNBULL: Mr.
11 Chair, I just have one question. What kind of
12 an elevator or lift do you have up there to
13 stack those cars?

14 MR. TEASS: The -- it's a -- this
15 is actually my client's area of expertise.
16 But it's basically, as I understand it, it's
17 a completely detachable or moveable structure,
18 that you pull the car in and it has four
19 points. It's not actually bolted down to
20 anything. It's actually on wheels that lock.
21 And so, what it allows him to do is kind of
22 raise the car to varying different heights to

1 work on it and/or store it.

2 ZC COMMISSIONER TURNBULL: So the
3 Aston Martin goes on top, right?

4 MR. TEASS: That's my
5 understanding, yes.

6 ZC COMMISSIONER TURNBULL: All
7 right. Okay. Thank you.

8 CHAIRPERSON JORDAN: Okay. Then
9 let's -- any other questions for the
10 Applicant? Let's turn now to the Office of
11 Planning.

12 MS. VITALE: Good morning, Mr.
13 Chair and Members of the Board, Elisa Vitale
14 with the Office of Planning. The Office of
15 Planning supports the Applicant's request for
16 a special exception relief and we rest on the
17 record. I can certainly answer any questions
18 that you might have.

19 CHAIRPERSON JORDAN: Does the
20 Board have any questions for the Office of
21 Planning? Does the Applicant have any
22 questions for the Office of Planning?

1 MR. TEASS: No, sir.

2 CHAIRPERSON JORDAN: Okay. Then
3 is there anyone here from the Department of
4 Transportation? We do have a letter in our
5 filed from the Department of Transportation,
6 which states they have no objection to the
7 relief requested. Is there anyone here from
8 ANC-6A? ANC-6A? We do have a letter in our
9 file to which we'll give great weight, that
10 ANC-6A stands in support of this application.
11 Is there anyone in the audience here wishing
12 to testify in support of this application?
13 Anyone in support wishing to testify? Anyone
14 in the audience in opposition to the
15 application? Anyone in opposition? Then we
16 will turn back now to the Applicant for what
17 they normally would have a rebuttal in closing
18 and give you the opportunity. Or are you
19 going to waive that?

20 MR. TEASS: Yes, sir. I am going
21 to waive my rebuttal.

22 CHAIRPERSON JORDAN: Good. The we

1 will close the record, based upon the file
2 deduced to this point. Is the Board ready to
3 deliberate? Then I would move that we grant
4 the relief requested by the Applicant in this
5 matter.

6 ZC COMMISSIONER TURNBULL:
7 Seconded.

8 CHAIRPERSON JORDAN: Motion made
9 and seconded. Any unreadiness? All those in
10 favor of the motion, signify by saying aye.

11 ALL: Aye.

12 CHAIRPERSON JORDAN: Those
13 opposed, nay. The motion carries. Mr. Moy?

14 MEMBER MOY: Yes, sir. The staff
15 would record the vote as four to zero. This
16 is on the motion of Chairman Jordan to approve
17 the application. Seconding the motion, Mr.
18 Turnbull. Also in support Vice Chairperson
19 Sorg and Ms. Allen. And Mr. Hinkle is not
20 present today. So the motion carries, Mr.
21 Chairman.

22 CHAIRPERSON JORDAN: All right.

1 Thank you. And this is prime for a summary
2 order, Mr. Moy.

3 MEMBER MOY: Yes, sir. Thank you.

4 CHAIRPERSON JORDAN: Thank you.

5 MEMBER MOY: The next application
6 for Public Hearing before the Board is
7 Application Number 18507. This is the
8 application of Kiddie Academy Child
9 Development, pursuant to 11 DCMR 3104.1, for
10 a special exception for a child development
11 center(20 children and five staff persons)
12 under section 205, in the R-3 District at
13 premises 2739 Knox Terrace, S.E. (Property
14 located in Square 5728, Lot 37).

15 CHAIRPERSON JORDAN: Good morning.
16 Please identify yourself. Is your mike on?
17 Make sure it's a glowing green light. Is it
18 glowing? Say something. No. Punch it.
19 Okay. There you go.

20 MS. MCMICKENS: Okay. Good
21 morning. My name is Towana McMickens. I'm
22 the owner and operator of Kiddie Academy Child

1 Development Home.

2 CHAIRPERSON JORDAN: Your last
3 name again?

4 MS. MCMICKENS: Towana McMickens.

5 CHAIRPERSON JORDAN: Mac?

6 MS. MCMICKENS: McMickens.

7 CHAIRPERSON JORDAN: Mickens?

8 MS. MCMICKENS: Yes.

9 CHAIRPERSON JORDAN: I didn't see
10 any letter from ANC-8B in the file. Did you
11 send this to the ANC?

12 MS. MCMICKENS: I spoke with my
13 ANC person. She's actually one of the first
14 people that did sign my petition. She talked
15 with Mr. Nero because apparently there is
16 something going on there.

17 CHAIRPERSON JORDAN: Got you.

18 MS. MCMICKENS: And she couldn't
19 -- and she --

20 CHAIRPERSON JORDAN: And they
21 have our letter too. I just didn't know if
22 you had opportunity to try to in presentation.

1 But the ANC is aware of this and so we can
2 move forward. Okay.

3 MS. MCMICKENS: Yes. She is. She
4 is my neighbor directly across the street.

5 CHAIRPERSON JORDAN: Okay. So is
6 there --

7 MS. MCMICKENS: I'm sorry.

8 CHAIRPERSON JORDAN: Give me one
9 second. Does the Board have any questions on
10 this application? Mr. Turnbull?

11 ZC COMMISSIONER TURNBULL: Ms.
12 McMickens, you're over tripling the enrollment
13 on this and the facility is still the same
14 size.

15 MS. MCMICKENS: Yes.

16 ZC COMMISSIONER TURNBULL: Is
17 there a -- I mean, I guess, right now, is
18 basically, is the facility -- is the home
19 underutilized? I mean, I'm just trying to
20 imagine if you had six, and now you're going
21 to 20, which is, you know, three times the
22 amount, and you're getting a larger staff, is

1 the home able to handle this? I mean, is it
2 still on one floor, two floors, or how do you
3 see the operation being handled?

4 MS. MCMICKENS: Well, what would
5 happen is my husband and I would move out and
6 we would turn the whole home into a daycare
7 center.

8 ZC COMMISSIONER TURNBULL: Okay.

9 MS. MCMICKENS: So, after I spoke
10 with my license person, she -- she assured me
11 that what happens is they come in and they
12 measure each square footage per child and that
13 they will let me know how many children I can
14 have in the rooms.

15 ZC COMMISSIONER TURNBULL: So
16 right now 20 is an estimate? Or it's --

17 MS. MCMICKENS: Right.

18 ZC COMMISSIONER TURNBULL: It's
19 not really an official number that's been
20 sanctioned or approved yet?

21 MS. MCMICKENS: Exactly.

22 ZC COMMISSIONER TURNBULL: Okay.

1 MS. MCMICKENS: It could be more.
2 It could be less. But I would just ask for 20
3 because I know how many I could have
4 downstairs already.

5 ZC COMMISSIONER TURNBULL: Okay.

6 MS. MCMICKENS: So it's -- it's
7 going to be both floors -- the first and
8 second floor.

9 ZC COMMISSIONER TURNBULL: Okay.
10 I mean, I was just curious. I mean the number
11 sounded a lot and I -- but when you say that
12 you're moving the residential part out, I see
13 that.

14 MS. MCMICKENS: Yes. Yes.

15 ZC COMMISSIONER TURNBULL: Okay.

16 CHAIRPERSON JORDAN: Ask that
17 question.

18 MEMBER SORG: Thank you, Mr.
19 Chairman. So just one question. You clearly
20 have lots and lots of signatures of people in
21 support of you. I saw that it included the
22 SMD, as you mentioned. But I was -- I didn't

1 see whether or not it included the adjacent
2 neighbors. This is an attached dwelling. So
3 have you had conversations and do you have the
4 support of the neighbors of the attached house
5 and also on the other side?

6 MS. MCMICKENS: Well, I'm on the
7 corner. And the person that's right next
8 store to me, he's Marion Wilson. His name is
9 on there also

10 MEMBER SORG: Okay.

11 MS. MCMICKENS: And so there's no
12 one else that -- our house is attached by
13 carport.

14 MEMBER SORG: Okay.

15 MS. MCMICKENS: And he's also my
16 person that I can go to in case of an
17 emergency.

18 MEMBER SORG: Oh, that's good.

19 CHAIRPERSON JORDAN: Okay. Does
20 the Board have any other questions? Then we
21 can proceed on, or if you wanted to make a
22 statement, you can feel free. But we're

1 comfortable where we are right now.

2 MS. MCMICKENS: Okay.

3 CHAIRPERSON JORDAN: So let's turn
4 to the Office of Planning. Oh, no. Let me go
5 back a second. There are some conditions --
6 excuse me. There are some conditions proposed
7 for this relief. One is that approval shall
8 be for a period of five years. And the Board
9 will more than likely implement that. Is that
10 okay with you?

11 MS. MCMICKENS: Yes, it is.

12 CHAIRPERSON JORDAN: The hours of
13 operation shall be from 7:00 a.m. to 6:00
14 p.m.?

15 MS. MCMICKENS: Yes.

16 CHAIRPERSON JORDAN: That the
17 number of enrolled children -- the number of
18 enrolled children, as allowed by the District
19 Government -- District of Columbia Government
20 shall not exceed 20.

21 MS. MCMICKENS: Exactly. Yes.

22 CHAIRPERSON JORDAN: The number of

1 staff shall not exceed five.

2 MS. MCMICKENS: Yes.

3 CHAIRPERSON JORDAN: Outdoor
4 activities shall be supervised and concluded
5 by 6:00 p.m.?

6 MS. MCMICKENS: Yes.

7 CHAIRPERSON JORDAN: Staff shall
8 monitor the dropping off and picking up of the
9 children?

10 MS. MCMICKENS: Yes.

11 CHAIRPERSON JORDAN: One off-site
12 parking space shall be provided on the
13 property.

14 MS. MCMICKENS: Yes.

15 CHAIRPERSON JORDAN: Yes. I think
16 that's what that meant. Yes. You are right.

17 MEMBER SORG: Off street?

18 CHAIRPERSON JORDAN: Yes. Off
19 street. Okay. Not off site, off street.
20 Okay. Did I get them all? Yes. Okay. I
21 just wanted to make sure those were clear with
22 you. Then let's turn to the Office of

1 Planning.

2 MS. ELLIOTT: Thank you. Good
3 morning, Mr. Chairman and Members of the
4 Board. For the record, my name is Brandice
5 Elliott, representing the Office of Planning.
6 And we are recommending approval of this
7 request with the conditions noted. And,
8 other than that, I'll stand on the record.
9 And I will be happy to answer any questions
10 you may have.

11 CHAIRPERSON JORDAN: Okay. Does
12 the Board have any questions for Planning?
13 Does the Applicant have any questions for
14 Planning?

15 MS. MCMICKENS: No, I don't.

16 CHAIRPERSON JORDAN: Okay. Then
17 let's turn to Department of Transportation who
18 -- anyone here? Then we have a letter in the
19 file from DDOT that has no objection to the
20 requested relief. Anyone here from Office of
21 the State Superintendent of Education? We do
22 have a letter approving your request from the

1 Office of State Superintendent of Education
2 (OSSE).

3 MS. MCMICKENS: OSSE.

4 CHAIRPERSON JORDAN: Yes.

5 MS. MCMICKENS: Okay.

6 CHAIRPERSON JORDAN: Supporting
7 your application. And is there anyone here
8 from ANC-8D? I think we covered that earlier.
9 We do have, in our filed, a letter of support
10 from 36 people and neighbors around the
11 location, which is in support of this.

12 MS. MCMICKENS: Thank you.

13 CHAIRPERSON JORDAN: Is anybody
14 else here to testify in support of this
15 application? Is there anyone here to testify
16 in opposition to the application? Then we
17 will turn back to the Applicant, if there is
18 anything that you wanted to say before we move
19 to our decision?

20 MS. MCMICKENS: No, there isn't.

21 CHAIRPERSON JORDAN: Okay. Then
22 we will close this hearing, based upon the

1 record already previously deduced in the file
2 and what we've gathered here today. Is the
3 Board ready to deliberate? All right. Does
4 someone else want to take the lead on this
5 one?

6 MEMBER SORG: Sure.

7 CHAIRPERSON JORDAN: Go ahead.

8 MEMBER SORG: Thank you, Mr.
9 Chairman. I think, based upon the information
10 in the application and the testimony that we
11 heard here today, although we don't have an
12 ANC letter, we have support of all of the
13 other agencies. And the child development
14 home has been operating in this location
15 without incident or complaint since 2010, so
16 potentially about three years. And we are
17 looking at conditions suggested by the Office
18 of Planning and agreed to by the Applicant.
19 So I would move that the Board approve
20 Application 18507.

21 MEMBER ALLEN: Second.

22 CHAIRPERSON JORDAN: And, just for

1 the record, I want to be sure that the
2 condition, when this is written up, includes
3 the point of number three, where I added to
4 it, as allowed by D.C. Government. Okay.

5 MEMBER SORG: As well as the type
6 in number seven.

7 CHAIRPERSON JORDAN: Yes. And the
8 type with number seven. Yes. You are
9 correct.

10 MEMBER SORG: Because the type is
11 a big zoning issue, actually.

12 CHAIRPERSON JORDAN: Yes. Yes.
13 Okay. Yes. You are right. Thank you.
14 Motion made and seconded. Any unreadiness?
15 Seeing none, all of those in favor, signify by
16 saying aye.

17 ALL: Aye.

18 CHAIRPERSON JORDAN: Those
19 opposed, nay. The motion carries. Mr. Moy?

20 MEMBER MOY: Staff would record
21 the vote as four to zero. This is on the
22 motion of Vice Chairperson Sorg, also with

1 this approval with the seven conditions, as
2 cited. It was seconded by Ms. Allen and also
3 in support of the motion by Mr. Turnbull and
4 Chairman Jordan. Mr. Hinkle is not present
5 today. So again, the motion carries, Mr.
6 Chairman.

7 CHAIRPERSON JORDAN: Okay.

8 MS. MCMICKENS: Thank you.

9 CHAIRPERSON JORDAN: Okay. Thank
10 you and good luck.

11 MEMBER MOY: Is that a summary
12 order, Mr. Chairman?

13 CHAIRPERSON JORDAN: Oh. Yes, Mr.
14 Moy. Thank you.

15 MEMBER MOY: The next application
16 is --

17 MEMBER SORG: Mr. Moy. I'm sorry.
18 Before you --

19 CHAIRPERSON JORDAN: Let him call
20 the call first.

21 MEMBER SORG: Okay. Fine.

22 MEMBER MOY: The next application

1 before the Board is Application Number 18508.
2 This is the application of Howard University,
3 pursuant to 11 DCMR 3103.2 for a variance from
4 the off-street parking requirements under
5 subsection 2101.1, to allow the construction
6 of an interdisciplinary research building in
7 the C-M-3 District at premises 2201 Georgia
8 Avenue, N.W. (Property located in Square
9 3065, Lot 833.)

10 CHAIRPERSON JORDAN: Thank you,
11 Mr. Moy. The persons for this 18508, please
12 come to the witness table.

13 MEMBER SORG: Mr. Chairman, as
14 they're doing that, I'm going to indicate that
15 I will not be participating in this case and
16 I recuse myself as the named representative is
17 a client of my company.

18 CHAIRPERSON JORDAN: Okay. Very
19 good.

20 MEMBER SORG: Thank you. See you
21 later.

22 CHAIRPERSON JORDAN: And we accept

1 that. Would you please identify yourself?

2 MS. GIORDANO: Cynthia Giordano
3 with Saul Ewing Law Firm, representing Howard
4 University.

5 CHAIRPERSON JORDAN: Your first
6 name again?

7 MS. GIORDANO: Cynthia.

8 CHAIRPERSON JORDAN: Okay. And
9 what law firm are you with?

10 MS. GIORDANO: Saul Ewing.

11 CHAIRPERSON JORDAN: Okay. Do we
12 have the letter of authorization in file? Did
13 we get that -- get it corrected, that issue?

14 MEMBER MOY: What we have in the
15 record, Mr. Chairman, is a letter of
16 authorization that was granted to a Willard
17 Mangrum and Derek Niec-Williams, unless that's
18 been changed, which is our Exhibit five in the
19 case record -- case files.

20 CHAIRPERSON JORDAN: So --

21 MS. GIORDANO: He is here present
22 with me.

1 CHAIRPERSON JORDAN: Okay. Then
2 why doesn't he just come to the table and just
3 -- unless you want to -- okay. And, for the
4 record, just identify yourself.

5 MR. NIECE-WILLIAMS: Good morning.
6 My name is Derek Niece-Williams, senior project
7 manager with Brailsford and Dunlevy and
8 owner's representative for this project.

9 MS. GIORDANO: And, Mr. Chairman,
10 Howard University is here, as well.

11 CHAIRPERSON JORDAN: Okay. And
12 Howard U could just, you know, defer -- but
13 that's -- could defer to you and then we can
14 get a letter in the file for you. But I think
15 we're okay anyway, as we move along. Is this
16 one of our procedural dot the Is and cross the
17 Ts that we have to do in these matters? Okay.
18 Does the Board have any issues or concerns
19 with this application? I think it was pretty
20 straight forward.

21 ZC COMMISSIONER TURNBULL: Mr.
22 Chairman, I really don't have any issue with

1 Ms. Giordano. She's been representing many
2 clients at the Zoning Commission. So maybe
3 there's just a technical snafu.

4 CHAIRPERSON JORDAN: Okay. No.
5 No.

6 ZC COMMISSIONER TURNBULL: That
7 should be followed up.

8 CHAIRPERSON JORDAN: No. We're
9 fine with that. I was moving on to the
10 application itself. Did you have any issues
11 you wanted to raise on this application?
12 Because I think it's fine.

13 ZC COMMISSIONER TURNBULL: My only
14 issue was with the -- was with the setback.
15 But I think the Office of Planning letter
16 clearly identifies the issues at hand. And
17 I'm satisfied with it.

18 CHAIRPERSON JORDAN: Yes. Okay.

19 MS. GIORDANO: Mr. Chairman, can I
20 address that issue, briefly?

21 CHAIRPERSON JORDAN: He said he
22 was clearly satisfied. Now, you can go ahead

1 and step in it, if you want?

2 MS. GIORDANO: Okay. I have to,
3 unfortunately.

4 CHAIRPERSON JORDAN: Okay. Go
5 ahead.

6 MS. GIORDANO: We -- we met with
7 the Zoning Administrator on Friday and just a
8 slight change in the relief that we need.
9 Apparently, we meet the setback requirements
10 on all sides, with the exception of W Street,
11 so that's the only street that we need the
12 setback from.

13 CHAIRPERSON JORDAN: That's
14 already in the record, right? Yes. That's
15 already in the record.

16 MS. GIORDANO: It's -- it's a
17 little unclear.

18 CHAIRPERSON JORDAN: But you're
19 not changing the relief as you sit here?

20 MS. GIORDANO: That's correct.

21 CHAIRPERSON JORDAN: Okay. That's
22 already in the record.

1 MS. GIORDANO: Okay.

2 CHAIRPERSON JORDAN: Yes. Okay.

3 Is there anything else you wanted to present?

4 Did you feel like you need to say something
5 else to us today?

6 MS. GIORDANO: No, sir.

7 CHAIRPERSON JORDAN: Okay. That's
8 a good thing. So then lets turn to Planning.
9 Is that okay with the Board? Okay. Let's
10 turn to Planning.

11 MS. BROWN-ROBERTS: Good morning,
12 Mr. Chairman and Members of the BZA. Maxine
13 Brown-Roberts, for the record. And I am going
14 to stand on the record with the letter stated
15 in the Office of Planning recommendation for
16 approval. Thank you.

17 CHAIRPERSON JORDAN: We appreciate
18 it. Does the Board have any questions for
19 Planning? Does the Applicant have any
20 questions for Planning?

21 MS. GIORDANO: No questions.

22 CHAIRPERSON JORDAN: Then let's

1 move to Department of Transportation. We do
2 have a letter in our file, Exhibit 25, with no
3 objections to the requested relief. Anyone
4 here from ANC-1B? We have a letter from ANC-
5 1B, Exhibit -- is it 18 or 26 -- Exhibit 18?

6 MEMBER MOY: I think it's 18.

7 CHAIRPERSON JORDAN: Well, it's a
8 letter standing in support of the application.
9 We do have letters of support from several
10 organizations: the Pleasant Plain Civic
11 Association; what is GACDTF letter in support;
12 the Joy Park Civic Association in support; and
13 a letter from -- we had another letter we just
14 got today, did we not? We have several
15 letters in support. Is there anyone else here
16 in the audience, wishing to testify in support
17 of this application? Anyone here wishing to
18 speak in opposition to the application? Then
19 let's turn back now to the Applicant to see if
20 there is any final wrap-up or rebuttal?

21 MS. GIORDANO: No further
22 comments.

1 CHAIRPERSON JORDAN: Good. All
2 right then. Does the Board -- we will close
3 the record, based upon the evidence already in
4 the record. Is the Board ready to deliberate?
5 Okay. Then let's do so. Mr. Turnbull, did
6 you want to say something?

7 ZC COMMISSIONER TURNBULL: Sure,
8 Mr. Chair. I would move that the Board
9 approve BZA Case Number 18508, the application
10 of Howard University, pursuant to 11 DCMR
11 3103.2, for a variance from the off-street
12 parking requirements under sub-section 2010.1,
13 to allow the construction of an
14 interdisciplinary research building in the C-
15 M-3 District at premises 2201 Georgia Avenue,
16 N.W. (Square 3065, Lot 833).

17 CHAIRPERSON JORDAN: And the
18 special exception?

19 ZC COMMISSIONER TURNBULL: And the
20 special exception 84.3B roof structure
21 enclosure setback 10 feet required, zero
22 provided, technically. And look for a second.

1 CHAIRPERSON JORDAN: Good.

2 MEMBER ALLEN: Second.

3 CHAIRPERSON JORDAN: Motion made
4 and seconded. Any discussion? All those in
5 favor, signify by saying aye.

6 ALL: Aye.

7 CHAIRPERSON JORDAN: All those
8 opposed, nay. The motion carries. Mr. Moy?

9 MEMBER MOY: Yes, sir. Staff
10 would record the vote as three to zero to two.
11 This is on the motion of Mr. Michael Turnbull
12 to approve the application for relief
13 requested, including the amendment for the
14 special exception, 840.3(b). Also in support,
15 Ms. Allen, to the motion. Also in support of
16 the motion, Chairman Jordan. And we have Ms.
17 Vice Chair Sorg not participating, recused
18 from the application and Mr. Hinkle not
19 present. So again, the vote is three to zero
20 in support of the motion, Mr. Chairman.

21 CHAIRPERSON JORDAN: Thank you.
22 Then we could have a summary order.

1 MEMBER MOY: Yes, sir.

2 CHAIRPERSON JORDAN: And we'll be
3 in recess for five minutes.

4 (Whereupon, off the record from
5 11:04 a.m. until 11:12 a.m.)

6 MEMBER MOY: Okay. Yes, Mr.
7 Chairman. My understanding is that we're
8 going to begin the remainder with Application
9 Number 18498. This would be the application
10 of 1311 Penn, LLP, pursuant to 11 DCMR at
11 3103.2. This is for a variance from the lot
12 occupancy requirements under section 772, and
13 a variance from the off-street parking
14 requirements under subsection 2101.1 to allow
15 the construction of a new three unit
16 residential building in the C-2-A District at
17 premise 1311 Pennsylvania Avenue, S.E.
18 (Property located in Square 1045, Lot 107).

19 CHAIRPERSON JORDAN: Persons
20 involved in Case 18498, please come to the
21 table. Going once. It's going twice. 18498?
22 Okay. So let's just pass it for right now.

1 And if we -- you know. And let's go back up
2 then.

3 MEMBER MOY: Okay. So what's
4 before the Board then is Application of 18511.
5 This is the application of Allyoop, LLC,
6 pursuant to 11 DCRM 3103.2, for a variance
7 from the use provisions under subsection
8 330.4, a variance from the nonconforming
9 structure provisions under subsection 2001.3,
10 and a variance from the building on an alley
11 lot provisions under section 2507. This is to
12 allow the use and alteration of an alley lot
13 to construct an addition to an existing
14 structure for a mixed-use (office and five
15 residential apartments) in the R-4 District at
16 premises rear 1018 Irving Street, N.W.
17 (Property located in Square 2851, Lot 837).

18 CHAIRPERSON JORDAN: Is that it?
19 That's a mouth full.

20 MEMBER MOY: Yes, sir.

21 CHAIRPERSON JORDAN: That's a
22 mouth full. And are the persons and parties

1 here? Please come forward. And would you
2 please identify yourselves? Please take a
3 seat and make sure that you've got the
4 microphones turned on. Push the button. Yes.
5 Okay.

6 MR. GARDNER: Good morning, Mr.
7 Chairman and Members of the Board. My name is
8 Greg Gardner from 753 Development. I'm the
9 developer and partner of Allyoop, LLC.

10 CHAIRPERSON JORDAN: Yes.

11 MS. GRANT: I'm Ellen Grant. Also
12 of 753 Development.

13 MR. LADEJOBI: My name is
14 Adelokumbo Ladejobi and I filed as a third
15 party, opposed to the -- to the development.

16 CHAIRPERSON JORDAN: Okay.

17 MR. LADEJOBI: I'm a resident in
18 that block

19 CHAIRPERSON JORDAN: Right. I
20 know you filed as a party for party status.
21 But I also took your letter saying you wanted
22 seven minutes to talk and you didn't have any

1 witnesses, etc.

2 MR. LADEJOBI: I do not have any
3 witnesses. I do have a -- which you've also
4 received -- a list of 16 signatures.

5 CHAIRPERSON JORDAN: Oh yes, I
6 have all of that. So I'm just trying to
7 determine whether or not you really need to be
8 party status, but certainly we will give you
9 the time allotted that you need to speak.

10 MR. LADEJOBI: Okay.

11 CHAIRPERSON JORDAN: Because party
12 status usually gets into more detail about
13 putting on evidence in opposition. You know,
14 you have your witnesses. You might have your
15 experts and all of that stuff. And I don't
16 think that's what you're doing. You really
17 want to make your voice heard in regards to
18 this matter.

19 MR. LADEJOBI: That's right.

20 CHAIRPERSON JORDAN: Is that
21 correct?

22 MR. LADEJOBI: Yes, sir.

1 CHAIRPERSON JORDAN: Okay. Then
2 let's do that. I will give you -- keep you as
3 a person in opposition, but give you
4 additional courtesies within that seven-minute
5 time frame to talk about what you want to talk
6 about.

7 MR. LADEJOBI: Sure.

8 CHAIRPERSON JORDAN: So you can
9 make your points.

10 MEMBER SORG: If I may, Mr.
11 Chairman, I -- it makes sense and it sounds
12 like this person is in agreement. But he does
13 note, in his filings, that there are several -
14 - 16 or whatever, people that are backing him.
15 So it's --

16 CHAIRPERSON JORDAN: He can talk
17 about it.

18 MEMBER SORG: -- it's a collection
19 of -- I would say to note, for the record,
20 that it is a collection of people.

21 CHAIRPERSON JORDAN: Yes.

22 MR. LADEJOBI: One of the -- one

1 of the gentlemen that signed is here, as well.
2 He would like to speak, as well.

3 CHAIRPERSON JORDAN: Okay. He
4 certainly has the right to do that.

5 MR. LADEJOBI: Sir?

6 CHAIRPERSON JORDAN: We'll do
7 that. Okay. Good. Then let's go to the main
8 gist of all of this. Have you met with the
9 developing group and have you met with Mr.
10 Ladejobi?

11 MR. GARDNER: Yes. We've met.

12 CHAIRPERSON JORDAN: And you can't
13 sign the -- Yes. Okay. I just wanted to
14 make sure you did that. Several things have
15 been raised in regard to this, that it's very
16 -- that the noise and traffic and congestion
17 in the alley. The first one, the alley is
18 narrower than what the requirements are for --
19 to allow for this to go forward. Your height
20 issue. Why has it got to be so big? There
21 are a lot of things we need to hear from you
22 guys. And I'm just going to open up for you

1 to do a presentation. Because we're really
2 starting at scratch here.

3 MR. GARDNER: Okay. We are
4 proposing a conversion of an existing one-
5 story building, currently being used as
6 automotive repair, into a three-story mixed
7 use structure. We're seeking relief, the use
8 variance 2507.1, 330.4, and area variances
9 from 2507.4 and 2001.3.

10 Through this presentation, we hope
11 you understand that our alley lot is unique
12 and that our proposed design has been
13 sensitive to the neighboring properties and
14 the proposed building creates an active and
15 occupied alley, which is to the benefit of the
16 neighborhood and to the city. This is an
17 exceptionally large lot at 5900 square feet.
18 It represents the largest single lot --

19 CHAIRPERSON JORDAN: Are you
20 using -- are you using any of these things
21 now?

22 MR. GARDNER: Yes.

1 CHAIRPERSON JORDAN: Okay. Then
2 let's do this. Let's -- can we dim for a
3 minute? Yes. Where is that light coming
4 from?

5 MR. GARDNER: A lot of these
6 images are part of the drawing set submitted
7 with the original filing and with the DDOT
8 submittal. The 5900 square foot lot, it
9 represents the largest single lot in Columbia
10 Heights -- alley lot in Columbia Heights.
11 It's surrounded on three sides by public
12 alleys and the fourth side by a rear yard that
13 abuts the only adjoining properties to the
14 north. There's also a significant grade
15 change to the west, which creates a ten-foot
16 difference in the first floor level of the row
17 houses on 11th street N.W. and our proposed
18 first-floor level.

19 The existing structure has been
20 used as automotive repair since the late
21 1920s. We found contamination on the site
22 from chemicals typical of automotive repair

1 and remediation of the ground filled site will
2 be completed as part of the construction
3 process. The building is also in a current
4 state of disrepair. Significant work to the
5 reinforced concrete roof structure and masonry
6 repairs to the exterior walls is necessary.

7 The proposed building, we believe,
8 has been thoughtfully designed to reduce the
9 impact on the neighbors. We didn't design a
10 three-story box. We instead stepped back the
11 mass on all three sides that abut alleys,
12 creating kind of a wedding cake form. Only
13 one story or two-story walls actually abut the
14 public alley. Nowhere on the building does 39
15 feet -- does a 30-foot wall rise up from the
16 alley or the property line. We also followed
17 the R-4 guidelines for maximum height in an R-
18 4 District, and for the number of dwelling
19 units per lot area. Had we been on a street
20 frontage, both of these parameters, we would
21 be -- we would not be seeking relief.

22 There is also, currently, many

1 three-story buildings and multi-family row
2 house conversions on the block. We purposely
3 are not proposing any roof structure or to
4 create any usable roof space on top of the
5 building.

6 We received a positive response
7 from DDOT on the impacts of pedestrian use,
8 lighting levels, traffic sequence, and garbage
9 removal.

10 We believe our proposed building
11 would be beneficial to the neighborhood, as
12 shown in the support we received and the
13 unanimous vote from the ANC. And we've
14 provided letters of support from neighbors on
15 the block. Along with our improvements to
16 public space, our mixed use building will
17 provide activity during the day and activity
18 at night. This, inherently, can reduce crime,
19 the graffiti, and dumping that is typical in
20 the alley. And, given other alternatives by
21 right, continued automotive use, which is
22 industrial in nature, is really unsuitable for

1 a residential district. And even less a
2 relief from special exception, allowing a
3 warehouse or garage still creates an empty
4 building. There's no activity -- no positives
5 for the neighborhood.

6 I also wanted to look at some
7 other alley precedents in the city. One in
8 LeDroit Park, a two-story structure on
9 similarly alley widths; another in
10 Bloomingdale, which consists of six separate
11 alley lots that create adjoining residences;
12 and then a third project in Adams Morgan, very
13 similar to our in that it was an adaptive
14 reuse of an existing industrial building,
15 where they -- there was an addition of two
16 stories and multi-family apartments above.

17 In closing, we hope you agree that
18 we've taken a unique alley situation, improved
19 a dilapidated building, and created a vibrant
20 and occupied structure that will improve the
21 neighborhood and the city. Thank you.

22 CHAIRPERSON JORDAN: Yes. Ms.

1 Allen?

2 MEMBER ALLEN: Thank you, Mr.
3 Chairman. Can you go back to about three or
4 four slides? That one. So, is the building
5 the smaller structure there in the middle?

6 MR. GARDNER: These are two
7 elevations of the building. The long
8 elevation at the west.

9 MEMBER ALLEN: That is the
10 building. That's what I wasn't sure about.

11 MR. GARDNER: Yes. It's the
12 proposed building here.

13 MEMBER ALLEN: Okay.

14 CHAIRPERSON JORDAN: And do you
15 have any pictures showing this building
16 situated -- and maybe it's -- I don't if they
17 really gave me the picture of the first --
18 your first screen. How it sits with the other
19 homes in the area.

20 MR. GARDNER: So, what we're
21 looking at here is the entire block.

22 CHAIRPERSON JORDAN: Correct.

1 MR. GARDNER: The dark shaded
2 being the houses.

3 CHAIRPERSON JORDAN: The elevation
4 there aspect.

5 MR. GARDNER: Currently there.
6 And this is a roof plan, so it -- the large
7 rectangle in the middle represents the third
8 story roof and then the smaller squares
9 outside of it are second floor levels or first
10 floor levels.

11 CHAIRPERSON JORDAN: From the
12 elevation standpoint, I mean, how -- in
13 relation to these buildings, I think you said
14 there were some other three stories, but I
15 just need to see that.

16 MR. GARDNER: Okay.

17 ZC COMMISSIONER TURNBULL: Maybe
18 if you show the building section -- you had a
19 building section, through the alley.

20 MR. GARDNER: Yes. Thank you. So
21 here's looking at the site section through the
22 alley, through 11th Street, to the left, and

1 all the way through to Sherman Avenue, to the
2 right. That's the retaining wall and grade
3 change to the west. These two dark grey
4 buildings are two-story structures. And, if
5 you'll see, there's a fine line above them,
6 representing some of the three-story
7 structures, both on 11th Street and on Sherman
8 Avenue. There's a three-story building on
9 each face of the alley to the west, to the
10 north, to the east.

11 ZC COMMISSIONER TURNBULL: Yes. I
12 see.

13 MR. GARDNER: So our building will
14 not be the tallest on the block.

15 CHAIRPERSON JORDAN: Ms. Sorg?

16 MEMBER SORG: Thank you, Mr.
17 Chairman. Look -- to me, the first bar you
18 have to get over is the use variance. I think
19 your project and the garbage that you've --
20 you know, worked out with DDOT and the -- the
21 parking situation and the, you know, the day
22 and night use, I don't -- I'm very familiar

1 with the alley thing -- I keep saying I'm very
2 familiar but whatever -- you know, day and
3 night use is very good. All of that other
4 stuff, the project can be very nice. But I
5 don't see -- I still have a lot of trouble,
6 you know, looking at how are you getting over
7 the use variance. So, to my mind, you have
8 got to talk about the use variance and then we
9 can talk about, you know, the sun angles and
10 the, you know, the extra height that you want
11 from the R-4 and the number of units. So if
12 you can go to that, that would be helpful.

13 MR. GARDNER: Sure. So, as far as
14 the use variance goes, my initial argument is
15 the alley lot is unique, based on its size and
16 configuration.

17 CHAIRPERSON JORDAN: Yes.

18 MR. GARDNER: It is atypical of
19 alley lots. And, because of the first floor
20 industrial use and the contamination, building
21 on additional floors is more prudent than
22 using the first floor as a single family or

1 multi-family use. And I've tried to follow
2 the conditions of an R-4 District, which does
3 allow multi-family --

4 CHAIRPERSON JORDAN: Let me do a
5 little redirect. She wants to know where's
6 your undue hardship?

7 MR. GARDNER: My hardship is both
8 in the contamination on the site and in the
9 remediation of that contamination and the --
10 the state of repair of the building.

11 CHAIRPERSON JORDAN: It can be a
12 single family home and not still have to do
13 the same, right?

14 MR. GARDNER: It --

15 MEMBER SORG: Or -- or you can --
16 or, you know, there are a whole list of
17 approved uses.

18 CHAIRPERSON JORDAN: Right.

19 MEMBER SORG: The way that these
20 types of variances are generally processed is
21 that we need you to go through all of the
22 approved uses, like an auto-repair shop or

1 like a storage facility for, you know,
2 whatever it is and a single family home, and
3 say why do these not work. And -- and, you
4 know, I noticed -- and we may get to this or
5 we may not, but you know, I noticed that there
6 is no economics --

7 CHAIRPERSON JORDAN: That's
8 exactly.

9 MEMBER SORG: -- in your
10 application, at all. And that is something
11 that is very important to see, you know, in
12 terms of a hardship in using it in a
13 conforming use.

14 CHAIRPERSON JORDAN: Yes. We
15 don't want to tell you what you need to do,
16 but those are some of the aspects of
17 considerations to do so. So it's on you to --
18 it's your burden to lift it up over that.

19 MR. GARDNER: Okay.

20 CHAIRPERSON JORDAN: Because
21 you're asking for a use variance.

22 MR. GARDNER: Yes.

1 ZC COMMISSIONER TURNBULL: And
2 part of the -- in conjunction with the use
3 variance, you've got very narrow alleys.

4 MR. GARDNER: Yes.

5 ZC COMMISSIONER TURNBULL: To deal
6 with, which is a big factor in changing and
7 proposing a use such as this.

8 MR. GARDNER: In my burden of
9 proof, I did address some of the difficulties,
10 basically with the size of the lot. It's
11 not --

12 CHAIRPERSON JORDAN: Let me say
13 this to you, and I'm giving you the bottom
14 line. We've read your brief 1010 times. Your
15 brief does not include anything on undue
16 hardship. It really doesn't get there. We
17 understand everything else you've been saying.
18 We might get to some uniqueness, clearly.
19 Undue hardship. I mean, that's from my
20 standpoint as the other Board members are
21 saying.

22 MEMBER SORG: Well, I agree. And

1 I think everything that you're saying about
2 the lot being unique, you know, it's the
3 largest alley lot in Columbia Heights and, you
4 know, there's a significant 10-foot or
5 whatever grade change and, you know, the
6 configuration of the three alleys and the --
7 and the rear yard, those are certainly
8 elements of the property that could be unique.
9 But I don't feel that you've connected it yet
10 to how do those things or other potential
11 uniqueness connect to the undue hardship and
12 using it in conformance with the zoning
13 regulations? That's where I think the
14 critical missing piece is.

15 CHAIRPERSON JORDAN: Okay.

16 MEMBER SORG: And that is what OP
17 really does point out in their report. Now,
18 you've gotten their report, right?

19 MR. GARDNER: I have. I was
20 arguing the hardship was the environmental
21 conditions and the remediation of the
22 building.

1 MEMBER SORG: But you haven't
2 given us costs.

3 CHAIRPERSON JORDAN: Costs. Cost
4 or something. There can be a lot of ways you
5 can attack that. But your application and
6 what I'm hearing from your presentation, it
7 has not gotten there to show us those things.

8 MR. GARDNER: Understood.

9 CHAIRPERSON JORDAN: Yes.

10 CHAIRPERSON JORDAN: Because --

11 MR. GARDNER: I was also hoping
12 that --

13 CHAIRPERSON JORDAN: Because those
14 remeditions, arguably, for any other use,
15 might still have to happen. So --

16 MR. GARDNER: When we were looking
17 at the design, we also looked at some of the
18 -- at some of the uses by right. And I
19 mentioned the warehouse and the automotive
20 storage. But I also looked at some of the
21 middle of the road variances, or special
22 exceptions. So a single family residence,

1 which is sometimes allowed with certain alley
2 widths, this -- the lot could be sub-divided
3 into three separate lots. And then -- and
4 then bringing up for three single family. But
5 still, I would require variances, even to make
6 that work.

7 CHAIRPERSON JORDAN: Okay.

8 MR. GARDNER: And then we're --
9 we're really speaking about a three -- three
10 families on a single lot, which is where I was
11 trying to connect to a multi-family building.
12 And I -- I understand the Board's concern with
13 the economic hardship and I am also arguing
14 that -- for the betterment of the
15 neighborhood.

16 CHAIRPERSON JORDAN: Okay. Has
17 the Board any other questions of this witness?

18 ZC COMMISSIONER TURNBULL: Well, I
19 guess yes, I have a comment or call it a
20 comment question.

21 CHAIRPERSON JORDAN: Go ahead.

22 ZC COMMISSIONER TURNBULL: You're

1 interjecting a very heavy use -- five
2 residential units, and you're going three
3 stories high in what has traditionally been a
4 one-story back yard area for all of these
5 people. So now you've got a rather intense
6 five-story -- three-story building on very
7 narrow streets. And you haven't made any --
8 I mean, I think that's a big push, right there
9 for it. Why not two stories? Why -- why did
10 you -- I mean, it looks like you're trying to
11 maximize profit on this lot. And why didn't
12 you look at other uses? There's no study in
13 here that tells other things that you looked
14 at and, right now, I'm a little hard pressed
15 to be able to get that threshold, as I think
16 the Vice Chair was talking about, as to why we
17 would go with this.

18 CHAIRPERSON JORDAN: I think -- I
19 think, Mr. Turnbull, I appreciate that. We
20 have asked like 50 different times. And I
21 kind of think I don't want us to continue to
22 keep asking for that.

1 ZC COMMISSIONER TURNBULL: I don't
2 think we're going to get it.

3 ZC COMMISSIONER TURNBULL: I don't
4 think so either. I mean, I don't want to put
5 words in your mouth on how to proceed or how
6 we proceed in these things, because it's on
7 the Applicant to have the proper resources and
8 the knowledge base to get the relief
9 requested. And I think you've heard it from
10 this Board that you're not there and there are
11 some things that are missing and some things
12 that you need.

13 MR. GARDNER: First, to address
14 Mr. Turnbull's two specific points, as far as
15 maximizing profit, you know, we aren't looking
16 at -- there's a lot more square footage that
17 could be occupied in a three-story building
18 than what we're proposing. So we aren't
19 looking at building the maximum mass for a
20 three-story building. Also, five units being
21 -- well, while you didn't use the word
22 density, you did speak to a large number of

1 units for the -- for the building. But,
2 following the R-4 guidelines of 900 square
3 feet of land per unit, we would be allowed
4 six. And we're proposing five. But I --

5 ZC COMMISSIONER TURNBULL: But
6 that refers to property on streets.

7 MR. GARDNER: Yes.

8 ZC COMMISSIONER TURNBULL:
9 Residential streets, not on alleys that are
10 only ten feet wide.

11 MR. GARDNER: Correct. And -- and
12 I've tried to address the pedestrian and the -
13 - and the automotive sequence through there.
14 But I believe what I would like to request the
15 Board is that I have a chance to come back and
16 address the economic and hardship situation.

17 CHAIRPERSON JORDAN: There you go.
18 The only problem I have with that, we have
19 people here who have taken their time for this
20 application, to be here. We can -- let me see
21 what possible date we have. And then I'm
22 going to come back to those in opposition and

1 see if that time frame is good enough for
2 them, if they have an opportunity to come back
3 or to take their testimony now. And we're not
4 like rushing, Mr. Moy.

5 MEMBER MOY: Not at all. Just the
6 Board has a very heavy docket through the
7 month of March. I -- I -- we do not have a
8 hearing on the week of the 19th. So we pick
9 up on the 26th. But I'm hesitant to --

10 CHAIRPERSON JORDAN: Of what month
11 is that.

12 MEMBER MOY: The next -- I would
13 say we can -- we can do --

14 CHAIRPERSON JORDAN: I don't know
15 how -- I'm not trying -- I'm really not trying
16 to jump start this past those things for which
17 we already have full dockets on. I'm not
18 going to give it that level of courtesy.

19 MEMBER MOY: Okay. Well, as a --

20 CHAIRPERSON JORDAN: You know,
21 don't make it hard on yourself and on us, Mr.
22 Moy.

1 MEMBER MOY: Thank you. Thank
2 you. Well, I'm looking, sir, at possibly
3 April 2nd. I mean, that's -- that's doable,
4 as April 9th.

5 CHAIRPERSON JORDAN: And I'm not
6 here the 9th. Note, the 9th I'm not going to
7 be here.

8 MEMBER MOY: Oh.

9 MEMBER SORG: And I won't be here
10 April 2nd.

11 MEMBER MOY: Oh, well then I think
12 April 2nd.

13 CHAIRPERSON JORDAN: Okay. Is
14 April 2nd a good day for you two to appear?
15 It would be, you know, starting at 9:30 a.m.

16 MR. LADEJOBI: Yes, sir.

17 CHAIRPERSON JORDAN: Okay. Then
18 let's do that. And it's probably best that
19 you want to give your testimony live and be
20 able to deal with it at that time, then to
21 give it in advance.

22 MR. LADEJOBI: Yes, sir.

1 CHAIRPERSON JORDAN: So let's move
2 it to April 2, 2013. You have a heavy lift --
3 if that's okay with the Board. Is the Board
4 okay with that? Okay. It's a heavy lift that
5 you have and you know, the Board has given you
6 some courtesy to allow you to try to get to
7 that lift instead of just denying your
8 request. Which it may do anyway, but still.
9 Okay?

10 MR. GARDNER: I appreciate that.

11 MEMBER MOY: Mr. Chairman, would
12 the Board care for the supplemental filings to
13 come in by Monday, March 25th? Or would you
14 want it on the date of the hearing?

15 CHAIRPERSON JORDAN: Yes. When do
16 you need it? The 25th is your date?

17 MEMBER MOY: That would be fine.

18 CHAIRPERSON JORDAN: Okay. And
19 just be sure, as a courtesy, to give it to Mr.
20 Ladejobi -- be sure that you give a copy of
21 your information to him, in advance.

22 MR. GARDNER: The contact

1 information or the supplemental?

2 CHAIRPERSON JORDAN: All the
3 supplemental information, I want him to also
4 have it, to be fair.

5 MR. GARDNER: Okay.

6 MR. LADEJOBI: Thank you.

7 MR. GARDNER: Yes. I have his e-
8 mail. Okay.

9 CHAIRPERSON JORDAN: Okay. With
10 that, then let's move this or continue it
11 until April 2, 2013.

12 MR. GARDNER: The ANC Commissioner
13 is present. Is it possible that he give his
14 testimony today?

15 CHAIRPERSON JORDAN: Yes. If the
16 ANC Commissioner does not want to come back on
17 the 2nd.

18 ANC COMMISSIONER: I would be
19 happy to come back.

20 CHAIRPERSON JORDAN: All right.
21 We will do it then. Thank you. Very good.
22 Thank you. Thank you.

1 MR. GARDNER: Thank you.

2 CHAIRPERSON JORDAN: Thank you for
3 coming. We appreciate it.

4 MEMBER MOY: All right.

5 CHAIRPERSON JORDAN: Is this the
6 last one?

7 MEMBER MOY: We've got that next
8 one too.

9 CHAIRPERSON JORDAN: Should we
10 break for lunch or --

11 MEMBER MOY: It's up to you. Do
12 you want to break for lunch, or do you just
13 want to do it.

14 CHAIRPERSON JORDAN: All right.
15 We're ready to roll.

16 MEMBER MOY: All right. The next
17 application, then Mr. Chairman, is BZA Case
18 Number 18474. This is the Application of
19 Wagtime LLC, pursuant to 11 DCMR 3104.2. This
20 is for a special exception for an animal
21 boarding under section 735, a special
22 exception for a pet grooming under section

1 736, and a special exception for an animal
2 shelter under section 739, in the C-2-A
3 District at premises 1232 9th Street, N.W.
4 (Property located in Square 398, Lot 922), as
5 advertised.

6 CHAIRPERSON JORDAN: It's an
7 interesting one. It's interesting. All
8 right. Come forward. Let's have some fun.
9 All right. Please identify yourself for the
10 record.

11 MS. BATTIES: Good morning, Mr.
12 Chairman and Members of the Board, Leila
13 Batties with the law firm of Holland and
14 Knight, on behalf of the Applicant, Wagtime
15 LLC.

16 MS. SCHREIBER: Hi. Lisa
17 Schreiber, owner of Wagtime LLC.

18 MR. SHER: I'm Steven Sher,
19 Director of Zoning and Land Use Services with
20 the law firm of Holland and Knight.

21 MS. MOLDENHAUER: Good morning,
22 Mr. Chairman and Members of the Board.

1 Meredith Moldenhauer with Griffin, Murphy,
2 Moldenhauer and Wiggling, on behalf of the
3 opposition.

4 MR. BEHESTIAN: Good morning. My
5 name is George Behestian. I'm a next door
6 neighbor at 1239 Street N.W.

7 CHAIRPERSON JORDAN: And you
8 are?

9 MS. MOLDENHAUER: He is the
10 representative on behalf of the owner in the
11 opposition. We have a letter of authorization
12 in the record.

13 CHAIRPERSON JORDAN: Oh, the
14 opposition owner? Okay. Yes. Got you. I
15 don't think there's any issue about granting
16 party status here. I think you've met that
17 burden by your submission. Does the Applicant
18 have anything they want to say about the party
19 status?

20 MS. BATTIES: We have no
21 objection.

22 CHAIRPERSON JORDAN: Okay. The

1 Board? Is that okay with the Board?
2 Certainly. I think we're real clear about
3 what you're trying to do and why you're trying
4 to do it. But I think we have to hit some
5 other issues both raised by the opposition and
6 by our own -- on the legal issues here. More.
7 So I don't know if the Board wants to hear
8 anything than hitting the legal issues that
9 need to be addressed first. Yes, go ahead.

10 MEMBER ALLEN: Hi. I just did
11 want to ask. I couldn't tell from the -- from
12 the record. Are you -- are all of these
13 activities going on there now or not?

14 MS. BATTIES: Yes, they are.

15 MEMBER ALLEN: They are going on
16 -- they are -- you do have grooming and
17 boarding and all of that now? Okay. Thank
18 you.

19 CHAIRPERSON JORDAN: If you want
20 to -- no. I don't think so. I don't think so.
21 I'm sorry, Kathryn, what was your --

22 MEMBER ALLEN: I already got my

1 answer.

2 CHAIRPERSON JORDAN: Oh. Okay.
3 Got you. So the answer to that, yes, they are
4 doing all three of these things there now.
5 Just a second. I have to kind of catch up
6 with myself here. Have you had a chance, and
7 I don't know if Mr. Sher wants to weigh in on
8 this for you, but in regards to 736.5 and
9 735.6, and 737.4, what's your view point of
10 what that means, external yards or other
11 external facilities for keeping of animals
12 shall not be permitted. What does that mean?

13 MS. BATTIES: I'm going to defer
14 to our expert. I would actually like to
15 proffer Mr. Sher as an expert witness and let
16 him address that.

17 CHAIRPERSON JORDAN: He's accepted
18 in the book, at page one.

19 MS. BATTIES: Okay.

20 MR. SHER: Back up half a step.
21 The basic uses that are sought here; animal
22 boarding, pet grooming; animal shelter, are

1 all permitted by special exception. The issue
2 then, on those is can we meet the standards.
3 And I think we've demonstrated that we can and
4 have. With one exception on each one of the
5 three, and that is that we have some outdoor
6 use of the roof deck over the first floor,
7 which is actually at the second floor level,
8 at the rear of the building.

9 The regulations that -- that the
10 Chairman just quoted are -- are all pretty
11 much the same. But they basically refer to
12 keeping of animals in that outdoor space. In
13 our view, that space is -- is incidental to
14 the main use of the building inside. We -- I
15 shouldn't say we -- Lisa and her staff --

16 CHAIRPERSON JORDAN: Right. I
17 understand.

18 MR. SHER: -- and her employees
19 take dogs out there on a limited basis, at
20 hours specified in agreement with the ANC and
21 that is -- we would -- we would argue that's
22 not keeping the animals outside. The animals

1 are kept on the premises, in the building.
2 They are exercised outside for limited periods
3 of time, in limited numbers.

4 CHAIRPERSON JORDAN: Ms.
5 Moldenhauer?

6 MS. MOLDENHAUER: I -- I would,
7 obviously, object to that. I think that the
8 regulations are very clear. There's actually
9 multiple areas, other than just the
10 phraseology of in keeping. There's also the
11 additional section which indicates that all of
12 the premises and the use, which includes
13 putting the dogs outside for a period of time,
14 that the use must occur completely and
15 entirely in an enclosed interior premises.
16 That's part of the regulations. And so, by
17 having any outdoor facility or outdoor yard or
18 outdoor roof deck, that that is what is at
19 issue in regard to their variance relief. And
20 that is a use variance.

21 The Zoning Commission, when this
22 section was before them and they were trying

1 to understand this text amendment and really
2 provide an opportunity for someone to have
3 this use here, they discussed -- and there's
4 quotes from that --

5 CHAIRPERSON JORDAN: So you read
6 the transcript also?

7 MS. MOLDENHAUER: Yes. I mean,
8 they talk about outdoor runs and exterior
9 yards. They talk about outdoor area for use
10 for the -- for the dogs. So it's clear that
11 we're talking about outdoor areas. You know,
12 any one might be out there, you know, then in
13 regards to grant not allowing then to have
14 outdoor areas.

15 That is the intent and there's
16 multiple sections, not just in regards to
17 having the use enclosed completely in an
18 indoor facility, which obviously having an
19 outdoor roof deck or what have you, however
20 you want to parse the words, is in violation
21 and would require a use variance for that
22 specific section. But also the term in

1 keeping out animals on an outdoor facility,
2 the word keeping, I think, and obviously,
3 they're trying to claim that that's not --
4 that they're just keeping them out there for
5 a few minutes. It also is in the section that
6 has to do with pet grooming.

7 So if I were to take my dog and
8 have them groomed at 9:00 a.m., but I don't
9 pick them up until 1:00 p.m., and they put the
10 dog outside for that period of time, that dog
11 is being kept outside, which is in direct --
12 you know, which is directly being excluded or
13 not permitted by the regulations. That use is
14 thus a use variance. And that is part of what
15 they're seeking today.

16 CHAIRPERSON JORDAN: So you
17 believe that transcript is clear on that
18 question?

19 MS. MOLDENHAUER: I believe they
20 talk about noise and that they talk about, in
21 those regards, and they also talk about, as I
22 said outdoor dog runs.

1 CHAIRPERSON JORDAN: Didn't they
2 also use the -- didn't they also talk about,
3 when that question was asked about what this
4 text amendment was going to be, they were
5 talking in terms of over night? Did they not
6 talk about that in the transcript?

7 MS. MOLDENHAUER: They -- they did
8 talk about over night, at times. But I don't
9 think that that specifically addressed --
10 there's also talk about, you know, in general,
11 you know. Obviously, they're concerned about
12 over night in one aspect of it, because of
13 people trying to sleep and things of that
14 effect. But it's also talking about overall
15 use. And I don't think that you can limit it
16 to just a simply over night. I think that
17 there are sections in regard to the
18 grandfathering language in the text amendment,
19 where it allows for external uses if it's
20 grandfathered in for specific limited hours.
21 But, at the same time, that does not indicate
22 that they are still not limited to be able to

1 use that space.

2 CHAIRPERSON JORDAN: Okay. Okay.

3 Because, what got me, you said you thought it
4 was clear. And I think this transcript is far
5 from clear. Because I think they were
6 wrestling -- Mr. Zoning Commission Member,
7 with this whole thing, during that whole
8 dialogue. Because they had disagreements, I
9 believe, among themselves. And so I asked the
10 question what was keeping to both parties
11 because that's something that we're probably
12 toying with ourselves in trying to understand
13 and going forward in this particular case.

14 MS. BATTIES: Mr. Chair, if I just
15 may respond to one assertion by Ms.
16 Moldenhauer, and that is the issue of whether
17 or not the variances should be deemed a use
18 variance or an area variance. With regard to
19 the use of the outdoor deck for the animal
20 shelter, if you deem this to be a variance, we
21 would argue that it is in fact an area
22 variance. The code --

1 CHAIRPERSON JORDAN: I think -- I
2 think, unless the Board differs with me, that
3 we would look at this as an area variance.
4 Yes.

5 MS. BATTIES: Enough Said.

6 CHAIRPERSON JORDAN: And that
7 would certainly, in light of the action that
8 the Zoning Commission has taken with its most
9 recent text amendment. So that's the way we
10 would look at this.

11 MS. MOLDENHAUER: Your Honor, I'd
12 like to just ask a point of clarification in
13 regards to the question of a use variance
14 versus an area variance. I believe that, you
15 know, there is case law and there is precedent
16 in regards to Ally Muse, that case, in which
17 we're talking about whether or not a structure
18 can be used or whether there is a dimension
19 that comes into play and that is kind of at
20 the crux of whether or not you evaluate the
21 difference between a use variance and an area
22 variance. Here, the structure -- all of the

1 uses -- all of the structure, in itself, in
2 regards to the rear yard, the lot occupancy,
3 could be maintained if they used that deck for
4 a residential unit or for an office space and
5 had cocktail parties there. The specific
6 issue here is the permitted use of dog
7 boarding or having dogs being kept out there
8 while they're being groomed or after they're
9 being groomed, until the owners pick up their
10 dogs or their animals is the issue. That use
11 goes directly to a use variance standard, not
12 an area variance standard.

13 CHAIRPERSON JORDAN: All right.
14 Have you -- I'm sure you're familiar with the
15 text amendment that the Zoning Commission has
16 in regard to the determination, I guess, that
17 was trying to help us at the BZA, so we don't
18 have this debate all the time. But I just
19 wonder if you've taken a look at that.

20 MS. MOLDENHAUER: I -- if you can
21 refresh my memory?

22 CHAIRPERSON JORDAN: In 3013 -

1 that's -- it's actually comes out this week.
2 But they have had the discussion in hearings
3 and met everything else on it. I think it
4 becomes official as of this week or next week.
5 But they had hearings on it. They had the
6 whole discussion and they issued a text
7 amendment. 3103, right, 345. I just throw
8 that out so that you can take a look at it.
9 Because they -- what they were trying to do
10 is, as you know, some of these matters -- you
11 know, what's a use and what's a variance,
12 based upon some of the arguments that we've
13 had here at the BZA. It's causing us to
14 question a lot of things.

15 So they set down some more
16 definitive guidelines in regards to what's an
17 area variance and what's a use variance. An
18 additional question I want to ask the
19 Applicant, and I ask this question. We see
20 you highlight and argue that the apartment is
21 not in use -- the residential unit? Why is
22 that significant?

1 MS. BATTIES: It's not used for
2 the business operations. They do have staff
3 people that go up there and have lunch; take
4 showers --

5 CHAIRPERSON JORDAN: But you
6 weren't using that in your argument, trying to
7 say that that shouldn't be included in the
8 prohibition because of residential use -- the
9 200 foot residential use issue?

10 MS. BATTIES: No.

11 CHAIRPERSON JORDAN: No? Okay.
12 So all right. Because I kind of got the feel
13 that that's the way you were going with that,
14 since nobody was in there, so it's not
15 residential and --

16 MS. BATTIES: No.

17 CHAIRPERSON JORDAN: Okay.

18 MS. MOLDENHAUER: I'd just like to
19 make a point of clarification. Because
20 Counsel had indicated that their employees are
21 using it to shower and that they're -- they're
22 using it as part of their -- obviously,

1 there's question there then about FAR. We had
2 brought that up initially. We have other
3 leading questions in regard to the fact that,
4 you know, they don't have a tenant. There are
5 other issues that we can bring up during the -
6 - the case in chief. But if they just
7 testified or provided confirmation that
8 they're using it for their employees or their
9 staff, we've submitted pictures and
10 documentation that they had previously been
11 using the additional deck on that area for
12 small dogs and the lower deck for larger dogs.
13 So, I mean, that to me brings up the issue
14 that we had raised in our initial submission
15 of, you know, do they comply with the floor
16 area ratio.

17 CHAIRPERSON JORDAN: Yes. That --
18 what did you want to say? Well say it on the
19 record. Say there's something -- okay. This
20 has been a concern.

21 MEMBER ALLEN: I had the similar
22 concern and I was trying to understand how

1 were you factoring in that third floor,
2 because it sounds like, in one area of your
3 argument, you're using it like for the FAR,
4 that there's no one there. But then, on the
5 other half, you're using it for a different
6 argument. And so I was like which one is it
7 really? So I had the same issue or concern.

8 MS. BATTIES: I will just say that
9 the third floor is not part of our
10 application. There is no relief being
11 requested as it relates to the use of the
12 third floor. So it's an apartment unit. It
13 has a separate entrance. It's not being
14 leased -- formally leased to anybody right
15 now. But it is not part of their -- part of
16 their business operations. It's a vacant
17 residential unit that they own as part of --
18 as the owners of the building.

19 CHAIRPERSON JORDAN: Yes. Okay.
20 That kind of hit some of the initial issues I
21 had before I let you go forward? Is there
22 anything else the Board wants to address, and

1 then we can have the Applicant do -- Mr.
2 Turnbull?

3 ZC COMMISSIONER TURNBULL: I just
4 had one question for the record. The actual -
5 - you're not looking to increase the intensity
6 of usage that you now have?

7 MS. BATTIES: Correct.

8 ZC COMMISSIONER TURNBULL: The
9 boarding capability or the grooming
10 capability, the number of dogs, the number of
11 what do you want to call them -- clients are
12 coming in. You're not looking to intensify
13 that use at all?

14 MS. BATTIES: That's correct.

15 ZC COMMISSIONER TURNBULL: Okay.

16 CHAIRPERSON JORDAN: Okay. All
17 right so -- all right. That just kind of hit
18 on some of the issues I wanted to be sure to
19 get out of the way. Why don't you proceed
20 with your presentation in regards to this and
21 particularly deal with the issue of harm to
22 the neighbors, too, as you go through your --

1 MS. BATTIES: I am sorry. I
2 can't hear you.

3 CHAIRPERSON JORDAN: I said
4 particularly, deal with the issues raised by
5 the opposition, the harm and the effect upon
6 the neighbors, also, please?

7 MS. BATTIES: Well, I -- I would
8 just like to say, by way of background and
9 context, when you read the regulations; when
10 you understand the genesis of the regulations;
11 they were actually adopted to protect abutting
12 residential or nearby residential owners and
13 users from the impacts of these type of dog
14 daycare centers, pet stores, animal boarding
15 businesses. And, interestingly enough, while
16 there are a number of residential units in
17 proximity to the property, the only person
18 that has filed an objection to this
19 application is, in fact, not a resident, but
20 the owner of a vacant property that's zoned
21 for commercial use. And so the intent of the
22 regulations is not even being fulfilled or

1 addressed with the application or the
2 statement filed by the objector.

3 And we have people that live in
4 proximity to the property or that have lived
5 in proximity to the property here to speak in
6 support of the application. As it relates to
7 the -- I'm sorry, I'm going through my notes
8 here. To the use or the impacts of the
9 surrounding areas, I will just again reiterate
10 that this application has gone before the ANC
11 -- ANC-2F on four occasions, to their
12 committee twice; to their Community
13 Development Committee twice; it has gone
14 before the full ANC twice. They have
15 supported the application in both cases.

16 In order to mitigate impacts from
17 the use to the surrounding areas, they have
18 proffered certain conditions, which we have
19 listed in our application. The Applicant is
20 aware of those conditions; has no objection to
21 complying with the conditions; and the --
22 there has been no indication from any of the

1 residential users that the existing operations
2 on the property have been a nuisance.

3 We have -- the adjacent property,
4 immediately to the north, is owned and
5 operated by an art gallery. Right? An art
6 gallery. They have high end events,
7 receptions at that site. They have not had
8 any concerns about the use of the property in
9 it's -- for its current operations. In fact,
10 they have issued a letter of support for the
11 application.

12 There is a high end restaurant
13 immediately across the alley to the north of
14 Wagtime's property. They have not issued any
15 letters in opposition to the application. So
16 there has not been any indication that the
17 current use of the property, in fact, creates
18 -- is a nuisance to -- to the immediate area.
19 And I'd just like to point out that the one
20 person that has filed an application or
21 statement in opposition, their property has
22 been vacant for years. It's been under

1 construction for years. So, in reality, they
2 have not suffered any impacts.

3 MS. MOLDENHAUER: Objection.

4 MS. BATTIES: From the use of the
5 property -- from Wagtime's use of the
6 property.

7 CHAIRPERSON JORDAN: All right.
8 Continue. Anything else you want to present
9 to us?

10 MS. BATTIES: Yes. And with
11 regard -- again, with regard to the specific
12 issue asked about, impacts to the
13 neighborhood, that's all that I really have to
14 say in that -- in that regard. Lisa
15 Schreiber, the owner of Wagtime, is here if
16 you have any questions related to the
17 operations or she can answer any questions as
18 it relates to the background of the property
19 and their use and history on the property.

20 CHAIRPERSON JORDAN: Whatever you
21 want to present to us, we'll hear.

22 MS. BATTIES: Well, I don't have

1 anything further. I think we'll be prepared
2 to answer any questions that the Board has.

3 CHAIRPERSON JORDAN: Okay. Does
4 the Board have any additional questions that
5 they would like to ask the Applicant? What
6 does abutting mean? In the context of our
7 zoning regulations and, in weighing that, what
8 does it mean, versus what we designate 200
9 feet in some places? So I'd like to hear
10 something on that.

11 MS. BATTIES: Mr. Sher, do you
12 have an answer for that?

13 CHAIRPERSON JORDAN: I think she's
14 looking at you, Mr. Sher.

15 MS. BATTIES: A code definition?

16 MR. SHER: Apparently so. My
17 understanding of the use of the term abutting
18 would mean immediately contiguous -- touching,
19 in the neighborhood, or within 200 feet,
20 obviously. It doesn't necessarily mean
21 touching, but within proximity of the four
22 corners of the property.

1 CHAIRPERSON JORDAN: That would be
2 -- okay. And is it your thought that that is
3 different terminology is used because it was
4 not intended to go beyond -- go up to the
5 limit of 200 feet, as we use the term in other
6 aspects of the zoning regulations?

7 MR. SHER: Well, the 200 foot
8 radius or dimension is one that, at least in
9 one -- in -- in specific part, the Board uses
10 as a mechanism for determining which neighbor
11 should be notified of a pending application.
12 There are some other specific sections of the
13 regulations that also use that 200 foot
14 radius. And on -- on one of these three, I
15 think it is the -- the animal shelter, there's
16 a requirement that you not be within 200 feet
17 of an existing residential use or residence
18 district.

19 CHAIRPERSON JORDAN: I guess my
20 question is, is that an intentional act by the
21 Zoning Commission, saying there's a
22 difference, because we use the word abutting

1 -- abut, and then we use 200 feet where we
2 wanted to use 200 feet?

3 MR. SHER: Yes. I would say that.
4 I did say that.

5 CHAIRPERSON JORDAN: That was my
6 question. Let me ask Mr. Moldenhauer what she
7 thinks about that.

8 MS. MOLDENHAUER: I think it
9 depends on whether it's referring to a
10 residential zone or a residential property.
11 I think that there are two different things.
12 Obviously, if it's saying abutting and is
13 referring to a zone, then it's talking about
14 not obviously a property next door, but it's
15 talking about you know, does the zone in which
16 the property is located touch another
17 residential zone, or does it touch a
18 residential zone at all. If it's talking
19 about a property, in regards to 200 feet
20 within a zone, is there a residential use or
21 property that is within that district. So I
22 think it depends upon the -- the context that

1 we're using it.

2 CHAIRPERSON JORDAN: In that
3 context that we're using it.

4 MS. MOLDENHAUER: And but it's
5 used in both ways here.

6 CHAIRPERSON JORDAN: You're saying
7 it's used both ways here?

8 MS. MOLDENHAUER: Yes. Both in
9 regards to zones and specific use. And here
10 there are both residential uses within the
11 zone and it's also abutting a residential
12 zone, the commercial zone in which this
13 property is located is abutting another -- a
14 residential zone.

15 CHAIRPERSON JORDAN: Does the
16 Board have continuing questions of the
17 Applicant?

18 MS. BATTIES: If I just may. If
19 we're going to the issue of whether or not
20 this is an area variance, I do want to --

21 CHAIRPERSON JORDAN: We're open to
22 this whole thing.

1 MS. BATTIES: Okay.

2 CHAIRPERSON JORDAN: So it was
3 your opportunity to do your presentation, like
4 I said.

5 MS. BATTIES: All right.

6 CHAIRPERSON JORDAN: And we're
7 just asking questions as things come up. So,
8 it's not that we're leading into --

9 MS. BATTIES: I just --

10 CHAIRPERSON JORDAN: -- leaning
11 any way in particular about -- I'm just asking
12 questions.

13 MS. BATTIES: I just want to
14 remind the Board that you recently heard the
15 Petco case, in which they sought a variance to
16 have the pet grooming abutting a residential
17 district. And, in that case, the Board
18 treated it as an area variance and made a
19 ruling on that case as an area variance. So
20 I just want to put that out there for the
21 record.

22 CHAIRPERSON JORDAN: Any more

1 questions from the Board? Ms. Sorg?

2 MEMBER SORG: Thank you. In
3 relationship to that question, that was one of
4 the ways that I was thinking about it for this
5 case. And so I would ask Ms. Moldenhauer if
6 you -- are we asking both parties?

7 CHAIRPERSON JORDAN: Well, you
8 can. I mean, because we're still doing
9 some --

10 MEMBER SORG: It's your
11 presentation, but you know, I hope you don't
12 mind.

13 CHAIRPERSON JORDAN: It's your
14 Board.

15 MEMBER SORG: I want to ask Ms.
16 Moldenhauer, if you have an argument or a
17 thought about why it may be different?

18 MS. MOLDENHAUER: I think that
19 there are two factors here. There are two
20 different sections in the regs; one that talks
21 about the property shall not abut a
22 residential use or residential district. And

1 that's in regards to a pet shop as well as pet
2 grooming, in which PetCo filed under. PetCo
3 filed under. There is also then, a wholly
4 separate section which indicates that there
5 shall be no external yards or fields. And,
6 obviously, you know, that is a separate issue
7 in regards to potentially, you know, how that
8 relates to the fact that, in an animal
9 boarding facility, it indicates that it shall
10 not abut a residential zone. So I think it's
11 -- I'm sorry, but it's not as clear in regards
12 to that we're dealing with three different
13 regulations. And then, in the PetCo case,
14 we're actually dealing with a separate
15 regulation in regards to a pet shop, which is
16 not really applicable here. Or they're not
17 seeking that issue here.

18 So there, in regards to an animal
19 boarding, it talks about animal boarding uses
20 shall not abut a residential zone. And so, in
21 that section, under 735.2, I believe that
22 means that it shall not, you know, the

1 property within which it's using that zone
2 shall not abut a residential zone. And then,
3 in regards to the other sections on pet
4 grooming, it's referring to a residential use
5 or residential district. I would disagree
6 with the Applicant's submission that the fact
7 that they actually are required to put
8 residential in their building and that they're
9 going to have a residential unit, which is
10 required by the FAR, would also come into
11 effect in regards to that not being another
12 way in which they don't satisfy the special
13 exception standard.

14 MS. BATTIES: Just a point of
15 clarification. The Zoning Regulations do not
16 require us to have a residential use on the
17 property. It limits the amount of floor area
18 for commercial use on the property.

19 MS. MOLDENHAUER: But, based on
20 their construction plans right now, they have
21 built out the property to a degree where they
22 are required to have residential in order to

1 have the property have the total gross number
2 of square feet that they have. This is the
3 game that they're playing where they're saying
4 it's vacant but we're not using it, but they
5 need it in order to not violate FAR. It's --
6 it's a very grey area. In my opinion, I don't
7 believe it's as grey. But obviously, you
8 know, based on what's being presented, I -- I
9 think that it's a line that the Board has to
10 evaluate. And are they going to create a
11 precedent by allowing the Applicant to make
12 this very sticky argument in our -- in our
13 opinion.

14 CHAIRPERSON JORDAN: Okay. Any
15 other questions from the Board?

16 MEMBER MOY: Mr. Turnbull?

17 ZC COMMISSIONER TURNBULL: I just
18 want to, from an operational standpoint, go
19 back to 802.24. Dogs are not going to be kept
20 outside. There's no facilities, no gates, no
21 cages, no nothing. So you're going to take
22 them out. You exercise them for a certain

1 amount of time and then bring them back in?

2 MS. SCHREIBER: Yes. And -- I'm
3 sorry. What we were requesting was, in a time
4 -- within a time period between 9:00 a.m. and
5 6:00 p.m. and no more than five dogs would be
6 allowed at a time -- out at a time. And we
7 don't take dogs that are being groomed outside
8 to put outside. Like -- just that -- that's
9 it.

10 ZC COMMISSIONER TURNBULL: Okay.
11 So it's mainly an exercise. I mean you take
12 them out a half hour --

13 MS. SCHREIBER: The dogs that are
14 there -- yes.

15 ZC COMMISSIONER TURNBULL: -- 20
16 minutes or whatever, and then bring them back
17 in?

18 MS. SCHREIBER: Yes.

19 ZC COMMISSIONER TURNBULL: Okay.
20 So it's incidental. You have minimal,
21 incidental use of the space?

22 MS. SCHREIBER: Yes.

1 ZC COMMISSIONER TURNBULL: Okay.

2 CHAIRPERSON JORDAN: Any other
3 questions from the Board? Although we've kind
4 of had a little off beat process here, Ms.
5 Moldenhauer, any cross examination questions
6 you would like to ask of the Applicant?

7 MS. MOLDENHAUER: Yes. I have
8 some questions for the Applicant, Ms.
9 Schreiber.

10 CHAIRPERSON JORDAN: Proceed,
11 please.

12 MS. MOLDENHAUER: What -- I'm just
13 trying to make sure I understand, what is the
14 difference between the initial application you
15 submitted and the current application that is
16 before the Board?

17 MS. BATTIES: If I can answer that
18 question for her?

19 CHAIRPERSON JORDAN: Yes.
20 Whoever. That's fine.

21 MS. BATTIES: Yes. The initial
22 application was limited to special exception

1 to permit the animal boarding, animal shelter,
2 and pet grooming uses. That application was
3 amended to include variances to use the
4 outdoor deck in connection with those uses.

5 MS. MOLDENHAUER: So the
6 difference is the deck?

7 MS. BATTIES: Correct.

8 MS. MOLDENHAUER: Ms. Schreiber,
9 when was the deck built?

10 MS. SCHREIBER: I guess was it --

11 MS. BATTIES: 2009.

12 MS. SCHREIBER: 2009. 2009. I'm
13 trying to think of all the construction. So
14 yes, 2009.

15 MS. MOLDENHAUER: And when --
16 you've been operating the facility for how
17 many years then, without the deck or outdoor
18 area?

19 MS. BATTIES: Well, the -- the
20 uses have been on the property since --

21 MS. MOLDENHAUER: I think I'm
22 asking Ms. Schreiber. I don't think Ms.

1 Batties can testify here. She's -- Batties,
2 I'm sorry -- Ms. Batties can testify here.
3 I'm asking Ms. Schreiber.

4 CHAIRPERSON JORDAN: Yes. I
5 understand, We kind of are pretty fluent with
6 that here. But Ms. Schreiber, do you have a
7 response. The question is how long have you
8 been using the outside or have you not been
9 using the outside in the way you're trying to
10 use it now. And I think what I'm
11 understanding from even what's been written in
12 your documents, if I can help Ms. Moldenhauer,
13 is that you've been using the outside space.

14 MS. SCHREIBER: Yes.

15 CHAIRPERSON JORDAN: Tell me if
16 I'm wrong, since you've been there?

17 MS. SCHREIBER: We have been using
18 the outside space.

19 CHAIRPERSON JORDAN: That's what I
20 thought you were trying to get her to.

21 MS. MOLDENHAUER: When did you --
22 you went -- you moved into the facility before

1 '09?

2 MS. SCHREIBER: Correct.

3 MS. MOLDENHAUER: So, before '09,
4 when you moved in, in about '05, you used then
5 the space for about five years without having
6 an outdoor facility? You conducted your
7 business without having or needing an outdoor
8 facility?

9 MS. SCHREIBER: Yes.

10 MS. MOLDENHAUER: Yes.

11 CHAIRPERSON JORDAN: Okay.

12 MS. MOLDENHAUER: Okay. So for
13 five years that you -- four to five years, you
14 did not have one?

15 MS. SCHREIBER: We did not use the
16 roof deck before that.

17 MS. MOLDENHAUER: Okay.

18 MS. SCHREIBER: Because it wasn't
19 built until 2009.

20 CHAIRPERSON JORDAN: Okay.

21 MS. SCHREIBER: The roof deck.

22 CHAIRPERSON JORDAN: Okay.

1 MS. MOLDENHAUER: And you are
2 aware that in '09 when you built the roof
3 deck, the regs specifically said, at that
4 time, and they were already in place in '06,
5 that there was no external yards or facilities
6 permitted?

7 MS. SCHREIBER: We were under the
8 impression that we were grandfather cloused
9 in.

10 MS. MOLDENHAUER: All right.
11 We'll get to that in a moment. But you -- so
12 you were aware of the regulations?

13 MS. SCHREIBER: No. I wasn't.

14 MS. MOLDENHAUER: The Applicant --
15 in your submission, and as I'm trying to
16 obviously understand the difference between
17 the submissions that were in -- you say that
18 you're not clear that there was a building
19 permit ever pulled for the deck?

20 CHAIRPERSON JORDAN: Got you. Got
21 you. Yes.

22 MS. SCHREIBER: No. We have an --

1 we had an architect and a construction company
2 that did all of our construction. And
3 therefore, we were under the impression that
4 any permits that needed to be pulled were
5 pulled by the architect and which it was a big
6 project. We had many permits pulled. And,
7 you know, I was under -- we were under the
8 impression that all the permits needed were
9 gotten.

10 CHAIRPERSON JORDAN: Prior to
11 2006?

12 MS. SCHREIBER: I mean for the
13 construction of the --

14 MS. MOLDENHAUER: Of '08 to '09,
15 during the renovation?

16 CHAIRPERSON JORDAN: So your
17 statement is that you were under the thought
18 that you -- anything that came after that
19 period was not applicable to you. Is that
20 what you're saying?

21 MS. SCHREIBER: No. I -- we -- we
22 were under the impression that, from when the

1 construction started to when it ended, all of
2 the permits needed were gotten by our Inter-
3 plan, our architect firm, and Corbet
4 Construction Company.

5 CHAIRPERSON JORDAN: And when was
6 that?

7 MS. SCHREIBER: Well, we finished
8 in 2009.

9 CHAIRPERSON JORDAN: And when did
10 you start it?

11 MS. SCHREIBER: 2008, I guess we
12 started, or the end of 2007. When did we
13 start it? 2008.

14 CHAIRPERSON JORDAN: So, in 2008,
15 when you started, you didn't have any thought
16 that you were going to be using -- you were
17 going to use the deck area for this temporary
18 in and out with the dogs?

19 MS. SCHREIBER: No, we did. But
20 we thought --

21 CHAIRPERSON JORDAN: Okay. But I
22 think Ms. Moldenhauer's question was, you were

1 aware in 2006 of the need or the restriction?

2 MS. SCHREIBER: Oh no, not in
3 2006. No. Because we didn't know that we
4 were going to have the building then and were
5 going to buy the building and have
6 construction then. Until we --

7 CHAIRPERSON JORDAN: I understand
8 what she's saying.

9 MS. SCHREIBER: I don't know if
10 I'm answering the question right.

11 CHAIRPERSON JORDAN: I'm good. Go
12 ahead.

13 MS. SCHREIBER: Okay.

14 MS. MOLDENHAUER: I'm just trying
15 to make sure that I clarify it, because
16 sometimes the facts are confusing. You said
17 that you knew that you wanted a deck when you
18 started construction in '08?

19 MS. SCHREIBER: We did not know.o

20 MS. MOLDENHAUER: Okay. So it was
21 a change order, because that's what your
22 submission says, that it was actually a change

1 order.

2 MS. SCHREIBER: Yes.

3 MS. MOLDENHAUER: And that that
4 was a totally new concept in '09 -- February
5 of '09, all of a sudden, you decided you
6 needed a deck and you were going to build one.

7 MS. SCHREIBER: It's not that we
8 decided that we needed one. We just added it
9 in. I don't know.

10 MS. MOLDENHAUER: So you added it
11 in, but you didn't confirm that there was any
12 permits for it?

13 MS. SCHREIBER: No. We had a
14 architect firm that did all the permits.
15 We're not permit -- we don't, you know, our
16 firm did that for us. And the architect --
17 and the construction company. So, as far as
18 permits --

19 MS. MOLDENHAUER: Just one last
20 question, kind of in this idea of the deck.
21 And I will keep going then after that, from
22 the -- the roof deck issue. One of the issues

1 that was brought up is about the effects and
2 the negative adverse effects of the outdoor
3 space and the use. Are you aware that this --
4 that you're using the deck for your dogs
5 during the day and at whatever times is
6 creating an adverse impact on the community?

7 MS. SCHREIBER: Absolutely not.

8 MS. MOLDENHAUER: So you're saying
9 that you had no complaints about the noise?

10 MS. SCHREIBER: No. Absolutely
11 not.

12 MS. MOLDENHAUER: I'd like to then
13 present you with an e-mail that was directed
14 to you, specifically asking questions, and
15 I've got copies for the Board --

16 MS. SCHREIBER: That was just now
17 -- recently -- since this started.

18 MS. MOLDENHAUER: You said that
19 you had absolutely no complaints.

20 MS. SCHREIBER: I didn't get that
21 though.

22 CHAIRPERSON JORDAN: We are not

1 going -- okay. Just ask the questions. Okay.
2 She's answered that question.

3 MS. MOLDENHAUER: Okay. Then I
4 will provide copies to the Board. I'll let
5 you have just a chance to look at this. Are
6 you saying you never got this e-mail?

7 MS. SCHREIBER: Yes. And I had
8 told him I never received it, as well.

9 MS. MOLDENHAUER: Okay. Then I'm
10 going to jump to page three, where it says Hi,
11 Ed. And then, at the bottom of the paragraph
12 is says, signed looking forward to hearing
13 from you, Lisa.

14 MS. SCHREIBER: Right.

15 MS. MOLDENHAUER: So you did get
16 the e-mail?

17 MS. SCHREIBER: No. He came to
18 the ANC -- he came to the ANC meeting and he -
19 - the -- the -- what's -- I don't know what
20 the name of the person is that is -- he's one
21 of the people on the Board.

22 MEMBER SORG: A single member

1 district?

2 MS. SCHREIBER: Yes. A single
3 member district told me about the gentleman
4 that he said wrote an e-mail -- gave me his
5 e-mail address. So he said, you know, maybe
6 you want to touch base with him, since you're
7 not getting complaints from anyone else in the
8 neighborhood and you have so many supporters.
9 It might be a good idea for you to reach out
10 to this one person, which is what I did. And
11 I told him I never received that e-mail. And,
12 you know, that I -- if there was an issue,
13 that I'd like to address it with him. But I
14 had never received the previous e-mail that he
15 said that he sent. Which is this.

16 MS. MOLDENHAUER: I'm just
17 pointing out -- I want to ask though -- I
18 didn't ask you about whether you got an e-mail.
19 I asked if you'd ever heard about complaints.
20 And you said no, you had never heard of any
21 complaints.

22 MS. SCHREIBER: Yes. I -- I

1 didn't -- I misunderstood what you were
2 asking. I testified at the ANC that I had not
3 gotten any complaints. And that's when I was
4 told about this e-mail and I had not gotten
5 any complaints. I still have not gotten any
6 complaints except this gentleman. I still
7 have not seen this e-mail, except for your
8 copy of it. I did a search in my e-mail. I
9 never got an e-mail from him.

10 CHAIRPERSON JORDAN: Ask her if
11 you want.

12 MEMBER SORG: Is Ed Horvath, is he
13 the single member district?

14 MS. SCHREIBER: No.

15 MEMBER SORG: Or is he just a
16 resident?

17 MS. SCHREIBER: He's a resident.
18 He's a neighbor and --

19 MEMBER SORG: Okay.

20 MS. SCHREIBER: It's a little --
21 just some of it is confusing, or whether he's
22 involved.

1 MEMBER SORG: Okay.

2 CHAIRPERSON JORDAN: Your next
3 question?

4 MS. MOLDENHAUER: Thank you. Let
5 me just focus in a little bit on some of the
6 special exception standards and ask you some
7 questions about that. Your application states
8 that you satisfy the requirement to have all
9 of your uses kept within the premises?

10 MS. BATTIES: That was before the
11 application was amended.

12 MS. MOLDENHAUER: And you're --
13 I'm asking you a question. Is the only use
14 that does not comply with that section the --
15 the second floor roof deck?

16 MS. SCHREIBER: Yes. To my
17 knowledge, yes.

18 MS. MOLDENHAUER: And there's
19 nothing else that would -- in regards to your
20 operation and how you run the company that
21 would be any other external use or yard that
22 would be used in conjunction with Wagtime?

1 MS. SCHREIBER: At this location?

2 MS. MOLDENHAUER: In general, for
3 -- for the use of Wagtime, at that location.

4 MS. SCHREIBER: You're asking if
5 there's any other outdoor area besides the
6 roof deck?

7 MS. MOLDENHAUER: Yes.

8 MS. SCHREIBER: That we're using
9 to exercise the doge?

10 MS. MOLDENHAUER: Yes.

11 MS. SCHREIBER: No.

12 MS. MOLDENHAUER: No? So you're
13 failing to admit that you use the rear of lots
14 18 and 121 two blocks -- two houses down?

15 MS. SCHREIBER: Yes. We do not
16 use that.

17 MS. MOLDENHAUER: You've never had
18 staff take dogs to that location?

19 MS. SCHREIBER: Yes, we have. But
20 we do not use that now.

21 MS. MOLDENHAUER: So when did you
22 stop using that yard or that exterior of your

1 area then for your staff to take dogs?

2 MS. SCHREIBER: About four months
3 ago, maybe. When this all started, I believe.

4 MS. MOLDENHAUER: But you were
5 using at one of the -- when you were
6 testifying before the ANC meetings?

7 MS. SCHREIBER: No. We stopped
8 using it.

9 MS. MOLDENHAUER: Four months ago?

10 MS. SCHREIBER: I don't know the
11 exact amount of time, but we stopped using it
12 so we could be in a good relationship with the
13 neighbors. We did not want any problems. We
14 stopped using the yard -- the rear yard of
15 that area.

16 MS. MOLDENHAUER: And how long had
17 you used it before you stopped?

18 MS. SCHREIBER: A year? I don't
19 know.

20 MS. MOLDENHAUER: And had you ever
21 attempted to get the proper authorization to
22 be able to use that yard for dog boarding or

1 for the use that you were --

2 CHAIRPERSON JORDAN: Is that
3 really relevant to this issue?

4 MS. MOLDENHAUER: It goes to
5 credibility. And they're trying to -- they
6 put that at issue in regards to claiming a
7 practical difficulty and so I -- I believe it
8 does. I believe it's relevant.

9 CHAIRPERSON JORDAN: So you're
10 saying if they had a good relationship because
11 they would have gotten permission before hand,
12 then they could still use it? Is that what
13 your argument is, as an alternative?

14 MS. MOLDENHAUER: The question is,
15 have they -- are they complying with zoning
16 requirements and have they shown that, in the
17 past, that they have disregarded zoning
18 requirements.

19 CHAIRPERSON JORDAN: I don't think
20 that's relevant. Let's go to the next
21 question.

22 MS. MOLDENHAUER: In regards to

1 the special exception standards, your
2 application and you believe that you've
3 satisfied the animal waste requirements?

4 MS. SCHREIBER: Absolutely. Yes.

5 MS. MOLDENHAUER: So all of your
6 animal waste is then contained in a closed
7 disposal?

8 MS. SCHREIBER: Yes.

9 MS. MOLDENHAUER: And you've seen
10 the submissions that we have provided to the
11 Board which are submitted in our opposition
12 statements in regards to your dumpsters?

13 MS. SCHREIBER: Yes.

14 MS. MOLDENHAUER: And you still
15 believe that you comply with --

16 MS. SCHREIBER: Absolutely. Yes.

17 MS. MOLDENHAUER: In addition to
18 using the plastic dumpsters, which are part of
19 an exhibit to our submission, do you also use
20 a wooden box to throw dog waste into?

21 MS. SCHREIBER: A wooden box? I
22 don't understand the question.

1 MS. MOLDENHAUER: Is there a
2 wooden box that is pushed up against your
3 property that you have a hole in the rear of
4 your building that you throw dog waste into?

5 MS. SCHREIBER: That box was -- I
6 know what you're saying. It's not a -- it was
7 actually made and created so it could contain
8 the -- after the waste is put into a
9 biodegradable bag and sealed, it goes in,
10 through the box, into the dumpster, so that it
11 doesn't get into the air and have any smell to
12 any other business in the alley.

13 MS. MOLDENHAUER: And you said the
14 box was made -- but it's made up of -- it's
15 just wood -- it's plywood?

16 MS. SCHREIBER: The waste bags
17 don't stay in the box. They go through the
18 box into the dumpster. So that way they do
19 not ever go into the air. It's a chute, yes.

20 MS. MOLDENHAUER: But the --

21 CHAIRPERSON JORDAN: No. I -- I
22 -- I think --

1 MS. SCHREIBER: That's all right.
2 It sounded like what she was describing.

3 MS. MOLDENHAUER: I believe it's a
4 box. A chute would be if it was, you know --

5 MS. SCHREIBER: It has metal
6 inside of it. Actually, it was made for that.
7 So it has metal kind of a chute that you use
8 for a laundry or trash chute in an apartment
9 building. And then it goes through the box
10 and into the dumpster.

11 MS. MOLDENHAUER: And so -- but
12 you can pull the box away from the wall and
13 there's a hole and the smell can then resonate
14 from the box?

15 MS. SCHREIBER: But the box is not
16 pulled from the wall. It's connected to it
17 like a chute from an apartment building with
18 a trash chute. It's that -- it was made to
19 impact any smell into the -- which it
20 absolutely works and does, but it does -- it
21 was made to impact -- I mean to -- to keep any
22 smell or any negative smells in -- from

1 getting into the air.

2 MS. MOLDENHAUER: Let me just back
3 up and ask you a couple questions about
4 Wagtime. You and your husband own Wagtime?

5 MS. SCHREIBER: Yes.

6 MS. MOLDENHAUER: And are there
7 any other owners or partners?

8 MS. SCHREIBER: No.

9 MS. MOLDENHAUER: How long have
10 you owned Wagtime? Since 2001?

11 MS. SCHREIBER: Since 2001 --
12 November 2001, yes.

13 MS. MOLDENHAUER: How involved
14 would you say you are with the business?

15 MS. SCHREIBER: Very.

16 MS. MOLDENHAUER: And when you
17 renovated the property, in '08 and '09, what
18 was the use prior to the renovation?

19 MS. SCHREIBER: Oh, oh, yes, it
20 was vacant. Not the -- not the prior --

21 MS. MOLDENHAUER: But what was
22 your use of the property? Prior to '09 and

1 '09?

2 MS. SCHREIBER: Oh, day -- pet
3 store, daycare, grooming.

4 MS. MOLDENHAUER: All of those?

5 MS. SCHREIBER: Yes.

6 MS. MOLDENHAUER: And after the
7 renovation, it was the same thing?

8 MS. SCHREIBER: Correct.

9 MS. MOLDENHAUER: After all of the
10 improvements, what was the total square
11 footage that Wagtime then operated out of?

12 MS. BATTIES: It's in the --

13 MS. MOLDENHAUER: Would 4,810 be
14 approximately right?

15 MS. SCHREIBER: I have no idea.

16 MS. MOLDENHAUER: Okay.

17 MS. BATTIES: It's whatever is in
18 our filings. She wouldn't know that
19 information.

20 CHAIRPERSON JORDAN: It's been
21 asked. It's been answered. The witness says
22 she was not aware. She didn't have knowledge.

1 Next question.

2 MS. MOLDENHAUER: She just doesn't
3 know how many square feet her space is?

4 CHAIRPERSON JORDAN: Yes. But you
5 asked the question and the witness's response
6 was that she did not know. You can put in
7 something to the contrary later, but her
8 response was she didn't know.

9 MS. MOLDENHAUER: Okay. And when
10 did you first move to this location?

11 MS. SCHREIBER: 2005.

12 MS. MOLDENHAUER: And you obtained
13 a certificate of occupancy in '05?

14 MS. SCHREIBER: Yes.

15 MS. MOLDENHAUER: And what was the
16 square footage on that certificate of
17 occupancy?

18 MS. SCHREIBER: I -- I'm not sure.

19 MS. MOLDENHAUER: It's part of our
20 pre-hearing submission that the Board has.
21 I'll give a copy to the Applicant so she can
22 take a look at it if she hasn't already

1 reviewed it before today.

2 CHAIRPERSON JORDAN: Okay.

3 MS. MOLDENHAUER: Can you --
4 sorry, that's your application. So this is
5 actually your '05 C of O. And that says that
6 is has -- that your use if '05 was for 1500
7 square feet? Your C of O in '05?

8 MEMBER SORG: I see that. Yes.

9 MS. MOLDENHAUER: I'm asking. Is
10 that what is says?

11 MS. SCHREIBER: That's what is
12 says. Yes. Yes.

13 MS. MOLDENHAUER: And when you
14 obtained -- when you obtained that, do you
15 know what the listed description of your use
16 was on the application for the certificate of
17 occupancy?

18 MS. SCHREIBER: Yes.

19 MS. MOLDENHAUER: What was it?

20 MS. SCHREIBER: Retail pet shop.

21 MS. MOLDENHAUER: And was that
22 just two months after the BZA had shut down

1 you Q Street location?

2 MS. SCHREIBER: No.

3 MS. MOLDENHAUER: For the decision
4 that it shut down your Q Street location?

5 MS. SCHREIBER: We weren't shut
6 down. We still had that location. We were
7 doing -- we had grooming and a pet store
8 there. We just didn't have daycare and
9 boarding.

10 MS. MOLDENHAUER: So they shut
11 down that use of your location, based on a
12 decision two months earlier?

13 MS. SCHREIBER: Right. Correct.

14 MS. MOLDENHAUER: And that
15 decision said that a pet shop is not
16 equivalent to dog boarding uses?

17 MS. SCHREIBER: There was no
18 regulation established at that time.

19 MS. MOLDENHAUER: I'm not asking
20 you a legal question about regulations. I'm
21 trying to understand what -- you obviously are
22 involved in the company. It's your business.

1 You had a decision that was done by the Board.
2 And then two months later you went and applied
3 for dog boarding and identified Pet Shop in
4 the use?

5 MS. SCHREIBER: That's what they
6 told us to put on there as a use. There was
7 no regulation established yet to say anything
8 else and that's what we were advised by DCRA.

9 MS. MOLDENHAUER: And then in
10 2008, when you expanded the use, did you ever
11 obtain a new C of O, that identified the 4,810
12 square feet?

13 MS. SCHREIBER: We tried to.

14 MS. MOLDENHAUER: And -- but
15 you've not -- you've not obtained one?

16 MS. SCHREIBER: We tried to. We
17 took all the permits. We went to DCRA and
18 were told that we could not change the
19 certificate of occupancy while there was a law
20 suit pending on the building next door, with
21 the building -- our building.

22 MS. MOLDENHAUER: And do you have

1 that in writing?

2 MS. SCHREIBER: No.

3 MS. MOLDENHAUER: And who did you
4 speak to?

5 MS. SCHREIBER: We spoke to the
6 DCRA representative and his senior advisor.

7 MS. MOLDENHAUER: And there's --
8 there's no -- you spent all this money and yet
9 -- but you have no evidence that you wouldn't
10 be able to get a C of O?

11 MS. SCHREIBER: No. I was under
12 the impression that if DCRA is telling me
13 that, that it was correct. And I don't --
14 that's what we did.

15 MS. MOLDENHAUER: Does a lawsuit
16 have any relevance to the use of the property?

17 MS. SCHREIBER: I -- what do you
18 mean?

19 MS. MOLDENHAUER: Is the law suit
20 related to the use of the property?

21 MS. SCHREIBER: No.

22 MS. MOLDENHAUER: All right. The

1 issue of FAR has come up and I want to
2 understand what -- you said that you're -- Ms.
3 Batties said that you use the third floor for
4 staff to shower and to eat?

5 MS. SCHREIBER: Yes.

6 MS. MOLDENHAUER: And in the past,
7 you've used the third floor for small dogs?

8 MS. SCHREIBER: Yes.

9 MS. MOLDENHAUER: The -- the back
10 caged deck?

11 MS. SCHREIBER: Yes.

12 MS. MOLDENHAUER: And, to your
13 knowledge, has that space been attempted to be
14 leased for residential use?

15 CHAIRPERSON JORDAN: That's not
16 relevant. Just go to the next question.
17 Please. Let's go to the next question.

18 MS. MOLDENHAUER: So I just want
19 to understand. Do you own the property?

20 MS. SCHREIBER: No.

21 MS. MOLDENHAUER: Who owns the
22 property?

1 MS. SCHREIBER: Les Ron LLC.

2 MS. MOLDENHAUER: And is Les Ron
3 LLC your mother and father?

4 MS. SCHREIBER: Yes.

5 MS. MOLDENHAUER: And did they
6 purchase the property in 2007, after the text
7 amendment and regulations had gone into
8 effect?

9 MS. SCHREIBER: Yes.

10 MS. MOLDENHAUER: And --

11 MS. BATTIES: Actually, I do want
12 to clarify. They purchased the property in
13 2007, before the pet grooming, pet shops, and
14 animal shelter regulations took effect.

15 MS. MOLDENHAUER: And when are
16 thinking they took effect?

17 MS. BATTIES: The pet grooming,
18 pet shops, and animal shelter regulations took
19 effect in September -- on September 14, 2007.
20 And Les Ron purchased the property in August
21 of 2007.

22 MS. MOLDENHAUER: But the Boarding

1 had already taken effect?

2 MS. BATTIES: The boarding took
3 place in August of 2006, after Wagtime was
4 already in operation at the property.

5 MS. MOLDENHAUER: So the boarding
6 -- and again, we're -- the boarding thought,
7 the text amendment for boarding had taken into
8 effect in '06.

9 MS. BATTIES: After --

10 MS. MOLDENHAUER: Before they --
11 her parent purchased the property.

12 CHAIRPERSON JORDAN: Folks, what
13 we're not going to go is have this type of
14 debate. We're going to move this hearing
15 along. We can take in what you guys are
16 saying. We're going to evaluate what you're
17 saying. If you have questions, ask the
18 questions. We're not going to go through this
19 type of debate. We know when the regs were
20 passed. We know what evidence has been
21 deduced right now. And so, if you have some
22 more questions, please go forward.

1 MS. MOLDENHAUER: Have -- you
2 indicate that you had discussions, but you
3 have no written documentation before you
4 obtained the -- went forward with
5 construction. Did you obtain a zoning
6 determination letter?

7 MS. SCHREIBER: No.

8 MS. MOLDENHAUER: You didn't get
9 anything in writing or conformation?

10 MS. SCHREIBER: No.

11 MS. MOLDENHAUER: No other
12 questions.

13 CHAIRPERSON JORDAN: Thank you.
14 Does the Board have additional questions? No.
15 And I think we're clear of the facts and the
16 use of the building. Let's turn now to the
17 Office of Planning.

18 MS. THOMAS: Good afternoon, Mr.
19 Chairman and Members of the Board. The Office
20 of Planning is recommending approval as stated
21 in our report and subject to the conditions in
22 our report. And I would be happy to take any

1 questions. Thank you.

2 CHAIRPERSON JORDAN: Yes?

3 MEMBER SORG: Okay. I will ask
4 one question. Or actually maybe two. The
5 opposition party brings up questions about the
6 allowable commercial and residential FAR. Can
7 you sort of elucidate what your understanding
8 is of the residential use, versus the
9 commercial use. The question, you know, from
10 the opposition party comes that the -- the
11 rental apartment is, in fact, being used by
12 Wagtime, itself. So I want to -- as a third
13 party who gained information, you know, for
14 your report, I'm curious to see what your
15 thoughts are on the FAR and whether that's an
16 issue or not.

17 CHAIRPERSON JORDAN: Why wouldn't
18 it be included in the FAR?

19 MS. THOMAS: Okay. Let's see.
20 From the way I understand it, the Applicant
21 was -- that space was rented out for
22 residential use. And if it is now vacant, I'm

1 not -- I'm sorry, I'm not sure if -- if I know
2 that -- if I knew that it was being used by
3 the Applicant on a -- on a --

4 CHAIRPERSON JORDAN: That's fair
5 enough.

6 MS. THOMAS: On a -- you know,
7 consistent basis, as part of their business
8 operations. I'm not clear as if that is the
9 case or not.

10 CHAIRPERSON JORDAN: Yes. Okay.
11 Right. Right. Okay. Good. We understand it
12 from your standpoint. Because I think we've
13 learned a lot here a couple of different ways.
14 It's been approached in a lot of different
15 ways and it's been responded to. So we can go
16 on. Any other questions of Planning?

17 MEMBER SORG: I do. I -- perhaps
18 you can give a little bit more explanation as
19 to why you're viewing the outdoor roof deck as
20 an exceptional situation.

21 MS. THOMAS: Seeing the use of the
22 outdoor area as an ancillary use -- ancillary

1 part of what the services -- some of the
2 services they provide. It's not -- it's not
3 a facility where they would -- or a place
4 where they would actually keep the animals,
5 you know, on a permanent basis. So I -- I --
6 we would have no objections to them using the
7 roof only to the extent that it does satisfy
8 the 200 foot rule that is a part of the
9 requirement.

10 MEMBER SORG: Okay. So my
11 understanding of your reasoning there then --
12 and correct me if I'm wrong -- is that they
13 have and are using a roof deck on the second
14 floor and wherever else. And it is an
15 integral part of their business operation and
16 therefore it makes it a unique situation?

17 MS. THOMAS: In the absence of
18 having I guess -- yes. It's a unique
19 situation. This type of business requires or
20 this type of business -- I wouldn't want to
21 use the work requires -- or it's a part of the
22 business to exercise the animals or provide

1 some area for the animals to go outside. Yes,
2 they do take it out -- take the dogs walking.
3 But --

4 CHAIRPERSON JORDAN: Okay.

5 MS. THOMAS: They have a space
6 that they built out prior to, I guess, the way
7 I'm understanding, is that prior to the --

8 CHAIRPERSON JORDAN: So that makes
9 it unique because they built it, so it becomes
10 unique?

11 MS. THOMAS: No.

12 CHAIRPERSON JORDAN: And they have
13 an opportunity, as you said, they were taking
14 dogs out. And other similar situated
15 facilities where they keep the dogs or animals
16 inside, it's not -- this is not strange that
17 the dogs are self-contained in the building,
18 and/or go down the street to do what they have
19 to do? Right?

20 MS. THOMAS: I'm not understanding
21 --

22 CHAIRPERSON JORDAN: I guess we're

1 stretching and trying to understand, as Ms.
2 Sorg said, how you get why this is a unique --
3 how do you say this is a unique situation?

4 MS. BATTIES: Chairman Jordan, if
5 I may?

6 CHAIRPERSON JORDAN: Let me have
7 Planning answer please.

8 MS. THOMAS: Let me go back to --
9 let me look at what our report says. I'm
10 sorry. I think -- I think that the unique
11 situation is that they don't have an area
12 onsite where they could actually exercise the
13 dogs or -- or take them out for a few minutes.
14 And -- and this area is provided. It's part
15 of their business operation. And that's all
16 I would say about that.

17 CHAIRPERSON JORDAN: Okay.

18 MEMBER SORG: Because of the 100
19 percent lot occupancy?

20 MS. THOMAS: Exactly.

21 MEMBER SORG: Okay.

22 CHAIRPERSON JORDAN: Okay. Any

1 other questions that the Board has for
2 Planning? Okay. Then we'll turn to the
3 Applicant for any cross examination or help
4 you need to try to ask some questions.

5 MS. BATTIES: Well, I -- I do want
6 to just point out --

7 CHAIRPERSON JORDAN: By
8 questioning Office of Planning?

9 MS. BATTIES: Unless you don't
10 want me to ask her that?

11 CHAIRPERSON JORDAN: If you could
12 ask her a question of the Office of Planning
13 and say your statement at the same time,
14 right? Isn't that right?

15 MS. BATTIES: I have a couple of
16 questions for the person that filed the
17 objection or opposition to the application.

18 CHAIRPERSON JORDAN: No. No.
19 Office of Planning.

20 MS. BATTIES: Oh, no. Oh, I'm
21 sorry. No. Not to the Office of Planning.

22 CHAIRPERSON JORDAN: Okay. Ms.

1 Moldenhauer?

2 MS. MOLDENHAUER: I do. I was
3 just -- I thought that the Applicant was going
4 to --

5 CHAIRPERSON JORDAN: You know
6 where we are. Come on. Let's not --

7 MS. MOLDENHAUER: I do.

8 CHAIRPERSON JORDAN: Yes.

9 MS. MOLDENHAUER: So Office of
10 Planning is indicating that, because the
11 Applicant built a deck without a permit, after
12 the regulations went into effect, that that's
13 exceptional?

14 MS. THOMAS: No. I -- I -- I
15 stated nothing to the effect of her building
16 it after a permit or before a permit. I'm
17 stating that the lot occupancy on the site
18 doesn't provide an area, and the Applicant is
19 using the roof deck, as they built it, to --
20 as part of their business to exercise the
21 dogs.

22 MS. MOLDENHAUER: But let's say,

1 on that -- I'm just confused by that because,
2 so let's say that they had a lot occupancy
3 that was 60 percent. And then they had a rear
4 yard. Based on the zoning and the special
5 exception language, they could not use their
6 rear yard. So how does that make it
7 exceptional?

8 MS. THOMAS: They would certainly
9 be entitled to provide -- I can't speculate on
10 what their reason would be.

11 CHAIRPERSON JORDAN: I kind of
12 thing, Ms. Moldenhauer, that we're all in on
13 this question. Unless you have another way.
14 Because I think her response to it three
15 different ways or four different ways have
16 been kind of the same. And you understand.
17 You can ask it again. But if you think you
18 have another way of getting to it. But I
19 think her response it what her response was.

20 MS. MOLDENHAUER: Then let me ask
21 a question in regards to -- has the Office of
22 Planning taken into consideration the effect

1 on the special exception condition in regards
2 to noise and odor and waste that would be
3 disposed of from the use of an exterior -- the
4 use of this roof deck?

5 MS. THOMAS: I think the Applicant
6 has addressed that in the special exception.
7 The roof deck -- the use of the roof deck is
8 no different from how they would remove waste
9 from the rest of the building.

10 MS. MOLDENHAUER: Well, I actually
11 have another question about that. But the
12 regs actually say that there has to be sound
13 proofing and the applicant said that they
14 satisfy that standard by sound proofing. And
15 then the regs say there has to be a heppa
16 infiltration -- an air filter. How can they
17 do that on an outdoor area?

18 MS. THOMAS: That's for a closed -
19 - that's for the closed area where they keep
20 the dogs. Where the dogs are boarded. And
21 this is not an area where they would keep doge
22 or board the dogs.

1 MS. MOLDENHAUER: So you're trying
2 to make a difference between the word keeping
3 and boarding?

4 MS. THOMAS: Keep and board are --
5 they are similar. That's not an area where
6 they keep the dogs for any extended length of
7 time. But I don't know how you would air
8 condition an outdoor facility.

9 MS. MOLDENHAUER: All right.

10 MS. THOMAS: I've never seen that.

11 CHAIRPERSON JORDAN: And I don't
12 think that the regs actually require about the
13 out doors. It's talking about the indoors.
14 So let's go on.

15 MS. MOLDENHAUER: Has Office of
16 Planning considered the negative impact on the
17 intent and purpose of the zone plan, if they
18 were to approve or the fact that they've
19 recommended approval for a special exception
20 where the Applicant had constructive knowledge
21 of the text amendments of the Prass BZA case
22 and history and now is seeking to use that as

1 leverage for applying for an after-the-fact,
2 after many many years of use -- do they have
3 a concern about how that's going to affect the
4 intent and purpose of the zone plan and zoning
5 regulations?

6 MS. THOMAS: No. That's not the
7 subject of this application. And I don't --

8 CHAIRPERSON JORDAN: Ask that
9 question again?

10 MS. MOLDENHAUER: I asked the
11 special exception standard is absolutely part
12 of this application. And the subject --

13 CHAIRPERSON JORDAN: Ask the
14 question again please.

15 MS. MOLDENHAUER: I'm just trying
16 to clarify because I was just trying to make
17 sure --

18 CHAIRPERSON JORDAN: I need the
19 question so I can determine what's -- go
20 ahead.

21 MS. MOLDENHAUER: Had OP
22 considered how it would effect the purpose and

1 intent of the zone plan by granting a special
2 exception approval to an owner who had
3 constructive knowledge of the text amendment
4 and of the regulations when they expanded a
5 use?

6 ZC COMMISSIONER TURNBULL: Mr.
7 Chair, that would presume that OP has
8 knowledge of the owner's thoughts and what's
9 going on. I don't know if they could answer
10 that.

11 CHAIRPERSON JORDAN: I really
12 don't get the question. And let's move on to
13 the next one because I'm going to say that's
14 out of order. Let's go to the next one.
15 Thank you, Mr. Turnbull. I agree with you.

16 MS. MOLDENHAUER: Is -- did Office
17 of Planning speak with any of the individuals
18 in the neighborhood regarding any of their
19 concerns about barking or noise?

20 MS. THOMAS: I do believe that the
21 -- the specialist who did work on this
22 application did talk to -- from the notes I'm

1 seeing, did talk to a couple people with
2 respect to that.

3 MS. MOLDENHAUER: All right.
4 Thank you.

5 CHAIRPERSON JORDAN: Any other
6 questions?

7 MS. MOLDENHAUER: Not at this
8 time. No.

9 CHAIRPERSON JORDAN: Okay. Then
10 do we have anyone here from the Department of
11 Transportation? We do have a letter from
12 Department of Transportation with no
13 objections. Do we have someone here from ANC-
14 2F? We do have a letter from ANC-2F with
15 conditions -- supporting the application with
16 conditions. All right. Is there anyone in
17 the audience here wishing to testify in
18 support? We do have 58 letters that's been
19 already submitted with the exhibit in support.
20 And then Mr. Richard Clug.

21 MS. MOLDENHAUER: Chairman Jordan,
22 I just realized that, because you were kind of

1 taking the initial portion of the presentation
2 out of order, I never got a chance to cross
3 Mr. Sher, who did testify.

4 CHAIRPERSON JORDAN: Well, I gave
5 you the opportunity to cross examine the
6 Applicant. So whatever that was was with
7 that. But I'll give you that -- well, I gave
8 you the opportunity to cross examine the
9 Applicant. And you directed your -- you
10 decided to direct it to Ms. Schreiber.

11 MS. MOLDENHAUER: Schreiber.

12 CHAIRPERSON JORDAN: So we've
13 crossed that road. Let me now have anybody
14 who is willing to testify in support please.
15 And please identify yourself.

16 MR. PROCTOR: My name is Geoffrey
17 Proctor and I used to live right next door and
18 well, 1240 9th Street, less than 200 feet from
19 Wagtime.

20 CHAIRPERSON JORDAN: Okay.

21 MR. PROCTOR: This has been going
22 on for some time. And I can tell you right

1 now --

2 CHAIRPERSON JORDAN: What's been
3 going on for some time?

4 MR. PROCTOR: The issue with this
5 zoning thing. And I can tell you, personally,
6 living in 1240 9th Street for six years. for
7 a long time, I didn't have air conditioning
8 and I slept with my windows open, even in the
9 summer time. And I went through an extended
10 period of medical treatment. And I never once
11 had a problem with the smells or dogs barking
12 or anything like that. The individual that's
13 -- Mr. Horvath, he lives almost in a straight
14 line, probably about 500 feet away. And if
15 you had to follow the contours of the alley,
16 probably a little bit more than that. If
17 anyone has a cause for complaint, it would be
18 me. And I have had no issues, whatsoever, as
19 far as smells, objectionable or otherwise.
20 No, nothing. I just don't -- I don't see
21 where there's a problem with it, as far as --
22 and I was living, I mean, 50 feet in a direct

1 line. And my windows were in that direct
2 line. And I never had one issue one with it.
3 But I will also make a statement also, the
4 individual who filed a complaint -- they dug
5 a hole in the back of an alley and left it for
6 over a year.

7 MS. MOLDENHAUER: Relevance?

8 CHAIRPERSON JORDAN: Yes. Let's
9 just talk about this application.

10 MR. PROCTOR: Okay. Well, it was
11 a public nuisance, as far as what he did.
12 But, as far as -- as far as Wagtime, not a
13 public nuisance at all. If anything, they add
14 to the value of the neighborhood.

15 CHAIRPERSON JORDAN: Okay. Thank
16 you. Is there anybody else here to testify in
17 support of this application? Then let's turn
18 now to the party in opposition for their
19 evidence.

20 MS. MOLDENHAUER: As indicated
21 earlier, I represent the party in opposition.
22 And, in that regard, the Applicant -- or the

1 party in opposition is in opposition to the
2 Applicant's request for a special exception
3 for animal boarding, pet grooming, and animal
4 shelter at 1232 9th Street. In addition to
5 those reliefs, the Applicant is also now
6 seeking for, as we would deem them, use
7 variances. And the burden of showing that
8 proposal meets the requirements enumerated in
9 the particular special exception standard
10 rests with the Applicant. We submit that the
11 Applicant has failed to satisfy their burden
12 of proof to satisfy both the special exception
13 standards and the higher standard for the
14 variance relief.

15 Special exceptions are allowed on
16 an otherwise restricted zone district, so long
17 as the owner can show that they comply with
18 the pre-determined conditions that the Zoning
19 Commission and Office of Planning have
20 determined would mitigate any adverse effects
21 on the neighboring property owners, local
22 area, and general purpose and integrity of the

1 zone plan and Zoning regulations. There is
2 nothing in the regulations that specifically
3 say that this language is to mitigate
4 anything for residential purposes or anything
5 as actually goes. And the special exception
6 standard goes towards adjacent, abutting,
7 neighboring property owners.

8 There has been many cases where a
9 commercial establishment, you know, such as
10 the M Street Follies case, had challenges of,
11 you know, another commercial establishment.
12 Just because this is not a residential use, in
13 regards to some of the concerns here, it does
14 not mitigate those claims and the concerns
15 that are presented by the party in opposition.

16 In the Zoning Commission text
17 amendment hearing, Chairman Mitten indicated
18 that the purposes of having this special
19 exception standard would be so that they would
20 be able to implement those requirements and
21 have it in regards to air filtration, waste
22 removal, sound proofing, to provide an easier

1 understanding for the BZA as to what things to
2 focus on when trying to grant that relief.

3 They also indicated that it would put the
4 burden on the business owner to commence that
5 process at the beginning, rather than trying
6 to deal with that on an enforcement level.

7 There are cases which indicate
8 that it is the business owner's responsibility
9 and obligation to obtain the proper
10 certificates of occupancy and to operate their
11 establishment in accordance with the
12 regulations. Granting this special exception
13 and variance application here would have a
14 significant negative impact on the purpose and
15 integrity of the zone plan.

16 In recent history, the Board has
17 hear many cases regarding unlawful uses or
18 illegal construction and OP, in most of those
19 instances, actually recommended denial because
20 of the potential public policy implications
21 that it might have. And in those instances
22 where the Board potentially found the

1 opportunity to grant those, they usually had
2 very specific questions to the Applicant about
3 good faith and about detrimental reliance and
4 about how that satisfies potentially the
5 practical difficulty.

6 And here, the Applicant cannot
7 show good faith or lack of constructive
8 knowledge of the zoning regulations. For
9 instance, in AMM Holdings, the Board found
10 that the owner had good faith because he was
11 a Virginia developer and had never done the
12 type of work before. Here the Applicant had
13 done the exact same thing on Q Street; came
14 before the Board in '04; had a decision that
15 clearly said no pet shop; you have to identify
16 it as dog grooming. And then went out and
17 sought a C of O two months later for a pet
18 shop. And then operated that under the
19 claimed belief that it's grandfathered. And
20 then expanded that use, without ever going and
21 coming and getting a 2001, you know, expansion
22 of a non-conforming use.

1 In Myers, the Board also -- it was
2 a case in which the Board identified the owner
3 as an innocent owner. In Murphy, the -- and
4 again, this was where condo owners -- this
5 was, you know, bought a property and the
6 developer had fled the scene and there was no
7 C of O. The Office of Planning in that case
8 specifically quoted and said in that case
9 there was a bad actor involved which is not
10 the Applicant in that case. Here, they are
11 one and the same. You're talking about the
12 Applicant who started the business; who's mom
13 and dad bought the property; who then did the
14 improvements; and is now trying to use that as
15 an exceptional circumstance or as reason to
16 obtain this special exception approval all of
17 these, you know, years later.

18 The -- granting the application
19 would pose a threat to the community based on
20 noise, odor, and it would harm and threaten
21 the integrity. We believe that there is
22 evidence before the Board that the Applicant

1 does not satisfy the standard in regards to
2 knowledge of the business owner and knowledge
3 when the deck was built and installed. And
4 that it would create a bad precedent. Right
5 now, I'm going to turn to the applicant to
6 provide a brief statement to the Board.

7 CHAIRPERSON JORDAN: Thank you.

8 MS. MOLDENHAUER: And the party in
9 opposition.

10 MR. BEHESTIAN: Yes. My name is
11 George Behesthian. My wife's name is (wife's
12 name not provided and not pronounceable.) And
13 I'm representing -- representing her in that
14 case also. We moved -- bought the property in
15 1230 9th Street adjacent to the Wagtime back
16 in September 20, 2006. And the location was
17 new and it would be a great for the restaurant
18 when we look at it. And the first time we
19 purchased it, it was an upcoming you know,
20 property. We own a restaurant in Georgetown
21 for 22 years. And we try to get this new
22 location right in front of commercial center,

1 and we anticipated we're going to move from
2 the Georgetown to this location.

3 Unfortunately, we closed the restaurant six
4 months ago, but we have -- we were involved
5 with a big litigation with the lot. See Mr.
6 Schroble then is their father and mother,
7 regarding to their lot. Because of that, the
8 unresolved dispute, we've been unable to you
9 know, go forward with the renovations. And we
10 -- first we purchased the liquor license this
11 year after that. It means we purchased the
12 license in March '07. And we still -- we had
13 the license and the Wagtime submitted that
14 referred to the rats and, unfortunately we --
15 we tried to do our best as we can to keep it
16 clean and neat. And we maintained it
17 according to law.

18 For opening the restaurant in our
19 property required sufficient renovations. And
20 we cannot finalize it until the litigation is
21 over. However, we are facing with the
22 concerns with the -- regarding to the

1 continuing of their property for violation of
2 the next door adjacent buildings for outdoor
3 grooming and -- and room and board. And we
4 are very optimistic opening the restaurant in
5 this location. We've even paid and obtained
6 the liquor license, as I mentioned to you
7 guys. And we tried to be good assets to the
8 neighborhood and community. We are a very
9 high end restaurant in Georgetown also, we
10 were.

11 And we -- well we have a major
12 concern about the Wagtime request for the
13 relief. You consider it along with many of
14 the current residents with the area about --
15 about the noise and odor and waste products,
16 by the pet grooming and boarding and the
17 animal sheltering next door. And the various
18 relief for uses of the outdoor space is a
19 particularly worry to us. While we are not
20 -- we are not all the time in that sections,
21 we are -- we are well aware about the
22 determined -- the requirement of the zoning

1 relief in our restaurants.

2 I understand that the zoning
3 regulation stated animal boarding, housing,
4 and pet grooming establishment are not
5 typically permitted in this zone, but can be
6 allowed by special exception. But external
7 yard or other external facility for keeping of
8 animals shall not permit it.

9 The Applicant -- the Applicant say
10 for varies from provisions, they wish to put
11 a dog not on the lower grassy level, but they
12 want to put it in their wooden deck in the
13 top. A dog outside is generally a concern to
14 me, but because let me explain the proposal
15 situation is even more worry to us in this
16 locations. The elevated deck is allowed the
17 dog to barking and howling to travels further
18 longer the area. The dog will, time to time,
19 relieve themselves. And then this is not the
20 grass to absorb it. Have to wash it with the
21 hose. And that would create a bad odor and
22 then is not -- well, is not a health concern.

1 Furthermore, the plans shows the
2 third floor as residential, but they use it as
3 a smaller dog boarding with the outside patio
4 on there. They are not entitled to outdoor
5 space and they built the deck after the new
6 zoning regulations. And they are trying to
7 use the deck for the reason for the Board to
8 give -- grant them relief. And the Wagtime
9 has used their exterior ground level for the
10 washing dogs. Created a health hazard to my
11 property because I'm adjacent to that
12 building. And also, I am putting the roof
13 cafe down in the sections would be like the
14 same level as their deck. And it is hazardous
15 to our customers or clientele. And also, they
16 have used the vacant lot next to them, as she
17 mentioned, for three years. And that is
18 against the zoning regulations.

19 I'm trying to be good neighbors,
20 but this situation concerns me with the future
21 restaurant I'm going -- I'm trying to build
22 up. But I'll work on all those regulations

1 and zoning and am waiting for a permit to come
2 because of the dispute we have. That's all.

3 CHAIRPERSON JORDAN: Is here
4 anything else you want to present?

5 MS. MOLDENHAUER: Yes. We have
6 another witness.

7 CHAIRPERSON JORDAN: Okay.

8 MS. MOLDENHAUER: Do you have -

9 CHAIRPERSON JORDAN: Okay. Go
10 ahead.

11 MS. MOLDENHAUER: Can you state
12 your name for the record?

13 MR. DUPONT: My name is Steven
14 Dupont.

15 MS. MOLDENHAUER: And Mr. Dupont,
16 can you describe what your background is?

17 MR. DUPONT: I'm an architect.

18 MS. MOLDENHAUER: Have you been
19 before this Board in the past?

20 MR. DUPONT: Yes.

21 MS. MOLDENHAUER: How many time,
22 about?

1 MR. DUPONT: Oh, three to five,
2 over many years.

3 MS. MOLDENHAUER: Can you
4 elaborate a little bit more on your
5 background?

6 MR. DUPONT: I have been an
7 architect, registered, since 1984 in the
8 District of Columbia. I used to work for
9 David M. Swartz, Architectural Services. I've
10 been a contractor. I've been a carpenter.
11 And I've been in various partnerships or self-
12 employed as a design builder and an architect
13 since 1988.

14 MS. MOLDENHAUER: Are you licensed
15 in the District of Columbia as an architect?

16 MR. DUPONT: Yes.

17 MS. MOLDENHAUER: I'd like to
18 proffer Mr. Dupont as an expert.

19 CHAIRPERSON JORDAN: In what?

20 MS. MOLDENHAUER: In architecture.

21 CHAIRPERSON JORDAN: Go on.

22 MS. MOLDENHAUER: Are you familiar

1 with George's property at 1230 9th Street?

2 MR. DUPONT: I am.

3 MS. MOLDENHAUER: And how did you
4 become familiar with that property?

5 MR. DUPONT: I am his architect.

6 MS. MOLDENHAUER: And you
7 understand his intentions to build a
8 restaurant --

9 CHAIRPERSON JORDAN: Let's --
10 let's -- we haven't made a formal declaration
11 of --

12 MS. MOLDENHAUER: Oh, you haven't
13 made a formal declaration? Okay. Sorry. Mr.
14 Jordan, I'll wait.

15 CHAIRPERSON JORDAN: Does the
16 Board have any issues with Mr. Dupont being
17 accepted? We will do so. Please proceed. We
18 will accept him.

19 MS. MOLDENHAUER: You've been
20 working with Mr. Behestian with the property
21 for how long?

22 MR. DUPONT: Since January of '07.

1 MS. MOLDENHAUER: During that
2 time, have you become familiar with Wagtime's
3 property, which is adjacent to it?

4 MR. DUPONT: Certain aspects of
5 it. Yes.

6 MS. MOLDENHAUER: Have you ever
7 had a chance to inspect the property,
8 Wagtime's property -- the Applicant's
9 property?

10 MR. DUPONT: When we did an
11 underpinning that abutted -- that involved the
12 party wall between the two properties, I was
13 in the Wagtime's building to photograph the
14 surfaces of the interior wall at the basement
15 and first floor.

16 MS. MOLDENHAUER: Okay.

17 MR. DUPONT: For future reference,
18 in case any problems occurred.

19 MS. MOLDENHAUER: So when you
20 first inspected the property for underpinning,
21 what year was that? Was that '07?

22 MR. DUPONT: Oh, I -- it's late

1 '07 or '08. I forget. It was '08, I think.

2 MS. MOLDENHAUER: And, when you
3 went in, what were they using the property for
4 and what portions of the property were they
5 using?

6 MR. DUPONT: They were using the
7 ground floor. I think there was a kind of a
8 retail function at the front. And in the back
9 they had the dogs all in a large space. There
10 was a garage door back there, opening onto the
11 alley and they had a kind of a low barrier
12 there to keep the dogs inside when the weather
13 was good.

14 MS. MOLDENHAUER: And I mean, you
15 went back in '08 for a party wall inspection?

16 MR. DUPONT: Prior to
17 underpinning.

18 MS. MOLDENHAUER: Prior to
19 underpinning. How much of the space was being
20 used at that point?

21 MR. DUPONT: The same.

22 MS. MOLDENHAUER: And have you

1 taken a look at their plans in conjunction
2 with this application?

3 MR. DUPONT: Yes. Well, what I
4 can get of them.

5 MS. MOLDENHAUER: And they are
6 currently proposing to use how much of the
7 space?

8 MR. DUPONT: I don't know about
9 the basement, too much. I imagine that's just
10 for storage and utilities. They're using the
11 whole first floor. They're using the second
12 floor. And they have a roof deck indicated on
13 the second floor. The basement area shows a
14 play area. And the second floor shows a deck.

15 MS. MOLDENHAUER: Do their plans
16 even show a roof deck or outdoor facility
17 which has been a large portion of this
18 discussion on the second floor roof?

19 MR. DUPONT: This plan shows a
20 deck on the second floor roof. Yes.

21 MS. MOLDENHAUER: Now where is it?

22 MR. DUPONT: This is -- oh, I'm

1 sorry. No, it does not.

2 MS. MOLDENHAUER: But actually it
3 would be -- it's the only way we qualify -- it
4 would be the first floor's roof on the second
5 floor. Do the plans show --

6 MR. DUPONT: There is no deck
7 shown for the first floor roof, serving the
8 second floor.

9 MS. MOLDENHAUER: And for the
10 third floor, have you visually seen the
11 current deck that's there?

12 MR. DUPONT: Yes.

13 MS. MOLDENHAUER: And do the plans
14 comply with what's visually build there?

15 MR. DUPONT: No. This plan is for
16 a much larger installation -- much more of a
17 residential looking sort of installation.

18 MS. MOLDENHAUER: And the current
19 -- how would you describe the current -- and
20 now we're talking about the top third floor,
21 which is the deck on top of the second floor
22 roof -- how would you describe what's

1 currently there? Is that -- how would you
2 describe that, architecturally?

3 MR. DUPONT: Well, it's a --
4 essentially, it's a cage.

5 MS. MOLDENHAUER: So it would no
6 be, in your opinion, for residential purposes?

7 MR. DUPONT: No. It's not
8 appropriate for that.

9 MS. MOLDENHAUER: And, as an
10 architect, you have occasion to calculate FAR?

11 MR. DUPONT: Yes.

12 MS. MOLDENHAUER: And if the top
13 floor was being used for commercial purposes,
14 would this property exceed the FAR
15 requirement?

16 MR. DUPONT: I think very likely.

17 MS. MOLDENHAUER: Have you had a
18 chance to go down and look to see if the
19 Applicant has a certificate of occupancy for
20 the residential third floor?

21 MR. DUPONT: Well, the most recent
22 C of O does not show that.

1 MS. MOLDENHAUER: So is there any
2 record of the residential unit having a
3 certificate of occupancy for residential
4 purposes?

5 MR. DUPONT: I couldn't find any.

6 MS. MOLDENHAUER: Do you have, in
7 the course of your interaction with the party
8 in opposition, had you --

9 CHAIRPERSON JORDAN: The party in
10 opposition?

11 MS. MOLDENHAUER: The party in
12 opposition. Yes.

13 CHAIRPERSON JORDAN: Oh, yes. The
14 party in opposition. Okay.

15 MS. MOLDENHAUER: Yes. Our party.
16 Had you ever -- did you see or have any
17 documentation of when the deck was being
18 installed?

19 MR. DUPONT: I'm sorry. What?

20 MS. MOLDENHAUER: Did you ever
21 have the chance to see when the deck was being
22 installed?

1 MR. DUPONT: No. I didn't see it
2 when it was being installed.

3 MS. MOLDENHAUER: Did you take any
4 pictures of potentially as it was starting to
5 be installed?

6 MR. DUPONT: I did -- very early
7 on, there were fence pipes being set on the
8 second -- on the roof of the first floor.
9 Yes.

10 MS. MOLDENHAUER: And that was in
11 '09?

12 MR. DUPONT: That was in -- I
13 think it was September of '09, I think.

14 MS. MOLDENHAUER: All right. And
15 you've reviewed the permits for the property
16 for Wagtime's property?

17 MR. DUPONT: Briefly, yes.

18 MS. MOLDENHAUER: And there are no
19 building permits for that deck that you've
20 been able to find?

21 MR. DUPONT: I glanced through the
22 PIV and I didn't see anything for that. No.

1 MS. MOLDENHAUER: Did you have a
2 chance to look at the -- Applicant submitted
3 kind of some detailing of their inner plan --

4 MR. DUPONT: Yes.

5 MS. MOLDENHAUER: A description of
6 how they built the deck and their costs
7 associated with that. When you reviewed that,
8 were there any questions that came into your
9 mind in regards to how they were summarizing
10 the costs?

11 MR. DUPONT: Well, they -- I
12 understand that the claim of the cost is
13 something close to \$40,000. But in the data
14 itemization, about a third of it actually is
15 for ground floor fencing.

16 MS. MOLDENHAUER: And the
17 materials that they used, as an architect, you
18 understand how materials are affected by
19 specific uses or the environment. Their
20 submission indicates what material was being
21 used as for the deck on the second floor/

22 MR. DUPONT: Those are 16 inch

1 square concrete pavers. I think they must be
2 concrete. They look like concrete.

3 MS. MOLDENHAUER: And, in your
4 expert opinion, how would concrete be affected
5 by using it for dogs and in regard to smells
6 and odors?

7 MR. DUPONT: It's very porous. It
8 would tend to absorb things.

9 MS. MOLDENHAUER: So can you
10 elaborate on that?

11 MR. DUPONT: Well, I mean, you
12 can't keep the dogs from relieving themselves
13 on the surface. And it's going to go between
14 the cracks because that's the way that
15 particular surface is designed to work. So
16 it's on the pavers. It's below the pavers on
17 the roof. It's in the guttering system. And
18 there's no way to successfully collect
19 everything. It's going to be getting into all
20 the pores of the various materials.

21 MS. MOLDENHAUER: And so, over --

22 MR. DUPONT: And being absorbed.

1 MS. MOLDENHAUER: I'm sorry. Let
2 me finish. Are you finished?

3 MR. DUPONT: Yes.

4 MS. MOLDENHAUER: Over time, is
5 the smell going to get worse and worse because
6 of the continued waste or animal urine that's
7 going to be absorbed into the deck?

8 MR. DUPONT: Probably. Yes.

9 CHAIRPERSON JORDAN: Let's start
10 to wrap it up. We're at your time limit.

11 MS. MOLDENHAUER: I have to go
12 through my questions.

13 CHAIRPERSON JORDAN: No, you
14 don't. We need to get to when we're going to
15 wrap this up.

16 MS. MOLDENHAUER: Were there any
17 other issues -- Actually, I think I am almost
18 finished. I just wanted to make sure I've
19 identified all the issues. Was there anything
20 else that you recognized in regards to
21 reviewing the construction of the deck from
22 visually reviewing it? Any concerns?

1 MR. DUPONT: Well, from reviewing
2 the documents, it seemed like it was very
3 carefully designed and estimated and all of
4 that. And it certainly would have required a
5 building permit to be included in the previous
6 permit.

7 MS. MOLDENHAUER: No other
8 questions at this time for Mr. Dupont.

9 CHAIRPERSON JORDAN: Does the
10 Board have any questions of the party in
11 opposition?

12 ZC COMMISSIONER TURNBULL: I just
13 have a question for Mr. Dupont. Mr. Dupont,
14 did you measure the facility?

15 MR. DUPONT: So you're --

16 MR. DUPONT: Do you mean measure
17 it with a tape measure and go onsite?

18 ZC COMMISSIONER TURNBULL: Right.
19 Well, I just want to make sure. Your
20 statements regarding FAR --

21 MR. DUPONT: I have no
22 measurements --

1 ZC COMMISSIONER TURNBULL: -- are
2 estimates or guesstimate. They're not actual
3 measurements?

4 MR. DUPONT: That's correct.

5 ZC COMMISSIONER TURNBULL: Okay.

6 Thank you.

7 CHAIRPERSON JORDAN: Any other
8 questions of the Board to the party in
9 opposition? Does the Applicant have any cross
10 examination?

11 MS. BATTIES: Yes, we do.

12 CHAIRPERSON JORDAN: Okay.

13 MS. BATTIES: First, for Mr.
14 Behestian.

15 CHAIRPERSON JORDAN: If you're
16 doing a cross examination -- well. let's put
17 the cross examination at five minutes and see
18 if there's any need to go beyond that.

19 MS. BATTIES: Okay. You said that
20 you purchased the property in September of
21 2006, correct?

22 MR. BEHESTIAN: Yes, ma'am.

1 MS. BATTIES: And, prior to the
2 purchasing of the property, did you go to the
3 site and look at the area?

4 MR. BEHESTIAN: Yes.

5 MS. BATTIES: Did you see that
6 Wagtime was in operation?

7 MR. BEHESTIAN: Yes.

8 MS. BATTIES: And knowing the
9 existing use of Wagtime site, 1232 9th Street,
10 you decided to purchase the building anyway?

11 MR. BEHESTIAN: Yes. We checked
12 the zoning. The zoning says just a shot -- an
13 animal shop. They sell the dog's merchandise,
14 not boarding or whatever like that. We don't
15 have such a thing because I purchased the lot
16 they used to have outside patio. We
17 purchased that one same time. It means they
18 didn't have that one at all. The only was it
19 was inside.

20 MS. BATTIES: Okay. And when you
21 purchased the property, you recognized that
22 animal boarding, pet shelters, what have you,

1 were permitted in the zoning district as
2 special exceptions?

3 MR. BEHESTIAN: No.

4 MS. BATTIES: Well, they are.
5 Your property is currently under construction.
6 Correct?

7 MR. BEHESTIAN: Yes.

8 MS. BATTIES: And how long has it
9 been under construction?

10 MR. BEHESTIAN: We are in
11 litigation for seven years with their father
12 and mother for the same property, since '0 --
13 since '08.

14 MS. BATTIES: So you -- or you've
15 never had a tenant in the building. Is that
16 correct?

17 MR. BEHESTIAN: No. The tenant --
18 I'm the tenant. Is Memaw's Restaurant, which
19 should be the tenant.

20 MS. BATTIES: Okay. And so then,
21 on what basis are you claiming that you are
22 being adversely impacted by Wagtime's uses,

1 given that you've never occupied the space?

2 MR. BEHESTIAN: If Wagtime, they
3 did all illegal permitting. I didn't want to
4 do illegal permitting in making a restaurants.
5 I'll go by the books. I don't just go --

6 MS. BATTIES: I'm saying, based on
7 the criteria in the zoning regulations for --

8 MS. MOLDENHAUER: I believe it's
9 basically he's the owner of the property next
10 door. And I believe that that would be the
11 answer.

12 MS. BATTIES: But look at the
13 criteria we're supposed to mitigate. Noise,
14 odor -- my question to you is, if you've never
15 occupied this space; you've never had a
16 restaurant there; you never had customers
17 there; how are you able to determine what
18 impact Wagtime's use has on your property?

19 MR. BEHESTIAN: It impacts on they
20 didn't have outside that time. They didn't
21 have no roof. They didn't have no outside.
22 And that's why there was no odor that time.

1 And we went to the Board for the Liquor
2 Boards. We get the liquor license also. It
3 means we have the liquor license since March
4 '07.

5 MS. BATTIES: But you don't have
6 anybody -- you're not using your property now.
7 Correct?

8 MR. BEHESTIAN: Because of middle
9 of litigation right now.

10 MS. BATTIES: So you are not
11 adversely impacted by any of the impacts
12 generated by their use?

13 MR. BEHESTIAN: Our concern is the
14 future because we are adjacent to the same
15 building with the same roof cafe next to the
16 deck for the dog.

17 MS. BATTIES: Okay. So it's
18 speculative. I mean, that's okay. And let me
19 ask you, why would your restaurant use be
20 affected any differently than the gallery next
21 door or the restaurant directly across the
22 alley?

1 MR. BEHESTIAN: The gallery next
2 door, they have all their functions afternoon
3 and also they do outside. It's my concerns
4 I'm right just next door -- just the same --
5 same roof, just like in one minute.

6 MS. BATTIES: But there's nothing
7 there. Correct?

8 MR. BEHESTIAN: Now, it's not
9 there. But eventually it will be there, a
10 roof cafe.

11 MS. BATTIES: Okay. And then I
12 have a few questions for Mr. Dupont. You said
13 that -- well, you do realize that the third
14 floor and the deck that you referenced is not
15 part of the applicant? The part of this BZA
16 application?

17 MR. DUPONT: Yes. Apparently not.

18 MS. BATTIES: Okay. And you had
19 indicated that there is no C of O for the use
20 of the third floor for residential use. Is
21 that correct?

22 MR. DUPONT: I couldn't find a

1 residential C of O for that property.

2 MS. BATTIES: Right. Is there
3 indication that there's a C of O or they've
4 applied for permits to use it for anything
5 other than residential use?

6 MR. DUPONT: No. I don't think
7 so.

8 MS. BATTIES: Okay. As an
9 architect, you said you did review the plans
10 and the correspondence that were prepared or
11 submitted as part of our pre-hearing
12 statement?

13 MR. DUPONT: I've seen a very
14 truncated set of plans.

15 MS. BATTIES: All right. And
16 would you say, given the type of work that was
17 done and discussed in that correspondence with
18 the Applicant and their architect, would you
19 say that it's the type of work -- you
20 mentioned that it's the type of work that
21 would normally require an applicant to pull
22 building permits. Correct?

1 MR. DUPONT: The roof deck?

2 MS. BATTIES: Yes.

3 MR. DUPONT: Absolutely.

4 MS. BATTIES: And is it normally
5 the case that the architect or the contractor
6 for a project would pull the permits? Or --

7 MR. DUPONT: Or an expeditor.

8 MS. BATTIES: Or an expeditor.
9 But it would not generally be the business
10 owner or a property owner? Correct?

11 MR. DUPONT: True.

12 MS. BATTIES: Okay. And so, is it
13 your opinion that the architect should have
14 pulled the permits for that work?

15 MR. DUPONT: Most architects
16 don't. I do.

17 MS. BATTIES: Okay. Okay. No
18 further questions.

19 CHAIRPERSON JORDAN: Okay. All
20 right. Then is there anyone else in the
21 audience wishing to speak in opposition to
22 this application? Yes, please. Come forward

1 and identify yourself. Wait. Did you get
2 sworn in this morning?

3 MR. DORATSHAN: But I did submit
4 my name.

5 CHAIRPERSON JORDAN: Yes. But did
6 you get sworn in too?

7 MR. DORATSHAN: No, I have not.

8 CHAIRPERSON JORDAN: Let's do
9 that, Mr. Moy.

10 MR. DORATSHAN: But my name is
11 Raymond Doratshan.

12 CHAIRPERSON JORDAN: Mr. Moy,
13 would you please?

14 MEMBER MOY: Yes, Mr. Chairman.
15 Sir, do you solemnly swear or affirm that the
16 testimony you are about to present in this
17 proceeding is the truth, the whole truth, and
18 nothing but the truth?

19 MR. DORATSHAN: I do.

20 MEMBER MOY: Thank you, sir.

21 CHAIRPERSON JORDAN: Please come
22 and take a seat and identify -- make sure --

1 is his microphone on, Ms. Moldenhauer?

2 MS. MOLDENHAUER: Yes.

3 CHAIRPERSON JORDAN: His
4 microphone? Okay. Please scoot up to the
5 microphone. And you have three minutes.

6 MR. DORATSHAN: Raymond Doratshan.
7 I happen to be a contractor, a structural
8 designer, and a city planner. I used to work
9 for the city of New York as a research
10 analysis.

11 CHAIRPERSON JORDAN: Do you live
12 around the property?

13 MR. DORATSHAN: I've been living
14 here for almost 30 years

15 CHAIRPERSON JORDAN: What's here?
16 Where do you live?

17 MR. DORATSHAN: But not -- not
18 adjacent to the property. No. I live in 2122
19 Mass Avenue -- Massachusetts Avenue, N.W.

20 CHAIRPERSON JORDAN: Okay. What
21 are you going to testify about?

22 MR. DORATSHAN: George approached

1 me in --

2 CHAIRPERSON JORDAN: George?

3 MR. DORATSHAN: Behestian, his
4 wife, for the location that they purchased.
5 I made an expedition regarding the status of
6 Wagtime. When we tried to expedite the nature
7 of the business, the certificate of occupancy
8 indicated it was a pet boutique, as opposed to
9 a -- a boarding or rooming or grooming. And
10 that's why the property was purchased, in
11 order to have Fino's Italian Restaurant to be
12 transferred to the existing property, which is
13 under construction. The crux of my
14 perspective is that based on my expedition,
15 that is factual and is on the record, the
16 certificate of occupancy for the Wagtime was
17 none other than a pet boutique. In
18 retrospect, he was at ease in order to proceed
19 with the purchase of the property.

20 CHAIRPERSON JORDAN: Okay. Have
21 you got anything else for us here today?

22 MR. DORATSHAN: No, sir.

1 CHAIRPERSON JORDAN: All right.
2 Thank you. Is there anyone else who wishes to
3 testify in opposition? The we'll turn it back
4 to the Applicant for any brief rebuttal and
5 closing. Have you got a question?

6 MEMBER SORG: Oh yes.

7 CHAIRPERSON JORDAN: Okay. Oh,
8 yes. Well turn it back to -- and I'll give it
9 a little bit more time and let's put seven
10 minutes on that clock. And then Ms. Sorg has
11 questions first, before you get to rebuttal.

12 MEMBER SORG: The only thing that
13 might make sense, in terms of crafting your
14 closing argument or rebuttal -- I'm not sure.
15 I have I think three questions.

16 CHAIRPERSON JORDAN: Oh, excuse
17 me. I'm sorry.

18 MEMBER SORG: Go ahead.

19 CHAIRPERSON JORDAN: I was
20 incorrect. Because I didn't give you the
21 opportunity to cross examine the --

22 MR. DORATSHAN: Raymond. Yes.

1 MS. BATTIES: Yes. Mr. Raymond,
2 in advising your clients about what -- where
3 they should locate their business, wouldn't it
4 be standard practice to look at all of the
5 zoning uses that would be permitted on a piece
6 of property, under the Zoning regulations?

7 MR. DORATSHAN: On this particular
8 piece of property was identified and George
9 asked me expedite only the nature of the
10 adjacent functions.

11 CHAIRPERSON JORDAN: You need to
12 be on a microphone please.

13 MR. DORATSHAN: Sorry. The
14 adjacent -- the function of the adjacent
15 property. In retrospect, I went to DCRA,
16 which I do go there on a regular basis.

17 MS. BATTIES: All right.

18 MR. DORATSHAN: And, based on the
19 expedition and that I found out that the
20 function of Wagtime was nothing but a pet
21 boutique -- it means that they -- they weren't
22 doing grooming, at least on a legal basis.

1 Nor boarding or other things that boarding and
2 grooming function does.

3 MS. BATTIES: Right. And my
4 question is, when you do your due diligence
5 for your clients, don't you look at the
6 breadth of uses that may be permitted on a
7 property? For example, you have properties
8 that are vacant.

9 MR. DORATSHAN: Sure.

10 MS. BATTIES: On the other side of
11 you. And there could be uses there that you
12 may -- Mr. Behestian may not like.

13 MR. DORATSHAN: I don't want to
14 say analogies are misleading. But the focus
15 was only on the adjacent property. So I
16 didn't go as far as determining the nature of
17 other premises. So the focus was only
18 Wagtime.

19 MS. BATTIES: Okay. Thank you.

20 CHAIRPERSON JORDAN: Okay. Ms.
21 Sorg? You wanted to ask questions of the
22 Applicant

1 MEMBER SORG: You know what? No.

2 CHAIRPERSON JORDAN: Okay. Ms.
3 Batties, do you want to give us a rebuttal and
4 wrap up in five?

5 MS. BATTIES: Sure.

6 CHAIRPERSON JORDAN: Actually,
7 three.

8 MS. BATTIES: Okay. The Applicant
9 acknowledges that the current use of the
10 property does not comply with the zoning
11 regulations and it is seeking special
12 exception approval for the three uses, the pet
13 grooming, animal shelter, and animal boarding
14 uses, as part of this application, as well as
15 the variance for use of the roof deck, in
16 order to obtain the necessary zoning approvals
17 and bring the property and the use of the
18 property under the District's regulatory
19 scheme.

20 It has been in operation at this
21 site for eight years. They've never received
22 a violation from the District for the use of

1 this operation. The District is well aware of
2 this site. It is a very visible business on
3 this section of 9th Street. And they actually
4 do business with the District. So it is not
5 as if no one knows that this operation and
6 business has been here.

7 The Applicant, while conceding
8 that it's not in operation -- or does not
9 comply with the zoning regulations, the
10 Applicant is not conceding as the objector has
11 suggested, that we're in the situation or the
12 Applicant is in this situation because of some
13 self-created hardship. Under the self-created
14 hardship rule, you have to demonstrate that
15 the Applicant went into the property or
16 started the business knowingly violating the
17 zoning regulations.

18 In this case, Ms. Scheiber has
19 testified that when she moved to the site in
20 2005, there were no zoning regulations in
21 effect with regard to the pet grooming, animal
22 shelter, and animal boarding uses. She

1 believed, based on her discussions with DCRA,
2 that those uses would be grandfathered on the
3 property. And there has not been any evidence
4 provided by the opposition that that was not
5 the case; that she did not know that. It's
6 illogical that the Applicant would expend 1.1
7 million dollars in renovations; purchase the
8 property for 1.2 million dollars; and believe
9 that the use and operation on the property was
10 not permitted. That just doesn't make any
11 sense.

12 The Applicant also testified --
13 I'm sorry. The Applicant also testified that
14 she did attempt to get a certificate of
15 occupancy for the expansion of the use into
16 the cellar and the second floor of the
17 building, but was told that she could not
18 because of the ongoing litigation.

19 If this were truly a case of them
20 trying to hide their business or circumvent
21 the regulations, they would not have attempted
22 to pull -- get a certificate of occupancy.

1 They would have not undergone all of the
2 renovations where they've pulled permits with
3 the District. So we would not concede or in
4 any way that this is a self created hardship.
5 We will acknowledge that the property needs to
6 be brought into compliance. These issues were
7 raised by the ANC and discussed at the ANC.
8 And at that point, everybody agreed that going
9 through this process was the best thing for
10 not only Wagtime but the neighborhood.

11 Wagtime, when they purchased this
12 property and began operations there eight
13 years ago, they were the only business on this
14 section of 9th Street. Right now, they're
15 only one of two businesses on this section of
16 9th Street. It is estimated that 1500
17 customers walk in and out of Wagtime's shop
18 1500 times per week. They employ 55 people,
19 45 of whom, I think approximately 45 of whom
20 are District residents. They are good
21 neighbors. They're good corporate citizens.
22 They're active in the community, as

1 demonstrated by the 60 letters of support that
2 have been submitted to the BZA. And we would
3 ask that the Board grant the relief that's
4 been requested. Thank you.

5 CHAIRPERSON JORDAN: Thank you.
6 Mr. Moy, let's have this set for a decision
7 date. But I also would like to have proposed
8 findings of fact and conclusions of law
9 submitted by the parties. And so we need a
10 date for that, please, Mr. Moy. And we're
11 going to close the record, except for that.

12 MEMBER MOY: Yes, sir. I'm
13 looking at the best available for the Board
14 for a decision on this application. On
15 Tuesday, April 9, 2013. Also, for allowance
16 for the transcript to be available within 10
17 to 14 days. This findings of fact and
18 conclusions of law by March 26, which is a
19 Tuesday. And any responses by Tuesday -- or
20 rather Monday, April 1, 2013.

21 CHAIRPERSON JORDAN: What was the
22 date? Give me the dates again, please.

1 MEMBER MOY: For a decision, April
2 9.

3 CHAIRPERSON JORDAN: I'm not going
4 to be here the 9th. Let's do another day.

5 MEMBER MOY: Okay. Another date?
6 Okay. We're going to have to do a special
7 public meeting then. The next available after
8 April 9, then, would be April 23, 2013. Okay.
9 So working backwards, responses -- let's see,
10 what did I say? April 23? Okay, responses by
11 April 15, which is a Monday, and submissions
12 for the draft order --

13 CHAIRPERSON JORDAN: We don't need
14 any responses to the proposed findings of
15 facts and conclusions of law.

16 MEMBER MOY: You don't want that?

17 CHAIRPERSON JORDAN: We're not
18 keeping the record open for any supplemental
19 documents.

20 MEMBER MOY: Okay. All right.
21 Well, in that event then, the decision -- what
22 did I say, April 23? Well then let's have the

1 proposed order due to the Board by let's make
2 it April 9, which is a Tuesday.

3 CHAIRPERSON JORDAN: And then the
4 meeting is going to be on what date?

5 MEMBER MOY: April 23.

6 CHAIRPERSON JORDAN: Okay. All
7 right. All right. With that then, we will
8 close the record, except for the submission of
9 the proposed findings of facts and conclusions
10 of law and bring this particular hearing to a
11 close. Thank you. Mr. Moy, do we --

12 MEMBER MOY: Yes, sir. The next
13 application --

14 CHAIRPERSON JORDAN: We've already
15 called that case, but you can call it again
16 and see if they're here.

17 MEMBER MOY: I can call it again.
18 That would be Application Number 18498. This
19 is the application of 1311 Penn, LLP. And I
20 don't believe I read the caption, so I'll do
21 that very quickly.

22 CHAIRPERSON JORDAN: Mr. Moy, I'm

1 going to continue that to another date. We
2 called this case --

3 MEMBER MOY: Oh, you want to
4 continue it?

5 CHAIRPERSON JORDAN: We called
6 this case earlier.

7 MEMBER MOY: Yes, you did. But we
8 moved it up, rather than --

9 CHAIRPERSON JORDAN: Oh, it's on
10 the docket for 9:30.

11 MEMBER MOY: All right.

12 CHAIRPERSON JORDAN: So what do we
13 -- now let me find out what the Board wishes
14 to do with it. Does the Board wish to hear
15 this or not? Mr. Turnbull? All right. We
16 had called the case earlier. All right. Then
17 we'll take -- we'll finish it today then, if
18 that's what the Board is wishing to do. I
19 mean, I could -- all right. Then we will come
20 back in session in 40 minutes. We will pick
21 this up in 40 minutes.

22 (Whereupon, off the record from

1 1:32 p.m. until 2:25 p.m.)

2 CHAIRPERSON JORDAN: We're back on
3 the record. Mr. Moy?

4 MEMBER MOY: Good afternoon Mr.
5 Chairman and Members of the Board. The next
6 to the last application for the day is
7 Application Number 18498. This is the
8 application of 1311 Penn, LLP, pursuant to 11
9 DCMR 3103.2, for a variance from the lot
10 occupancy requirements under section 7772, and
11 a variance on the off-street parking
12 requirements under subsection 2101.1. This is
13 to allow the construction of a new three-unit
14 residential building in the C-2-A District at
15 premises 1311 Pennsylvania Avenue S.E.
16 (Property located in Square 1045, Lot 107).

17 CHAIRPERSON JORDAN: Would you
18 please identify yourself for us, please?

19 MR. BLACKSTOCK: My name is David
20 Blackstock. I'm the majority owner and
21 representative of the 1311 LLP.

22 CHAIRPERSON JORDAN: Okay. I

1 understand that these plans have been changed
2 from having four units to having three units.
3 Correct?

4 MR. BLACKSTOCK: No, sir. We
5 always intended to have three units.

6 CHAIRPERSON JORDAN: Okay.

7 MR. BLACKSTOCK: Planning and
8 Zoning wanted the cellar area to be identified
9 --

10 CHAIRPERSON JORDAN: Got it.

11 MR. BLACKSTOCK: And we identified
12 that as part of the first floor unit. We're
13 not adding a fourth unit. And our intent is
14 not to add a fourth unit.

15 CHAIRPERSON JORDAN: Okay. Got
16 it. Now, if you can tell us about -- I don't
17 know if you brought any diagrams to show us.
18 But are you familiar with the opposition that
19 has been -- the letter of opposition that was
20 filed in this matter?

21 MR. BLACKSTOCK: I do. And that
22 was the reason for my proposed postponement at

1 the last hearing date. I personally delivered
2 all the -- all the letters of acceptance to
3 the neighbors and I happen to notice one in --
4 in the audience when I came here. And, at
5 that time, I -- I requested a postponement to
6 give me time to speak to him.

7 CHAIRPERSON JORDAN: Okay.

8 MR. BLACKSTOCK: And I've met with
9 him, including the ANC, was present at that
10 meeting. It was basically a misunderstanding
11 with the Zoning rules and regulations and then
12 the fence opening into their back property.

13 CHAIRPERSON JORDAN: Does it do
14 that?

15 MR. BLACKSTOCK: It -- we removed
16 the fence completely and we resolved
17 everything. And I brought in to submit now a
18 letter of their --

19 CHAIRPERSON JORDAN: From that
20 person?

21 MR. BLACKSTOCK: Yes, sir.

22 CHAIRPERSON JORDAN: Could you

1 give that to the Board's secretary, please?
2 Well.

3 MR. BLACKSTOCK: It's an e-mail
4 letter sent. They didn't sign it but their
5 names are clearly designated on it -- on their
6 removal request.

7 CHAIRPERSON JORDAN: Yes. I don't
8 know. That's a good question. You weren't
9 here this morning to be sworn in were you?

10 MR. BLACKSTOCK: Yes, I was, sir.
11 I was here at 9:30. I think there was a case
12 called first thing at 9:30. I was at the end
13 of the docket. That was the reason I had to
14 assume that I had time to feed the meter when
15 I stepped out, during your mid-morning call.

16 CHAIRPERSON JORDAN: You said this
17 is an e-mail.

18 MR. BLACKSTOCK: It was an e-mail
19 with attachments sent unsigned, just as you
20 see it there, with their names clearly --

21 CHAIRPERSON JORDAN: Yes. But
22 that -- okay. It's not signed. And that

1 doesn't mean whether or not they really
2 intended to, but they're not here too. So
3 we'll take it for what it's worth.

4 MR. BLACKSTOCK: Thank you, sir.

5 CHAIRPERSON JORDAN: And all
6 right. So this fence now does not open into
7 their yard. What about their trash -- the
8 ability to take out trash? How is that
9 operating?

10 MR. BLACKSTOCK: We removed the
11 fence. 50 percent of the fence has been
12 removed, so it's open access to the back.

13 CHAIRPERSON JORDAN: So if people
14 are coming across what would be your property
15 to take their trash -- is that the way it was
16 going?

17 MR. BLACKSTOCK: The alley --
18 there's public alley that comes across the
19 back area there. But not enough room to bring
20 in for automobiles or any type of parking.
21 Trash is moved out to the public alley way as
22 is -- as in everyone else's trash in the area.

1 CHAIRPERSON JORDAN: Okay. Does
2 the Board have any other questions on this
3 application? Mr. Turnbull?

4 ZC COMMISSIONER TURNBULL: Thank
5 you, Mr. Chair. I've just got a question.
6 There is one thing which is a little
7 troubling. I mean, I'm looking at these small
8 scale plans. But I'm just concerned. Do you
9 have a roof deck --

10 MR. BLACKSTOCK: Yes, sir.

11 ZC COMMISSIONER TURNBULL: -- that
12 is going to be an occupied space. People can
13 go up there and it looks like the whole roof
14 is to be used.

15 MR. BLACKSTOCK: Yes, sir.

16 ZC COMMISSIONER TURNBULL: Which
17 is okay in one sense. But what bothers me is
18 that there looks like there's another stairs
19 that goes up even higher to an observation
20 point.

21 MR. BLACKSTOCK: There is, sir.
22 And I have a larger 11 by 19 drawing if you

1 would like to look. But yes, we're occupying
2 the roof deck, and then we have a smaller 20
3 by 20 observation deck, sun deck/slash above
4 that. Our height limitation is 50 foot. To
5 the top of the rail of that upper deck is 50
6 feet.

7 ZC COMMISSIONER TURNBULL: Well, I
8 can't tell from the plan. I mean, there's
9 also a trellis that goes over part of this.
10 But how much of that trellis can people walk
11 on? I mean, do you go up this circular stair
12 to what?

13 MR. BLACKSTOCK: A 20 by 20 deck.

14 ZC COMMISSIONER TURNBULL: There's
15 a 20 by 20 deck?

16 MR. BLACKSTOCK: Yes, sir.

17 ZC COMMISSIONER TURNBULL: I --

18 MR. BLACKSTOCK: Oh, no. Excuse
19 me. It's not a 20 by 20. It's a 14 by 20
20 deck.

21 ZC COMMISSIONER TURNBULL: Okay.

22 MR. BLACKSTOCK: The width of the

1 property is only 14.

2 ZC COMMISSIONER TURNBULL: Well, I
3 am just -- my only thing is I'm looking at
4 neighbors next door that being able to -- do
5 they understand that you're now going to be
6 able to be looking over their property as
7 such? And I'm -- there's no real reference
8 that shows the houses next door and what the
9 impact would be of this deck area on the
10 adjoining property. I don't mind the roof
11 terrace. The roof terrace, I mean, a lot of
12 people have that. It's just this addition
13 height of a deck going up on this trellis area
14 that would be possibly objectionable to next
15 door neighbors.

16 MR. BLACKSTOCK: It was entered on
17 the drawing and submitted to everyone. And
18 again, we're within our height limitations of
19 that -- of the C-2-A zoning. In fact, we're
20 under the height limitations.

21 ZC COMMISSIONER TURNBULL: I know.
22 I'm just expressing my concerns that it may

1 not be fully understood.

2 MR. BLACKSTOCK: Jenkins Row,
3 which is on the same block, has multiple
4 balconies, a roof deck, occupied, and two
5 different levels.

6 ZC COMMISSIONER TURNBULL: Okay.
7 Well, I can bring this up to the Office of
8 Planning when we get to that too.

9 MEMBER SORG: As a follow up, I
10 actually -- the neighboring property is to
11 where you are constructing this residence, are
12 they fully commercial? They know that on this
13 portion of the block you had discussed earlier
14 that it was a fairly commercial and -- or is
15 it commercial and residential?

16 MR. BLACKSTOCK: It's a
17 residential and mixed use, but the majority is
18 commercial. In other words, I have commercial
19 to the right; I have commercial to the left,
20 and pretty much all the way down the block is
21 commercial. Directly behind is -- is more of
22 a residential area.

1 MEMBER SORG: Yes.

2 MR. BLACKSTOCK: But all of
3 Pennsylvania Avenue is -- is a majority
4 commercial. But again, it's mixed us.

5 MEMBER SORG: Right. Okay.

6 ZC COMMISSIONER TURNBULL: What is
7 the material? I mean, I can't tell from the
8 elevations. Is it brick? Well, what do
9 you --

10 MR. BLACKSTOCK: Well, it's going
11 to be brick and dry -- it's basically
12 compliments the same new building across the
13 street; the same finishes, which is a dark
14 grey brick and a dry -- but a grey dry
15 material.

16 ZC COMMISSIONER TURNBULL: Oh.
17 Okay.

18 MR. BLACKSTOCK: And we're -- our
19 intent is to keep the same esthetics that are
20 already developed in that area.

21 CHAIRPERSON JORDAN: Okay. Any
22 other questions for the Applicant, anyone?

1 Then let's turn now to the Office of Planning.

2 MR. JESICK: Thank you, Mr.

3 Chairman and Members of the Board. My name is

4 Matt Jessick. The Office of Planning has

5 reviewed this application and we feel that the

6 application meets the three part test for the

7 variances being requested. And for the rest

8 of my testimony, I will rest on the record.

9 But I'd be happy to take any questions. Thank
10 you.

11 CHAIRPERSON JORDAN: Mr. Turnbull?

12 ZC COMMISSIONER TURNBULL: Yes.

13 Mr. Jessick, any comment on the little

14 observation deck beyond the roof and the extra

15 level?

16 MR. JESICK: Yes. The application

17 was requesting relief from lot occupancy and

18 vehicular parking, so to be honest, we didn't

19 - we didn't look at the roof level too much.

20 And they are within their height limits so we

21 didn't pay that much attention to the roof

22 deck to be honest.

1 ZC COMMISSIONER TURNBULL: Okay.

2 MEMBER SORG: Do you think -- as a
3 follow up, do you think it's out of character?
4 Or do you think it's in keeping with the
5 development along this area?

6 MR. JESICK: I've been to this
7 site, but I would have to say I'm not -- I
8 wouldn't be comfortable characterizing the
9 character of the neighborhood. I don't think
10 it's out of character with something you might
11 see in the C-2-A zone, in general.

12 MR. BLACKSTOCK: May I comment
13 again on the deck?

14 CHAIRPERSON JORDAN: Let me -- any
15 other questions of Office of Planning. Yes.
16 Go ahead then

17 MR. BLACKSTOCK: The deck heights,
18 we also did the appropriate setbacks from the
19 front of the building and the rear of the
20 building that's required for any sort of above
21 roof stairway or above roof cooling tower. So
22 we've addressed the same exact setbacks for

1 that deck as we would any other type of roof
2 housing for that zoning.

3 CHAIRPERSON JORDAN: Additional
4 questions of Planning, anyone? Then
5 Department of Transportation has submitted a
6 letter voicing no opposition to this. ANC-6B,
7 no one is here, so ANC-6B voted 10 to nothing,
8 I guess, in support of this application?

9 MR. BLACKSTOCK: Yes, sir.

10 CHAIRPERSON JORDAN: The file does
11 contain some -- well, form letters, but
12 letters of people in support of the
13 application and you've tendered what may be
14 another letter of the opposition pulling back.
15 There's nobody else in this room, but I will
16 ask. Is there anyone here who wishes to
17 testify in support of the application?
18 There's no one else in the room, but I will
19 ask. Is there anyone here who wishes to
20 testify in opposition to the application?
21 Then let's turn it back to the Applicant and
22 see if there's some additional questions from

1 the Board or anything else you may want to
2 say. Board, any other questions?

3 MR. BLACKSTOCK: I'm fine, sir.
4 Thank you.

5 CHAIRPERSON JORDAN: Then we'll
6 conclude this hearing, based upon the record
7 already deduced. Is the Board ready to
8 deliberate on this matter?

9 MEMBER SORG: Yes.

10 CHAIRPERSON JORDAN: Okay. Then I
11 would move that we grant the requested relief
12 as requested by the Applicant in this matter.

13 MEMBER SORG: Second.

14 CHAIRPERSON JORDAN: Motion made
15 and seconded. Any unreadiness? Hearing and
16 seeing none, all those in favor signify --
17 ohm, I'm sorry. Unready? No. Seeing none,
18 all those in favor signify by saying aye.

19 ALL: Aye.

20 CHAIRPERSON JORDAN: Those opposed
21 nay. The motion carries. Mr. Moy?

22 MEMBER MOY: Yes, sir. Staff

1 would record the vote as four to zero, this on
2 the motion of Chairman Jordan, to approve the
3 application for the relief requested.

4 Seconding the motion, Vice Chairperson Sorg.
5 Also in support Mr. Turnbull and Ms. Allen,
6 and Mr. Hinkle is not present today. So the
7 motion carries, Mr. Chairman.

8 CHAIRPERSON JORDAN: Thank you.
9 Can we have a summary order please?

10 MEMBER MOY: Yes, sir.

11 CHAIRPERSON JORDAN: Then this
12 concludes that matter and concludes us for the
13 day, Mr. Moy?

14 MEMBER MOY: Absolutely, sir.

15 CHAIRPERSON JORDAN: Well thank you
16 very much. I appreciate it.

17 MR. BLACKSTOCK: Sorry to
18 interrupt your morning.

19 CHAIRPERSON JORDAN: Yes. Yes.
20 So then we're adjourned.

21 (Whereupon, the Public Hearing was
22 adjourned at 2:30 p.m.)

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Before: DCZC

Date: 03-05-13

Place: Washington, DC

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