

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

SEPTEMBER 21, 2010

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:30 a.m., Meridith H. Moldenhauer, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH H. MOLDENHAUER Chairperson
JEFFREY L. HINKLE Board Member
(NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL Commissioner
FAIA (AOC)

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN
PAUL GOLDSTEIN
ARLOVA JACKSON
MATT JESICK
KAREN THOMAS

This transcript constitutes the minutes from the Public Hearing held on September 21, 2010.

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

WELCOME:

Meridith Moldenhauer, Chairperson.....6

APPLICATION NO. 18100IRVING GORNSTEIN - ANC-3G:.....11Office of Planning:

Arlova Jackson.....14

Exhibit 24 - ANC-3G Report:.....15

Board Deliberation:.....17

Motion to Approve Application.....18

Vote: 3-0-2 to Approve Application.....19APPLICATION NO. 18102TOM AND CAROL SEITZ - ANC-3G:.....20Office of Planning:

Matt Jesick.....22

Witness:

Peter Donovan, Architect.....24

Exhibit 17 - ANC-3G Report.....26

Board Deliberation:.....26

Motion to Approve Application.....28

Vote: 3-0-2 to Approve Application.....29APPLICATION 18099BEAU THAI LLC - ANC-2C:.....30Witnesses:

Kinley Bray, Esq., Arent Fox.....31

Ellen McCarthy, Arent Fox.....38

Office of Planning:

Steve Cochran.....45

Exhibit 43 - ANC-2C Report.....51

Persons/Parties in Support:

Martin Moulton.....53

Marie Maxwell.....55

Khawla Nimri.....56

Closing Remarks:

Kinley Bray, Esq., Arent Fox.....59

Board Deliberation:.....62

Motion to Approve Application.....72

Vote: 3-0-2 to Approve Application.....72**NEAL R. GROSS**

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

<u>APPLICATION NO. 18104</u>	
<u>WILLIAM S. LANGHORNE - ANC-2E:</u>	79
<u>Witnesses:</u>	
William Langhorne, Applicant	81
Douglas Rixey, Architect	82
<u>Office of Planning:</u>	
Karen Thomas	108
Exhibit 28 - ANC-2E Report:	115
<u>Persons/Parties in Support:</u>	117
<u>Closing Remarks:</u>	
Douglas Rixey, Architect	117
<u>Board Deliberation:</u>	119
Motion to Approve Application	132
Vote: 3-0-2 to Approve Application	132
<u>APPLICATION NO. 18101</u>	
<u>NABEEL AUDEH - ANC-2E:</u>	133
Waive Posting Requirements	136
<u>Witness:</u>	
Stephen duPont	138
<u>Office of Planning:</u>	
Paul Goldstein	155
<u>Persons/Parties in Opposition:</u>	
Sanjit Preet	162
Sam Elissawy	172
Peter Colasante	177
<u>Closing Remarks:</u>	
Stephen duPont	184
Continue Hearing to October 19, 2010:	195
Specifically Requested Material:	196
<u>APPLICATION NO. 18066</u>	
<u>CASEY DALTON - ANC-1B:</u>	198
<u>Witness:</u>	
Casey Dalton, Applicant	201
<u>Office of Planning:</u>	
Karen Thomas	206
Exhibit 28 - ANC-1B Report/Supplement	208
<u>Closing Remarks:</u>	
Casey Dalton, Applicant	209
Specifically Requested Material:	210
Set for Decision October 19, 2010:	211

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

<u>APPLICATION NO. 18090</u>	
<u>M. SIKDER - ANC-5A:</u>	211
<u>Witness:</u>	
Mohammad Sikder, Applicant.....	213
<u>Office of Planning:</u>	
Karen Thomas.....	224
<u>ANC-5A:</u>	
Janae Grant.....	226/235
<u>Persons/Parties in Opposition:</u>	
Richard Brooks.....	227
Joel Tomlinson.....	233
<u>Cross-Exam of OP by ANC:</u>	247
<u>Cross-Exam of Applicant by ANC:</u>	254
<u>Closing Remarks:</u>	
Mohammad Sikder, Applicant.....	268
Specifically Requested Material:.....	272
Continue Hearing to November 2, 2010:.....	282
 <u>ADJOURN:</u>	
Meridith Moldenhauer, Chairperson...	282

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

2 10:44 a.m.

3 CHAIRPERSON MOLDENHAUER: This
4 hearing will, please, come to order. Good
5 morning, ladies and gentlemen. This is the
6 September 21, 2010 Public Hearing of the Board
7 of Zoning Adjustment for the District of
8 Columbia.

9 My name is Meridith Moldenhauer,
10 Chairperson. Joining me to my right is
11 representative of the National Capital
12 Planning Commission, Mr. Jeff Hinkle. To my
13 left is the representative of the Zoning
14 Commission, Mr. Michael Turnbull.

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

18 Please, be advised that this
19 proceeding is being recorded by a Court
20 Reporter and is also being webcast live.
21 Accordingly, we must ask you to refrain from
22 any disturbing noise or any actions in the

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1 hearing room.

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

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

17 The order of procedure for special
18 exceptions and variances are as follows: One,
19 statement and witnesses of the applicant; two,
20 Government reports, including the Office of
21 Planning and Department of Public Works;
22 three, reports from the ANC; four, parties and

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1 persons in support; five, parties and persons
2 in opposition; and then closing remarks from
3 the applicant.

4 Pursuant to ' 3117.4 and 3117.5,
5 the following time constraints will be
6 maintained: The applicant, appellant, persons
7 and parties, except an ANC, in support,
8 including their witnesses, will be provided 60
9 minutes collectively. The appellee, persons
10 and parties, except an ANC, in opposition,
11 including witnesses, will be provided 60
12 minutes collectively. All individual
13 witnesses will be provided 3 minutes.

14 These time restraints do not
15 include cross-examination or questions from
16 the Board. Cross-examination of witnesses
17 will be permitted by the applicant or parties.

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

21 Nothing prohibits the Board from
22 placing reasonable restrictions on cross-

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1 examination, including time limits and
2 limitations on the scope of cross-examination.

3 The record will be closed at the
4 conclusion of each case, except for material
5 specifically requested by the Board. The
6 Board and the staff will specify at the end of
7 the hearing exactly what is expected and the
8 date when the persons should be submitting
9 such evidence to the Office of Zoning. After
10 the record is closed, no other information is
11 accepted by the Board.

12 The Sunshine Act requires that the
13 Public Hearing on each case be held in the
14 open before the public. The Board may,
15 consistent with its rules and procedures and
16 the Sunshine Act, enter into Executive Session
17 during or after a Public Hearing on a case for
18 the purposes of reviewing the record or
19 deliberating on the case.

20 The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance to

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1 the contrary, the Board requests that the
2 persons present not engage the Members of the
3 Board in conversation.

4 Please, turn off all cell phones
5 and beepers, at this time.

6 The Board will now consider any
7 preliminary matters. Preliminary matters are
8 those which relate to whether a case will or
9 should be heard today, such as requests for
10 postponement, continuance or withdrawal or
11 whether proper adequate notice has been given.

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

16 Mr. Secretary, are there any
17 preliminary matters?

18 MR. MOY: Staff is not aware of any
19 for the morning session, Madam Chair.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you. Then all individuals wishing to testify,
22 will you, please, rise and Ms. Bailey will

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1 administer the oath.

2 MS. BAILEY: Please, raise your
3 right hand.

4 (Whereupon, the witnesses were
5 sworn.)

6 MS. BAILEY: Thank you.

7 CHAIRPERSON MOLDENHAUER: Thank you
8 very much, Ms. Bailey. Mr. Moy, you can call
9 the first case.

10 MS. BAILEY: Madam Chair, I can
11 help you with that, if that's okay?

12 CHAIRPERSON MOLDENHAUER: That
13 would be perfect. Thank you.

14 MS. BAILEY: The first case is
15 Application 18100. It's the Application of
16 Irving Gornstein. It's pursuant to 11 DCMR '
17 3104.1, for a special exception to allow a
18 rear addition to an existing one-family
19 detached dwelling under ' 223, not meeting the
20 side yard requirements, that's ' 405. The
21 property is Zoned R-2. It is located at 3924
22 Morrison Street, N.W., Square 1748, Lot 34.

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1 CHAIRPERSON MOLDENHAUER: Thank you
2 very much. Will the applicant, please, step
3 forward to the tables? Turn on your
4 microphone and then introduce yourself.

5 MR. GARDNER: Hi. My name is Greg
6 Gardner from Landis Construction representing
7 the owner.

8 CHAIRPERSON MOLDENHAUER: Thank you
9 very much, Mr. Gardner. The first thing that
10 we have to address is the Affidavit of
11 Posting.

12 MR. GARDNER: Yes.

13 CHAIRPERSON MOLDENHAUER: While it
14 looks as though the date of the posting was
15 sufficient in time, they are also supposed to
16 provide an affidavit within 14 days from the
17 hearing and it looks like it was just received
18 on September 14th.

19 MR. GARDNER: It was just received
20 today.

21 CHAIRPERSON MOLDENHAUER: Yes,
22 okay.

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1 MR. GARDNER: I posted the sign at
2 the end of August, but I did not file the
3 affidavit photograph.

4 CHAIRPERSON MOLDENHAUER: Okay.
5 And is there good cause that you can
6 articulate as to why it was delayed?

7 MR. GARDNER: No. It was just an
8 oversight on my part.

9 CHAIRPERSON MOLDENHAUER: Okay.
10 But it was posted and there was notice given?

11 MR. GARDNER: It was posted about
12 21 days prior to the hearing.

13 CHAIRPERSON MOLDENHAUER: Okay.
14 Okay. That being said, I think that there was
15 notice provided. And I think we can waive our
16 requirements for that.

17 MR. GARDNER: Thank you.

18 CHAIRPERSON MOLDENHAUER: Thank
19 you. That being said, I think that you have a
20 very solid record on this case. And it seems
21 as though if you would like, you can rest on
22 the record and we can move forward. If you

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1 want to articulate some additional aspects of
2 the case, you can, if you would like.

3 MR. GARDNER: No. I don't have
4 anything to present.

5 CHAIRPERSON MOLDENHAUER: Okay.
6 Thank you. Then, at this point in time, do
7 any Board Members have any questions for the
8 applicant? Seeing none, we can always come
9 back to any additional questions, if there are
10 any.

11 Will the Office of Planning present
12 their report, please?

13 MS. JACKSON: Good morning. For
14 the record, my name is Arlova Jackson with the
15 Office of Planning. OP recommends approval of
16 the requested special exception to allow 4
17 foot side yard. The property is existing
18 nonconforming with regard to lot width and
19 size and the only relief requested is to allow
20 the continuation of an existing nonconforming
21 side yard.

22 We find that the applicant meets

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1 the standards for approval found in ' 223 and
2 they have also submitted letters of support
3 from all adjacent neighbors and ANC-3/4G.

4 Therefore, we recommend approval of
5 the requested special exception and I will
6 take any questions you have, at this time.

7 CHAIRPERSON MOLDENHAUER: Thank you
8 very much. Does the applicant have any
9 questions for the Office of Planning?

10 MR. GARDNER: No, I don't.

11 CHAIRPERSON MOLDENHAUER: Okay. Do
12 any Board Members have any questions for OP?
13 No? Seeing none, then, at this point in time,
14 we would turn to the ANC. Is anybody from
15 ANC-3G present? Seeing no one present from
16 ANC-3G, I will reference our Exhibit No. 24,
17 which is a letter from ANC-3G indicating that
18 they had a public meeting on June 28th and that
19 a vote of 6-0 with a quorum being present to
20 support the application.

21 And we have that in the record. It
22 satisfies our standard for great weight and we

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1 would give that record great weight.

2 Are there any individuals in
3 support or in opposition to the application?
4 Seeing none, I would then just also reference
5 that we have exhibits in the case folder which
6 indicate that the applicant has received
7 support from his neighbors indicating their
8 addresses on Morrison Street, which is our
9 Exhibit No. 25.

10 That being said, I'll turn back to
11 any Board Members if they have any questions
12 of the applicant?

13 COMMISSIONER TURNBULL: No, Madam
14 Chair. I think OP's record and the
15 applicant's information has been sufficient.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you. Then are there any closing remarks by
18 the applicant?

19 MR. GARDNER: No.

20 CHAIRPERSON MOLDENHAUER: None.
21 Then, at this point in time, we will conclude
22 the hearing and enter into a deliberation.

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1 At this point in time, I will start
2 off the deliberation for Application No. 18100
3 for a special exception under 223 to permit an
4 addition to an existing single-family dwelling
5 at 3924 Morrison Street, N.W.

6 And I am going to rely on Office of
7 Planning's report which provides an in depth
8 analysis of the 223 requirements and 405
9 requirements. And I feel that they have
10 specifically articulated all the standards and
11 the applicant has supported all of those
12 requirements.

13 That being said, I would be
14 inclined to approve the application. Are
15 there any additional deliberations for this
16 case?

17 COMMISSIONER TURNBULL: Madam
18 Chair, I would just repeat your comments and
19 say, you know, on page 2 of the OP report, the
20 relief is really de minimis. The height
21 conforming, the lot width and area are
22 existing nonconforming, occupancy, rear yard

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1 are conforming. The only relief that they are
2 really looking for is for the side yard, which
3 is maintaining the existing standard that is
4 there now.

5 So it's really minimum and the way
6 that the addition is designed, it does not
7 take away or increase the height of the
8 existing structure. It has little impact on
9 light and air of the adjacent structure. So I
10 think what they are looking for is very
11 minimum.

12 CHAIRPERSON MOLDENHAUER: I agree.
13 Thank you very much. Are there any
14 additional deliberation? Seeing none, then I
15 will submit a motion to approve Application
16 No. 18100 for special exception relief under
17 223 requiring relief under 405 to allow a side
18 yard of 4 feet.

19 A motion has been made. Is there a
20 second?

21 MEMBER HINKLE: Seconded.

22 CHAIRPERSON MOLDENHAUER: The

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1 motion has been made and seconded.

2 All those in favor say aye.

3 ALL: Aye.

4 MR. MOY: The staff would record
5 the vote as 3-0-2. This is on the motion of
6 the Chairperson, Ms. Moldenhauer, to approve
7 the application for special exception relief,
8 223, not meeting the side yard requirements
9 under ' 405, seconding the motion Mr. Hinkle.

10 In support of the motion is Mr. Turnbull. No
11 other Board Members participating.

12 So again, the final vote is 3-0-2.

13 CHAIRPERSON MOLDENHAUER: Thank you
14 very much, Mr. Moy. Thank you. What we will
15 do is we will, with no opposition, waive our
16 requirements and ask the Office to provide a
17 summary order.

18 MR. MOY: Thank you.

19 CHAIRPERSON MOLDENHAUER: Thank you
20 very much.

21 MS. BAILEY: Madam Chair, next
22 case, Application No. 18102. It's the

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1 Application of Tom and Carol Seitz, and it's
2 pursuant to 11 DCMR ' 3104.1, for a special
3 exception to allow a two-story side addition
4 to an existing one-family detached dwelling
5 under ' 223, not meeting the side yard
6 requirements, that's ' 405. The property is
7 Zoned R-1-A. It is located at 3001 Beech
8 Street, N.W., Square 2366, Lots 816 and 832.

9 CHAIRPERSON MOLDENHAUER: Good
10 morning. If you can, please, turn on your
11 microphone and introduce yourself for the
12 record?

13 MR. DONOVAN: Yes. My name is
14 Peter Donovan. I'm at 3749 McKinley Street
15 and I'm the architect helping with this
16 project for Tom and Carol Seitz on Beech.

17 CHAIRPERSON MOLDENHAUER: Thank you
18 very much. And we have your Letter of
19 Authorization, which is our Exhibit No. 5.
20 This case is very similar to the prior case.
21 I think you have a very full record.

22 We have letters of support and the

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1 relief that you are seeking is special
2 exception 223 relief. That being said, I
3 think we may have some questions from some
4 Board Members. Do you have any additional --
5 you obviously have the opportunity, if you
6 would like to present, you can. If you would
7 like to rest on the record, you can do that as
8 well.

9 MR. DONOVAN: I would be happy to
10 respond to questions.

11 CHAIRPERSON MOLDENHAUER: Okay. I
12 don't know if we have any questions. I think
13 they may have been addressed by reviewing the
14 record in a little more detail. Do we have
15 any additional questions from Board Members?

16 COMMISSIONER TURNBULL: I guess the
17 only question I think was in the Office of
18 Planning's report that prior to construction,
19 they have to separate the two lots? There was
20 something about the double lot. I'm looking
21 at the Office of Planning.

22 CHAIRPERSON MOLDENHAUER: Why don't

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1 we do this? Why don't we jump to the Office
2 of Planning and Office of Planning can provide
3 us their report and maybe specifically address
4 Mr. Turnbull's question?

5 MR. JESICK: Good morning, Madam
6 Chair and Members of the Board. My name is
7 Matt Jesick.

8 The Office of Planning is happy to
9 support this application for special exception
10 relief. We feel that the application meets
11 the criteria described under ' 223 of the
12 Zoning Regulations. The addition would not
13 impact light or air for adjacent properties.
14 It would not impact privacy of adjacent
15 properties. And the character of the addition
16 would match the existing character of the
17 house.

18 There is ample open space
19 surrounding the house, both in the form of
20 public parks, public right-of-way and large
21 private yards.

22 Now, I believe what Mr. Turnbull is

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1 referring to -- maybe there are two tax lots
2 currently shown in our GIS records. And that
3 can be seen on the vicinity map on the last
4 page of the report.

5 Also, according to our GIS records,
6 there is no record lot underlying the tax
7 lots, which is not unheard of, somewhat
8 unusual. Before obtaining a building permit,
9 I believe the applicant will be required to
10 record a tax lot or a record lot at DCRA
11 before they will issue a building permit.

12 So I don't know if that answers
13 your question, but I would be happy to answer
14 any other question.

15 COMMISSIONER TURNBULL: Well, does
16 the record lot combine both of the tax lots?

17 MR. JESICK: The way the
18 application is stated is that the rear yard,
19 approximately, would be 87.5 feet with the
20 addition and that includes the --

21 COMMISSIONER TURNBULL: The other
22 lot?

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1 MR. JESICK: -- the northern tax
2 lot.

3 COMMISSIONER TURNBULL: I was going
4 to say, otherwise, you've got a very small
5 rear yard if you didn't include it.

6 MR. JESICK: I think it would still
7 meet the requirements.

8 COMMISSIONER TURNBULL: It will
9 meet it.

10 MR. JESICK: But it would be
11 somewhat smaller, obviously.

12 COMMISSIONER TURNBULL: Yes.

13 MR. DONOVAN: I might be able to
14 shed light on that, Mr. Turnbull. We have
15 filed for the subdivision plat, which would
16 incorporate both lots into one new recorded
17 number.

18 COMMISSIONER TURNBULL: Okay.

19 MR. DONOVAN: We have started that
20 process, but then it sort of just held up
21 until we get approval, but we have every
22 intent and will have one recorded lot.

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1 COMMISSIONER TURNBULL: One
2 recorded lot, okay. Thank you.

3 CHAIRPERSON MOLDENHAUER: Thank you
4 very much. I think that, obviously, you know,
5 the 800 lots are lots for purposes of tax and
6 revenue purposes, rather than actually
7 recorded lots, but, at the same time, I think
8 that for our purpose of evaluating the case,
9 we can look at both lots as being owned by the
10 same owner and as eventually being combined as
11 to one record lot. I don't think that that's
12 an issue.

13 That being said, I have no
14 additional questions for the Office of
15 Planning. Do any other Board Members have any
16 questions for the Office of Planning? Thank
17 you very much. It was a very thorough
18 analysis and I appreciate that report.

19 At this point in time, we will turn
20 to ANC. Is anybody present from ANC-3/4G
21 present? Seeing none, I'll reference then our
22 Exhibit No. 17, which is a letter from the ANC

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1 indicating that there was a regularly held
2 public meeting on May 24th in which a vote of
3 7-0 with a quorum present to support the
4 application.

5 That they, I think most importantly
6 in my opinion, indicate that no objections had
7 been received from any of the nearby
8 neighbors, indicating that there were no
9 general concerns with the application.

10 That being said, we will now turn
11 to if there is anybody in the audience in
12 support or in opposition of this case. Seeing
13 none, I'll turn back to the applicant if there
14 is any additional closing remarks.

15 MR. DONOVAN: No, I do not have
16 any.

17 CHAIRPERSON MOLDENHAUER: Okay.
18 Then at this point in time, I will conclude
19 the hearing and we will enter into
20 deliberation on this case.

21 I will start us off. This is an
22 application for 223, side yard relief. And I

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1 think that this is a very minor relief that is
2 being sought.

3 In addition to that, I think that
4 the applicant has sufficiently satisfied the
5 requirements under 223, that there would be
6 no, you know, substantial effect to the
7 character of the neighborhood, to any
8 potential light and air of neighboring
9 properties, with the ANC having supported the
10 case and being given great weight, and having
11 no concerns by neighbors being voiced by
12 either the ANC or present today, I think that,
13 you know, I'm definitely inclined to support
14 the application.

15 That being said, I'll open up the
16 floor to any additional deliberation.

17 COMMISSIONER TURNBULL: Madam
18 Chair, I would again concur with your analysis
19 of it. Looking at the OP report on page 2,
20 which gives all the zoning requirements, all
21 of the relief is conforming. The only thing
22 again that they are looking for is relief from

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1 the side yard.

2 So just like the previous case,
3 it's a very minimal requirement. And the 4
4 feet that they are looking at actually is
5 facing public open land, so it's really very
6 de minimis.

7 CHAIRPERSON MOLDENHAUER: Thank
8 you. Is there any additional deliberation?

9 MEMBER HINKLE: No, Madam Chair. I
10 think you were relatively thorough in your
11 discussion.

12 CHAIRPERSON MOLDENHAUER: Thank
13 you. Then, at this point in time, I will
14 submit a motion to approve Application No.
15 18102 for special exception relief under 223
16 for section 405 to construct a two-story side
17 yard addition to a single-family dwelling not
18 meeting the 8 foot side yard setback
19 requirement at 3001 Beech Street, N.W.

20 A motion has been made. Is there a
21 second?

22 MEMBER HINKLE: Seconded.

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1 CHAIRPERSON MOLDENHAUER: The
2 motion has been made and seconded.

3 All those in favor say aye.

4 ALL: Aye.

5 MR. MOY: Staff would record the
6 vote as 3-0-2. This is on the motion of the
7 Chairperson, Ms. Moldenhauer, to approve the
8 relief for special exception 223 not meeting
9 the side yard requirements under section 405.

10 Seconding that motion, Mr. Hinkle, in support
11 of the motion, Mr. Turnbull. No other Board
12 Members participating.

13 So again, the application is
14 approved on a 3-0-2 vote.

15 CHAIRPERSON MOLDENHAUER: Thank you
16 very much, Mr. Moy. Seeing that there is no
17 opposition, I would request that we waive our
18 requirements and issue a summary order.

19 MR. MOY: Very good. Thank you.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you. Thank you very much.

22 MR. DONOVAN: I thank the Board.

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1 MS. BAILEY: Madam Chair, the last
2 case of the morning is Application of Beau
3 Thai LLC, and the number is 18099, and it's
4 pursuant to 11 DCMR ' 3104.1, for a special
5 exception to allow a change from nonconforming
6 use, as a fast-food restaurant, to another,
7 sit-down restaurant, on the first floor. The
8 application is under subsection 2003.1. The
9 property is Zoned R-4. It is located at 1700
10 New Jersey Avenue, N.W., Square 508, Lot 41.

11 MS. McCARTHY: If I could just have
12 a moment, Madam Chair, I have a couple of
13 things to submit to Ms. Bailey.

14 CHAIRPERSON MOLDENHAUER: Not a
15 problem. Take your time. Ms. Bray, it looks
16 like you are ready to begin now, but before we
17 start off, I just wanted to note that I would
18 ask the applicant to voluntarily amend their
19 caption, so that we can have the correct use
20 classification in the caption.

21 Right now, it indicates the change
22 from a fast-food restaurant to a sit-down

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1 restaurant. And I believe the correct caption
2 would be fast-food to a restaurant.

3 MS. BRAY: That's correct. And we
4 would be happy to amend.

5 CHAIRPERSON MOLDENHAUER: Thank
6 you. I appreciate that. That being said, at
7 this point in time, you can start presenting
8 your case.

9 MS. BRAY: Thank you, Madam Chair
10 and Members of the Board. Welcome, Mr.
11 Hinkle. My name is Kinley Bray with the Law
12 Firm of Arent Fox. And with me today are
13 Aschara Vigsittaboot, the operator of Beau
14 Thai, LLC, the applicant in this case, Ralph
15 Brabham from Arent Fox and also with us is
16 Ellen McCarthy, Director of Planning and Land
17 Use at Arent Fox, who we would request be
18 qualified today and accepted as an expert in
19 the field of planning and zoning.

20 Ms. McCarthy's r sum  was submitted
21 as part of our prehearing statement in this
22 matter.

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1 CHAIRPERSON MOLDENHAUER: Thank you
2 very much. I have had an opportunity, this
3 time and many other times, to review Ms.
4 McCarthy's rèsùmè and I see no issue with
5 granting her expert testimony qualifications.

6 Does anybody else have anything additional?

7 Seeing none, then that --

8 COMMISSIONER TURNBULL: I think we
9 will let her in.

10 CHAIRPERSON MOLDENHAUER: Seeing
11 that, you can proceed.

12 MS. BRAY: Thank you very much.
13 This is an application for a change in --

14 CHAIRPERSON MOLDENHAUER: Can you
15 just clarify the two additional individuals
16 sitting, just so I can know --

17 MS. BRAY: Sure. Perhaps they can
18 introduce themselves for the record. I
19 believe they are here in support of the
20 application.

21 CHAIRPERSON MOLDENHAUER: Okay.

22 MR. MOULTON: Good morning, Board,

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1 Madam Chair. My name is Martin Moulton. I'm
2 the President of the Convention Center
3 Community Association. Here, I'm voicing
4 support for the special exemption.

5 CHAIRPERSON MOLDENHAUER: Okay.

6 MS. MAXWELL: Hello. I'm Marie
7 Maxwell. I live about a block from Beau Thai
8 and I'm here in support of the application.

9 CHAIRPERSON MOLDENHAUER: Okay. So
10 you both will then be individual witnesses
11 that we will get to at a later point in the
12 testimony. I'm just trying to figure out who
13 everyone was sitting there. Thank you very
14 much. You can continue, Ms. Bray.

15 MS. BRAY: Thank you. This is a
16 self-certified application for a change in
17 occupancy from one nonconforming use, that
18 being a fast-food establishment, to another, a
19 restaurant, in the R-4 Zone.

20 Beau Thai has been operating for
21 about a month now as a fast-food establishment
22 serving Thai food with no seating in the

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1 building. As the application details, the
2 property was renovated substantially and has a
3 long history of commercial uses on the first
4 floor beginning in 1948 as a lunchroom.

5 I think there was a brief stint as
6 a beauty salon and most recently, since the
7 mid-'70s, as a carryout restaurant.

8 Beau Thai opened as a carryout, but
9 would like to operate as a sit-down restaurant
10 seeking 25 seats inside the building and with
11 operating hours of 11:00 a.m. to 10 --
12 currently, 10:30 p.m., but we would like to
13 operate until 11:00 p.m. to accommodate for
14 closing activities.

15 The Office of Planning as well has
16 expressed their support in their report. And
17 numerous neighbors have also submitted
18 letters of support into the record. The ANC
19 unanimously supported this application at
20 their July meeting.

21 And I just want to address a couple
22 of things that are in the OP report before

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1 turning this over to Ms. McCarthy for her
2 brief testimony.

3 OP asked for three things in order
4 to recommend approval. One would be closing
5 hours prior to 11:00 p.m., which the applicant
6 agrees to. Second was affirming the hours of
7 solid waste pickup. We do have a contract
8 with us and I'm happy to submit that into the
9 record.

10 Unfortunately, we believe that the
11 contract had specifically a time listed upon
12 it and it does not. The solid waste pickup is
13 with kmG Hauling and it's currently being
14 picked up after 9:30 a.m.

15 Right now, the hauling company has
16 been coming in the afternoon to pickup and we
17 agreed that pickup should not take place in
18 the morning. But I don't have anything
19 additional to submit into the record. We are
20 certainly willing to agree to a condition of
21 approval indicating that garbage pickup should
22 be after 9:30 a.m.

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1 Finally, the Office of Planning
2 requested documentation in the form of
3 detailed plans of a planned enclosure to
4 screen both the garbage dumpster and the
5 residential cans serving the units in this
6 building on the basement and upper floors from
7 view along R Street.

8 And so we have submitted into the
9 record a detail prepared by Ed Ault, a
10 registered architect in the District of
11 Columbia, showing the details of the gate,
12 which is to be 42 inches in height, the same
13 height as the dumpster, approximately, 12 feet
14 long up against the rear of the building and,
15 approximately, 4 feet in depth, 4.5 feet,
16 almost 5 feet, I'm sorry, in depth extending
17 from the building with gates on both sides to
18 accommodate both the dumpster and residential
19 trash.

20 I have also submitted a photograph
21 of some salvage materials that the applicant
22 has acquired in order to construct the fence.

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1 So it would be a board-on-board enclosure
2 with salvage materials from Wright & Shaw.
3 And we believe that that would adequately
4 screen any solid waste cans/dumpsters from
5 view along R Street.

6 With that, I would like to turn it
7 over to Ellen McCarthy who is prepared, along
8 with written testimony that she submitted
9 today, to address the conditions required to
10 meet the test for a special exception for this
11 classification under 2003.1.

12 And we are happy to answer any
13 questions the Board may have.

14 CHAIRPERSON MOLDENHAUER: Yes, I
15 have a couple of questions before we move on
16 to Ms. McCarthy. I'm looking at the new
17 diagram for the enclosure of the garbage.
18 Will there be a lock provided on this to
19 secure the facility?

20 MS. BRAY: Yes.

21 CHAIRPERSON MOLDENHAUER: Yes?

22 MS. BRAY: Yes, there is.

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1 CHAIRPERSON MOLDENHAUER: And the
2 hours of operations you indicated that the
3 applicant is looking for them to go to 11:00
4 from 10:30 currently. Would that be Monday
5 through Sunday?

6 MS. BRAY: Yes.

7 CHAIRPERSON MOLDENHAUER: Okay.
8 Okay. Those are the only questions I have for
9 the applicant. Did any other Board Members
10 have any questions for the applicant, at this
11 time? Not at this time. Then we will
12 continue on with your presentation. Thank
13 you.

14 MS. MCCARTHY: Thank you, Madam
15 Chair, and Members of the Board. I will be
16 very brief. I just wanted to highlight some
17 of the aspects that are in my testimony to
18 emphasize, in particular, about the nature of
19 the neighborhood.

20 This is a neighborhood which is
21 extremely diverse in terms of the style of the
22 buildings and the uses and some of them are

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1 very historic, some are new. So you can see
2 from the second page while it is Zoned R-4,
3 which is consistent with the moderate density
4 residential classification that it's in, it's
5 a very busy area.

6 The Future Land Use Map calls for
7 mixed-use commercial just a block or so to the
8 north. The green and yellow line is three
9 blocks to the west. Across the street is the
10 international aid organization, Africare,
11 which occupies the former school building.
12 There are two gas stations which are the
13 gateway into New Jersey Avenue, at that point,
14 one with a Dunkin Donuts and one without.

15 There is a convenience store, a
16 very large liquor store, a cleaners. So we --
17 and as the Office of Planning report points
18 out, three-quarters of this square is Zoned C-
19 2-A. It is only this small part which is
20 Zoned R-4. And even though R-4 is
21 residential, it's important to remember that
22 R-4 includes uses such as private clubs,

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1 fraternities, sororities, health facilities
2 that are not strictly residential or at least
3 not single-family residential.

4 So we are talking about a diverse
5 neighborhood with relatively diverse zoning to
6 begin with and a building that was built in
7 the late 1800s. Apparently, always at least
8 partially used for commercial purposes,
9 typical corner store kind of arrangement with
10 the door right on the corner on New Jersey
11 Avenue, which is a four lane, fairly major,
12 arterial that connects to Rhode Island on the
13 north, which is also a major arterial and that
14 is six lanes, I believe.

15 So what we are talking about is the
16 provision which permits nonconforming uses,
17 which are all of the uses you saw in our
18 initial application, a long string of
19 Certificates of Occupancy documenting the
20 various nonconforming, and they were even
21 conforming before, because they started when
22 there were no Zoning Regs.

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1 But we are talking about the
2 provision which permits the conversion of a
3 nonconforming use into one that is first
4 permitted at the same or a more restrictive
5 section of the Zoning Regulations.

6 The intent behind that, I have some
7 selections there from the Zoning Regulations
8 where the Zoning Commission reconsidered
9 nonconforming use as it made some changes.

10 The notion is you have got to
11 balance the rights of property owners who have
12 buildings that were constructed with uses in
13 them that were legal at the point in time of
14 which those uses were put in. And while the
15 Zoning Regulations look for nonconformity to,
16 as one of the court cases say, wither away,
17 they also recognize they need to balance the
18 property rights of the owners and of the
19 businesses that are there.

20 So the standards are fairly strict
21 in terms of not having an adverse impact
22 either on the use or future uses of the

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1 neighborhood and also in terms of any adverse
2 impact on the property owners.

3 And it also determines that in a
4 Residential Zone, if you are going to invoke
5 this special exception clause, it needs to be
6 for another use which is either residential or
7 which qualifies as a neighborhood facility.

8 I think it is very clear that when
9 we are talking about a restaurant with only 25
10 seats that is specifically aiming on the part
11 of the proprietress to be a neighborhood
12 gathering place, which advertises largely by
13 word of mouth, and which doesn't have a dress
14 code or an admission fee or anything.

15 We are talking about something that
16 meets the tests that were established in the
17 previous BZA case as classifying a
18 neighborhood -- classifying a restaurant as a
19 neighborhood facility.

20 In terms of the adverse impacts, I
21 think our prehearing statement was pretty
22 clear about the ventilation improvements that

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1 the applicant has put in to make sure that any
2 cooking odors are effectively dissipated. You
3 just heard a pledge to limit the hours. The
4 trash hauling has been worked out, so that it
5 is the same trash hauler as Africare across
6 the street, so there is not an additional set
7 of truck trips introduced.

8 The enclosure will be built so it
9 is sheltered from view and in keeping with the
10 residential character of the area.

11 And that there are basically, as
12 the Office of Planning agrees, no other
13 neighborhood-serving, no other sit-down
14 restaurants, basically, within easy walking
15 distance of this facility.

16 Restaurant use is a C-1 use, which
17 is officially classified in the Zoning
18 Regulations as neighborhood-serving. And I
19 think that -- so what we are doing is,
20 basically, transforming from a take-out use,
21 which is first permitted in C-2 Zones, into
22 something that is even more conforming and

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1 less intensive, which is a restaurant that is
2 a C-1 use.

3 So basically, in short, the change
4 from a fast-food establishment, which was
5 largely take-out, to a predominantly sit-down
6 restaurant that is neighborhood-serving
7 satisfies all the requirements of ' 2003.1 of
8 the Zoning Regs to permit the substitution of
9 a new nonconforming use for an existing one.

10 It meets the requirements of 3401
11 with regard to granting a special exception in
12 that it is in harmony with the intent and
13 purpose of the Zoning Regs. It's not likely
14 to cause any adverse impacts on neighboring
15 property. In fact, it is an improvement over
16 existing conditions and over the previous
17 nonconforming uses.

18 And as you can see from the letters
19 of support in the record and from the
20 neighbors that are here to testify in support,
21 it will not have adverse impacts on
22 neighboring uses or property.

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1 So thank you very much.

2 CHAIRPERSON MOLDENHAUER: Thank
3 you. Ms. Bray, any additional witnesses or
4 testimony?

5 MS. BRAY: No. I would just like
6 to reserve a couple of minutes for closing if
7 that's appropriate at the end after persons in
8 support or opposition have spoken and after
9 Board questions.

10 CHAIRPERSON MOLDENHAUER: Not a
11 problem. Thank you. Then at this point in
12 time, we will turn to the Office of Planning
13 for their report.

14 MR. COCHRAN: Thank you, Madam
15 Chair. For the record, Steve Cochran, Office
16 of Planning. I'll just go through some of the
17 technical requirements, because I think the
18 applicant has dealt with the general
19 atmospheric considerations and the impacts on
20 the neighborhood.

21 With respect to 3104.1, it is clear
22 that it meets the general special exception

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1 requirements. It certainly comports with the
2 purpose and intent of the Zoning Regulations.

3 There are no physical changes of any
4 consequence. It provides adequate light and
5 air.

6 There is not going to be any
7 increase in population or overcrowding. And
8 as far as the specifics of ' 2003, I believe
9 Ms. McCarthy already noted that the sit-down
10 restaurant use is first permitted in the C-1
11 District, a zone that's even more restrictive
12 than the C-2 District, in which a fast-food
13 establishment is first permitted and,
14 therefore, it meets the threshold standard of
15 2003.1.

16 The applicant has demonstrated as
17 is required by 2003.2 and 3, that using the
18 property as a restaurant would not adversely
19 affect the neighborhood or its potential
20 development. And given the documentation that
21 the applicant submitted today, that its
22 operation would be suitably controlled.

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1 All of the concerns that had raised
2 have been addressed by the documents that the
3 applicant submitted. It has been supported by
4 the neighborhood, the Convention Center
5 Community Association, the 15 letters on
6 record in support of the application and just
7 walking around the neighborhood.

8 Essentially, the neighbors that I
9 ran into said yes, please, give us this
10 restaurant.

11 So with the application having met
12 the requirements of ' 3104 and 2003, OP
13 recommends that you approve the application,
14 subject to the requirements that we noted and
15 that the applicant provided today, the
16 screening of the trash area, the pickup every
17 second day of the restaurant's operation and
18 the closing of the restaurant by at least
19 11:00 p.m.

20 I'm open to questions, but that
21 concludes OP's testimony.

22 CHAIRPERSON MOLDENHAUER: Thank you

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1 very much. That's a very thorough analysis
2 and I think that I don't have any specific
3 questions for the Office of Planning. Do any
4 other Board Members?

5 COMMISSIONER TURNBULL: Mr.
6 Cochran, the two properties adjacent to the
7 restaurant or the proposed restaurant on R
8 Street, are they residential?

9 MR. COCHRAN: Yes.

10 COMMISSIONER TURNBULL: Before you
11 become C-2-A?

12 MR. COCHRAN: Yes, they are.

13 COMMISSIONER TURNBULL: They are
14 residential?

15 MR. COCHRAN: Yes.

16 COMMISSIONER TURNBULL: And the
17 ones up on New Jersey are also residential
18 then?

19 MR. COCHRAN: Correct. And I have
20 spoken to one of the residents of the property
21 to the west on R Street, who is heartily in
22 favor of the restaurant.

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1 COMMISSIONER TURNBULL: Okay. The
2 streets are fairly wide public areas,
3 sidewalks.

4 MR. COCHRAN: Very wide. I mean,
5 they are major avenues. They are 160 foot
6 wide --

7 COMMISSIONER TURNBULL: Right.

8 MR. COCHRAN: -- right-of-way on
9 New Jersey Avenue and I don't recall on R
10 Street. But that corner has considerable
11 opportunity for occupancy for public space, if
12 permitted, of course, by --

13 COMMISSIONER TURNBULL: I think you
14 mentioned that there is a possibility that you
15 could have outdoor seating?

16 MR. COCHRAN: Well, yes. The
17 corner --

18 COMMISSIONER TURNBULL: Lends
19 itself?

20 MR. COCHRAN: -- lends itself to
21 it. It is ready for every -- it has it all
22 prepared except for chairs and tables.

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1 COMMISSIONER TURNBULL: Yes. And
2 it looks like --

3 MR. COCHRAN: And umbrellas.

4 COMMISSIONER TURNBULL: -- the main
5 entrance is at the corner with a secondary
6 entrance down in the middle bay or something?

7 MR. COCHRAN: Right. The building
8 has two uses. There is an entrance, there is
9 a diagonal entrance on the corner. There is a
10 residential entrance, as I recall, maybe I
11 should look at the pictures again, on R
12 Street. So there is a lower level unit, a
13 second floor unit, both of which are
14 residential. They have always been used
15 residentially.

16 The operator of the restaurant has
17 a lease for the lower level unit. I don't
18 know who lives up on the second floor.

19 COMMISSIONER TURNBULL: But they
20 are residential?

21 MR. COCHRAN: Yes.

22 COMMISSIONER TURNBULL: Okay.

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1 Thank you.

2 CHAIRPERSON MOLDENHAUER: Thank you
3 very much. Does the applicant have any
4 questions for the Office of Planning?

5 MS. BRAY: No, we do not. Thank
6 you.

7 CHAIRPERSON MOLDENHAUER: Thank
8 you. Then at this point in time, we would
9 turn to the ANC. Is anybody present from ANC-
10 2C? Seeing no one present, then I will
11 reference our Exhibit No. 43, which indicates
12 that at a duly noticed meeting on July 7,
13 2010, the applicant presented a case before
14 the ANC and the ANC voted to support the
15 special exception unanimously 4-0.

16 I'm sorry, I'm looking at this
17 letter and I don't see that they indicated
18 that a quorum was present. The letter does
19 not indicate that a quorum was present. So
20 while we will consider the letter as a letter
21 of support, it will not be provided great
22 weight.

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1 MS. BRAY: Madam Chair, I would
2 note for the record that there are only four
3 members of ANC-2C. So if the vote was 4-0,
4 there was certainly a quorum present.

5 CHAIRPERSON MOLDENHAUER: And what
6 I will do is I will -- at the bottom, they
7 actually list all four, it looks like. Let's
8 see 2C01, 2C02, 2C03 and 2C04. So what I'll
9 do is I'll just take notice of the fact that
10 there are four individuals listed at the
11 bottom showing that then a 4-0 would be a
12 quorum.

13 MS. BRAY: Thank you.

14 CHAIRPERSON MOLDENHAUER: But I
15 would just, for purposes if the ANC is
16 listening, to encourage that they actually
17 just include that, so that there is no
18 question in any future letters. That letter
19 will get great weight.

20 At this point in time then, we
21 would turn to any individuals in support or in
22 opposition. And I believe that we already had

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1 stated that there were two individuals
2 present. So I will turn to the gentleman,
3 first, and if you can introduce yourself again
4 and you will be provided three minutes to
5 present any statements in support or
6 opposition.

7 MR. MOULTON: Good morning. Thank
8 you again, Madam Chair and to the Board.
9 Again, my name is Martin Moulton. I'm the
10 President of the Convention Center Community
11 Association. And I'm a resident just three
12 blocks away from this restaurant, proposed
13 restaurant.

14 I would note that our association
15 has met twice to discuss this restaurant's
16 application. And we did vote unanimously in
17 support of it to echo the ANC's unanimous
18 support.

19 As a neighbor, I would also say
20 that I have heard no opposition anywhere in
21 the community to -- that would stand in this
22 way of this application being approved.

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1 And thank you again for your
2 consideration.

3 CHAIRPERSON MOLDENHAUER: Thank you
4 very much. Mr. Moulton, I just have a
5 question for you. It came out in the Office
6 of Planning's discussion just a second ago
7 from some questions from Mr. Turnbull that
8 there is the potential, obviously, for outdoor
9 seating and a large amount potentially,
10 because of the size of the sidewalks there.

11 Do you think, in your opinion, as
12 being a neighbor close by and having, you
13 know, a pretty good handle of what the
14 community is interested in, that that would
15 potentially create any undue sound or noise in
16 the area, as a neighbor, as a community
17 activist that you would be in support of or in
18 opposition of?

19 MR. MOULTON: I think we, most
20 neighbors, would be in support of outdoor
21 seating at this restaurant. New Jersey Avenue
22 is already quite noisy, Rhode Island to the

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1 north. I don't think there would be an
2 additional impact from outdoor seating at this
3 restaurant.

4 CHAIRPERSON MOLDENHAUER: All
5 right. Thank you. I appreciate you touching
6 on that point for me. Are there any other
7 questions from Board Members for Mr. Moulton?
8 Seeing none, thank you for taking the time to
9 come down. And then the next witness?

10 MS. MAXWELL: Hello once again.
11 I'm M. Marie Maxwell. I live at 1618 4th
12 Street, N.W., which is about a block from Beau
13 Thai. I walk along R Street as part of my
14 commute back and forth from work, so I do pass
15 by it and I have lived there since, lived in
16 the area, 2001, so I remember, I think it was,
17 Dan's Carryout that was before there and its
18 interesting smells.

19 Beau Thai is a great improvement
20 over the previous incarnation, well, previous
21 restaurant that was there. And I am fully in
22 support of it being a sit-down restaurant. I

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1 will most likely support if Beau Thai decides
2 to try to have outdoor seating, so I'm just
3 here in support of that. Thank you.

4 CHAIRPERSON MOLDENHAUER: Thank you
5 very much. Do any Board Members have any
6 questions for Ms. Maxwell? Seeing none, thank
7 you both for coming down today.

8 Are there any individuals in the
9 audience in support or in opposition? Please,
10 come forward. Oh, you need to come forward
11 and actually speak into the microphone.

12 MS. NIMRI: Hi.

13 CHAIRPERSON MOLDENHAUER: Hi, yes,
14 if you could turn on, you can introduce your
15 name and state your home address, please.

16 MS. NIMRI: My name is Khawla Nimri
17 and I live across the street in 1707 New
18 Jersey. I just have -- I went to the
19 restaurants and their food is wonderful. It's
20 really nice restaurant. But I just have a
21 question about parking, when people come to
22 the restaurant. How -- you know, wouldn't it

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1 be more cars around?

2 CHAIRPERSON MOLDENHAUER: And so
3 you are concerned about the traffic
4 potentially being increased in the area?

5 MS. NIMRI: No. To park their
6 cars.

7 CHAIRPERSON MOLDENHAUER: Parking
8 their cars. Well, what I'm going to do is I'm
9 going to actually then turn your concern to
10 the applicant and ask the applicant to address
11 that and then I can also potentially relay
12 some additional issues after that.

13 MS. NIMRI: That's fine, but it's
14 really nice restaurant.

15 CHAIRPERSON MOLDENHAUER: Okay. I
16 appreciate that. That concern, the applicant
17 can address that issue.

18 MS. BRAY: Sure, we would be happy
19 to. There is no parking plan for the
20 restaurant, because it is intended to be a
21 neighborhood restaurant and not advertised
22 heavily outside of the neighborhood or

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1 encouraging folks from outside the
2 neighborhood coming to the restaurant.

3 It is the goal of Beau Thai to be a
4 walkable destination for all neighbors in the
5 neighborhood. There is one parking place
6 behind the building, but that is actually used
7 by the operator and not intended for public
8 parking. There is parking along both R Street
9 and New Jersey Avenue.

10 But again, it is Beau Thai's
11 intention to be a neighborhood destination.
12 It is, as Ms. Maxwell stated, right between
13 the Metro Station and the majority of the
14 neighborhood. And it has been observed since
15 they have been in operation, since mid-August,
16 that the majority of the patrons have been
17 coming on foot to the restaurant.

18 And Ms. Vigsittaboot also has
19 discussed with us the fact that she has talked
20 to her customers and has noted that most of
21 them are living in the area. So we don't
22 anticipate any increase in vehicle traffic to

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1 the neighborhood.

2 MS. NIMRI: Thank you.

3 CHAIRPERSON MOLDENHAUER: Thank you
4 very much. That being said, your closing
5 remarks, at this time.

6 MS. BRAY: Thank you. I'll just
7 note for the record while we are on the
8 subject of parking, that we have done a
9 parking analysis and no parking is required
10 for this use. It is because it is a
11 grandfathered, both commercial and residential
12 use, only one parking space would be required
13 for the residential uses having been
14 constructed in 1900 with a maximum of two
15 units plus the commercial use, which is not in
16 and of itself large enough to warrant a
17 parking space.

18 The Zoning Regulations would
19 entitle the owner to a parking credit of one
20 space. Only one space would be required today
21 for the use, so we have determined no parking
22 is necessary.

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1 Onto the conclusion. I also want
2 to note for the record that, I know there was
3 a question regarding the neighbors on both
4 sides, and Mr. Cochran indicated that he had
5 spoken with the neighbor on R Street, but the
6 neighbor immediately adjacent on New Jersey
7 Avenue has become a frequent customer of Beau
8 Thai as well.

9 And although we had expected a
10 letter in support, I looked at the record
11 yesterday and I didn't see anything from him.

12 But I'm informed that he is dining in the
13 restaurant at least once, if not twice, a
14 week.

15 In conclusion, I think we have
16 clearly demonstrate that we meet the test.
17 This is clearly an underserved neighborhood
18 when it comes to the provision of
19 neighborhood-centric retail, restaurants and
20 that the fact that the request of the
21 restaurant 25 indoor seats with a potential
22 should DDOT approve it in the future for any

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1 outdoor seating, would be a small
2 neighborhood-centric facility, not large
3 enough for destination dining, on the way
4 between the Metro and the neighborhood and
5 would provide a very important function in
6 terms of being eyes-on-the-street and a
7 neighborhood gathering place.

8 There is no deleterious effects
9 converging from the fast-food use. In fact,
10 it will generate less waste and we hope
11 generate less of the loitering and other
12 adverse impacts associated with fast-food
13 establishments throughout the District.

14 Moreover, the applicant has made
15 arrangements for better handling of solid
16 waste and hours of operation, which are in
17 harmony with the needs of the community.

18 There have been overwhelming
19 support and we believe we have met the test
20 for a special exception and we would request a
21 Bench decision, if it's the pleasure of the
22 Board. Thank you very much.

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1 CHAIRPERSON MOLDENHAUER: Thank you
2 very much, Ms. Bray. Are there any other
3 Board questions of the applicant? Seeing
4 none, then at this point in time, what we will
5 do is end the hearing portion of this and
6 enter into our deliberation session.

7 That being said, I will start us
8 off with this case. This is a case for a
9 special exception for a nonconforming use.
10 And I think that we have a fairly solid
11 record, that the prior use on this property
12 has a very long history of being some sort of
13 commercial use.

14 We have documentation of all of the
15 older C of Os going back to when you had
16 delicatessens, you had delis. There was, you
17 know, sufficient evidence that, you know, more
18 recently this facility has been used as a
19 fast-food establishment, which we have heard
20 testimony from the applicant's expert, Ms.
21 McCarthy, that, obviously, a fast-food
22 establishment is a higher use in regard to a

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1 C-2 versus a C-1, in which a restaurant would
2 be and, thus, this would be actually a
3 reduction in the nonconforming aspect in
4 conjunction with the zoning requirements.

5 And that we have sufficient
6 documentation showing that this is in harmony
7 with the general purpose of the Zone Plan and
8 also that there has really been no evidence of
9 any adverse effect on the neighboring
10 properties, that actually a majority of the
11 neighboring properties are in support.

12 And that while this is an R-4 Zone,
13 there is a large majority of commercial and
14 retail mixes in the surrounding community and
15 that there is no general adverse effect to
16 seeing that the prior use was for a fast-food
17 establishment, which would potentially be
18 considered a more adverse use, rather than a
19 restaurant use.

20 In addition to that, under 2003.1,
21 the nonconforming use, whether or not the
22 nonconforming use actually has any adverse

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1 effects on the surrounding community and
2 looking at issues of noise and traffic and
3 parking, odors, vibration, designs, that being
4 said, I think that we have had some extensive
5 testimony from the applicant and from the
6 witnesses testifying that there was some
7 renovations done on the property in regards to
8 trying to minimize any odors from the
9 facility.

10 Ms. Maxwell indicated that the
11 smell has not been nearly as bad since the new
12 applicant has taken ownership and has been
13 operating the facility.

14 In addition to that, we have
15 testimony that the neighbors are very
16 encouraging of it. We did have Ms. Nimir
17 state that she had some concerns about
18 parking, but I think that the applicant did
19 address that, both in their prehearing
20 statement hearing report and here today, that
21 from the current use over the last couple of
22 months of the facility, that a majority of the

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1 patrons are walk-in patrons. They are not
2 driving patrons.

3 In addition to that, Ms. Bray did
4 testify and is accurate in the fact that there
5 is no parking requirement for this project, so
6 that being said, we are really not looking at
7 the parking issue, but it is a part of our
8 evaluation under 2003.3 in regards to how that
9 would affect it.

10 But I think that considering the
11 area, considering the support of all the
12 neighbors and the fact that it seems that this
13 will be something in which the residents would
14 be walking from the Metro or from their homes
15 to use, that being said, I think that that
16 might be a factor when we start talking about
17 conditions.

18 Maybe potentially we want to throw
19 in a condition. I know it is not already
20 articulated in the OP report, but a term
21 condition to just ensure that potentially over
22 the years that there is no change in the

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1 effect or potential issues. And I think I'll
2 throw that out now, just kind of as a
3 potential issue we can discuss during
4 deliberations and other Board Members can
5 weigh in on.

6 But the other three terms are
7 conditions that the Office of Planning
8 articulated, I think, have been agreed upon by
9 the applicant and I think are very strong
10 issues.

11 That being said, I am in support of
12 this application, based on the conditions in
13 the Office of Planning report and I'll open up
14 the deliberation for additional discussion.

15 MEMBER HINKLE: Thank you, Madam
16 Chair. I don't have much more to add to that.

17 I just wanted to state that, you know, I do
18 think there is a solid record of use at the
19 site and I certainly appreciate Ms. McCarthy's
20 testimony today in terms of the
21 appropriateness of the restaurant use of the
22 site.

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1 And I also wanted to state that I
2 appreciate what I would term the significant
3 support by the community for this use at the
4 property, even today as well as the materials
5 that were submitted with this application.
6 That's all I have for now.

7 CHAIRPERSON MOLDENHAUER: Thank
8 you.

9 COMMISSIONER TURNBULL: Yes, Madam
10 Chair, I would agree with the both of you. I
11 think the Office of Planning report by Mr.
12 Cochran is very thorough and I think
13 supplemented by Ms. McCarthy's report. We are
14 looking at a use change. And as you had said
15 earlier, you know, we're going from a fast-
16 food establishment, which is a matter-of-right
17 in the C-2 Zone, I'm basically rereading some
18 of Ms. McCarthy's language here, and a
19 restaurant is permitted into the C-1 Zone.

20 So we are looking at the
21 nonconforming as trying to make it more
22 conforming or less impact than what it was

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1 previously. So I think the idea that it's
2 neighborhood-oriented, I think, this is a
3 wonderful way to move forward with this kind
4 of a property. The fact that it has been
5 grandfathered and kind of a more pleasing use
6 for the facility, I think, I'm in support of
7 this.

8 Commenting on your question of the
9 term, I guess I'm open to it. I'm just
10 curious. I don't know what that does. They
11 would have to come back before us or no? They
12 just have to renew their C of O?

13 CHAIRPERSON MOLDENHAUER: They
14 would have to come back before us. It would
15 be the same thing that we do for a lot of
16 other applications, you know, CDC applications
17 where an applicant -- you know, lots of times
18 when we feel as though potentially the use
19 would increase or potentially we don't know
20 exactly how it would, in the future, affect
21 the surrounding community as to the standard
22 under 2003.1, potentially terming it to that.

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1 If there is any adverse effect, the
2 applicant can then come back before us and
3 neighbors would be provided an opportunity to
4 have a Public Hearing and potentially to voice
5 any concerns, if there are any. If there
6 aren't any, then, obviously, it would be a
7 fairly seamless process.

8 It's just potentially a precaution
9 we could take. We don't have to. I'm
10 throwing it out there --

11 COMMISSIONER TURNBULL: Yes.

12 CHAIRPERSON MOLDENHAUER: -- more
13 for discussion.

14 COMMISSIONER TURNBULL: Yes.

15 CHAIRPERSON MOLDENHAUER: I'm not
16 set on it one way or another. But, you know,
17 lots of times where a facility hasn't yet
18 really started operating, so you don't know
19 any specific impacts it may have currently or
20 in the future. We do term approvals. I'm
21 throwing it out there for discussion.

22 COMMISSIONER TURNBULL: Well,

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1 that's a good question. I'm not sure. I
2 guess we could consider it. I'm thinking of
3 terms with parking lots and things to where we
4 have a potential problem. I don't know. I'll
5 ask our other Member to --

6 MEMBER HINKLE: Yes, that's a good
7 question. I'm not inclined to put a term
8 limit on this application as a condition of
9 this application, simply because I don't think
10 the use that is being proposed is
11 significantly different from what is existing.

12 And I think it has been discussed there is an
13 improvement in terms of the nonconformity than
14 what is currently there.

15 So I'm inclined not to support a
16 term as a condition of this application.

17 COMMISSIONER TURNBULL: Well, I
18 guess I could -- I'm open either way. But I
19 think Mr. Hinkle does bring out a -- we're
20 going to a better usage or we're going to a
21 more conforming usage, rather than the fast-
22 food. I guess I would let it. I would not

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1 want to do it then either.

2 CHAIRPERSON MOLDENHAUER: Okay. I
3 think that I agree with both of your analyses.

4 I was just simply -- I think it's always good
5 to think out different issues and to
6 potentially ensure that we have discussed any
7 opportunity that may affect the community,
8 making sure that we are looking out for all of
9 those interests that, you know, exist
10 currently or may exist in the future.

11 But I do agree that there is an
12 overwhelming amount of support for this
13 application, that it is, I think, an amenity
14 or a facility for the residential purposes of
15 the community to have in a neighborhood, to be
16 able to go and walk down the street and be
17 able to enjoy a nice meal.

18 So that being said, I think we have
19 completed our deliberation. Let's --

20 COMMISSIONER TURNBULL: Maybe Mr.
21 Moulton can write us a letter if he sees a
22 problem.

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1 CHAIRPERSON MOLDENHAUER: That
2 being said, I'll submit a motion, a motion on
3 Application No. 18099, for a special exception
4 to permit a change in use from a nonconforming
5 fast-food establishment to a restaurant at the
6 premises 1700 New Jersey Avenue, N.W.

7 COMMISSIONER TURNBULL: Second.

8 CHAIRPERSON MOLDENHAUER: The
9 motion has been made and seconded.

10 All those in -- oh, I'm sorry.
11 Then that motion was conditioned upon the
12 conditions in the OP report. The motion has
13 been made and seconded.

14 All those in favor?

15 ALL: Aye.

16 MR. MOY: Staff would record the
17 vote as 3-0-2. This is on the motion of the
18 Chairperson, Ms. Moldenhauer, to approve the
19 application for relief as she stated, seconded
20 by Mr. Turnbull. Also in support of the
21 motion is Mr. Hinkle. No other Board Members
22 participating.

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1 So again, the final vote to approve
2 the application is 3-0-2.

3 CHAIRPERSON MOLDENHAUER: Thank you
4 very much, Mr. Moy. And with no opposition, I
5 would request that we waive our requirements
6 and ask for a summary order to be issued.

7 MR. MOY: Excellent.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you.

10 MS. BRAY: Thank you, Madam Chair
11 and Members of the Board.

12 CHAIRPERSON MOLDENHAUER: Thank
13 you.

14 (Whereupon, the Public Hearing was
15 recessed at 11:49 a.m. to reconvene at 1:16
16 p.m. this same day.)

17

18

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1 first, stating your name and home address.
2 When you are finished speaking, please, turn
3 off the microphone, so that your microphone is
4 no longer picking up sound or background
5 noise.

6 All persons planning to testify
7 either in favor or in opposition are to fill
8 out two witness cards. These cards are
9 located to my left on the table near the door
10 and on the witness tables. Upon coming
11 forward to speak to the Board, please, give
12 both cards to the Court Reporter sitting to my
13 right.

14 The order of procedure for special
15 exception and variances are as follows: One,
16 statement and witnesses of the applicant; two,
17 Government reports, and Office of Planning
18 and the Department of Public Works; three,
19 reports from the ANC; four, persons and
20 parties in support; five, persons and parties
21 in opposition; and then closing remarks from
22 the applicant.

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1 Pursuant to ' 3117.4 and 3117.5,
2 the following time constraints will be
3 maintained: The applicant, appellant, persons
4 and parties, except an ANC, in support,
5 including their witnesses, will be given 60
6 minutes collectively. The appellee, persons
7 and parties, except an ANC, in opposition,
8 including their witnesses, will be given 60
9 minutes collectively. Individual witnesses
10 will be given 3 minutes each.

11 These time restrictions do not
12 include cross-examination or questions from
13 the Board. Cross-examination of witnesses is
14 permitted by the applicant or parties. The
15 ANC within which the property is located is
16 automatically a party to special exception or
17 variance cases.

18 Nothing prohibits the Board from
19 placing reasonable restrictions on cross-
20 examination, including limitations on time and
21 scope.

22 The record will be closed at the

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1 conclusion of each hearing, except for any
2 material requested specifically by the Board.

3 The Board and the staff will specify at the
4 end of each hearing exactly what is expected
5 and the date in which that person must submit
6 the evidence to the Office of Zoning. After
7 the record is closed, no other information
8 will be accepted by the Board.

9 The Sunshine Act requires that the
10 Public Hearing on each case be held in the
11 open before the public. The Board may,
12 consistent with its rules and procedures and
13 the Sunshine Act, enter into Executive Session
14 during or after a Public Hearing on a case for
15 purposes of reviewing the record or
16 deliberating on the case.

17 The decision of the Board in these
18 contested cases must be based exclusively on
19 the public record. To avoid any appearance to
20 the contrary, the Board requests that persons
21 present not engage the Members of the Board
22 in conversation.

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1 Please, turn off all beepers and
2 cell phones, at this time, so as not to
3 disturb these proceedings.

4 The Board will make every effort to
5 conclude the Public Hearing as near as
6 possible to 6:00 p.m. If the afternoon cases
7 are not completed by 6:00 p.m., the Board will
8 assess whether it can complete the pending
9 case or cases remaining on the agenda.

10 At this time, the Board will
11 consider any preliminary matters. Preliminary
12 matters are those that relate to whether a
13 case will or should be heard today, such as
14 requests for postponement, continuance or
15 withdrawal or whether proper adequate notice
16 was given. If you are not prepared to go
17 forward today or you believe that a case
18 should not proceed, now is the time to raise
19 such a matter.

20 Mr. Moy, are there any preliminary
21 matters?

22 MR. MOY: Madam Chair, there is a

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1 slight one to the second case of the
2 afternoon, but staff would suggest that we
3 take that up when we call the case.

4 CHAIRPERSON MOLDENHAUER: Thank
5 you. I agree with that. Would all
6 individuals wishing to testify this afternoon
7 before the Board, please, stand and Ms. Bailey
8 will administer the oath.

9 MS. BAILEY: Please, raise your
10 right hand.

11 (Whereupon, the witnesses were
12 sworn.)

13 MS. BAILEY: Thank you.

14 CHAIRPERSON MOLDENHAUER: Thank
15 you. We will call the first case for this
16 afternoon.

17 MS. BAILEY: Madam Chair, Members
18 of the Board, to everyone, good afternoon.

19 The first case is Application
20 18104. It's the Application of William S.
21 Langhorne, and it's pursuant to 11 DCMR '
22 3103.2, for a variance from the limitation on

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1 the allowable number of stories under
2 subsection 400.1, to allow a fourth story
3 addition to an existing one-family row
4 dwelling. The property is located in the R-3
5 District at 3245 N Street, N.W., Square 1231,
6 Lot 806.

7 CHAIRPERSON MOLDENHAUER: Thank
8 you. Will the parties, please, step forward
9 and introduce themselves?

10 MR. LANGHORNE: Good afternoon. My
11 name is William Langhorne and I live at 3245 N
12 Street.

13 MR. RIXEY: And my name is Douglas
14 Rixey. I'm Mr. Langhorne's architect. My
15 office is at 349 1/2 M Street in Georgetown.

16 CHAIRPERSON MOLDENHAUER: Okay.
17 Mr. Langhorne or Mr. Rixey, whoever will be
18 presenting, if you want to start off and
19 begin? Do you both have copies of the Office
20 of Planning report? Okay. So, obviously, you
21 may want to focus on addressing some of those
22 issues.

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1 MR. LANGHORNE: Oh, in addressing
2 the issue of wanting to do the fourth story,
3 when I purchased the -- moved into the house a
4 couple of years back, I was single at the time
5 and it was a great size house for myself at
6 the time. And since that time, I'm now
7 getting married next week and my fiancée and I
8 would love to have kids immediately.

9 And the house is great as a single
10 dwelling, but as a family, we would like to
11 have more space. We contemplated selling the
12 house, buying a house close to the top of the
13 market and selling the house now. It could be
14 a very difficult situation and would probably
15 have to move further out of the city if not
16 out of the city in order to have a larger
17 house.

18 So we are thinking well, let's try
19 and make the best of the situation that we
20 have here in the current house that we have
21 and putting a floor on top of it. So that's
22 when we came to the decision to try and put

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1 another floor on the current house we have.

2 CHAIRPERSON MOLDENHAUER: And can
3 you actually address some of the legal issues
4 or the aspects of the variance test in regards
5 to how you satisfy that?

6 MR. RIXEY: I would like to address
7 that, if I may? Shall I move those boards
8 closer or can you see them from there?

9 CHAIRPERSON MOLDENHAUER: Actually,
10 we have a videocamera right near where Mr. Moy
11 is sitting, so if you can angle them so that
12 they can be captured --

13 MR. RIXEY: Great.

14 CHAIRPERSON MOLDENHAUER: -- by the
15 videocamera and also easier for us to see,
16 that would be appreciated.

17 MR. RIXEY: I would just like to
18 quickly explain the context. This is just
19 west of Wisconsin Avenue on N Street in
20 Georgetown. It is in a block that is about
21 half commercial and half residential. There
22 is a great variety of building types and uses

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1 on this block.

2 There are commercial buildings,
3 apartments, condos, single-family dwellings.
4 They vary wildly in building style and type
5 and size. Anything from two to three to four
6 to five stories.

7 Our subject property is right here
8 and you can see there is quite a variety just
9 in this short part of the block.

10 Another view. This is the
11 property. This is a funny photograph, because
12 the building to the east, actually both of the
13 flanking buildings are taller. This is taken
14 in such a way that it looks like this building
15 already has a fourth floor on it. So it gives
16 you -- it's a pretty -- it wasn't intentional,
17 but it gives you a pretty good idea of what
18 will happen if a fourth floor is allowed.

19 Across the street there are three,
20 four and even five story residences. This
21 part of N Street and especially the next block
22 over has some very large houses. Smith Row is

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1 just a block over. There are some great
2 Georgetown houses here.

3 However, our property at the moment
4 is not one of them. This house was built in
5 1960. It is a property line to property line
6 dwelling, so technically a row house. We'll
7 add 60 percent lot coverage. It's setback 4
8 feet from the front property line.

9 And when it was built,
10 unfortunately, the developer buried it in the
11 hillside. So the only frontage this floor has
12 is on the front. 87 percent of the perimeter
13 is completely underground. And, in fact,
14 about a third of this floor isn't even
15 excavated. There is a crawlspace. There is
16 mechanical rooms and there is one usable room
17 here, but the rest of it is service areas.

18 This red line, if you can see it,
19 is what the actual grade is as soon as you
20 pass the facade. This is a retaining wall.
21 That's the grade. So really this building,
22 the first floor, the ground floor, under most

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1 jurisdictions, would have been considered a
2 basement and we wouldn't be having this
3 conversation.

4 In terms of site, this is the site
5 plan. Another peculiarity of the site is that
6 in the rear there is an attached garage, but
7 there is a large parking lot over here that is
8 part of the apartment building next door.
9 There are about 20 or 30 cars that have the
10 right to cross over the rear property of my
11 client's land.

12 And even though it doesn't
13 technically address the issue of lot coverage
14 or number of floors, it does impact the
15 usability of this site.

16 The last item on the site and the
17 building is that we are currently at almost 58
18 percent lot coverage. We are allowed about 44
19 square feet of addition without a variance.
20 44 square feet across the width of the
21 property would result in an addition 2 feet
22 deep. So it's not really a viable

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1 alternative.

2 The existing building, again built
3 in 1960, has rather low floor-to-floor. It's
4 -- a typical Georgetown row house would have
5 9, 10 or 11 foot ceilings or 12 foot ceilings.

6 This house has 8 foot and 9 foot ceilings.
7 And as a result, its height to the parapet is
8 only 31 feet, which is substantially lower
9 than the 40 feet allowed.

10 In plan on ground level, you can
11 see that this is the only portion that is
12 exposed. This portion is unusable or
13 underground and this one room is the only one
14 that even has any windows. So it is really
15 not viable as living space, in our opinion.

16 The first floor above grade is a
17 typical living floor with a living room,
18 kitchen, dining room and family room,
19 perfectly ordinary row house.

20 The second floor is three bedrooms
21 and two baths. So if you have a guest and two
22 children, the house is full and there is no

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1 place for the owners to live. Thus, we are
2 asking for the fourth floor.

3 In terms of specifically addressing
4 the requirements to grant a variance, we feel
5 that the underground condition of the first
6 floor precludes -- that requires the variance
7 for the fourth floor addition. The lot
8 coverage would require a variance for lot
9 coverage exception, so we feel that that is a
10 hardship that is due to site constraints that
11 were not created by the owner.

12 William already addressed the
13 financial aspect of buying high and trying to
14 sell low and practically speaking, it doesn't
15 make sense to try and sell this and buy a
16 larger house. And really there is no reason
17 to, because when you get to the second issue
18 of impact on the neighborhood or public good,
19 we have spent almost a year working on
20 designing alternatives for this project.

21 The Old Georgetown Board actually
22 has said that they feel that the addition

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1 makes this a better project. At the moment,
2 it's a bit of a missing tooth on the block
3 where you are coming along with these grand
4 houses and suddenly you have this funny little
5 thing built in 1960.

6 So here you can see the proposed
7 addition. We are maintaining the existing
8 cornice line. We are sloping the roof back as
9 a mansard. You can also see it on the model.

10 To try and scale the massing back to have
11 less impact on the neighborhood, but still
12 maintain something that has some context with
13 the existing buildings.

14 Even with the addition, which does
15 meet the height limit of 40 feet, we are still
16 3 feet below the Miller's house to the west
17 and 6 feet below the apartment building to the
18 east. So even with the extra floor, it's
19 still lower than the adjacent buildings. I'm
20 sorry, was that not clear? No.

21 Further, we have not only the
22 support of the OGB, but the ANC is in favor

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1 and we have signatures from seven neighbors
2 not just not objecting, but actually in favor
3 of the variance.

4 The last item as far as addressing
5 zoning intent, I feel that staying within the
6 height limit certainly is within the intent of
7 the Zoning Ordinance. Being similar in
8 massing and size to the neighbors is certainly
9 within the intent of the ordinance. In my
10 opinion, not counting a ground floor that is
11 87 percent completely underground really
12 shouldn't be considered a story. I think
13 that's at least the intent of the Zoning
14 Ordinance.

15 And we hope you will agree and
16 allow the extra floor.

17 CHAIRPERSON MOLDENHAUER: Board
18 Members, do you have any questions?

19 COMMISSIONER TURNBULL: Yes, Madam
20 Chair. Whereabouts on the basement ground,
21 the ground floor, is the mechanical?

22 MR. RIXEY: This is the mechanical

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1 room and this is a portion of the mechanical
2 room. This is unexcavated crawlspace.

3 COMMISSIONER TURNBULL: So
4 basically, when you come in, you come in and
5 you go right up the stairs. The room with the
6 fireplace, is that -- what is that used as?

7 MR. RIXEY: This is used as the
8 owner's home office.

9 COMMISSIONER TURNBULL: Okay. How
10 much space did you say is back in that area
11 that is, basically, mechanical or unused?

12 MR. RIXEY: The footprint, the
13 overall footprint of the building is,
14 approximately, 1,400 square feet. I could
15 calculate, but I would estimate that this is
16 in the range of about 600 square feet
17 probably.

18 Certainly less than half, but not
19 more than a third.

20 COMMISSIONER TURNBULL: Sure. And
21 the grade is -- once we get -- I'm trying to
22 look at this picture. Can you see when you

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1 are on that side, is that covered with dirt or
2 is that just open?

3 MR. RIXEY: Yes. When you go
4 through this gate, this is a retaining wall
5 and the grade beyond is at this line. So back
6 behind that brick wall is grade. The grade is
7 there and it's pretty much level all the way
8 back to the alley, very similar to what you
9 can see on this. See there is a big step in
10 the front and then it pretty much levels out
11 back to the alley.

12 COMMISSIONER TURNBULL: What's that
13 opening at the back of the house? Yes.

14 MR. RIXEY: Those are French doors
15 going into the family room, existing. So
16 that's on the level above-grade.

17 COMMISSIONER TURNBULL: I gotcha.
18 Okay. Okay.

19 MR. RIXEY: So here is the entrance
20 at grade. Those are the French doors you saw
21 up at the garage level, the alley level.

22 COMMISSIONER TURNBULL: Okay. So

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1 other that the very front of the building,
2 that floor is totally underground?

3 MR. RIXEY: Completely.

4 COMMISSIONER TURNBULL: Okay.
5 Thank you.

6 CHAIRPERSON MOLDENHAUER: You
7 indicated that the basement currently, the
8 front portion of the basement is being used
9 for a home office. Is there a restroom? I
10 just can't tell. I can't see that from here.
11 Is there a bath on the bottom floor?

12 MR. RIXEY: There is a bathroom
13 here.

14 CHAIRPERSON MOLDENHAUER: Okay.
15 And I was looking at the design, I guess, in
16 harmony with the other. The mansard roof that
17 you are recommending and I was looking at your
18 diagram there and also it looks like the
19 windows are not -- I guess, they look like
20 they are in a different appearance from the
21 rest of the neighboring community.

22 Is there a reason for that or why

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1 you didn't try to conform with the adjacent
2 properties as much or even the other windows
3 that are on the building?

4 MR. RIXEY: Yes. We actually
5 generated, I would estimate, 10 or 15
6 different alternatives for the way this roof
7 would be configured. Some of them were very
8 traditional with typical masonry dormers and
9 all that sort of thing. Some were very
10 contemporary with open porches and lots of
11 glass.

12 The Old Georgetown Board actually
13 preferred that this be less traditional and
14 more contemporary. And I can show you the
15 alternatives if you would like to see them?
16 We have quite a few.

17 CHAIRPERSON MOLDENHAUER: It's just
18 one of our standards is that, you know, any
19 addition is in conformity or harmony with the
20 character and design --

21 MR. RIXEY: Yes.

22 CHAIRPERSON MOLDENHAUER: -- of the

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1 neighborhood. And you know, obviously, one of
2 the benefits, you know, obviously, of
3 Georgetown, I have family there. But, you
4 know, just to me, it doesn't seem as though it
5 is in conformity or harmony with the community
6 or the neighboring designs.

7 Can I see the other ones? Yes, I
8 think I might appreciate that.

9 MR. RIXEY: Certainly. May I just
10 respond to that very briefly?

11 CHAIRPERSON MOLDENHAUER: Sure,
12 yes.

13 MR. RIXEY: You know, the Miller's
14 house next door is really a magnificent house.

15 It has beautiful dormers, beautiful mansard
16 roof. This is actually in scale, not that
17 much larger than this. And by folding the
18 roof back, the intent was not to try and take
19 away from this and allow it to remain the
20 grand house that it is.

21 This is meant to be very polite and
22 discrete. It is -- the roof does slope back.

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1 It is stepped back. It will be metal with
2 wood windows. So it's not super modern, but
3 it is not also purely traditional.

4 Let me show you some of the
5 alternatives with it. So these were some of
6 them. This is the existing condition. This
7 one had a brick facade that went straight up.

8 This had a mansard roof with three dormers.
9 A brick facade that went up with arched
10 openings, somewhat in response to the Miller's
11 house. A large mansard with a gabled dormer,
12 very much like the Miller's house. A step-
13 back facade with a covered porch on the front,
14 which actually was our preference, because it
15 solved -- it addressed the massing question
16 and gave them a front terrace facing N Street,
17 that Georgetown is very much against.

18 Both the community and the OGB are
19 against roof terraces, so we eliminated that.

20 And this was just a very plain Jane, the same
21 facade straight up kind of scheme. And this
22 was actually considered to be too massive, too

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1 mundane and not interesting enough.

2 So these are just some of them. We
3 have more that we went through and every one
4 of these has a different piece for the model.

5 And after a lot of attention to it, OGB
6 really felt that this was the most
7 appropriate.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you. And I think what I'll do is I'll turn to
10 the architects on the Board, not being one, to
11 kind of comment more on that and provide me
12 with some more perspective on those issues.

13 Getting back to some of the zoning
14 issues, and I appreciate you showing that to
15 me. It does help and it does help in
16 explaining the process that you went through
17 with the Old Georgetown Board.

18 But getting to the three-prong test
19 for the variance and, you know, if you get
20 past the first-prong, one of my questions
21 would be is, you know, how do you show that
22 there is a practical difficulty that

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1 associates with the grading to then the need
2 for a fourth floor?

3 Can you go through? I guess, did
4 the applicant, did, you, Mr. Langhorne, think
5 about excavating the rest of the basement and
6 potentially, you know, excavating some of the
7 rear and can you talk a little bit about that
8 and maybe how that, as an option, created some
9 practical difficulty for you, if it did?

10 MR. RIXEY: I'm not quite sure what
11 --

12 CHAIRPERSON MOLDENHAUER: Or if
13 your architect can address that.

14 MR. LANGHORNE: We are not quite
15 sure what is -- why this was designed the way
16 it was and why there is only a crawlspace
17 there. We're not quite sure what we would
18 find underneath there, whether it is piping or
19 solid rock, you know. And do we get into the
20 demolition only to find that there is solid
21 rock that would need to be blasted or, you
22 know, major city piping. We are not quite

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1 sure what is under there, so it was --

2 CHAIRPERSON MOLDENHAUER: So you
3 didn't do any research though to determine if
4 that was an option?

5 MR. LANGHORNE: Well, we have
6 discussed it. I don't know if you want to
7 talk further.

8 MR. LANGHORNE: Well, that was one
9 aspect, a concern about why it wasn't
10 excavated, because this part of Georgetown
11 does have a lot of rock-out croppings.
12 Whether it is excavatable or not, I had this
13 conversation with Mr. Jackson at the Office of
14 Planning about a month ago.

15 The real issue is that since we are
16 party wall to party wall, we can excavate all
17 day long, but there is no way to get any
18 windows. And so yes, we could theoretically
19 have areaways in the back, but they would be a
20 floor below-grade and then that would preclude
21 access to the garden, because you would have
22 to walk over these areaways to get to the rear

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1 garden and to the garage and the public space.

2 So I think given the length of the
3 plan, even if you had space in there, it
4 wouldn't be usable for habitable space, such
5 as bedrooms or anything that requires egress
6 or light.

7 CHAIRPERSON MOLDENHAUER: You say
8 that you are party wall to party wall, but you
9 are not actually sharing a party wall with any
10 other property on the two neighboring
11 buildings. They are being used, I guess, as--

12 MR. RIXEY: Correct. But we are
13 not allowed to penetrate those walls, because
14 they are considered fire walls. So we could
15 not have areaways or windows on those side
16 walls at-grade, because we would actually be
17 on someone else's property.

18 So the property line is right on
19 the face of our building. And, you know, if
20 we could excavate window wells along the
21 perimeter, that would be great, but they would
22 be on someone else's land. And also they

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1 really wouldn't be that great, because it
2 would be a window where the head of it was at-
3 grade, so you would look out the window and be
4 looking at the retaining pit that was
5 protecting the window. But we can't do it
6 anyway, so it's a non-issue.

7 So practically speaking, there is
8 really no way to add to this house, because we
9 are at our lot coverage virtually. We can't
10 gain livable space below-grade. So the only
11 way to go is up. And since it's within the
12 height limit and similar to the context, we
13 didn't think it was such an unreasonable thing
14 to do.

15 CHAIRPERSON MOLDENHAUER: Do any
16 Board Members have any other questions, at
17 this time?

18 COMMISSIONER TURNBULL: So the open
19 area belongs to the Miller house?

20 MR. RIXEY: Yes. This is the
21 Miller's side garden. And this little sod of
22 space belongs to the apartment building.

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1 COMMISSIONER TURNBULL: Now, how do
2 you get to your garage? Is there a fence at
3 the back or what do you -- how do you --

4 MR. RIXEY: There are fences on
5 each side here. And there is a fence across
6 the back that has large bi-fold doors. But
7 once you open it, you are actually in a public
8 right-of-way that then goes back to the
9 garage.

10 COMMISSIONER TURNBULL: Okay. How
11 do you get into the garage from --

12 MR. RIXEY: The garage door is
13 here.

14 COMMISSIONER TURNBULL: Right
15 there. Okay.

16 MR. RIXEY: On their property, so
17 they use the same public alley to turn into
18 their garage as opposed to going over to the
19 neighbor's property and coming in sideways.

20 COMMISSIONER TURNBULL: I didn't
21 look, are we at lot occupancy in this?

22 MR. RIXEY: I think we are at 58.7

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1 percent, so we have 1.3 percent, which is
2 about 44 square feet.

3 COMMISSIONER TURNBULL: Which is
4 what you were talking about before. Okay.

5 CHAIRPERSON MOLDENHAUER: Mr.
6 Turnbull just brought up the issue of the
7 garage and I just had a question. Does the
8 garage have a carriage house? You were
9 describing earlier some of the reasons. Does
10 it have any livable space in it on the upper
11 level?

12 MR. RIXEY: No, it's purely a
13 garage.

14 CHAIRPERSON MOLDENHAUER: Purely a
15 garage. Okay. I was just trying to look at
16 your diagram and it looked as though there are
17 windows. Can you turn that, so I can see it a
18 little bit better?

19 MR. RIXEY: Certainly.

20 CHAIRPERSON MOLDENHAUER: There are
21 three windows at the top or that's just
22 decorative?

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1 MR. RIXEY: There are three
2 windows, but it's just one volume of space.
3 There is no occupiable space in there. It's
4 just a two-car garage. It's about 20 x 22.
5 That's what it looks like without the floor,
6 by the way.

7 MEMBER HINKLE: Just real quick, I
8 wanted to go back to the alternative designs
9 that you had. And noting the concept design
10 review of the Old Georgetown Board, they
11 mentioned an alternative design of five multi-
12 light double hung windows. Did we see that
13 before?

14 MR. RIXEY: Let me see if I have it
15 here. Just one second. That was the scheme
16 where we had five double hung windows with
17 transoms above them to try and get more light
18 into the building. And I think one of the
19 criticisms of this was that as a result, as
20 opposed to having a sloping mansard, as you
21 see on the model, this facade comes straight
22 up. So it's more mansive and I think -- well,

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1 it's an alternative they would accept, but I
2 believe they prefer this one.

3 MEMBER HINKLE: Thank you.

4 COMMISSIONER TURNBULL: Can you
5 refresh my memory? The Board has last say on
6 the aesthetics?

7 MR. RIXEY: Technically, the
8 Commission of Fine Arts has the last word.

9 COMMISSIONER TURNBULL: Well,
10 that's what I -- okay.

11 MR. RIXEY: But practically
12 speaking, on residential projects from
13 Georgetown, the OGB reviews them. If they are
14 approved at the OGB level, they typically go
15 to Fine Arts on a Consent Calendar. So once
16 it's approved at the public hearing at OGB,
17 there is no further public hearing unless
18 someone is contesting the OGB's ruling.

19 COMMISSIONER TURNBULL: Okay.

20 MR. RIXEY: In which case, I think
21 you can appeal to the Commission, but I'm not
22 sure they always accept the appeal. They

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1 pretty much stand by --

2 COMMISSIONER TURNBULL: OGB?

3 MR. RIXEY: -- OGB's ruling.

4 COMMISSIONER TURNBULL: Okay.

5 MR. RIXEY: At least in my
6 experience.

7 CHAIRPERSON MOLDENHAUER: I have a
8 question. I was looking at the lot occupancy.

9 Is there a reason why you didn't consider
10 potentially seeking a special exception and
11 going up to 70 percent lot occupancy and doing
12 an addition on, you know, the two stories in
13 the rear of the house?

14 Because, obviously, the standard
15 for a variance, as you know, is a higher
16 standard. It's a more challenging standard.
17 But a special exception variance under 223
18 going to 70 percent would be a lot less. And
19 so I'm just curious as to why you didn't
20 pursue that option.

21 MR. RIXEY: Well, two issues on
22 that really. One is the plan is so long, if

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1 we were to do another addition in the rear,
2 all that would do is create the same problem
3 we have in the basement where the internal
4 rooms are even more landlocked.

5 So whatever that space is you are
6 adding on the end, that becomes the only room
7 with windows. So on this floor, if we were to
8 do an addition back here, these two internal
9 bedrooms would be landlocked, therefore, not
10 count as bedrooms, so we wouldn't have
11 actually gained a bedroom. They have to have
12 windows and egress to be counted as a living
13 space.

14 So let's say we took half of those
15 and made the master bedroom larger on the
16 addition, you've got the same problem where
17 these are still landlocked with no egress and
18 no light.

19 CHAIRPERSON MOLDENHAUER: You
20 couldn't put windows? I mean, obviously, I'm
21 looking at, I think you said, the Miller's
22 house.

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1 MR. RIXEY: Yes.

2 CHAIRPERSON MOLDENHAUER: I mean,
3 the Miller's house has windows all throughout
4 and they have a side patio and there is no way
5 you could --

6 MR. RIXEY: You're not allowed to
7 put windows on the side walls. And this house
8 does have a couple of windows on the party
9 wall.

10 CHAIRPERSON MOLDENHAUER: Yes.

11 MR. RIXEY: But they are not
12 allowed. I mean, they are grandfathered now.

13 One of the conditions when we submitted this
14 was the planner/reviewer saying we have to
15 close all the windows up. But we don't
16 because they are grandfathered, but you are
17 not allowed to add new ones in a party wall.

18 I think it's kind of a backward
19 concept, because realistically, no one is
20 going to add onto the two adjacent buildings
21 to the point that they are going to engage our
22 party walls. And even if they did, you could

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1 close the windows then. But if our scheme was
2 based on assuming we could have windows in the
3 party walls and it landlocked internal
4 bedrooms, maybe that's why they did it.

5 CHAIRPERSON MOLDENHAUER: Yes. I
6 don't have any further questions for the
7 applicant. Do any other Board Members?
8 Seeing none at this time, then what we will
9 do, if the applicant has concluded their
10 presentation, at this time, we will turn to
11 the Office of Planning for their report.

12 MS. THOMAS: Good afternoon, Madam
13 Chair. I'm Karen Thomas with the Office of
14 Planning. I'm sitting in for Arthur Jackson
15 this afternoon.

16 I believe that we have recommended
17 that we did not support the variance to
18 increase the height to the extra story. At
19 the time, we didn't believe that we had
20 sufficient information regarding the practical
21 difficulty.

22 We understood that there was a

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1 uniqueness in the situation, but we couldn't
2 see how it created a practical difficulty, so
3 we couldn't support the variance.

4 I'll leave it at that. If you have
5 more questions?

6 COMMISSIONER TURNBULL: Ms.
7 Jackson, good afternoon. I guess after
8 looking at the model and looking at the plans,
9 we have a definition problem. I guess, we're
10 at a conundrum here. It would almost appear
11 that although the entrance into the house is
12 at this grade, the street level, the whole
13 floor has really got dirt on all three sides.

14 It almost would -- I'm looking at --
15 -- when I was looking at the definition for
16 basement or cellar, it looks like it would
17 almost qualify as a -- it's underground. The
18 only windows are right at the front and that's
19 because the building was sunk down in. It
20 almost looks like it's a basement entry with,
21 you know, the old family room or a recreation
22 room in the basement that's looking out.

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1 It's an interpretation. I guess
2 it's how you look at it and for the most part,
3 it just seems like it is space that is really
4 not quite habitable. It's mechanical. As he
5 says, he has got it as a home office.

6 After seeing the model now and
7 looking at it, do you have any other thoughts
8 on it?

9 MS. THOMAS: Well, yes, after his
10 explanation, I can see where he is saying that
11 the majority of the ground level space is
12 unusable. It almost looks as if the house is
13 turned back like the front should be the back.
14 I mean, it looks like the situation that I
15 have in my row house where I have that
16 situation towards the back and not the front.

17 Where his back, where he enters
18 straight off the alley, that's where it, you
19 know, should have been switched around. So
20 after explanation, I can see where there may
21 be a practical difficulty in using that space
22 to satisfy his living arrangements.

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1 COMMISSIONER TURNBULL: Well, I
2 guess, and I'm just talking out loud here
3 trying to go through the different arguments
4 on a space like this, that he has really got
5 two livable floors or floors that are
6 habitable. And windows can only be on the
7 front and the back.

8 And, unfortunately, he comes in to
9 this space at street-level, which is really an
10 underground floor. I can almost make a case
11 for seeing that he could -- that the ground
12 floor is not really a story. It's really a
13 basement that you can enter it, but the
14 livable floor areas are really the two floors
15 above.

16 MS. THOMAS: Yes.

17 COMMISSIONER TURNBULL: I mean, you
18 could almost say that if he took out that door
19 and he added a set of stairs, he could go up
20 to enter into one of the windows and be in his
21 living room, which would make more sense in
22 one way. It's an odd set up for a house.

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1 MS. THOMAS: That is correct, yes.

2 COMMISSIONER TURNBULL: I'm not
3 sure what the other Board Members feel, but it
4 just seems like it's a weird setting. You
5 could almost make a case for adding it to be
6 at three floors then, three stories and
7 consider this an exposed basement, at least
8 exposed on one side, on one entrance.

9 It doesn't quite fit. It's neither
10 fish nor fowl on this thing, but you can make
11 a case that that is really a basement, if it's
12 unexcavated on three sides.

13 MS. THOMAS: Yes, I wasn't aware
14 that, you know, he was not able to add any
15 windows at all on this side and that was
16 considered a party wall that you couldn't add
17 windows on that side. But whatever windows
18 exist on those properties are grandfathered in
19 now. I wasn't aware of that.

20 But if that is the case, I could
21 see some practical difficulty in not being
22 able to add on and create bedrooms in the

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1 interior spaces. So that would be --

2 COMMISSIONER TURNBULL: Yes, it
3 sounds like he has got a Building Code issue.

4 MS. THOMAS: Issue, yes.

5 COMMISSIONER TURNBULL: That he has
6 to deal with. I'm not sure what my colleagues
7 think. I think it's just a strange situation.
8 It's like I'm always reluctant to go against
9 OP, but maybe OP has a little bit of doubt now
10 as to how this really sits. I'm not sure.

11 CHAIRPERSON MOLDENHAUER: Do any
12 other Board Members have any other questions
13 for the Office of Planning? Does the
14 applicant have any questions for the Office of
15 Planning?

16 MR. RIXEY: I don't really have a
17 question.

18 CHAIRPERSON MOLDENHAUER: If you
19 don't have a question, there will be a point
20 in time where the applicant can make closing
21 remarks and you can make them at that time
22 then.

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1 MR. RIXEY: (No audible answer.)

2 CHAIRPERSON MOLDENHAUER: Thank you
3 very much. Then at this point in time, we
4 will turn to an ANC report. Is anybody
5 present from the local ANC.

6 Sir, I don't see in my file a
7 letter from the ANC. Had you obtained one?

8 MR. RIXEY: Yes, exactly the same
9 with the Office of Planning report.

10 CHAIRPERSON MOLDENHAUER: I
11 actually have it. I have been --

12 MR. RIXEY: It was supposed to have
13 been --

14 CHAIRPERSON MOLDENHAUER: Flowing
15 in from all sides.

16 MR. RIXEY: -- in last week and I
17 went down and checked the file and there was
18 neither an Office of Planning report or an ANC
19 letter, so I contacted the ANC and Ron Lewis
20 was able to turn it around very quickly the
21 same day.

22 Office of Planning, Mr. Jackson

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1 told me, wouldn't be generating a report, so I
2 was a little surprised this afternoon when we
3 came in and found out there was one. But
4 anyway, you have it in your file?

5 CHAIRPERSON MOLDENHAUER: I do. I
6 do. It's our Exhibit No. 28. It indicates
7 that the ANC has a public hearing on August
8 30th. It was a duly noticed public hearing, a
9 quorum was present, and that they voted to
10 issue a resolution that would say that they
11 had no objections to the variance.

12 This would satisfy our requirements
13 for great weight and we will give their letter
14 of support great weight or their letter of no
15 objection great weight.

16 That being said, we will then move
17 to any individuals in the audience here today
18 in support or in opposition of this case. If
19 you are here to testify, come forward. There
20 are two seats here. If you can, please, come
21 forward and take a seat?

22 I don't believe that you were sworn

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1 in, so when you take a seat, you will also
2 need to stand and take the oath. Well,
3 actually, if you want to be in support, you
4 have to actually make a statement on the
5 record.

6 So introduce yourself, your name
7 and your home address.

8 MS. GOODMAN: My name is Ann
9 Goodman and I live at 3254 O Street, N.W.
10 It's about a block away from them.

11 CHAIRPERSON MOLDENHAUER: Okay.
12 And, Ms. Bailey, for procedural purposes, and
13 I appreciate it, MS. Goodman, if you can just
14 take the oath.

15 (Whereupon, the witness was sworn.)

16 CHAIRPERSON MOLDENHAUER: And if
17 you can just provide any support or however
18 you would like to present your statements.

19 MS. GOODMAN: Hello? Okay. I
20 didn't realize it was actually a two-story
21 house. And I don't really care whether it is
22 a two or three-story house, because I think

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1 four stories looks great. So I just wanted to
2 support it. Thank you.

3 CHAIRPERSON MOLDENHAUER: Thank
4 you. I appreciate it. Thank you for coming
5 down. Any other individuals in the audience
6 in support or opposition?

7 Then I just want to reference, we
8 do have some letters of support indicating --
9 from the Commission of Fine Arts, our Exhibit
10 No. 24, and a letter from -- let's see here, I
11 believe that's it.

12 At this point in time then, we will
13 turn back to the applicant for any closing
14 remarks.

15 MR. RIXEY: Well, I personally
16 appreciate your careful consideration. It is
17 a very strange situation this existing
18 condition. And you know, as I mentioned
19 earlier, under any other jurisdiction this
20 would be considered a basement.

21 I understand we are not in any
22 other jurisdiction, but I really believe that

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1 given the appropriateness to the context and
2 the support of the neighborhood and,
3 therefore, the absolute minimal, if any,
4 impact this is going to have on the community,
5 if anything, it's going to help N Street. And
6 the fact that we do have the sort of odd
7 basement condition, it seems like a very
8 reasonable request to me and I hope you will
9 agree.

10 CHAIRPERSON MOLDENHAUER: Thank you
11 very much. At this point in time then, we
12 will conclude this hearing.

13 Then what we are going to do is we
14 are actually going to jump right into
15 deliberation. And I'm actually going to turn
16 to my colleague, Mr. Turnbull, to start us off
17 on the deliberation.

18 COMMISSIONER TURNBULL: Thank you,
19 Madam Chair. Some of these cases get to be a
20 little bit difficult trying to look at what
21 the regulations say and looking at the
22 existing conditions. And I'm not sure to what

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1 degree Mr. Jackson looked at it. And maybe
2 their arguments at the time didn't really get
3 into a lot of these issues and that's why they
4 were in opposition.

5 I guess just getting back to some
6 of my earlier comments and I'm going back to
7 the rather interesting photo you showed, which
8 was the other house next door, the other side
9 which looks like you now have a mansard roof
10 on it, here is what troubles me.

11 If I look at the Miller house, you
12 have got -- again, the way the windows are set
13 up, it's for the height you are dealing with,
14 it's not quite the same, but the Miller's
15 house has this stairway that goes up. And
16 they have a couple of windows in front looking
17 in on what would be their basement.

18 If I looked at this house, as I
19 said before, you could almost eliminate this
20 doorway that goes into the basement and put a
21 stairway there and go and make one of the
22 windows the door. And you would have the same

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1 setup.

2 When you have got dirt on three
3 sides, I mean, it's a basement, the thing that
4 is deceptive about this house is that the
5 front, the basement windows is more finished.

6 It looks like you are going into a house, a
7 habitable floor. It looks like it says this
8 is the entrance, come on in, you're welcome.

9 But actually, you have got to go
10 all the way back and go up the stairs, or I
11 think you have an elevator there, too, to go
12 up. So it's a little disconcerting the way --
13 I mean, it is what it is. The developer built
14 it this way and it looks like it's a finished
15 floor, but in actuality, you know, like a good
16 quarter of it, 25 percent or more, is a
17 crawlspace.

18 And then he has got mechanical
19 room, so those are typically basement things
20 that you are going to be putting into a
21 residence. And he has got a finished room
22 down there, but that's all he has got.

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1 I could see, you know, looking at
2 it very -- just looking at this picture, my
3 feeling is it's a basement. It's the cellar.

4 And the only thing is that they have
5 positioned it such that they put a door. The
6 Miller's could do the same thing. I guess the
7 Miller's they would have to go down another
8 couple of feet to really get totally into
9 their basement.

10 So it's a conundrum. I struggle
11 with going against, you know, fudging the
12 Zoning Regs, but in this particular case, I
13 could make a case that says this is a
14 basement. He has got two stories. He is
15 entitled to go another story for habitable
16 space.

17 But that's just looking at this
18 picture. To me, it's a little bit more
19 convincing that there is an interpretation
20 here we have got. That if, you know, you've
21 got dirt on three sides of the building, you
22 can't do anything with it, you can't open it

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1 up. I mean, if you opened up the back, you
2 would have to go out about, you would have to
3 dig out, 8 feet to make it usable, so he could
4 get air and light in there.

5 So anyway, as I say, to me, it's a
6 bit of a conundrum. It's a definition as to
7 the basement. But I think he could make a
8 case that this is really a basement entrance
9 into his house that goes up to the, you know,
10 occupied floors. The two residential floors
11 are the first and second and the addition,
12 this mansard, shows that it would be in
13 character with the rest of the neighborhood.
14 Although, his is a little bit different what
15 he is proposing, it's not that egregious.

16 But I'm glad to listen to other
17 arguments.

18 MEMBER HINKLE: I guess I echo Mr.
19 Turnbull's analysis here. You know, you can
20 make a case that this potentially could be
21 defined as a cellar versus a story. And for
22 all practical purposes, you could put a

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1 staircase up to that, what we are now calling,
2 second floor and have that be the first floor
3 and have that property be relatively similar
4 to the adjacent properties.

5 You know, as was discussed,
6 excavating in the back and working that out, I
7 think would just make it difficult to, number
8 one, get up to the garage itself and, number
9 two, it just doesn't seem practical in terms
10 of the layout of the second floor and how that
11 would work in terms of an addition back there.

12 So I certainly feel that the
13 topography of the site, you know, begins to or
14 can be called an exceptional quality to the
15 site. And, you know, I'll leave it at that at
16 the moment.

17 CHAIRPERSON MOLDENHAUER: I
18 definitely agree with my colleagues. I do
19 struggle with this. I feel that, you know,
20 while there is some exceptional factors here
21 with an entrance on a majority below-grade
22 space, I do think that hypothetically

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1 speaking, if you were to put a doorway as the
2 Millers have on the second floor, you would
3 then still have, you know, a two-story home
4 with usable space in the basement.

5 The question is, you know, is the
6 need for an additional floor -- is the
7 practical difficulty of having this basement,
8 half usable space in the basement, associated
9 or related to the practical difficulty of
10 needing the additional floor?

11 And I think that Mr. Rixey did
12 present, I think, some very persuasive
13 evidence. Unfortunately, some of the
14 constraints that are applied to this property
15 in regards to the inability to put on
16 sidewalls, the length of the building, though
17 I'm looking at Exhibit 1, I think it is going
18 to be like the second -- no, some of the last
19 diagrams that are exhibits from the north rear
20 and west side view and, you know, it's
21 showing, you know, one window, obviously.

22 And it is showing another home, the

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1 Miller's home, with it extended, you know,
2 trying to potentially create another way to
3 obtain more space for usable space that would
4 allow for light and air to be provided. But
5 again, that being said, you know, looking at
6 that and seeing that it has been done on a
7 neighboring property, I do understand Mr.
8 Rixey's statements in regard to, you know, the
9 fact that that would create a very long, very
10 abnormal type of layout. And then additional
11 rooms that would be dark and not have windows,
12 which would reduce the use.

13 I think that considering the
14 multiple factors here of exceptional
15 circumstances in which this property presents
16 itself, one, the topography of having almost,
17 you know, more than, you know, only about
18 maybe one-fourth of the floor above-grade or
19 having window access, having any challenges of
20 excavating the basement in regards to
21 excavating if it is still having no additional
22 side yard, because it is a row house built

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1 from party line to party line and not being
2 permitted to excavate and provide additional
3 light and air on the sides of that rear
4 addition or excavated basement.

5 And the reason why I asked about
6 that was because we have to consider other
7 potential cases that could be presented before
8 us. And there are a lot of properties that
9 have two-story dwellings with basements and
10 are unable to provide any additional space,
11 you know, for themselves or for their
12 families.

13 And, you know, a lot of those cases
14 do excavate the basements and I wouldn't want
15 to create a situation in which, you know, a
16 lot of people are indicating that they need
17 variance relief. And I have said this a
18 couple of times now today, variance relief is
19 a very high standard. And it's a standard
20 that, you know, I don't grant easily.

21 And so I think, you know, in this
22 case, that there is a confluence of factors

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1 that relate to the exceptional circumstances
2 which then directly relate to the practical
3 difficulty of obtaining additional usable area
4 and other aspects of the property, which would
5 then relate to being able to provide an
6 additional floor.

7 That being said, I think that, you
8 know, I would be in support of this
9 application. Is there any additional
10 deliberation on this case?

11 COMMISSIONER TURNBULL: No. I know
12 the angst you are going through on this. And
13 it is -- you know, I think none of us like to
14 get ourselves where we set a precedent for
15 something in the future, but this is a point,
16 it's this instance.

17 At one point, as a definition, you
18 know, typically a building or cellar, that
19 portion of a story, the ceiling of which is
20 less than 4 feet above the adjacent finished
21 grade. Well, here, you know, the problem is
22 what's finished grade? Is it the street or is

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1 it the grade around him? That's the awkward
2 part.

3 Typically, if this was considered a
4 basement, he wouldn't be before us. As a
5 matter-of-right, he could go up to the three
6 stories. I know that's the awkward part.

7 CHAIRPERSON MOLDENHAUER: Yes, half
8 a basement.

9 COMMISSIONER TURNBULL: Yes, yes.
10 No, I know what you are struggling with. I
11 just feel that the way this house was
12 positioned and the way the builder built it
13 has limited -- it has made a practical
14 difficulty out of making use of the house the
15 way that they could for a larger family.

16 And in trying to manipulate the
17 house, so that you could, like you had said,
18 go for a special exception that simply makes
19 the building longer, it either makes those
20 bedrooms longer or if you try to make it a
21 separate room, you have got to somehow create
22 an atrium or something to get windows on both

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1 sides.

2 So you just make gymnastics of
3 trying to get a building to work. It sounds
4 like you have to go through a lot to try to
5 get it to work. And then if you put an atrium
6 in there, then he is going to want to have
7 more space. He is going to go beyond the 70
8 percent.

9 No, I sympathize with your angst on
10 how you are struggling with this, but I think
11 that since there is the soil, the grade on
12 three sides, you know, sort of engulfs this
13 level and it's not fully excavated, the back.

14 And who knows what it is.

15 Is it a rock cropping that they
16 found and, you know, significant excavation
17 has to be done? I mean, we don't know. But
18 over 40 percent of it is either mechanical or
19 unusable space.

20 I guess, Ms. Thomas, do you really
21 think this is a basement?

22 CHAIRPERSON MOLDENHAUER: I think

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1 we are in deliberations right now.

2 COMMISSIONER TURNBULL: Oh, you're
3 right, you're right.

4 CHAIRPERSON MOLDENHAUER: I'm
5 sorry.

6 COMMISSIONER TURNBULL: You're
7 right.

8 CHAIRPERSON MOLDENHAUER: I have to
9 --

10 COMMISSIONER TURNBULL: You're
11 right. I guess I'm in favor of granting
12 relief on this, which I struggle with and I
13 would like to -- I mean, we need to point out,
14 well, you have pointed out quite well on the
15 record by your comments, that we don't want to
16 see this as a precedent. That this is a very
17 unique specific case and as Mr. Hinkle said,
18 this is -- the topography has set this up as a
19 point in space.

20 Again, it's neither fish nor fowl.
21 When you look at it, you can argue. We could
22 go the other way and say yes, it is. It's --

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1 you know, but my feeling is that there is
2 enough of -- there are enough issues here that
3 we could grant relief with this and not cause
4 any deference to the Zone Plan and to the
5 regulations.

6 CHAIRPERSON MOLDENHAUER: Okay.
7 Yes, I echo your comments. And I think, you
8 know, you see that I am kind of really on the
9 fence and I think that this case is
10 definitely, you know, just slightly above, you
11 know, satisfying the standards for the test.
12 And I think that it is because I said there
13 are multiple factors that are unique to the
14 property that are distinct from the other
15 properties on the block, both, you know, on N
16 Street and in that location.

17 So it provides for the exceptional
18 circumstances and then the association between
19 those multiple exceptional circumstances to
20 the practical difficulty of creating an
21 additional floor.

22 That being said, I think, at this

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1 point then, if we have concluded our
2 deliberation, I will submit a motion, a motion
3 on Application 18104 to grant the area
4 variance to add a fourth floor to the existing
5 three-story house. And is there a second?

6 MEMBER HINKLE: Second.

7 CHAIRPERSON MOLDENHAUER: The
8 motion has been made and seconded.

9 All those in favor say aye.

10 ALL: Aye.

11 MR. MOY: Staff would record the
12 vote as 3-0-2 on the motion of the
13 Chairperson, Ms. Moldenhauer, to approve the
14 application for the variance relief requested,
15 seconded by Mr. Hinkle, supporting the motion
16 Mr. Turnbull and no other Board Members
17 participating.

18 So again, that's an approval on a
19 vote of 3-0-2.

20 CHAIRPERSON MOLDENHAUER: And with
21 no objections or any additional opposing
22 parties, I would like to ask for a summary

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1 order and waive our requirements.

2 MR. MOY: All right. Very good.
3 Thank you.

4 CHAIRPERSON MOLDENHAUER: We can
5 call the next case.

6 MS. BAILEY: That's Application
7 18101, and it's pursuant to 11 DCMR ' 3103.2,
8 for a variance from the floor area ratio
9 requirements under ' 771, and the
10 nonconforming structure requirements under
11 subsection 2001.3, to expand an existing
12 restaurant, Wisey's, to all floors. The
13 property is Zoned C-2-A. It is located at
14 1440 Wisconsin Avenue, N.W., Square 1244, Lot
15 163.

16 CHAIRPERSON MOLDENHAUER: Good
17 afternoon. If you can introduce yourself for
18 the record?

19 MR. duPONT: Good afternoon. My
20 name is Stephen duPont, 5159 Fulton Street,
21 N.W.

22 CHAIRPERSON MOLDENHAUER: Hello,

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1 Mr. duPont. Before you get started, I just
2 want to ask is anybody present from ANC-2E?
3 Not seeing anybody present, before we get
4 started, I wanted to address a couple of
5 things.

6 One, the Affidavit of Posting. I'm
7 sure you are aware that it was posted late and
8 if you can, on the record, provide some good
9 cause or explain why it was posted late?

10 MR. duPONT: Other than my sort of
11 essential difficulty scheduling things like
12 that, there was a great deal to do in the last
13 week for this project and a couple of others.

14 I spent most of my time in the last week
15 trying to talk with the neighbors and the
16 owner and rewrite the Burden of Proof letter
17 and things of that nature.

18 And I simply forgot. My dog was at
19 the vet. I mean, all kinds of things
20 happened. I just forgot. I filed -- I mean,
21 I posted this thing on the 8th and you can see
22 from the photograph that it is quite faded.

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1 CHAIRPERSON MOLDENHAUER: Yes. I
2 mean, the regs require that it had been posted
3 by September 5th.

4 MR. duPONT: Oh, okay.

5 CHAIRPERSON MOLDENHAUER: And that
6 then the documentation should have gone to us
7 by 15 days or 14 days prior to the hearing.
8 But seeing as though we have a notification
9 from the ANC that they had, I guess, been
10 notified that you had been working with them
11 and that actual notice had been received,
12 while I'm not typically inclined to in a
13 situation like this where there is -- you
14 know, I will waive the requirements unless any
15 other Board Members --

16 MR. duPONT: Well, I apologize for
17 that.

18 CHAIRPERSON MOLDENHAUER: -- have
19 any issues.

20 MR. duPONT: And I would also point
21 out the Old Georgetown hearings were the same
22 week and I had projects, three projects in

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1 both of those hearings.

2 CHAIRPERSON MOLDENHAUER: Okay.

3 MR. duPONT: I'm sorry.

4 CHAIRPERSON MOLDENHAUER: I say,
5 you know, I don't typically like waiving these
6 requirements, so from now on make sure that,
7 you know, you do have a timely posting that is
8 provided.

9 MR. duPONT: Yes, thank you.

10 CHAIRPERSON MOLDENHAUER: That
11 being said, another preliminary issue is we
12 received a letter today from the ANC
13 indicating that, I guess, they had thought
14 that you were going to be asking for a
15 continuance on behalf of the applicant. And
16 so in this letter, they pretty much raised
17 some concerns and then indicate that, you
18 know, pretty much they are hoping for a
19 postponement, because that was initially what
20 was going to be anticipated.

21 If you can touch on that, since,
22 unfortunately, no one is here from the ANC,

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1 while you are going through your presentation,
2 that would be helpful.

3 MR. duPONT: Well, actually, I have
4 50 letters in support and there are two
5 neighbors who have concerns. Although the day
6 of the hearing is when I was told that they
7 would show up and I was told they were not
8 going to oppose. They are both here, which
9 I'm happy about.

10 CHAIRPERSON MOLDENHAUER: Okay.
11 Well, any individuals that are here, whether
12 you are here in support or opposition will be
13 provided time, at that point in time, to
14 testify and to provide any additional
15 comments.

16 MR. duPONT: Well, what basically
17 happened is the hearing for the ANC was taking
18 both July and August and it was a very long
19 hearing. And my client did not understand the
20 purpose of the hearing. He lost his temper
21 and made a big fuss about something,
22 misinterpreting entirely what was going on.

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1 Mr. Skelsey offered us either a
2 deferral or a negative recommendation. My
3 client jumped at the deferral, thinking that
4 that was less bad and I thought it probably
5 was right, so I didn't object to that. But
6 when I spoke to Mr. Nero and discovered what
7 deferral meant, I had to go back and try to do
8 otherwise.

9 At the OG hearing three days later,
10 I spoke to Tom Birch and asked him if he
11 thought that by talking to the neighbors and
12 addressing their exact concern between then
13 and now and reporting back to the ANC and
14 making very sure to keep the ANC in the loop,
15 which is something I believe in, would he --
16 did he think that that would be an acceptable
17 alternative approach? And he seemed accepting
18 of that idea.

19 I also spoke to Ed Solomon, who has
20 a store just a half a block away, is also on
21 the ANC board. He was also receptive.

22 I didn't actually from Mr. Lewis

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1 until Thursday last week and he was pretty
2 angry. I have spoken with Sam. I have spoken
3 somewhat with Peter and his partner, although
4 less effectively. I have 50 letters of
5 support from the community. We have the
6 positive Office of Planning report.

7 And if you don't mind, I would like
8 to try to present the case and resolve the ANC
9 issues, to the best of my ability. If you
10 want me to go back and report to them, I would
11 be delighted to do so.

12 CHAIRPERSON MOLDENHAUER: If you
13 can present your report, in doing so, I would
14 appreciate kind of the background information,
15 but while presenting your report, I would like
16 you to identify specifically what the ANC's
17 issues were and then how you have addressed
18 those or how you think that either they are
19 being addressed or however you can present
20 those issues, I would like you to actually
21 identify those for us. I would appreciate
22 that.

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1 MR. duPONT: I don't think the ANC
2 actually had the chance to get to those
3 issues, but I think that the neighbors do have
4 issues, which I would like to address.

5 CHAIRPERSON MOLDENHAUER: Okay.
6 And that would be fine, as long as you can
7 articulate, you know, what you think that they
8 are and how you can address them. So, please,
9 get started.

10 MR. duPONT: Shall I give you
11 these?

12 CHAIRPERSON MOLDENHAUER: What is
13 that?

14 MR. duPONT: 50 letters of support.

15 CHAIRPERSON MOLDENHAUER:
16 Everything should have already been submitted
17 to our office --

18 MR. duPONT: Oh.

19 CHAIRPERSON MOLDENHAUER: -- you
20 know, already. We don't typically accept
21 documentation, you know, on the date of the
22 hearing. But if you want to provide those to

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1 Ms. Bailey, she will make copies for us that
2 we can then enter those into our record.

3 MR. duPONT: That would be fine. I
4 have copies already.

5 CHAIRPERSON MOLDENHAUER: You need
6 to actually provide anything to Ms. Bailey and
7 she will provide it to us. Thank you.

8 MR. duPONT: I have provided Ms.
9 Bailey an old plat showing the relationship of
10 Lot 163 to its neighbors. It actually is
11 superseded by the photograph of the Office of
12 Planning being -- added to by the photograph
13 from the Office of Planning report, which
14 shows clearly how the buildings enclose this
15 one.

16 Essentially, it's a tiny little
17 building and as the Office of Planning report
18 says, it is in the, I think he said, bottom 5
19 percent of all lot sizes in the city. And
20 because the Hyde-Addison School complex runs
21 behind, all of the buildings on that side of
22 this block are pretty much landlocked. This,

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1 however, is the smallest of the bunch.

2 It is very difficult quarters. And
3 the restaurant functions successfully, but it
4 is very crowded. And there have been days
5 when literally you can't get in the front
6 door, because the standing room only fills the
7 entire space.

8 What the owners would like to do is
9 expand to the second floor for a seating area
10 much as the way that Starbuck's or Marvelous
11 Market has a seating area where people in the
12 neighborhood can come and read, use the
13 Internet, write, meet with friends, get out of
14 their apartment, their group house if they are
15 students or whatever.

16 You will find in many of the
17 letters include addresses from the neighboring
18 two or three blocks around and that's what
19 people would like to use the space for and
20 they do to a certain extent, but it's really
21 close quarters.

22 Because of the configuration of the

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1 building, there really isn't any way to adjust
2 it. This is the cellar space. It's fully
3 underground. It's about 3 feet underground at
4 the back and the sidewalk at the front. The
5 main floor has a little tiny area open to the
6 sky on the ground floor.

7 This access actually is through
8 Sam's back porch, which causes incessant
9 problems for both of them. Sam is also
10 landlocked, by the way, by the property beyond
11 him.

12 And I would point out a small
13 errata in the Office of Planning report. This
14 is actually about 95 percent lot occupancy,
15 not 88.

16 The second floor has a room and a
17 room and a stair in the middle with a bathroom
18 adjacent. So it's basically cut in half by
19 the utility area. The two rooms are about 14
20 x 13. There are closets and fireplaces across
21 this side. There isn't any way to breakdown
22 the modules of the building.

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1 For the restaurant to take over one
2 of the rooms means they also have to use the
3 stair, which means that the back room is
4 sharing the stair with the restaurant,
5 whatever function that back room might be.

6 If it's an apartment, it's too
7 small. If it's part of the apartment
8 upstairs, it has to use the common stair with
9 the store. And when the store is closed, they
10 have to be getting in and out of the store.
11 It's very awkward.

12 The top floor of their floor is
13 relegated to some subsidiary use and, in this
14 case, it would be office and storage.

15 The second minor errata in the
16 Office of Zoning report is the building over
17 here, listing the first floor as being retail.

18 It's actually both floors, both the first and
19 second floor are retail. And it's on the
20 third floor where the tenant uses for living
21 quarters. At least that's my understanding.

22 I don't --

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1 CHAIRPERSON MOLDENHAUER: Is that
2 the antique shop?

3 MR. duPONT: Yes.

4 CHAIRPERSON MOLDENHAUER: Okay.

5 MR. duPONT: Yes, that's Mr.
6 Colasante. Sam, whose last name I don't
7 know --

8 MR. ELISSAWY: Attison.

9 MR. duPONT: -- Attison, okay,
10 lives in the building to the south and his
11 second and third floors are residential. I
12 don't know where he sleeps and he has a
13 tenant. I don't know which spaces they use,
14 but I met with Sam for about an hour and a
15 half and I have talked to him before for other
16 reasons.

17 Basically, what he would like is
18 for us to soundproof this side of the party
19 wall and the ceiling of the second floor, so
20 that his second and third floors would be
21 somewhat protected by any sort of talking or
22 anything else that goes on.

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1 I'm very happy to do it. I don't
2 believe the noise will be more than any normal
3 apartment would have been, but it's really
4 easy to do and it's not expensive and I have
5 no problem making that gesture for him. I'll
6 be putting sprinklers in anyway and that's a
7 lot more expensive.

8 Mr. Colasante, if I'm saying your
9 name right, lives on the third floor. There
10 are closets, bathroom and everything along
11 that side and we don't have a public use up
12 there intended.

13 I don't know what his problems are
14 except that I understand there is an issue
15 with vermin, that a problem exists regardless
16 of whether or not we have a variance request
17 and we're certainly -- any restaurant has to
18 work with that issue. So there is, you know,
19 no objection to that at all. We do have a
20 monthly Orkin contract.

21 CHAIRPERSON MOLDENHAUER: Have you
22 concluded with your presentation?

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1 MR. duPONT: I can go through
2 uniqueness and hardship and everything as
3 well. Uniqueness is the small size of the
4 site and the difficulty of configuring the
5 space inside. Percentage-wise, it's such a
6 small percentage of building types in the
7 city, it cost us virtually no precedent.

8 Hardship is obvious. Again,
9 smallness of size and difficulty of
10 manipulation of the configuration and no back
11 access.

12 Benefit to the neighborhood or
13 damage to the neighborhood, really there isn't
14 any. The photographs that you have in your
15 package show a very narrow slot of view out
16 the back here. Beyond it is another
17 commercial building and beyond that is the
18 Hyde School.

19 In the front, two windows on
20 Wisconsin Avenue. There can't be any noise or
21 visual impact that would be damaging to
22 Wisconsin Avenue.

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1 I really don't see anything
2 untoward in this project that would cause
3 inconvenience or difficulty to the community.

4 CHAIRPERSON MOLDENHAUER: Thank you
5 very much. Does that conclude your
6 presentation now?

7 MR. duPONT: Except for questions,
8 yes.

9 CHAIRPERSON MOLDENHAUER: Thank
10 you. Do Board Members have any questions, at
11 this time, for the applicant?

12 COMMISSIONER TURNBULL: Madam
13 Chair, I have one. The door on the first
14 floor, that's off the back, is the door on the
15 first floor at the back of the building?

16 MR. duPONT: It goes into a little
17 tiny areaway and then there is sort of kind of
18 like a double or triple adverse possession
19 through the corner of Sam's building and then
20 through the parking lot behind that belongs to
21 the building next door. So yet another party.

22 COMMISSIONER TURNBULL: But it's

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1 not a required exit per se?

2 MR. duPONT: It's grandfathered.
3 It couldn't be there today.

4 COMMISSIONER TURNBULL: It couldn't
5 be there today.

6 MR. duPONT: No. There is no
7 property. There is no access to any public
8 space back there.

9 COMMISSIONER TURNBULL: Okay. So
10 you go out --

11 MR. duPONT: It's adverse
12 possession at the pleasure of all the
13 neighbors.

14 COMMISSIONER TURNBULL: So you can
15 go out there and have a smoke or don't they?

16 MR. duPONT: Well, I mean, you try
17 to take your trash.

18 COMMISSIONER TURNBULL: Oh, you can
19 take your trash out through there.

20 MR. duPONT: But you have to
21 trespass to do it.

22 COMMISSIONER TURNBULL: Yes.

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1 MR. duPONT: There is no way -- I
2 mean, we don't have any public access at the
3 back.

4 COMMISSIONER TURNBULL: Right. You
5 must have an agreement with the neighbors to
6 be able to do it.

7 MR. duPONT: Or a disagreement, as
8 the case may be.

9 COMMISSIONER TURNBULL: Or a
10 disagreement, okay. So basically, really you
11 need the one exit stair?

12 CHAIRPERSON MOLDENHAUER: Yes.

13 MR. duPONT: Yes.

14 COMMISSIONER TURNBULL: And that
15 because of the size of the building, that's
16 all you need.

17 MR. duPONT: No. It is illegal.
18 And that's -- but it is also irremediable.

19 COMMISSIONER TURNBULL: Oh.

20 MR. duPONT: You can't fix it.
21 There is no way to do a fire escape that gets
22 you to public space or even to any more

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1 reasonable area of refuge. There already are
2 sprinklers in the cellar and the first floor.

3 COMMISSIONER TURNBULL: Gotcha.

4 MR. duPONT: We're going to extend
5 them to the upper two floors, regardless -- my
6 understanding is that's going to happen
7 regardless of your ruling today.

8 CHAIRPERSON MOLDENHAUER: You just
9 said that it was illegal. It's grandfathered
10 though, so it's not --

11 MR. duPONT: Well, I don't know how
12 to answer that, because it is grandfathered
13 across other people's property. It would be
14 an adverse possession, I think.

15 CHAIRPERSON MOLDENHAUER: Oh, yes.
16 And that's an issue for the Court of Law. We
17 won't address any issue of adverse possession
18 here.

19 MR. duPONT: Well, we are assuming
20 that it is -- I mean, he uses it, but I have
21 no idea what the strength of use is.

22 CHAIRPERSON MOLDENHAUER: Yes.

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1 MR. duPONT: The strength of that
2 use is. They all trespass across each other,
3 because -- well, at least Sam and my client
4 do, because they are firmly landlocked.

5 COMMISSIONER TURNBULL: It sounds
6 like something beyond the zoning here.

7 CHAIRPERSON MOLDENHAUER: Yes.
8 That's exactly it. Beyond the Board of Zoning
9 Adjustment's authority and so I don't think
10 that -- just putting everybody on notice in
11 the audience, you know, we won't be talking
12 specifically about any access or rear access,
13 because we really have no authority to discuss
14 that issue specifically or make any --

15 MR. duPONT: I'm not sure. I mean,
16 other than being part of the contributing
17 difficulty of living here, I'm not sure I can
18 make it an actual mechanical link between that
19 and the variance. It's just an impossibly
20 difficult site.

21 CHAIRPERSON MOLDENHAUER: I think
22 that that is just a fact.

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1 MR. duPONT: Yes.

2 CHAIRPERSON MOLDENHAUER: Can you
3 just review for me again, I know it's in the
4 report and I can probably find it and read
5 through it, but what the current use is on the
6 upper two levels now?

7 MR. duPONT: It's a two-story
8 apartment.

9 CHAIRPERSON MOLDENHAUER: Okay.

10 MR. duPONT: It has been unoccupied
11 for over a year.

12 CHAIRPERSON MOLDENHAUER: So it's
13 an unoccupied apartment use? Unoccupied,
14 vacant apartment use?

15 MR. duPONT: It's unoccupied, yes.
16 The previous occupant was from next door.

17 CHAIRPERSON MOLDENHAUER: Okay. I
18 don't have any questions, at this time. I
19 think I probably will later on, but --

20 MEMBER HINKLE: My only other
21 question right now is in terms of the
22 separation of the existing apartment to the

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1 restaurant, how is that? Is there a
2 staircase? I'm sorry, a doorway in front of
3 the staircase?

4 MR. duPONT: There is a stairway
5 here that goes up and turns above the
6 restaurant. And we would enlarge this opening
7 a little bit, restore the door back here to
8 the street where it was originally and make
9 the stairway part of the restaurant.

10 MEMBER HINKLE: So currently, there
11 is no door at the street?

12 MR. duPONT: There isn't, but
13 the --

14 MEMBER HINKLE: Okay.

15 MR. duPONT: -- approval -- the
16 permit has been done.

17 CHAIRPERSON MOLDENHAUER: Any
18 additional questions from Board Members, at
19 this time? Seeing none, what we are going to
20 do is we're going to turn to the Office of
21 Planning for their report.

22 MR. GOLDSTEIN: Good afternoon,

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1 Madam Chair and Members of the Board. For the
2 record, my name is Paul Goldstein.

3 I believe I'll lead off by
4 addressing the errata sheet I perhaps should
5 have given along with my report. My report
6 incorrectly states the lot occupancy and the
7 footprint numbers. The lot occupancy should
8 be about 95 percent and the footprint number
9 should be 590 square feet.

10 In speaking with the applicant,
11 that shouldn't change the FAR numbers,
12 according to the applicant, I haven't done the
13 math, but apparently those numbers would
14 actually be correct in my report. Otherwise,
15 I don't believe that it actually changes my
16 analysis at all. I just wanted to correct
17 that for the record.

18 The Office of Planning recommends
19 approval of the applicant's request for relief
20 from ' 771.2, which limits the property's
21 nonresidential FAR. As noted in the OP
22 report, relief from ' 2001.3 was also

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1 requested, but it doesn't appear that such
2 relief would be needed because there was
3 actually no physical expansion of the building
4 proposed.

5 Out of an abundance of caution, OP
6 would be supportive of such relief if the
7 Board finds it necessary.

8 For the record, the subject
9 property is Lot 163 in Square 1244 and is
10 Zoned C-2-A. The relief is needed to
11 accommodate the applicant's proposal to expand
12 the commercial use to the entire building. No
13 physical expansion, as I said, of the building
14 is proposed.

15 ' 771.2 just generally limits
16 nonresidential FAR and that number is actually
17 a 1.5 FAR maximum. Currently, the commercial
18 use occupies, approximately, .8 FAR. OP
19 believes that the applicant has satisfied the
20 variance test, as I'll explain now, and is
21 captured more fully in my report.

22 First, the property does exhibit an

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1 exceptional condition with respect to its
2 small size and layout. It's among the
3 smallest properties in the square, that's 624
4 square feet, as the applicant referenced.
5 Just as a general frame of reference, it is
6 among the smallest C-2-A properties that you
7 find in the city. And it has an even smaller
8 building footprint.

9 The building dates to the late 19th
10 Century and has a constrained interior layout.

11 The stairway location connecting the second
12 and third floor, as you have heard, produces a
13 layout where only one room can flank the
14 staircase on the second and third floor.

15 There is limited circulation and
16 limited potential to have another source of
17 access on the property to the upper floors.
18 This exceptional condition does impose a
19 practical difficulty which is unnecessarily
20 burdensome to the owner.

21 Currently, the building has a
22 commercial use, as you've heard, on the ground

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1 floor and a single split-level apartment on
2 the second and the third floor. The applicant
3 has indicated that the restaurant is hindered
4 by or at least constrained by a lack of
5 additional commercial space and an expansion
6 to the second floor would provide needed
7 customer room.

8 Although the applicant is permitted
9 up to 1.5 FAR by right, such an expansion
10 would here produce a result where,
11 approximately, two-thirds of that second floor
12 are occupied. Due to the constrained layouts
13 of the upper floor, such an expansion would
14 restrict the tenants access to the third floor
15 by forcing a third floor tenant to pass
16 through the second floor commercial space.

17 Under such circumstances, without
18 relief, a section of the second floor and the
19 entire third floor would have limited utility
20 to the applicant. Again, these consequences
21 are driven by the small size of the property
22 and the constrained layout of the building.

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1 Finally, OP does not anticipate
2 that the proposal would substantially harm the
3 public good on what is currently a busy mixed-
4 use corridor. Certainly, there are some
5 neighbors here who can testify with a bit
6 greater specificity than I have about some of
7 the consequences of this expansion.

8 I'm looking forward to hearing a
9 bit more from them directly about what the
10 consequences are. The relief request would
11 not substantially impair the intent and
12 integrity of the Zoning Regulations.

13 And to conclude, the Office of
14 Planning recommends approval of the requested
15 relief. One thing that I also now heard from
16 the applicant is this idea of soundproofing or
17 any other conditions that are coming up.
18 Perhaps the Board may want to entertain making
19 this a condition upon approval, that certain
20 mitigating measures are taken. Just to throw
21 it out there as a possibility.

22 That concludes my presentation and

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1 I'm not available for any questions.

2 CHAIRPERSON MOLDENHAUER: Thank you
3 very much, Mr. Goldstein. I don't have any
4 questions for the Office of Planning, for you.
5 Do any other Board Members, at this time?

6 Seeing none, then --

7 COMMISSIONER TURNBULL: Are you
8 trespassing back in that little --

9 CHAIRPERSON MOLDENHAUER: I don't
10 know if we want to go on the record for that.

11 MR. duPONT: I'll just say no
12 comment.

13 CHAIRPERSON MOLDENHAUER: Yes.
14 Does the applicant have any questions of the
15 Office of Planning?

16 MR. duPONT: (No audible response.)

17 CHAIRPERSON MOLDENHAUER: Oh, if
18 you can put it on the record?

19 MR. duPONT: Sorry. No, I don't
20 have any questions.

21 CHAIRPERSON MOLDENHAUER: Okay.
22 Then at this point in time, we would typically

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1 turn to the ANC, but I have already indicated
2 I don't believe anybody from the ANC is
3 currently present. And I have referenced
4 their letter. At the end of the hearing, we
5 will determine how we best handle that issue.

6 But right now, what we will do is
7 I'm going to open up the floor to any
8 individuals who would like to testify in favor
9 or in opposition. And what I would ask is
10 that if anyone wants to testify, you can come
11 forward and sit down. Everybody who is
12 interested and then what we will do is we will
13 just -- all together, because there are
14 individual microphones here.

15 And we will go one at a time. But
16 I want to make sure, I don't believe everybody
17 here had actually taken the oath when I
18 indicated to take the oath. So if everybody
19 can stand who hasn't taken the oath then, and
20 Ms. Bailey will administer an oath.

21 MS. BAILEY: Please, raise your
22 right hand.

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1 (Whereupon, the witnesses were
2 sworn.)

3 MS. BAILEY: Thank you.

4 CHAIRPERSON MOLDENHAUER: Okay. So
5 we are going to start on my far right. And
6 then each individual will be given three
7 minutes to testify.

8 MR. PREET: Good afternoon. My
9 name is Sanjit Preet. I'm the third neighbor
10 on the -- looking at the property on the left
11 side. And my property is shaped in an L-
12 shape, which Mr. duPont was talking about
13 trespassing over my property, which is my
14 parking lot in the back.

15 And my major concern is not just,
16 you know, soundproofing the wall, it's also
17 their drivers, who Mr. duPont did not mention
18 at all. At the present time, right now, the
19 way they are operating that little deli/
20 restaurant is it's being really ran by
21 drivers. They have like 10, 15 drivers
22 working every night and they are parking in

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1 the alley, in the back, on my property, my
2 parking lot and they are very loud. And I
3 have even called the police on them several
4 times.

5 And, you know, I used to have a
6 relationship with the owners. I haven't
7 talked to them in a year because last time --
8 I mean, apart from the zoning issues, they
9 also had a deli, which without -- they were
10 operating a business for over a year without a
11 license.

12 And second thing, you know, just
13 like the Board mentioned, they just put that
14 plaque in the window. It wasn't a mistake.
15 It was done on purpose, because that plaque
16 was in their restaurant for over two weeks.
17 And because I'm their neighbor and my
18 employees go in that restaurant to buy
19 smoothies and stuff and they didn't want to
20 put it in the window for just the purpose of,
21 you know, not letting everyone know there is a
22 hearing.

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1 Just like last time, I missed a
2 hearing. I didn't know there was a hearing
3 date. You know, I mean, I have -- I totally
4 object to this, you know, renovation they are
5 trying to expand the restaurant onto the
6 second and third floor, because, first of all,
7 they have no way to take the trash out. They
8 have nowhere to put the trash. That's why we
9 have rats in the back alley.

10 And I have a parking lot. My
11 tenants need to park in the back. They are
12 afraid to go in the back because of the trash
13 is all over the parking lot. And I have
14 called the police several times. I have
15 called the Health Department on them several
16 times. They come, they fix it up for a couple
17 of days and then they go back to the same
18 regular routine again.

19 They have no fire exits. If they
20 are allowed to have a restaurant or have
21 customers go on the second floor, and God
22 forbid there is a fire, I mean, they will be

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1 completely trapped in that restaurant. They
2 will not be able to get out at all, because
3 they have no rear exit at all.

4 I mean, it's basically when I have
5 my cars parked there, they can't even take
6 their trash out and they always scratch my
7 cars up. And they, basically, lie to me and
8 tell me that they are taking -- they are not
9 taking their trash from the back. They are
10 taking it out from the front. And we have
11 cameras and everything in the back.

12 The drivers are there every night
13 making loud noises, beeping their horns and
14 just, basically, you know, it's -- I mean,
15 it's a big nuisance, you know, as a neighbor,
16 you know.

17 I mean, I very rarely like to
18 complain about anybody, but this particular
19 restaurant, this particular owner is very
20 obnoxious. He has run a business in
21 Georgetown for many years without certain
22 licenses. When I complain about them last

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1 year, he literally came in my property and
2 threatened me that what did you have to do
3 with that?

4 Because they had a deli license and
5 just right now, they got their licenses taken
6 care of for the existing restaurant even. And
7 they are already doing construction in that
8 building without any permits.

9 CHAIRPERSON MOLDENHAUER: Okay.
10 Your time is up right now.

11 MR. PREET: Sorry.

12 CHAIRPERSON MOLDENHAUER: So if you
13 want to wrap up and make any last general
14 comments?

15 MR. PREET: Yes. The last comment,
16 I mean, the last statement that I would like
17 to say is to the Board. I mean, please, I'm
18 requesting that this place should not be
19 allowed to expand their business to second and
20 third floor. They are already very -- you
21 know, they just cramp up the restaurant as it
22 is. They have, like I said, 10 to 15 drivers.

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1 I mean, if they are allowed to go
2 on second and third floor, it would be just
3 ridiculous. I would lose my tenants. And the
4 other letters, Mr. duPont has 50 letters in
5 support, they are their friends and family who
6 live like, you know, far away from there.
7 They are nowhere near it, you know. And
8 that's it.

9 CHAIRPERSON MOLDENHAUER: Thank you
10 for coming down and presenting. Do any Board
11 Members have any questions?

12 COMMISSIONER TURNBULL: It sounds
13 like you have got a few issues.

14 MR. PREET: Yes.

15 COMMISSIONER TURNBULL: You say you
16 haven't really been able to talk to the owner
17 for about a year?

18 MR. PREET: No. I said that I
19 haven't talked to him for a year now, because
20 before that, last year, I have complained
21 about him to DCRA, because I found out they
22 only had a deli license to make cold

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1 sandwiches. And they have been running it.
2 They have illegal hood in that restaurant that
3 -- I mean, apart from the zoning issues, with
4 DCRA, I mean, if you, you know, do an
5 investigation from DCRA, they never applied
6 for a hood.

7 I mean, they have had a restaurant
8 for like now three or three and a half years,
9 never had a hood license. So when I found
10 out, it was a very big concern of mine,
11 because if there is, God forbid, a fire in
12 there, I mean, I'm next door and my building
13 is like an L-shape. I mean, you know, I don't
14 know what would happen to the people who are
15 sleeping.

16 COMMISSIONER TURNBULL: Okay.
17 Thank you.

18 MR. PREET: Yes.

19 CHAIRPERSON MOLDENHAUER: I don't
20 believe there are any other questions. Just
21 for the record, any issues in regards to
22 improper use of existing or past use that was

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1 in violation, it's not something that we
2 have --

3 MR. PREET: I see.

4 CHAIRPERSON MOLDENHAUER: --
5 authority to address. There are correct
6 channels which could potentially bring it back
7 to us, you know, if there was an appeal or if
8 there was a challenge to the correct use, but
9 that's not currently what we are here today
10 for.

11 But I would say if there are
12 issues, you know, in the past or in the
13 future, you know, there are channels to
14 pursue.

15 MR. PREET: Well, I understand.
16 The only reason I brought it up is because as
17 you mentioned earlier, they didn't even put
18 the plaque up. And that's the normal way of
19 doing -- this owner doing his business. And
20 he has Mr. duPont here, as you recall last
21 time, I mean, he went crazy in a meeting, I
22 heard from other people who were present, and

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1 that's the reason why the owner himself is not
2 even here, because he knows, I mean, there are
3 a lot of other people who are objecting to
4 this, they just are not here today.

5 CHAIRPERSON MOLDENHAUER: All
6 right. Thank you. What we will do now is we
7 will turn, I believe --

8 COMMISSIONER TURNBULL: Madam
9 Chair, can I just ask --

10 CHAIRPERSON MOLDENHAUER: Yes.

11 COMMISSIONER TURNBULL: I want to
12 get something clear about the property.

13 CHAIRPERSON MOLDENHAUER: Yes.

14 COMMISSIONER TURNBULL: You have
15 got an L-shaped building. You have an alley
16 on one side.

17 MR. PREET: No. What it is is I'm
18 on Wisconsin Avenue. My property is 1436
19 Wisconsin Avenue. It's an L-shaped property.

20 And the rear exit that Mr. duPont was talking
21 about, they are putting their trash cans on my
22 property before. So I called the police and

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1 they took the trash cans off of my property.

2 Right now, they have nowhere to put
3 their trash. So they are already doing a lot
4 of business. I mean, if they increase their
5 business, I mean, I know, I understand why
6 they are doing this to increase their
7 profitability, financial reasons, but they
8 have no place to even put trash.

9 COMMISSIONER TURNBULL: And the
10 parking lot, that's your parking lot?

11 MR. PREET: Yes, sir.

12 COMMISSIONER TURNBULL: Okay.
13 Thank you.

14 CHAIRPERSON MOLDENHAUER: Okay.
15 Our next witness?

16 MR. ELISSAWY: Good evening, Madam
17 Chairwoman and Member of the Board. My name
18 is Sam Elissawy. I live at 1438 Wisconsin
19 Avenue, right next door to 1440. And I run a
20 business and I work all night until 5:00 or
21 6:00 in the morning and I go home. I live
22 upstairs, which is I live for the last 18

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1 years for this property.

2 And when I realized that he, the
3 applicant, want to expand upstairs, I
4 approached him a few months ago and he
5 reluctant not to speaking to me and he walked
6 away from me. And I was very disappointed,
7 because I approached him to let him know that
8 what you are doing upstairs, are you going to
9 put soundproof, because you know I'm working
10 at nights and I go to sleep at 6:00 by the
11 time you would be open 8:00.

12 So I was very concerned about what
13 he is going to do, but I didn't get no really
14 positive response. And I raised my concern to
15 the ANC. And I was -- I spoke to Mr. Solomon
16 and I think he is a very honest man. And he
17 told me he will solve this problem.

18 And when I talked to ANC, Mr. --
19 the applicant, who is very out of control in
20 the meeting. And I didn't think be able to
21 make it mediated with him. I didn't want to
22 oppose what he is doing, but I need my concern

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1 about sleeping for last 18 years. I didn't
2 want to be changed.

3 And if I may approach the Bench,
4 I'm going to show -- yes, can I use this?
5 Going back to your question about the
6 building.

7 CHAIRPERSON MOLDENHAUER: If you
8 can use the microphone? Yes.

9 MR. ELISSAWY: To answer your
10 question --

11 CHAIRPERSON MOLDENHAUER: I don't
12 think it's on, sir.

13 MR. ELISSAWY: Oh, thank you. Back
14 to the question about the building we talking
15 about. It's L-shaped. This is Mr. duPont
16 building right here. And this is my building
17 right here. And I sleep in the first floor
18 and I have a tenant second floor. And this is
19 between me and Mr. duPont.

20 Okay. So this is the typical
21 building exactly what we talking about here.
22 For me, I live in this building in the middle

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1 right next door to them. And I am concerned
2 about the going expanding upstairs which is
3 I'm not opposing about expanding. I'm just
4 concerned about sleeping -- my sleeping habit
5 for last 18 years never change.

6 CHAIRPERSON MOLDENHAUER: Thank you
7 very much.

8 MR. ELISSAWY: Thank you, ma'am.

9 MS. GLAZER: Madam Chair?

10 CHAIRPERSON MOLDENHAUER: Yes?

11 MS. GLAZER: I'm concerned about
12 the photograph not being picked up in the
13 record. Perhaps --

14 CHAIRPERSON MOLDENHAUER: What we
15 will do, I'm going to actually ask if you can
16 present that to Ms. Bailey?

17 MR. ELISSAWY: Would you like to
18 have it?

19 CHAIRPERSON MOLDENHAUER: Yes.

20 MR. ELISSAWY: Okay.

21 CHAIRPERSON MOLDENHAUER: Please.

22 MR. ELISSAWY: Okay.

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1 MS. BAILEY: Thank you.

2 MR. ELISSAWY: Thank you very much.

3 CHAIRPERSON MOLDENHAUER: Thank you
4 very much.

5 MR. ELISSAWY: Yes.

6 CHAIRPERSON MOLDENHAUER: Do any
7 Board Members have any questions?

8 MEMBER HINKLE: Madam Chair?

9 CHAIRPERSON MOLDENHAUER: Yes?

10 MEMBER HINKLE: I just wanted to
11 ask, I think the discussion on soundproofing
12 was on the second floor.

13 MR. ELISSAWY: And the third floor.

14 MEMBER HINKLE: And the third
15 floor.

16 MR. ELISSAWY: Yes, sir.

17 MEMBER HINKLE: Thank you. I just
18 wanted to clarify.

19 MR. ELISSAWY: Thank you.
20 Basically, he will build a wall and the
21 ceiling, because it's going to be very
22 important with the second floor. It's a

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1 three-story building, so --

2 MEMBER HINKLE: Right.

3 MR. ELISSAWY: -- we're going to
4 understand this is going to have to be some
5 proof. Second floor and the third floor.

6 MEMBER HINKLE: Great.

7 MR. ELISSAWY: Thank you.

8 MEMBER HINKLE: Thank you.

9 CHAIRPERSON MOLDENHAUER: One last
10 witness.

11 MR. COLASANTE: Yes.

12 CHAIRPERSON MOLDENHAUER: If you
13 can it on, I don't believe your microphone is
14 on.

15 MR. COLASANTE: Is that it?

16 CHAIRPERSON MOLDENHAUER: Yes.

17 MR. COLASANTE: Okay. Madam
18 Chairman, Board Members, my name is Peter
19 Colasante and I am the other piece of bread,
20 if you will, in the sandwich. I live and
21 occupy and operate my business on the corner
22 of Wisconsin, 1442. Another sort of wrap-

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1 around situation, which surrounds the property
2 and subject at hand.

3 And I echo my neighbors' concerns
4 100 percent, but I have to amplify them. I
5 occupied that space for several years above
6 the now existing restaurant. To me, my then
7 fiancée, now wife, lived there and had an art
8 studio in that top floor apartment.

9 Subsequently, it was rented to a
10 series of young women who lived -- I think
11 went to Georgetown and they made use of the
12 apartment space.

13 I have several concerns and fears.
14 One is that if this is turned into an
15 additional deli/restaurant space, the
16 character of these apartments, which are of
17 the period, late 19th Century, would be
18 destroyed forever. They will never be -- it
19 will never be reverted to living space.

20 Once it becomes commercial and once
21 it is -- and it would have to be modified,
22 because the existing structure is

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1 insupportable, insupportable for more than
2 three or four people. I was there every day.

3 I saw the space. I went up the incredibly
4 narrow staircase, the 19, 20 or 21 stairs.

5 My -- the reason that my fiancée
6 left was because of concerns of fire. There
7 is no way to get out of that place. Even the
8 back window which opens onto my wall 3 feet or
9 4 feet away is blocked by a vent. I could not
10 imagine going to sleep at night, myself,
11 thinking about people up in there every day
12 with no way of getting down physically if
13 something would happen. It's not a small --
14 it's a major concern.

15 Secondly, and this has been an
16 ongoing problem with Nabeel, the owner, the
17 waste disposal is enormous. With the existing
18 restaurant, they are unable to control or take
19 the trash. There is a rodent infestation
20 behind my building, in all the buildings of
21 the block, but because of the nature of the
22 refuse, which is food refuse, rats are -- have

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1 never been in my building. They are in now
2 since Nabeel has put his trash directly
3 outside the door on the other side of where
4 the oven is. It's the only -- within that
5 tiny square you see up in that -- second from
6 the left.

7 I was out yesterday morning. I
8 happen to get up early and walk. There were
9 three enormous rats coming from below the
10 stair level where the trash would be. This is
11 within 3 feet of the cooking area.

12 I am trying to do this in a
13 rational, you know, way, but safety first.
14 Infestation of rodents second. That property
15 is too small to support any additional
16 restaurant food use. I don't think it should
17 be a commercial use. It is a beautiful
18 apartment, which was used as an apartment
19 until, I think the rent scale was so high, the
20 people really couldn't afford it.

21 I have nothing against Mr. Audeh.
22 He has been very nice, very accessible, trying

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1 to address my concerns. I have personal
2 concerns also about soundproofing, because
3 even though I live on the third floor, the
4 second and third floor are like echo chambers.

5 I heard everything that was going on in that
6 apartment years ago.

7 I have a living space above my
8 retail space. But these are testimonial
9 concerns compared to we also have the
10 problem --

11 CHAIRPERSON MOLDENHAUER: I just
12 have to -- you are over your time.

13 MR. COLASANTE: I'm over, okay.

14 CHAIRPERSON MOLDENHAUER: Please,
15 wrap-up, wrap-up.

16 MR. COLASANTE: Well, I think the
17 wrap-up is that inaccessibility, impossibility
18 of removal of trash, landlocked, impossibility
19 of servicing a larger business that exists
20 there doesn't work. It just doesn't work.
21 And is a danger for the neighborhood, the
22 entire neighborhood. Safety and health.

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1 CHAIRPERSON MOLDENHAUER: Thank
2 you.

3 MR. COLASANTE: And fire.

4 CHAIRPERSON MOLDENHAUER: Thank
5 you. Do any Board Members have any questions?
6 Seeing none, thank you to the three of you
7 for coming down and presenting your concerns.

8 At this point in time, what we will
9 do is then we will turn back to the applicant
10 for any closing remarks. I hope that maybe
11 you can address some of these things that have
12 not yet been addressed in your presentation,
13 such as, you know, solid waste removal,
14 storage.

15 You know, we had a case this
16 morning for a restaurant where we addressed
17 that specific issue. With this small lot
18 size, that is a concern, especially with an
19 expanded space with more, you know, eating on-
20 site that is going to occur.

21 Additional concerns in regards to
22 potential carryout. I will just note for the

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1 record a restaurant is required to have a
2 specific percentage of eat-in dining and
3 carryout must be a subservient, you know, need
4 to that aspect.

5 So, you know, I would just enforce
6 upon your client to make sure that, you know,
7 they maintain a specific level of eat-in
8 dining to carryout. And that there are
9 certain aspects. We have had cases before in
10 which we have had to determine whether a
11 facility is, you know, not conforming with
12 their C of O.

13 So just, you know, making sure that
14 that is something that is conforming. So
15 those are my comments, in general. So if you
16 can present any closing remarks? You have to
17 turn your mike on.

18 MR. duPONT: Shall I start with the
19 left?

20 CHAIRPERSON MOLDENHAUER: Technical
21 difficulties. Oh, you don't -- Mr. duPont is
22 going to continue now.

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1 UNIDENTIFIED SPEAKER: I was just
2 asking for a witness card.

3 CHAIRPERSON MOLDENHAUER: Oh, from
4 the three gentlemen?

5 UNIDENTIFIED SPEAKER: Yes.

6 CHAIRPERSON MOLDENHAUER: Okay. If
7 you can just jump up and let me know. Thank
8 you. To the three gentlemen, you need to fill
9 out two witness cards, so if you can, please,
10 all do that and then present it to the Court
11 Reporter to my right.

12 MR. PREET: Sure.

13 CHAIRPERSON MOLDENHAUER: All three
14 of you. Thank you. Mr. duPont, if you would
15 like to provide your closing remarks?

16 MR. duPONT: Mr. Creet is how I
17 know him.

18 MR. PREET: Preet.

19 CHAIRPERSON MOLDENHAUER: Preet.

20 MR. PREET: Mr. Preet, P as in
21 Paul.

22 MR. duPONT: Preet, okay. I

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1 renovated the building at 1426, which is next
2 door to another of his buildings. I have
3 worked on the block for a long time. It is
4 kind of a stew over there of different
5 personalities and it's a difficult place to
6 work.

7 There always are inspectors coming
8 on because one has called about the other. It
9 is not true that the notice was in the
10 building for two weeks. Meridith here can
11 tell you which day I picked it up and that was
12 not even two weeks before this hearing. It
13 was posted the day I picked it up.

14 The permits were there for the
15 minor renovations that were done. There was
16 electrical and a plumbing permit. Case work
17 doesn't require a permit. I got the plumbing
18 permit myself for the plumber, because I was
19 extremely concerned about that.

20 The addresses of the letters,
21 actually I did get addresses on the letters
22 and most of them are within the two or three

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1 block radius.

2 Sam's concerns, I have really no
3 problem with. He has been very nice to me,
4 first of all, and, secondly, he has been able
5 to express his concerns in a way that makes
6 sense. To the extent that you can soundproof
7 at a party wall, which is load-bearing the
8 joists, we will do what we can. And I have
9 explained to him how to do it, to the best of
10 my knowledge, and I'll look into doing it even
11 better, if possible.

12 We didn't talk about doing the
13 third floor, because we don't have any
14 intended use up there, other than storage.
15 But if he wants us to do the third floor, I
16 really don't have a problem with that.

17 Mr. Colasante, actually, one of the
18 points we made in the report to the burden of
19 proof is that we do not intend to remodel the
20 space, because it is a nice space and it would
21 be revertible back to apartment. The stair is
22 in great shape. It is much better shape than

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1 most of the 100-year-old buildings I have
2 worked in. And in most of my career, I have
3 worked in 100-year-old and plus buildings. It
4 is in excellent condition.

5 The fire issue is for real, but
6 it's a Historic District. It's a landlocked
7 building and there is nothing I can do about
8 it, except tell the owner not to use his
9 building for anything. We are putting
10 sprinklers in.

11 The third floor noise, I don't know
12 how to address it. There is bathrooms on that
13 side. There are closets and chimneys on that
14 side against the party wall. The joists do
15 bear in the wall. Mr. Colasante knows much
16 better than I how the noise transfers. If
17 there is anything I can do to help nullify/
18 moderate that problem, I would be delighted to
19 talk with him about it.

20 I will be happy to go up to his
21 space and have somebody jump up and down next
22 door. But bear in mind, it was an apartment

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1 for college kids before. We are not going to
2 be any worse than that. This is a sitting
3 area on the second floor only for a space akin
4 to Starbuck's sitting area.

5 And in those places, people are
6 generally very respectful of each other,
7 noise-wise. People read books there. They
8 read books there. They are on the Internet.
9 It's generally an out-of-home study space.

10 Trash is the big issue. I don't
11 know that we are going to be preparing any
12 additional food on-site, but certainly there
13 will be more eating on-site. There will be
14 cameras up above, so that they can maintain an
15 observation of the conditions that are going
16 on. And it is intended to let people go up
17 and then bring their food to them, so it's not
18 going to be a neglected space.

19 It doesn't help your business to
20 have a trashy joint anyway, so I don't think
21 that's what is going to happen.

22 But the trash problem below has

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1 been an ongoing issue. I don't know much
2 about it honestly. I don't know anything at
3 all about the delivery people. I don't know
4 what his ratios of carryout to in-house are.
5 They will certainly get better with this, but
6 I don't know what they are.

7 But I do know that trash is a
8 problem. My understanding is that he was
9 using a concrete pad at the back of Mr.
10 Colasante's building for a while. He has
11 stopped doing that. He is now keeping it
12 inside his own semi-enclosure with a can in
13 the basement and it may well be that we need
14 to get bear boxes or something to keep the
15 rats out.

16 But that can certainly -- I mean,
17 to the extent that one can do anything, we
18 will do it. And it's just, you know, a huge
19 problem in the city. I see rats all over
20 Georgetown.

21 CHAIRPERSON MOLDENHAUER: Thank you
22 very much. Just a couple follow-up questions.

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1 What are the hours of operation?

2 MR. duPONT: Around, I think it is,
3 8:00 to about 10:30.

4 UNIDENTIFIED SPEAKER: Can I say
5 something?

6 CHAIRPERSON MOLDENHAUER: Yes, what
7 I'm thinking is I think that I actually have a
8 lot of other questions about exactly where the
9 trash is going to be located, how it is going
10 to be operated.

11 You know, as I said, we had a case
12 this morning for a restaurant use and we
13 talked about, you know, what hours the trash
14 is going to be picked up. We talked about
15 locations of the trash. I just don't feel as
16 though, one, you have that information.

17 MR. duPONT: I do not.

18 CHAIRPERSON MOLDENHAUER: Or that
19 the applicant/owner has really provided you
20 with that information. And potentially to
21 address, you know, making sure that the hours
22 of operation are correct, because if we were

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1 to rule on this, I would be conditioning it on
2 certain hours.

3 MR. duPONT: Yes.

4 CHAIRPERSON MOLDENHAUER: And I
5 would want to make sure that those hours are
6 correct.

7 MR. duPONT: Hours of operation?

8 CHAIRPERSON MOLDENHAUER: Yes.

9 MR. duPONT: As I said, it's around
10 10:30 that he closes.

11 CHAIRPERSON MOLDENHAUER: But --

12 MR. duPONT: Sam closes at 5:00 in
13 the morning.

14 CHAIRPERSON MOLDENHAUER: I don't
15 care who closes at what point in time.

16 MR. duPONT: No, but I mean --

17 CHAIRPERSON MOLDENHAUER: I'm
18 talking about this application.

19 MR. duPONT: Yes.

20 CHAIRPERSON MOLDENHAUER: And I'm
21 talking about this application.

22 MR. duPONT: That's fine.

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1 CHAIRPERSON MOLDENHAUER: Again, so
2 I think that what I would like to do is I
3 would like to continue this hearing and that
4 would provide the ANC, they had given a
5 report, and it they wanted to weigh in --

6 MR. duPONT: Yes.

7 CHAIRPERSON MOLDENHAUER: -- while
8 the ANC is obviously reiterating some of the
9 concerns from the neighbors that are here
10 today, you know, that's what an ANC is
11 supposed to do.

12 MR. duPONT: Yes.

13 CHAIRPERSON MOLDENHAUER: They are
14 supposed to hear concerns or just hear support
15 and make a decision. So I would like to see
16 what type of decision the ANC finally makes
17 weighing both the letters of support that you
18 have and the concerns from these neighbors
19 that we have heard today.

20 So I would like to continue this
21 case to a further date where, one, we can have
22 the applicant present and I can actually hear

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1 from him about what type of -- and as the
2 architect, I hope that you work with him, Mr.
3 duPont and try and figure out methods in which
4 there can be sufficient storage for trash on-
5 site.

6 Because you don't have an off-site
7 location.

8 MR. duPONT: No.

9 CHAIRPERSON MOLDENHAUER: And with
10 having this many individuals in the building,
11 you have to leave that back rear door as
12 potentially a second way to get out of the
13 building, if the fire is in the front portion
14 of the building. So you can't have that
15 cluttered with garbage at all times.

16 So there needs to be a plan in
17 regards to whether you are dealing with
18 compost or something to try to deal with the
19 trash. And you have the space in the basement
20 and you have the space on the top floor to
21 create something.

22 MR. duPONT: Okay.

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1 CHAIRPERSON MOLDENHAUER: I don't
2 know. I'm not an architect. That would be
3 something I would be looking for you to work
4 with your client and figure out and present to
5 us at the next continued hearing.

6 MR. duPONT: Could I ask a
7 question?

8 CHAIRPERSON MOLDENHAUER: Sure.

9 MR. duPONT: The reason I'm here
10 today instead of asking for the delay is that
11 when I asked Mr. Nero on the 3rd or 4th of
12 September what that next day would be, he put
13 it well into November.

14 CHAIRPERSON MOLDENHAUER: I will
15 look at the calendar and see when --

16 MR. duPONT: And I'm hoping that--

17 CHAIRPERSON MOLDENHAUER: -- I can
18 make it. You know, we have to look at our
19 calendar. We also need to give time for the
20 ANC to actually --

21 MR. duPONT: Yes, I was hoping that
22 we would roll into the next hearing, that's

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1 why I'm here today.

2 CHAIRPERSON MOLDENHAUER: No. We
3 will not, because I need to give time for the
4 ANC to be able to respond to this.

5 MR. duPONT: Well, they are on the
6 11th.

7 CHAIRPERSON MOLDENHAUER: They have
8 their next -- when do they have their next ANC
9 meeting?

10 MR. duPONT: I think like the 11th
11 or the 7th --

12 CHAIRPERSON MOLDENHAUER: The 11th.

13 MR. duPONT: -- of October.

14 CHAIRPERSON MOLDENHAUER: So then
15 we could --

16 MR. duPONT: The 4th of October.

17 CHAIRPERSON MOLDENHAUER: The 4th
18 of October. So we couldn't have another
19 meeting until after the 4th of October.

20 MR. duPONT: Right. Which is two
21 weeks.

22 CHAIRPERSON MOLDENHAUER: So let's

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1 look then at the calendar. Where's my
2 calendar at? Cliff, I don't seem to have my
3 calendar. I mean, I'm sorry, Mr. Moy.

4 Okay. Okay. So this hearing is
5 going to be continued until the morning of the
6 19th.

7 MR. duPONT: Of October?

8 CHAIRPERSON MOLDENHAUER: Of
9 October.

10 MR. duPONT: Thank you very much.

11 CHAIRPERSON MOLDENHAUER: And so at
12 that point in time, what I would like to see
13 is I really enforce, Mr. duPont, that you work
14 with the ANC. I would like to see a
15 resolution, a letter from the ANC. And,
16 obviously, you know, the different
17 individuals, you know, here today, you should
18 also, you know, express concerns.

19 And maybe there are some issues
20 that can be worked out. I would like to see
21 some sort of plans or options for the trash.

22 MR. duPONT: All right.

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1 CHAIRPERSON MOLDENHAUER: I would
2 like to see any potential additional
3 conditions, such as maybe providing us with
4 copies of, you know, the rodent contracts that
5 you have --

6 MR. duPONT: Yes.

7 CHAIRPERSON MOLDENHAUER: -- with
8 the application confirming what hours of
9 operation would be. And then, you know, if
10 you have already agreed to soundproofing of,
11 you know, the second floor, if you have
12 confirmed to soundproof the third floor, to
13 let us know that and confirm that information.

14 And then I would just have some
15 additional questions for the applicant about,
16 you know, his carryout procedures and the
17 drivers and things of that effect, because
18 that does affect the public good. And I have
19 now heard testimony of some of those issues.
20 And so I would just have to feel comfortable
21 with those issues, you know, before going
22 forward on a case, such as this.

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1 So that is what I'm looking for.
2 That is what I'm leaving the record open for.
3 The record is actually not going to be
4 closed, so the record will remain open until
5 we continue the case on the 19th.

6 MR. duPONT: Thank you very much.

7 CHAIRPERSON MOLDENHAUER: Thank you
8 very much, everybody.

9 MR. duPONT: Thank you.

10 MR. COLASANTE: Thank you all.

11 CHAIRPERSON MOLDENHAUER: If the
12 next applicant, which is Dalton, can come
13 forward and at least set up, we will call that
14 case momentarily.

15 MS. BAILEY: Madam Chair, are you
16 ready for the case to be called, at this time?

17 CHAIRPERSON MOLDENHAUER: Yes,
18 please.

19 MS. BAILEY: Application 18066 of
20 Casey Dalton, and it's pursuant to 11 DCMR '
21 3104.1, for a special exception to allow a
22 change of use from a nonconforming retail

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1 grocery store to a delicatessen/prepared food
2 shop. The project is being presented under
3 subsection 2003.1. It is located at 1201 S
4 Street, N.W. It is Zoned R-4 and it is also
5 located in Square 275, Lot 35.

6 Members of the Board, this is a
7 continuation hearing from the July 20, 2010
8 hearing.

9 CHAIRPERSON MOLDENHAUER: Good
10 afternoon. How are you doing? If you can
11 both introduce yourselves for the record?

12 MR. DALTON: My name is Casey
13 Dalton. I'm the owner of 1201 S Street, N.W.,
14 Washington, D.C.

15 CHAIRPERSON MOLDENHAUER: Thank
16 you.

17 MR. PAUL: My name is Leon Paul.
18 I'm his representative today on behalf of Toye
19 Bello, who is the representative in the
20 original hearing.

21 CHAIRPERSON MOLDENHAUER: Mr. Paul,
22 do you have a Letter of Authorization?

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1 MR. PAUL: From?

2 CHAIRPERSON MOLDENHAUER: Yes, we
3 have to have some sort of Letter of
4 Authorization indicating that you are here on
5 behalf of Mr. Bello and that Mr. Dalton had
6 authorized you, in addition to Mr. Bello.

7 What we can do is we can supplement
8 the record at the end of the hearing and
9 provide that. That would be great. If you
10 can make sure that you are actually, Mr. Paul,
11 on the mike when you are speaking, that would
12 be --

13 MR. PAUL: Okay.

14 CHAIRPERSON MOLDENHAUER: Thank
15 you. Okay. Perfect. Then this case had bee
16 continued from a prior hearing and we had
17 asked for some additional documentation. You
18 guys have supplemented the records. I will
19 give you both an opportunity to speak on that
20 issue.

21 But one thing I wanted to point out
22 to both of you was that we need you to amend

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1 the caption. The caption refers to a deli,
2 but it should refer to that the application is
3 trying to revise the use from a grocery to a
4 restaurant use.

5 MS. GLAZER: Sorry to interrupt.

6 CHAIRPERSON MOLDENHAUER: Yes?

7 MS. GLAZER: I think it's a
8 prepared food shop was the use classification.

9 CHAIRPERSON MOLDENHAUER: Oh, okay.

10 So it's from a prepared food shop?

11 MS. GLAZER: I think --

12 CHAIRPERSON MOLDENHAUER: From --

13 MS. GLAZER: -- from a
14 nonconforming grocery to a prepared food shop.

15 CHAIRPERSON MOLDENHAUER: To a
16 prepared food shop. Okay. Thank you. I'm
17 sorry, I was -- okay.

18 Mr. Dalton and Mr. Paul, if either
19 of you would like to start presenting, just
20 maybe summarizing some of the issues that we
21 identified to supplement the record, that
22 would be great.

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1 MR. DALTON: I think the major
2 concern was the Certificate of Occupancy and
3 presented evidence of non-abandonment. I
4 gathered what I could. My records beyond 2005
5 are a little thin. What I had was various
6 utility bills to the property billed at the,
7 willingly, like I willingly paid, non-
8 commercial rate.

9 I mean, at the commercial rate, as
10 opposed to the nonresidential rate, they are
11 all separated metered. The 1201 address being
12 the meters exclusively for the store.

13 I also added in a letter from the
14 real estate agent that actually ended up
15 renting out the store that -- actually bought
16 by clients of his previous -- probably
17 starting, I guess, 2001. And I actually found
18 a fax from 2001 from a potential client. I
19 think it's like -- yes, I actually found in my
20 stuff like one page of a fax that I received
21 in 2001 from a potential client.

22 Beyond that, I submitted utility

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1 bills, tax bills, the tax bills again at the
2 commercial rate for the entire building, which
3 I actually found out last year I only have to
4 pay the commercial rate on the commercial
5 portion, but I have been paying the commercial
6 rate tax rate on the building since I
7 purchased the building in 1999.

8 Also, I have receipts from the
9 general contractor on renovations that I have
10 been doing over the years. I guess the
11 earliest one that I had was 2005 actually.
12 And then again, there is another one for 2006.

13 So, yes, and then the letter from the real
14 estate agent with, I believe there is also, a
15 lease from SunRise Academy, who was the
16 tenant, who started this process, who is the
17 end tenant and could not continue this process
18 or continue the project of making this
19 delicatessen or prepared food shop.

20 What else did I have? There is
21 also -- I also thought I submitted a
22 biography. There was a bio from the real

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1 estate agent with the letter. I don't know if
2 that is necessary as well. I'm trying to
3 think.

4 Basically, all the documentation
5 that I could pull together on proof of non-
6 abandonment over the years from '99 when I
7 purchased the building until today.

8 Do you have any --

9 CHAIRPERSON MOLDENHAUER: Okay.
10 Thank you. I don't have any questions about
11 that specific issue, at this current time,
12 following the documentation that you had
13 submitted. Is there anything else that you
14 would like to present in your case in chief?

15 MR. DALTON: Yes. Not only -- I
16 presented also -- I submitted letters of
17 support. Not only -- I think the support goes
18 beyond support to actual pressure from the
19 neighbors to get this done. They ask me all
20 the time how is the process going? What can
21 they do? What do we have to do to get this
22 open or get it rented out? You know, again,

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1 to a tenant who can open the store.

2 And with the renovations being done
3 and the change of zoning, it is in excellent
4 shape to be rented out. And I will probably
5 market -- either way I'm going to market the
6 store, begin marketing it immediately after
7 this hearing. It would -- and I'm sure it
8 will market a lot quicker and better and get a
9 better client if the zoning changed to a
10 prepared food shop with a limited amount of
11 seating.

12 And also, if the zoning doesn't get
13 changed, I'm left with a very awkward property
14 that is not a residential front at all. And I
15 would guess I would have to then change it
16 somehow to a residential front. And I think
17 that would be bad for the historical
18 appearance and usage of the property.

19 CHAIRPERSON MOLDENHAUER: Thank you
20 very much. I don't have any specific
21 questions. I think that the documentation you
22 provided kind of spoke to some of the

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1 different issues that we had previously had
2 with the application.

3 Do you have any questions for the
4 applicant? Seeing no other questions, is
5 there any additional information that you
6 would like to present? If not, we will turn
7 to the Office of Planning. Okay.

8 Office of Planning, I believe that
9 we had your prior OP report. But I don't
10 think we have received a revised OP report
11 with the revised plans, if there is any. If
12 you just want to --

13 MS. THOMAS: Madam Chair, Karen
14 Thomas with the Office of Planning sitting in
15 for Arthur Jackson again. I believe based on
16 OP's report, we stated at that time we
17 couldn't make a recommendation, given the
18 information, additional information that
19 needed to be supplemented in the record.

20 I do believe that the information
21 that was submitted is satisfactory to prove
22 that this use has been in existence in some

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1 form or another as a commercial use, the
2 structure rather as a commercial property.
3 And that we would have no objection to that
4 continued use, even as a prepared food shop.

5 CHAIRPERSON MOLDENHAUER: Thank you
6 very much, Ms. Thomas. Are there any
7 questions for the Office of Planning from
8 either Board Members or the applicant?

9 MR. DALTON: Yes. Actually, I just
10 forgot. I also have a letter from my ANC
11 Member stating that all the supplemental
12 information that I gave to you guys, I also
13 gave to the ANC, and he emailed me a signed
14 copy of a letter.

15 Well, he wrote me a letter,
16 basically, stating that he received the same
17 information that you received and that their
18 decision to approve or support the zoning
19 change is consistent with the information, the
20 supplemental information.

21 CHAIRPERSON MOLDENHAUER: Okay. I
22 appreciate that. And if you can provide that

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1 to Ms. Bailey, that would be great. But at
2 this point in time, I was actually asking if
3 you had any questions for the Office of
4 Planning?

5 MR. DALTON: Oh, no, not at this
6 moment.

7 CHAIRPERSON MOLDENHAUER: Okay.

8 MR. DALTON: Sorry.

9 CHAIRPERSON MOLDENHAUER: That's
10 not a problem. If you can provide that to Ms.
11 Bailey, that would be helpful, because right
12 now, now that we are completed with Office of
13 Planning, and I appreciate Office of
14 Planning's report and statement in regards to
15 the supplemental information, we would turn to
16 the ANC.

17 I want to actually reference this
18 letter that we will get in a moment. Did you
19 get that? While we are waiting for that to be
20 made, what we will do is I will look in the
21 audience. Is anyone from the ANC present for
22 this case? Not seeing anybody come forward,

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1 then what we will do is we will reference that
2 letter that you will provide us.

3 We previously had Exhibit No. 28,
4 which was a letter of support from the ANC-1B,
5 but we will also reference the letter that you
6 are providing us. It doesn't sound as though
7 it's potentially maybe a resolution, although
8 we'll take a look at it, but we will take a
9 look at the letter when we get there.

10 At this point in time then, what we
11 will do is we will move on to individuals in
12 support or in opposition of this case. If
13 there is any individuals in the audience in
14 support or in opposition of this case, seeing
15 none, then what we can do is we can turn back
16 to the applicant for any closing remarks.

17 MR. DALTON: I think I got all my
18 remarks in in the beginning. But, yes,
19 without this zoning variance, I am definitely
20 left with a very awkward property. And I
21 don't -- I think that this actually goes
22 beyond having -- not having an adverse effect,

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1 but actually having a very positive effect on
2 a property that is -- well, that unit, that
3 first floor unit right on the corner, kind of
4 like the gateway of 12th and S being vacant,
5 finally being able to get it occupied.

6 And also it would add to the safety
7 having it occupied during the day with people
8 would probably cut down on, potentially cut
9 down on, crime in the neighborhood during the
10 day, I think, that's when all the robberies
11 happen is when everyone is at work.

12 And just bring a little life to the
13 block. That has been long needed and awaited,
14 both by myself and by my neighbors.

15 CHAIRPERSON MOLDENHAUER: Thank you
16 very much. What we are going to do then, at
17 this time, is we're going to conclude the
18 hearing. We are not going to go into
19 deliberation today. We are going to wait for
20 documentation of a supplemental Letter of
21 Authorization.

22 And what we will also do then is we

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1 have two additional Board Members who have
2 previously been involved in this case and we
3 will give them the time to read the
4 transcript. And so we will set a hearing date
5 for this case for Tuesday. I believe with the
6 holiday of Columbus Day, the next time we
7 would be able to have this would be the
8 morning of Tuesday, October 19th. Is that
9 correct? Okay.

10 MR. MOY: Yes.

11 CHAIRPERSON MOLDENHAUER: So what
12 we will do is we will set this for a hearing
13 on the morning of October 19th.

14 MR. MOY: Is this a hearing or a
15 decision, Madam Chair?

16 CHAIRPERSON MOLDENHAUER: Decision.
17 I'm sorry. Thank you.

18 MR. DALTON: Thank you very much.

19 CHAIRPERSON MOLDENHAUER: Thank
20 you.

21 MS. BAILEY: Madam Chair, are you
22 ready for the last case of the day?

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1 CHAIRPERSON MOLDENHAUER: Yes, we
2 are. If you can, please, call that and if the
3 parties can come forward?

4 MS. BAILEY: Application 18090 of
5 M. Sikder, and it's pursuant to 11 DCMR '
6 3103.2, for a variance from the lot area and
7 lot width requirements under ' 401, a variance
8 from the lot occupancy requirements under '
9 403, a variance from the side yard
10 requirements under ' 405, to allow the
11 construction of a new one-family semi-detached
12 dwelling at premises 3158 Monroe Street, N.E.
13 The property is Zone R-1-B. It is located in
14 Square 4309 on Lot 26.

15 And this is a continuation hearing
16 from the August 3, 2010 Public Hearing.

17 CHAIRPERSON MOLDENHAUER: Good
18 afternoon, Mr. Sikder. If you can, please,
19 introduce yourself for the record?

20 MR. SIKDER: Good afternoon.

21 CHAIRPERSON MOLDENHAUER: I don't
22 believe your microphone is on.

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1 MR. SIKDER: Good afternoon, Madam
2 Chair and Board Members. My name is Mohammad
3 Sikder. And I reside at 6660 Tennyson Drive,
4 McLean, Virginia.

5 CHAIRPERSON MOLDENHAUER: Thank
6 you. If you would like to present your case?

7 MR. SIKDER: Yes.

8 COMMISSIONER TURNBULL: Madam
9 Chair, just before Mr. Sikder starts, I should
10 probably state for the record that I have read
11 the record and I'm prepared to talk about this
12 case.

13 CHAIRPERSON MOLDENHAUER: Thank
14 you.

15 MEMBER HINKLE: Madam Chair, I also
16 have read the record and am prepared to act on
17 this case.

18 CHAIRPERSON MOLDENHAUER: Thank you
19 both. We can go forward.

20 MR. SIKDER: I own this property at
21 the address of 3150 Monroe Street. It is
22 about 20 feet wide and 2,000 square feet lot

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1 area. And it does not -- it in R-1-B Zone.
2 And it does not meet the requirements to build
3 a house as a matter-of-right.

4 Therefore, we are seeking the
5 variance under 401, lot area and lot width,
6 and the side yard and I think also lot
7 occupancy.

8 This property is unique by reason
9 of its exceptional narrowness and exceptional
10 situation and the condition, because adjacent
11 properties are in secret ownership. The right
12 side of this property is owned by U.S.
13 Government. And left side, there is a small
14 piece of land, owned by Mr. Richard Brooks.
15 That lot is, approximately, 25 feet wide and
16 2,500 square feet.

17 Although I tried to purchase this
18 lot to combine, however, it did not work it
19 out, because his asking price was way high
20 than the market value.

21 Besides even I combine this, I
22 mean, adjacent lot, it would not conform the

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1 zoning requirements. It would not in -- R-1-B
2 Zoning requires 5,000 square feet and 50 feet
3 wide lot. Therefore, there is no opportunity
4 to combine lots to create a conforming lot.

5 By reason of unique or exceptional
6 condition of the property, the strict
7 application of the Zoning Regulations will
8 result in peculiar and exceptional particular
9 -- practical difficulties and undue hardship
10 upon the owner of the property.

11 We have a practical difficulty
12 because the lot area and lot width cannot be
13 expanded, because the adjacent lot have
14 different ownership and/or are currently
15 developed, so we don't believe the property
16 would be incapable of being developed.

17 The variance will not cause
18 substantial detriment to the public good and
19 will not impair the intent, purpose and
20 integrity of the Zoning Plan as is worded in
21 the Zoning Regulations and Map.

22 The requested variances could be

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1 granted without substantial impact to the
2 Zoning Regulations and public good. The
3 proposed two-story plus basement structure
4 would not limit the light and air to adjacent
5 properties or to other dwellings in the
6 neighborhood.

7 And in relation to ANC meeting, I
8 attended on June 13th and, at that time, there
9 was some concern. One of the concern was the
10 building did not look to the neighboring
11 houses.

12 And in the beginning, we proposed
13 the front view would be like this way, like a
14 flat roof and this view would be the front
15 view. And everyone I -- I mean, I did some
16 search and I went to 3100, 3300 Block.
17 Actually, 3100 Block of Monroe Street and I
18 took about seven or eight houses. I mean, I
19 took the pictures, which is very similar to
20 the proposed currently. Actually, it look
21 like this. Very, very similar to the other
22 houses.

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1 And at the next meeting, I proposed
2 -- I attended that meeting on -- the last
3 meeting was in August and I explained them.
4 And here we are. Do you have any other
5 question, I can -- I will be able to answer
6 it. Thank you.

7 CHAIRPERSON MOLDENHAUER: Thank you
8 very much. At this point in time, do any of
9 the Board Members have any questions for the
10 applicant?

11 COMMISSIONER TURNBULL: Just one
12 right now. If I look straight on at your
13 house, your proposed house, it looks exactly
14 like you showed it. But if I'm across the
15 street, I just see a narrow little sliver of a
16 peak. I mean, part of your Exhibit 34 is that
17 it looks like that. It's just not a real
18 roof. It's just a little front piece that
19 just sort of tries to look like the other
20 houses, but really it didn't quite make it to
21 the same character, if I'm just like next door
22 looking at it.

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1 CHAIRPERSON MOLDENHAUER: I'm
2 sorry, I think you need to be on the mike.

3 MR. SIKDER: Yes. It appears
4 absolutely right. We could not do it. The
5 reason we made this, like to make it happen,
6 to make it at least in the front view similar
7 to the other houses, but we cannot do all
8 around, because this would be like semi-
9 detached.

10 I mean, our house is semi-detached,
11 so we cannot put any gutter or any downspout
12 on the left hand side.

13 COMMISSIONER TURNBULL: All right.

14 MR. SIKDER: So as it does --

15 COMMISSIONER TURNBULL: Because
16 that's the property line you are abutting up
17 to it?

18 MR. SIKDER: Correct. So I mean,
19 we have no other choice but to make the roof
20 flat. Only we are decorating in the front
21 just to make it very similar to other houses.

22 COMMISSIONER TURNBULL: Okay.

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1 CHAIRPERSON MOLDENHAUER: So I just
2 want a point of clarification. You're
3 indicating that you are semi-detached, because
4 it is going to be built from lot line to lot
5 line and you are not going to be having any
6 side yard?

7 MR. SIKDER: Yes. On the left hand
8 side, actually, we proposed on the right hand
9 side to be touched on the right hand side on
10 the lot line. I mean, if you look into -- I
11 mean, this is non-restrict and this is the
12 U.S. Park and this is the other lot.

13 We initially proposed this line
14 with this lot line. However, Office of
15 Planning, they recommended to make aligned
16 with on this boundary, on this line. So yes,
17 you're right. The house is currently
18 positioned on this lot line on the left hand
19 side.

20 COMMISSIONER TURNBULL: So you have
21 a side yard of how many feet on the other
22 side?

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1 MR. SIKDER: Currently, what we are
2 proposing 3 feet.

3 COMMISSIONER TURNBULL: 3 feet.

4 MR. SIKDER: 3 feet, correct.

5 COMMISSIONER TURNBULL: Okay.

6 Thank you.

7 CHAIRPERSON MOLDENHAUER: I guess
8 one thing that you could do, and maybe this is
9 a question for OP, is that you have a 3 foot
10 side yard on one side, why couldn't you
11 provide a 1.5 foot side yard on both and then
12 the property would be a single-family detached
13 dwelling permitted use in the zone?

14 I guess I'm going to jump, Mr.
15 Sikder --

16 MR. SIKDER: I would have no
17 problem or no issue if that's the case, we
18 will be able to provide it. That's not --

19 CHAIRPERSON MOLDENHAUER: Because
20 then you could actually do a full mansard roof
21 or a full roof structure, because I have to
22 agree with Mr. Turnbull, I mean, that looks

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1 horrible. It doesn't -- you know, it's going
2 to be visible from the side, from the street.

3 It's going to appear as though it's this, you
4 know, faux roof structure and not conform.

5 I mean, while maybe if you are in a
6 one-dimensional world and you are just going
7 to look straight at the building, you know, it
8 would conform with the character and nature of
9 the block, but if you walk down the block or
10 drive down the block, which most people do,
11 you are going to see that it doesn't conform
12 with it.

13 So I'm going to actually jump over
14 to OP --

15 MR. SIKDER: Sure.

16 CHAIRPERSON MOLDENHAUER: -- and
17 see what their response would be to that
18 statement.

19 MS. THOMAS: Yes. Madam Chair,
20 good afternoon.

21 CHAIRPERSON MOLDENHAUER: Good
22 afternoon.

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1 MS. THOMAS: Karen Thomas, again,
2 for the record, sitting in for Arthur Jackson,
3 again. I believe that the intent here was to
4 give the vacant lot on the other side the
5 opportunity to build up and create another
6 semi-detached structure, because that lot, as
7 well, is so narrow.

8 They would have to come in to build
9 anything on that lot, in any event. So it
10 would push the two houses together this way
11 and have an opportunity to give a wider side
12 yard between the existing home that already
13 exists next to the empty lot, which is also a
14 substandard lot.

15 So they would have a side yard, a
16 maximum side yard on that side. So this side,
17 you know --

18 CHAIRPERSON MOLDENHAUER: I
19 understand your rationalization. I guess my
20 concern is that I'm really opposed to the
21 architectural and the appearance of that, you
22 know, roof structure.

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1 MS. THOMAS: Yes.

2 CHAIRPERSON MOLDENHAUER: And if
3 there was a way to modify that, which would be
4 potentially providing, you know, a side yard
5 on both sides in order to provide gutter
6 access to the house. I'm just trying to think
7 of issues, because, right now, I don't see
8 that the design is in conformity with the
9 character of the neighborhood.

10 MS. THOMAS: Right. Well, I don't
11 know how much of a -- we have had this
12 discussion about these side yards before. In
13 terms of having these small side yards that
14 are less than 3 feet, you know, in terms of
15 maintenance and --

16 CHAIRPERSON MOLDENHAUER: Yes.

17 MS. THOMAS: -- you know, cleaning
18 and how you get enough there, even with 1
19 foot.

20 CHAIRPERSON MOLDENHAUER: Yes.

21 MS. THOMAS: 1.5, so, yes, we have.
22 I understand your concern as well, but,

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1 unless the house goes to the property line on
2 the park side.

3 CHAIRPERSON MOLDENHAUER: Yes.

4 MS. THOMAS: And you push the side
5 yard to the other property line and then you
6 could probably have a full mansard roof, full
7 hip roof or A-line roof.

8 CHAIRPERSON MOLDENHAUER: Yes. I
9 guess, you know, obviously, I know you had the
10 prior OP report. Is there anything additional
11 that OP would like to report on, at this time,
12 based on some of the new drawings, new plans?

13 MS. THOMAS: If he reduced the lot
14 occupancy, as we requested, to -- by pulling
15 the rear back in about 4 feet, we would have--
16 we would support that, reducing the lot
17 occupancy to within what is permitted.
18 Because we want -- we have had to grant that
19 variance beyond 40 percent.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you. Do any Board Members have any questions
22 of the Office of Planning?

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1 COMMISSIONER TURNBULL: I guess,
2 I'm sorry. I missed if he does what?

3 MS. THOMAS: I believe that the
4 report said we're going to support the
5 variance to the lot occupancy, because he
6 requested it beyond the 40 percent.

7 COMMISSIONER TURNBULL: Okay.

8 MS. THOMAS: So if he adjusted the
9 plans -- and we had suggested that he pull 4
10 feet in that would keep him within the lot
11 occupancy and, you know, the footprint of the
12 building within what is permitted.

13 COMMISSIONER TURNBULL: Okay. For
14 some reason, my mind shifted off and I didn't
15 catch that last part. So thank you.

16 MS. THOMAS: Okay. It's all right.

17 CHAIRPERSON MOLDENHAUER: Does the
18 applicant have any questions for the Office of
19 Planning?

20 MR. SIKDER: No.

21 CHAIRPERSON MOLDENHAUER: No.

22 MR. SIKDER: I mean, no I don't

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1 have any questions.

2 CHAIRPERSON MOLDENHAUER: Okay.
3 Thank you very much. At this point, however,
4 are there any individuals in the audience from
5 the ANC? Please, come forward. Okay. We
6 will get to you. First, it's the ANC
7 individual and then -- have you provided
8 cards? Yes. First, we will have ANC present
9 and then any witnesses in support or in
10 opposition would be able to present.

11 You need to actually come down and
12 speak on the mike. Thank you. I appreciate
13 it. I don't know if it's on. There you go.

14 MS. GRANT: Well, I am prepared to
15 testify and speak. I just want to allow for--

16 CHAIRPERSON MOLDENHAUER: Can you
17 just state your name?

18 MS. GRANT: Yes. Janae Grant. I'm
19 the Commissioner representing 5A11 regarding
20 this case.

21 Mr. Brooks has been here before and
22 I just really want him to have the opportunity

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1 to speak before me. He waited all of last
2 time and he has been, you know, really patient
3 considering the situation that we have had to
4 change schedules quite -- a couple of times.
5 And with the understanding to get him here,
6 considering he takes care of his wife who is
7 practically not mobile.

8 So I just really want him to speak
9 before me, just to get it off his chest.

10 CHAIRPERSON MOLDENHAUER: That's
11 fine. We can -- if you want to stay here, Mr.
12 Brooks, if you want to come forward? We will
13 switch up the schedule a little bit at the
14 request of the ANC. I'm fine with that. And
15 we will turn actually now to any individuals
16 in support or in opposition, providing them
17 with a three minute testimony opportunity.

18 And if you can start off by stating
19 your name and home address for the record?

20 MR. BROOKS: Okay. My name is
21 Richard Brooks. I live at 3154 Monroe Street,
22 N.E. I'm the property next to Mr. Sikder's

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1 property. And, first of all, I brought some
2 pictures of the houses near me.

3 Mr. Sikder presented the houses
4 that he showed you that are similar to the
5 house that he wants to build as being in the
6 3100 Block of Monroe Street. They are not.
7 They are on the 3000 Block of Monroe Street.
8 And I can show you these pictures. These are
9 the houses, my house and my neighbors' houses.

10 CHAIRPERSON MOLDENHAUER: Thank
11 you. If you can provide those to Ms. Bailey
12 and then she will provide copies to us.

13 MR. BROOKS: Okay. Also, it shows
14 the half lot, a little more than half lot that
15 is on my property, abutting Mr. Sikder's lot.
16 We've -- the houses were built there in 1926
17 and are basically all cottage-style houses in
18 that neighborhood.

19 When I bought my house it had the
20 extra lot on it, because the houses were built
21 in '26 and my wife and I bought the house from
22 the original owners in '71. So I got a good

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1 deal there because of the extra half lot and I
2 was happy about that.

3 Mr. Sikder, I guess, has his front
4 face. He has put in for 20 feet across, I
5 think. There is a U.S. boundary stake that is
6 about 18, 19 feet from my fence and that's the
7 part that will begin to the right, further to
8 the right from his property. His property is
9 sandwiched between my property and the park.

10 The second drawing to the houses
11 that he presented are awful. Basically, it's
12 still a flat roof, sloping roof, with a little
13 eye candy to make it look like something else.

14 And the other problem is there are no --
15 because his house will abut my property line,
16 he can't have windows. About two years ago
17 my wife and I were ready to retire. At the
18 same time she had that stroke and everything,
19 so she has been in the nursing home for two
20 years and I'm getting ready to bring her home.

21 If we look out our living room
22 window, what I'll, basically, see when Mr.

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1 Sikder puts his property up is about 1,200
2 square feet of nothing, a house, 1,200 square
3 feet of like a billboard without
4 advertisement. That's what we'll be looking
5 at.

6 And sorry. Another point is, he
7 was -- he brought up the point about the cost
8 of the lawn that he did and that is when I saw
9 it began. He gave me three options in the
10 letters. He could buy the 25 feet on my side,
11 sell him 5 feet or to buy his property and
12 everything.

13 So I, you know, found out -- we
14 talked about it a little bit, but I need to
15 find some more information, so I got back to
16 him two or three days. And so I found out
17 some things. So, basically, before the
18 conversation ended on the phone, I asked him
19 well how much would -- well, I gave him a
20 price. I said something like \$50,000/51,000
21 for that 25 feet.

22 It is much too high. Before he got

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1 off, I asked him how much was he willing to,
2 you know, pay for that piece of property? And
3 he said between \$5,000 and \$7,500. The tax
4 assessment on that lot itself, the 25 feet x
5 100, is \$44,000. So, basically, he is
6 offering -- he offered me a deal of I give him
7 a \$100 and he'll give me \$16.65 back, not much
8 of a deal. So, that conversation ended right
9 away.

10 CHAIRPERSON MOLDENHAUER: Mr.
11 Brooks, I appreciate you coming down here.

12 MR. BROOKS: Sure.

13 CHAIRPERSON MOLDENHAUER: But you
14 have a three minute time limit and I really
15 let you kind of go over, the clock is showing.

16 But if there is anything else, I would just
17 ask you to kind of wrap up anything that
18 relates to the relief that is being sought.

19 I understand the option to
20 potentially buy your property, but,
21 unfortunately, I think it's more important
22 about, you know, the impact to the

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1 neighborhood and things of that effect. So if
2 you want to make any last closing remarks.

3 MR. BROOKS: Yes. It's just there
4 are little things where it seems Mr. Sikder is
5 a business man. Go into business to make
6 money. His seems to be everything goes his
7 way, you know, and in the end, he reaches the
8 biggest profit margin he can. My neighbors
9 don't like the idea of a house there,
10 particularly, the style of house that he wants
11 put in there.

12 And, you know, speaking for my
13 wife, I would be looking at 1,200 square feet
14 of nothing. And she worked for 40 years in
15 D.C. Public School System and, at this time in
16 her life, I don't want anything like that to
17 happen. So I am against it. And I don't
18 think any remodeling of the house the way it
19 is, would make any difference, you know.

20 Also, there is some -- a question
21 on where exactly those property lines are on
22 that piece of lot.

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1 CHAIRPERSON MOLDENHAUER: Thank
2 you.

3 MR. BROOKS: Thank you.

4 CHAIRPERSON MOLDENHAUER: Thank you
5 very much. At this point in time, is there
6 anybody else in the audience in support or in
7 opposition? If you can come forward and state
8 your name for the record?

9 MR. TOMLINSON: My name is Joel.

10 CHAIRPERSON MOLDENHAUER: You need
11 to turn on your microphone. I don't believe
12 it is on still.

13 MR. TOMLINSON: My name is Joel
14 Tomlinson. I live at 3155 Monroe Street
15 opposite Mr. Sikder's proposed property. And
16 I strongly oppose to having a one house
17 townhouse development right in front of my
18 house. This thing is shaped like a domino,
19 sort of on it's side. And it will accommodate
20 some day, another townhouse coming and
21 another.

22 I'm afraid that if we make an

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1 exception for him, then in my neighborhood
2 where we have properties of 6,000 square feet
3 that integrity of the neighborhood will be
4 compromised, because instead of having one
5 Cape Cod-style house built in the 1920's,
6 we'll have three townhouses. And that's the
7 main reason why I oppose it. I don't see why
8 the rules should be changed for some developer
9 who lives in Virginia, which definitely will
10 impact the quality of the lives of the people
11 in the neighborhood.

12 CHAIRPERSON MOLDENHAUER: Thank you
13 very much. I appreciate you coming down and
14 presenting your concerns. Do Board Members
15 have any questions for any of the witnesses?
16 I don't believe I have any. Thank you very
17 much. Then at this point in time, we will
18 turn to the ANC for their report.

19 MS. GRANT: Great. Thank you, Mr.
20 Tomlinson and thank you Mr. Brooks. Madam
21 Chair, how long do I have to speak? You gave
22 them three. I didn't know.

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1 CHAIRPERSON MOLDENHAUER: No. ANC
2 is provided -- I don't think there is a time
3 limit.

4 MS. GRANT: I mean, I won't do the
5 whole what you have before you.

6 CHAIRPERSON MOLDENHAUER: And there
7 is no time limit, but we will hopefully have a
8 reasonable time frame. Thank you.

9 MS. GRANT: Yes.

10 CHAIRPERSON MOLDENHAUER: Thank
11 you.

12 MS. GRANT: I won't go long before
13 you.

14 CHAIRPERSON MOLDENHAUER: Okay.

15 MS. GRANT: And thank you for
16 indulging me regarding the two witnesses.

17 Good afternoon. My name is Janae
18 Grant. Again, I'm the Chair of ANC-5A, but
19 more proudly, I represent Single Member
20 District 5A11, in which this variance has come
21 before us.

22 So what was supposed to be July

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1 27th, the ANC normally meets the 4th Wednesday
2 of the month. And so we looked at this and
3 then we actually had a little bit more
4 opportunity to look at this. But officially,
5 June 23rd, ANC-5A took our vote regarding this
6 matter.

7 And so they voted in support. It
8 was unanimous of the 10 Commissioners that
9 were present, no dissensions and no
10 abstentions regarding the significant variance
11 that the applicant is seeking, particularly
12 with the minimum lot area in R-1-B Zone.

13 5,000 square feet is needed. The
14 applicant only had 2,000. The lot width which
15 is 50 feet minimum, the applicant only had 20.

16 And regarding the side yard, which is really
17 of concern, 8 feet is needed. And it's very
18 questionable what the applicant actually has
19 in addition to what the applicant is actually
20 seeking, as what was provided, because we just
21 don't know really what the width is. And so
22 we'll discuss that a little bit later.

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1 But as stated, Mr. Sikder is
2 seeking to build a 20 foot long, 17 foot wide,
3 44 foot height, new construction of a single-
4 family dwelling at 3158 Monroe Street. The
5 community took a formal vote and it was
6 unanimously disapproved at my Single Member
7 District meeting. Additionally, what was
8 supposed to be a brick front, single-family
9 home, according to the applicant's statement
10 as you also have, it is now hardy plank
11 siding. There was no pitched roof. And still
12 no windows on the left side facing Mr. Brooks'
13 home.

14 And specifically, the applicant
15 specified that that type of design was
16 recommended and given to him by the Office of
17 Planning. It will be a detriment for our
18 community, whose homes are bungalows,
19 particularly, Cape Cods, which are no higher
20 than at least 1 foot and a half stories high.

21 The plans that Mr. Sikder is
22 proposing is to build right up on the property

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1 line, which abuts Mr. Brooks' property that is
2 fenced. Due to the lack of community concern,
3 just looking at the windows, which -- I'm
4 sorry there are no windows, that's an extreme
5 inconsistent look of homes on that specific
6 block, which is the block we are talking
7 about.

8 As you have in Exhibit A, you can
9 see there the style of homes that we're
10 specifically -- we would anticipate on that
11 block. So to say what he is now proposing is
12 in line with the characteristics, it's so
13 untrue.

14 Due to the fencing that needs to be
15 set back, whenever the applicant does any type
16 of work, just even for the construction of
17 this home, let alone side repairs or what have
18 you, he'll always be on Mr. Brooks' property,
19 because of the closeness and again because
20 he's trying to build right up close to the
21 line.

22 But we know that, technically, you

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1 can't build up on the line, which is why Mr.
2 Brooks' property, in terms of his fence, is
3 set back to the -- and then also the applicant
4 expressed no gutters. And again we can't have
5 a fence on that line.

6 In the Woodridge area we are known
7 for having amplified front and rear yard
8 space. So this is so not in line with what we
9 would anticipate to come in this area. The
10 loss of light and air and privacy, as was
11 already expressed with Mr. Brooks, would be
12 lost, because, again, you are building right
13 up onto that line where most homes you have
14 some space in between.

15 The Exhibit B which will show you
16 what the property actually looks like now, has
17 actually allowed for, you know, the coolness
18 and the shade that the block has definitely
19 been welcome to and has experienced for over
20 40 plus years. Particularly, the, you know,
21 home that Mr. Sorrell will be -- that he lives
22 in, sunlight will be directly upon him. And

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1 right now he's covered with the shade that's
2 currently there.

3 What we're scared about is this
4 Eiffel Tower-looking possible home that may
5 come in, as you see in Exhibit C, that home on
6 Brentwood. Yes, any developer would say it's
7 nice to have a home, but it is so
8 nonconforming. And we're very much afraid of
9 what is being distorted when an applicant says
10 2 feet or 3 feet, actually, in terms of what
11 he supplied.

12 That home on Brentwood hasn't sold.

13 And for \$650,000 compared to a neighborhood
14 that's roughly in the \$300's it wouldn't sell.

15 To say that his infill lot would actually
16 help, in terms of negating blight, isn't the
17 case. There is no police report with me,
18 because there are and have been no crimes in
19 and around that area.

20 Actually, it's been nice to have,
21 because you can't really -- you literally just
22 can't get around it with all the shrubs and

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1 the trees that are physically and literally
2 there.

3 On the opposite side of the street
4 the same also exists, where there is a bunch
5 of trees habitated right at the very end of
6 the block. So that's in line with the look
7 and feel of the area.

8 You see Exhibit D, and literally
9 across the street is what it also looks like.

10 Sorrell also used the excuse that we need
11 more homes in the area. As the Commissioner
12 and not necessarily too proud of it, but the
13 situation is what it is. We have roughly 30
14 homes that are for sale and a part of that
15 also includes foreclosure. It is just what it
16 is.

17 So we don't need additional surplus
18 homes for more stock to be sold when we have
19 quite a few that are just currently sitting
20 today. As I mentioned, there is no crime
21 issues, which is a blessing in and of itself.

22 It is possible that when the applicant begins

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1 to dig into the area -- we currently have a
2 natural spring and it actually affects Newton
3 and Monroe Street. It's been there, it's just
4 been there. You know, streams are just what
5 they are.

6 And in the winter months, it
7 actually protrudes onto Monroe and Eastern
8 Avenue. And it does get icy and it causes the
9 -- you've just got to kind of move away from
10 it because the ice freezes over. I mean, the
11 water freezes over and it becomes slippery.
12 But this is just what it is.

13 And so dealing with Mother Nature,
14 those are just some of the things that we
15 deal with. But because DDOT has been unable
16 to actually cap that spring, we don't know
17 what further could be dug up when he actually
18 digs down for this potential basement that the
19 applicant is seeking to have. And it's just
20 an unknown, but it's an unknown that we don't
21 want to have happen. And so we would rather
22 keep the habitat the way it is.

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1 We have quite a few inconsistencies
2 that the applicant has brought to our
3 attention and this is just mainly from the
4 applicant's statement. You know, it's things
5 like it's supposed to be three bedrooms, when
6 in actuality the drawings actually show four.

7 It's things like is it a garage in the front
8 or is it a garage in the back?

9 These are all what has been put
10 forth on paper per the applicant. And then
11 knowing that the applicant has given way to
12 his drawings as prepared and given by OP,
13 we're not too happy about that, because it
14 actually looks like they are in cahoots. Mr.
15 Sikder is no novice when it comes to coming
16 before this Board and actually in working with
17 OP.

18 And it's a blatant disrespect if,
19 in fact, OP gave him these drawings and they
20 are not in line with our community at all. So
21 there will be, you know, a couple of questions
22 regarding that.

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1 And then finally with the height,
2 if it's supposed to be 22 versus 44, that
3 further intrudes and impedes the light and air
4 quality regarding this. My community is quite
5 the open and friendly type, even our
6 Commission. And so, you know, the NIMBY
7 doesn't always qualify. But when we feel like
8 we're being duped, that's when we stand at --
9 we stand ready to say not in my back yard.

10 There is quite a lot of
11 apprehension and quite a few discrepancies in
12 regards to what the applicant has officially
13 put forth. And as much as possible I stand
14 here with my community as well as on behalf of
15 my Commission to protect what we have and to
16 not allow further atrocities to come into the
17 area, because once he's granted this, we may
18 really be stuck with a 3 foot story high home
19 versus the 2 feet that was alleged.

20 And we really urge the BZA to not
21 grant this variance. Thank you so much and
22 that concludes that and yes, I do have

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1 questions, but that concludes that for now.

2 CHAIRPERSON MOLDENHAUER: Thank you
3 very much. Do any Board Members have any
4 question for the ANC Commissioner? I am
5 seeing none, at this time. Thank you very
6 much. I appreciate you coming down and
7 presenting to us.

8 You said you have questions. You
9 have questions for whom?

10 MS. GRANT: For the applicant, as
11 well as OP.

12 CHAIRPERSON MOLDENHAUER: Okay,
13 yes.

14 COMMISSIONER TURNBULL: Madam
15 chair, I just have one question for
16 Commissioner Grant.

17 MS. GRANT: Yes, sir.

18 COMMISSIONER TURNBULL: When you
19 said you were worried about 40 feet on the --
20 I misunderstood about the height that you were
21 concerned about.

22 MS. GRANT: Right. It was -- well,

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1 what we have in our drawings say 44 feet. And
2 then again, it's the potential of going back
3 based on what OP just said about possibly
4 bringing it down, but we don't know just yet.

5 CHAIRPERSON MOLDENHAUER: We
6 actually have revised drawings.

7 MS. GRANT: Right.

8 CHAIRPERSON MOLDENHAUER: And they
9 show 29.9.

10 COMMISSIONER TURNBULL: 29.

11 MS. GRANT: For the --

12 COMMISSIONER TURNBULL: Right. Is
13 there a document that looks like this?

14 MS. GRANT: Yes. I have that, too.
15 One second.

16 CHAIRPERSON MOLDENHAUER: Mr.
17 Sikder, do you have a copy of those with you?

18 MS. GRANT: I have it.

19 CHAIRPERSON MOLDENHAUER: Oh,
20 you've got it? Okay. All right. Does that
21 clarify your question?

22 MS. GRANT: Okay. Well, I guess I

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1 can ask that question. Is that okay?

2 CHAIRPERSON MOLDENHAUER: Yes.

3 MS. GRANT: When that time permits.

4 CHAIRPERSON MOLDENHAUER: Yes. At
5 this point in time, I will allow you to ask
6 any questions of the Office of Planning.

7 MS. GRANT: Great. Thank you. So
8 per the Office of Planning, I believe, in your
9 comments on page 3 where it says detriments
10 relating to the Zoning Regulations, it also
11 includes a statement and I want you to explain
12 "The necessity for this relief was established
13 consistent with these regulations." The very
14 last line.

15 MS. THOMAS: Okay. Let me take a
16 look at that, because I didn't -- this is not
17 my report. Let me just -- give me a minute.

18 MS. GRANT: Right. It says the
19 detriment to the intent of the Zoning
20 Regulations granting the request of relief
21 from the lot width, area shall --

22 CHAIRPERSON MOLDENHAUER: Yes. I

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1 think she's just taking a moment to review it.

2 And it's already in the record, so we'll have
3 that to review.

4 MS. GRANT: Yes.

5 MS. THOMAS: Yes. Because the
6 regulations do recognize that they are
7 nonconforming lots within the city. And when
8 these regulations were created, the result
9 would be nonconforming lots back in 1958. You
10 would have nonconforming situations arise and
11 so that regulation took into consideration
12 those situations where you would have
13 nonconformities. Yes, with the intent that
14 they would come before a board to get relief,
15 provided that there were no adverse impacts.

16 MS. GRANT: Okay then. Well, then
17 throughout OP's recommendation, it was
18 mentioned that the applicant is seeking
19 similar zoning relief to mirror that of semi-
20 detached dwelling knowing full well in an R-1-
21 B Zone that is not allowed. Please explain
22 your rationale and I would hope that OP's not

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1 blindly giving consent for this change in
2 zone.

3 MS. THOMAS: There is no change in
4 the zoning.

5 MS. GRANT: Okay.

6 MS. THOMAS: There is no intent to
7 change the zoning. We are recognizing that
8 there would be a nonconforming structure. The
9 applicant had not applied for that relief and
10 we were trying to bring that out, that
11 additional relief would be needed to that
12 effect. Because what, in effect, he was
13 building would be a semi-detached structure.
14 Sometimes people don't recognize that as a
15 semi-detached structure, but it is.

16 MS. GRANT: Okay. And I appreciate
17 that, because that's not what is allowed in R-
18 1-B Zone. It's not what we want in R-1-B
19 Zone. But in the write up, it actually says
20 that we can give way to possibly having
21 another structure on the other side. Why
22 would we even open ourselves up to that, when,

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1 in essence, that property is currently already
2 pre-owned and occupied and it's not intended
3 for such an additional structure?

4 But yet, the language is definitely
5 illustrating as such and I feel that, and we
6 feel that that if that's the case, then full
7 well that this is subtly, but literally, a
8 semi-detached dwelling. That's not what we
9 have in our area and that's not what we want
10 and that's not allowed, per the regulations.

11 MS. THOMAS: Number one, we were
12 not aware that this vacant lot was occupied.
13 It seems vacant. And we need to recognize
14 that this is also a substandard lot in
15 existence.

16 MS. GRANT: Okay. All right. But
17 yes, you agree that, in essence, what the
18 developer is seeking is a semi-detached
19 dwelling?

20 MS. THOMAS: That's what we
21 recognize, yes.

22 MS. GRANT: Thank you. All right.

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1 We do, too, and we don't want that happening
2 in our area. That's not the way it is
3 supposed to be, that's not what we want.
4 Homeowners have free will to buy the homes
5 wherever they choose to live. It's free will
6 I get that. OP may not be in the position of
7 denying an applicant to buy and purchase land.
8 That's all well and good.

9 But we have the zoning laws in
10 place and much as possible regarding the
11 exceptional clause is -- while the land may be
12 exceptional, but it's really not because his
13 home actually exceeds in shallowness, that
14 doesn't take away from the fact that what
15 would be anticipated, would be a similar
16 structure-type home.

17 Point blank, this doesn't give
18 leniency or give way to say build whatever
19 type home you have because the topography or
20 it's ununiqueness in terms of the size of the
21 lot, that does not take away from what it is
22 supposed to be and anticipated and expected,

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1 because if you build a house on that land, it
2 would be in line with what is currently there
3 today point blank.

4 So I -- we really feel slighted
5 regarding the issue that while the applicant
6 has been afforded the opportunities many times
7 in the near -- I'm sorry in the far northeast
8 and southwest areas, upper northeast is not
9 like that. Okay. You got R-2s in your
10 northeast.

11 Again, anybody can live where they
12 choose to live. You could buy whatever type
13 home you want to buy. And the applicant can
14 build whatever they choose to buy, provided
15 it's within that particular zone. The
16 applicant is trying to come in this zone and
17 in this area and distort and destroy what we
18 have. What we choose. So I take offense to
19 that. And we're really not trying to have
20 that.

21 Mr. Brooks, when did you buy this
22 property? I'm sorry. Oh, I thought I could

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1 still talk.

2 CHAIRPERSON MOLDENHAUER: Yes, you
3 can. You can ask questions, but it's Mr.
4 Sikder.

5 MS. GRANT: I'm sorry. Thank you.

6 CHAIRPERSON MOLDENHAUER: So the
7 applicant is now going --

8 MS. GRANT: Excuse me.

9 CHAIRPERSON MOLDENHAUER: That's
10 okay. Will be cross-examined by the ANC
11 Commissioner.

12 MS. GRANT: Excuse me.

13 CHAIRPERSON MOLDENHAUER: Okay.
14 And so I just have given you an opportunity to
15 kind of ask questions and provide closing
16 remarks or different comments. Usually, it's,
17 you know, your comments and then it's the
18 questions and then no additional comments. So
19 if you can ask questions and then we'll
20 conclude the ANC presentation.

21 MS. GRANT: Okay.

22 CHAIRPERSON MOLDENHAUER: Okay?

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1 MS. GRANT: Oh, okay. So I can ask
2 my questions?

3 CHAIRPERSON MOLDENHAUER: Yes.

4 MS. GRANT: Okay. I'm done with
5 OP.

6 CHAIRPERSON MOLDENHAUER: Yes.

7 MS. GRANT: So I --

8 CHAIRPERSON MOLDENHAUER: Are you
9 concluded with OP?

10 MS. GRANT: Yes.

11 CHAIRPERSON MOLDENHAUER: You have
12 no other questions for OP?

13 MS. GRANT: Well, I don't know if
14 he says anything different. But, yes.

15 CHAIRPERSON MOLDENHAUER: Okay.
16 So, at this point in time, Mr. Sikder will be
17 cross-examined.

18 MS. GRANT: So the question was
19 when did you purchase this property?

20 MR. SIKDER: Actually, I got this
21 property through tax sale. I think I bought
22 it some time in 2005.

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1 MS. GRANT: Okay. I thought it was
2 bought earlier this year. But, okay, even
3 still --

4 MR. SIKDER: No. The reason is
5 when you buy it, it does not mean I get the
6 deed right away. It takes about sometimes
7 four years to get, by the time I get the deed.

8 MS. GRANT: Okay. And knowing that
9 you brought the property with the current
10 situation that was there, meaning that the
11 Government property was on the right side of
12 your property and the current homeowner had
13 the lot to the left side of your property,
14 please, tell me what the intention of what you
15 were going to do once you bought this
16 property? Knowing that the two -- you
17 couldn't buy any side lines, any side
18 properties.

19 MR. SIKDER: Would you, please,
20 repeat your question?

21 MS. GRANT: When you bought it, did
22 you know full well -- when you bought the

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1 property, you knew full well that --

2 MR. SIKDER: Yes. I knew.

3 MS. GRANT: Okay. So I would hope
4 that the Board recognizes that they are not
5 necessarily in the position of granting
6 financial forgiveness just because the
7 applicant chose to buy and didn't make good
8 that he was going to be able to --

9 CHAIRPERSON MOLDENHAUER: You can't
10 interject comments while asking questions. I
11 know that it's hard at times.

12 MS. GRANT: How many garages do you
13 plan --

14 CHAIRPERSON MOLDENHAUER: I just
15 ask that --

16 MS. GRANT: -- on having at this
17 property?

18 MR. SIKDER: How many garages or
19 how many parkings, you mean?

20 MS. GRANT: You can answer both.

21 MR. SIKDER: Well, it shows only
22 one parking tagged.

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1 MS. GRANT: Okay. But according to
2 your statement, you have that in your project
3 description there will be one car parking at
4 the back of the house and accessible from the
5 alley. And then closer to your conclusion,
6 right before you say this proposed three-story
7 structure will not limit the light and air.
8 And we also will provide a one car pad garage
9 at the front of the proposed structure. So I
10 just want -- that's where the question came
11 from. We need clarity to know what we are
12 going to get ourselves in to.

13 MR. SIKDER: Yes. It may have been
14 mistaken. Yes. I do apology for that. But
15 the parking pad will be in the back of the
16 property as shown here. All the way from the
17 alley. It comes along here.

18 MS. GRANT: So definitely from the
19 back?

20 MR. SIKDER: Right.

21 MS. GRANT: And there is no use and
22 no need for anything in the front?

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1 MR. SIKDER: Right.

2 MS. GRANT: Okay. When was the
3 last time you measured this property since you
4 bought it?

5 MR. SIKDER: Measured means? What
6 do you mean? I mean I just go there, I don't
7 go there to measure it. But normally what we
8 do, once we have the projects and everything
9 ready, we send stick out. But this is a legal
10 paper. This is drawn by DC Survey Office.
11 And this is recorded. So this is my property.

12 MS. GRANT: Okay. Because that
13 goes back to one of the things I said earlier,
14 that we don't believe that you actually have
15 the 20 feet wide, according to our
16 measurements that have been taken. Again
17 there is a fence on Mr. Brooks' property and
18 so that's 2 feet back and then that 2 feet
19 going to the marker of the Government property
20 is actually a total of 17 feet, not 20.

21 So literally take back the 2 that
22 is still exposed on Mr. Brooks' side, we're

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1 right at 15. Your structure is saying 14.
2 You don't have the actual space. And then let
3 alone, again dealing with the yardage, you
4 won't have either to do in terms of your side
5 yards. It will actually be zero on both
6 sides, because you're actually impeding and
7 encroaching on the Government property, as
8 well as what you anticipate on the left side
9 when you are looking at Mr. Brooks' property
10 because of his fence.

11 MR. SIKDER: So what is your
12 question? I didn't get it.

13 MS. GRANT: I was asking when you
14 last measured it because, in essence, it's not
15 accurate.

16 MR. SIKDER: It's not -- I don't
17 think that's important probably right now to
18 iterate.

19 MS. GRANT: But it affects your
20 drawings --

21 MR. SIKDER: Because I know my --

22 MS. GRANT: -- and it effects what

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1 you actually deem livable space, but you won't
2 have. And so we will then have to be back at
3 the drawing board all over again.

4 MR. SIKDER: As I said, I didn't
5 draw this.

6 MS. GRANT: Fair.

7 MR. SIKDER: This is done by either
8 --

9 MS. GRANT: And its to scale.

10 MR. SIKDER: No.

11 MS. GRANT: It's to scale.

12 MR. SIKDER: It's in the scale.

13 MS. GRANT: It's to scale.

14 MR. SIKDER: It was done by DC
15 Surveyor's Office and this is recorded. Is
16 everything in due process?

17 MS. GRANT: It's to scale.

18 MR. SIKDER: There's no reason --

19 CHAIRPERSON MOLDENHAUER: I'm going
20 to interrupt you both for a second. Office of
21 Planning, is there any question as to the
22 accuracy of the surveyor's dimensions?

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1 MS. THOMAS: I can't speak to that.
2 We would have to have somebody from
3 Surveyor's Office, I don't believe so.

4 CHAIRPERSON MOLDENHAUER: Okay.
5 Since it's not something that we can, unless
6 you have specific proof or documentation, I
7 know that your saying that you have measured
8 it yourself, but without anything else, you
9 know, right now what we have to rely upon is
10 the surveyor's plan. I understand that you
11 are questioning it. And I think that we have
12 gotten that point across.

13 But at this point, however, I
14 recommend that you go on to another question.

15 MS. GRANT: Okay. Your plan
16 includes to be fenced all around. Can you
17 tell me the setback of the fencing and how
18 that will affect your current livable space?

19 MR. SIKDER: So your question is
20 how I'm going to fence around this? Yes, I'm
21 planning to put a fence all around.

22 MS. GRANT: And how much --

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1 MR. SIKDER: Over here, this is the
2 fence around this boundary line.

3 MS. GRANT: Right. So the entire
4 property is fenced. What's the space in
5 between the fencing and your home and then
6 also the fencing and what's supposed to be
7 exposed?

8 MR. SIKDER: I'm not a
9 professional. I'm not really sure yet this is
10 where we're going to put the fence or not.
11 This is very tentatively we are planning. We
12 might not do it at all. So that's not, I
13 mean, I don't know if I am -- I'm not really
14 asking any variance for this. I mean yes,
15 very likely, we normally, in general, we
16 provide fence to make it more secure, because
17 we found it on most of the home buyers, they
18 are looking for some kind of secure property.
19 As it is, we provide that. So that's how our
20 -- I mean our goal.

21 But, I mean, that's what we are
22 anticipating, but whatever comes, we'll take a

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1 permit if necessary and we will do. We will
2 arrange it.

3 MS. GRANT: And how many bedrooms?

4 MR. SIKDER: Our bedrooms, three
5 bedrooms on the second floor. And normally
6 since most appraiser they don't value it in
7 the basement as a bedroom. But we put a
8 bedroom as, you know, I mean, it can be
9 bedroom or a den or office also. If it come
10 to that four bedroom, you know.

11 MS. GRANT: Okay. Well, I mean, I
12 understand that. That does conclude the
13 questioning. Again, we were trying to show
14 that there were quite a few discrepancies
15 going back and forth. And what it seems like
16 is when the applicant comes before the Board,
17 you know, he actually gets recommendations
18 from the Board, and as well as from OP, to say
19 oh well, this is the way it should be done.

20 But it doesn't come back to the
21 community to then be adjusted and looked at
22 and even reconciled. But this is where the

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1 case gets decided at and so some of the
2 discussions that we've had here have been
3 different from what we've had formally in
4 terms of the community.

5 So it's just that understanding,
6 you know, to even say that we may not even do
7 the fence. And that it's -- you know, this
8 information that was originally given was
9 provided to the community. And so, we're just
10 looking at the gaps and what can happen. 3
11 foot story high home in an area of Cape Cod
12 that are right at 1.5 is no -- it's completely
13 a statement, physically in the community. You
14 can't miss it.

15 And it will -- again, similar to
16 the Brentwood situation those homes, those
17 sale prices are just going to stay flat. They
18 are going to be stagnant. You're not going to
19 pay something as close to \$650 and you get
20 \$300. It's just -- the resale value is just a
21 hardship on the community in and of itself.

22 This home is nothing like what the

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1 homes on this block look like and despite him
2 showing a couple of pictures that he did show,
3 that, technically, is a block away and
4 actually that strip -- there was nothing there
5 so when they built it, they did go to the 3
6 feet. There was nothing there at the time, so
7 it was disallowed and it was fine, because
8 that was within their capacity to do in terms
9 of an MOR, matter-of-right.

10 So that was what that is looking
11 and comparing to. So as much as possible we
12 don't feel comfortable with what this
13 applicant is proposing and saying he's going
14 to do in terms of this construction. We
15 really don't feel comfortable with his
16 accuracy and his genuineness at all.

17 CHAIRPERSON MOLDENHAUER: Thank
18 you. I appreciate you coming forward and
19 testifying. And I appreciate your comments.
20 Do any Board Members have any questions for
21 ANC? Seeing none.

22 COMMISSIONER TURNBULL: I have a

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1 question for Ms. Thomas.

2 CHAIRPERSON MOLDENHAUER: Okay.
3 Then what we'll do is we'll conclude the ANC
4 presentation, at this point in time. We'll
5 turn to Board questions. And I believe Mr.
6 Turnbull has one.

7 COMMISSIONER TURNBULL: Yes. This
8 is for Ms. Thomas and I know you are
9 substituting for Mr. Jackson.

10 MS. THOMAS: I'll try.

11 COMMISSIONER TURNBULL: On page 2
12 of the July 20th report, at the very top, it
13 says "The R-1-B District allows one-family
14 detached dwelling as a matter-of-right.
15 However, semi-detached dwellings are not
16 allowed until the R-2 District." By the way
17 this is being structured, are we -- is OP
18 encouraging R-2 semi-detached dwellings in the
19 R-1-B area here?

20 MS. THOMAS: No, no, not at all.
21 That's why we recognize that you would have to
22 have relief for it to permit that type of

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1 structure. Albeit, it's a use that's
2 permitted, but this type of structure is not.

3 It's a semi-detached structure. But we're
4 not encouraging it one way or the other. We
5 don't make the decision. We just do the
6 recommendation.

7 COMMISSIONER TURNBULL: Well, I
8 guess, that's kind of hedging the question a
9 bit. But, I mean, usually we get you are
10 either for or against something and this
11 sounds like it's you are leaving it to the
12 board. I mean does OP --

13 MS. THOMAS: But we've had
14 situations whereby we have recommended a semi-
15 detached structure. I can't recall the case
16 right now, but within the last -- the past
17 year where we did do a semi-detached within
18 the R-1-B in a similar situation like this.

19 COMMISSIONER TURNBULL: Okay. But
20 I guess --

21 MS. THOMAS: Only because the
22 northwest is so narrow.

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1 COMMISSIONER TURNBULL: Yes.

2 MS. THOMAS: Yes.

3 COMMISSIONER TURNBULL: Okay.

4 Thank you.

5 CHAIRPERSON MOLDENHAUER: Are there
6 any other questions for the Office of
7 Planning? Seeing none, then what we'll do is,
8 if there is any closing remarks by the
9 applicant, we'll take those.

10 MR. SIKDER: Yes, closing remarks?

11 CHAIRPERSON MOLDENHAUER: Yes.

12 MR. SIKDER: The proposed -- our
13 proposed structure will contribute to the
14 continued improvement of Woodridge area by
15 developing one of the many vacant empty lots.

16 The improvement of this empty lot would be
17 for the public good as it will remove a vacant
18 property and prevent the use of the property
19 in negative purposes.

20 So I wish this variance could be
21 granted.

22 CHAIRPERSON MOLDENHAUER: Thank

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1 you. I appreciate the application. Then what
2 we'll do is, I don't think we're going to be
3 able to decide this today. I think that there
4 is just a lot of information, a lot of facts,
5 a lot of different issues. I will allow one
6 small comment by the ANC.

7 MS. GRANT: It's a small comment.
8 I forgot to and I failed to share, but this is
9 next to the Government property line. This is
10 meant to be a buffer zone to transition
11 between the Government space for this
12 nonconforming lot size and then you have a
13 home. It's just what it is. It was meant to
14 be a buffer. You can buy whatever you want to
15 buy.

16 I mean I can sell you the Brooklyn
17 Bridge today, regardless of the fact that this
18 transitional space was meant to do that, so
19 that we wouldn't encroach the park upon the
20 actual residential land. Thank you, Madam
21 Chair.

22 MR. SIKDER: Madam Chair, can I

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1 make one input, please?

2 CHAIRPERSON MOLDENHAUER: Yes.

3 Considering that you typically would have the
4 closing remarks, I will let you respond to
5 that comment.

6 MR. SIKDER: Yes. I believe OP
7 does not oppose. I would move this property
8 on this U.S. -- I mean on this side, right
9 hand side as it is out from Mr. Brooks' side
10 would be the windows and there will be not --
11 would be a line along with this property
12 line.

13 CHAIRPERSON MOLDENHAUER: Okay.

14 MR. SIKDER: I mean if OP does not
15 oppose, I would move -- I mean, we look at
16 this property on the right hand side --

17 CHAIRPERSON MOLDENHAUER: Yes.

18 MR. SIKDER: -- so that --

19 CHAIRPERSON MOLDENHAUER: Yes. I
20 hear what your saying Mr. Sikder I think the
21 problem is is that the plans have already
22 changed once. And we would need to have final

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1 plans in order to make a decision. I think
2 that there is also an issue, which is why I'm
3 indicating that I don't think we'll be able to
4 make a decision today, there is an issue that
5 relief will be necessary if you build to a
6 property line. It is then considered a semi-
7 detached home and in this zone you would need
8 relief. And that relief currently has not
9 been requested and that would need to be
10 noticed and that would need to be relief that
11 would be amended to your application.

12 That being said, I think what I'm
13 going to do is I'm going to take just a quick
14 10 minute break with the Board Members to
15 decide exactly how we want to pursue this and
16 then we'll be back and provide some final
17 closing comments before we then determine the
18 next course of action for this case.

19 (Whereupon, at 4:39 p.m. a recess
20 until 4:56 p.m.)

21 CHAIRPERSON MOLDENHAUER: Okay. We
22 are back to hearing the last case of the day

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1 for Mr. Sikder, Case 18090.

2 And what the Board has decided that
3 we are going to do is I know that there is --
4 in the prior hearing on August 3rd, there was
5 some confusion back and forth. And I want to
6 clarify some issues.

7 Right now, the way these plans are
8 drawn, this would require a relief, a higher
9 standard of a variance relief, because it
10 would be requiring a detached home, which is
11 not permitted in an R-1 Zone. I think that
12 that was discussed previously and there was
13 maybe a different conclusion or maybe a more
14 confusing conclusion that will come, but that
15 would be required.

16 That being said, I'm encouraging
17 the applicant to revise its plans. You know,
18 the applicant indicated, Mr. Sikder, I believe
19 that you indicated, and correct me if I'm
20 wrong, that it was not an issue for you, that
21 you would be fine with creating, you know, two
22 smaller side yards and creating a single-

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1 family detached dwelling. I see that you are
2 shaking your head. Just to kind of verbalize
3 that.

4 So I'm happy with that. And I
5 think what we need to do is we need to see
6 revised plans, that way that type of relief is
7 not required.

8 I also was I think very persuaded
9 by the ANC and some of the other individuals
10 in opposition in regards to potential
11 integrity of the Zone Plan, in regards to the
12 way the house is designed and to conformity
13 with the character.

14 And so I would strenuously
15 recommend and strongly recommend that you
16 revise the plan to try to address some of
17 these, I think, very strong arguments on the
18 ANC's behalf and on the opposition parties'
19 behalf in regards to conforming with the
20 character of the other neighboring properties
21 in regards to the front facade and layout and
22 size. And I think that, you know, would be

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1 recommended.

2 Obviously, I can't tell you what to
3 do, but I can give you some inclination as to
4 the way the Board would potentially be ruling,
5 you know, if those things are not revised.

6 That being said, I know that the
7 ANC is very active on this case. I know that
8 they will be given a copy of the plans and we
9 are going to go through the time frame in
10 which you would need to revise these plans.
11 And then give the ANC time to review those
12 plans prior to another hearing.

13 I don't think that there would be a
14 need for ANC to provide any written comments,
15 but, rather, we will have a continued hearing
16 and the ANC can attend and make comments on
17 anything, at that time.

18 Let's look at our calendar. Mr.
19 Sikder, could you get revised plans into the
20 office by October 7th? Would that be possible?

21 Okay. Mr. Sikder is saying that that is
22 possible.

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1 And then what I would indicate
2 would be then that if -- Mr. Moy, do we have
3 time then on the 19th to continue this case? I
4 know we have an appeal in the afternoon, but
5 is there a way that we can either squeeze it
6 in in the afternoon? I think I just added a
7 case in the morning earlier today.

8 MR. MOY: Yes, you just added one
9 in the morning, which would give us three in
10 the morning. We do have this appeal in the
11 afternoon, which I'm familiar with. I think
12 we can add this application to the afternoon.

13 CHAIRPERSON MOLDENHAUER: Okay.
14 Can we make this first in the afternoon?

15 MR. MOY: Certainly.

16 CHAIRPERSON MOLDENHAUER: Okay.
17 That way it will maybe accommodate some
18 individuals' schedules, that way they know
19 exactly that it will start at 1:00 in the
20 afternoon on the 19th.

21 So that being said, you know,
22 obviously, just for the record, you know, any

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1 changes or revisions will not guarantee an
2 approval. It's just things that, based on the
3 current comments I have heard, it's just a
4 matter of going through and we are going to
5 have to see whether it still meets the
6 standard.

7 And I think that there are some
8 concerns in the application right now, as it
9 stands, in regard to whether or not it meets
10 some of the high standards for approval.

11 That being said, this portion of
12 the hearing then is concluded. And we will
13 move forward. And obviously, it provides time
14 for all individuals to have copies of the
15 documentation, take a look at it and then
16 provide any additional comments at a continued
17 hearing.

18 MS. GRANT: Madam Chair, so this is
19 just set up for the applicant to always get an
20 approved variance?

21 CHAIRPERSON MOLDENHAUER: No, it's
22 not. I just said that any revisions or

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1 comments would not guarantee an approval.
2 That we are encouraging him to make revisions.

3 MS. GRANT: Let me see something
4 for the community then.

5 CHAIRPERSON MOLDENHAUER: He will
6 provide you a copy. I indicated that. He
7 will provide the ANC a copy of the revised
8 changes by October 7th. The ANC then has an
9 opportunity to review or meet with Mr. Sikder
10 between October 7th and October 19th.

11 MS. GRANT: And ANC meets October
12 27th. Again, we are --

13 CHAIRPERSON MOLDENHAUER: October,
14 okay.

15 MS. GRANT: And the next meeting--

16 CHAIRPERSON MOLDENHAUER: Okay. So
17 --

18 MS. GRANT: -- for the ANC,
19 technically, is this Wednesday.

20 CHAIRPERSON MOLDENHAUER: This
21 Wednesday.

22 MS. GRANT: This is a rush

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1 situation. Madam Chair, with all due respect,
2 if you want to give the applicant the
3 approval, then we don't need to be here.

4 CHAIRPERSON MOLDENHAUER: I am not
5 giving anyone approval. I think I said --

6 MS. GRANT: You give --

7 CHAIRPERSON MOLDENHAUER: I think I
8 said, --

9 MS. GRANT: (Ms. Grant speaking
10 over Chairperson Moldenhauer.) You are giving
11 the opportunity for him to move and actually
12 completely transition what he has. Mr. Sikder
13 has been to this Board numerous times upon the
14 recommendations of BZA ample times before.

15 CHAIRPERSON MOLDENHAUER: Okay.
16 I'm going to have to --

17 MS. GRANT: You keep giving him
18 that leeway.

19 CHAIRPERSON MOLDENHAUER: I
20 disagree with you. I think that we are
21 actually saying that we are hearing you and we
22 are supporting the ANC and the comments and

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1 that we are informing Mr. Sikder that right
2 now we have some major problems with this
3 application.

4 And I think that right now, we are
5 actually indicating that we have been
6 persuaded strongly by the ANC.

7 MS. GRANT: So it's called deny.

8 CHAIRPERSON MOLDENHAUER: And so--
9 that is right now our process. This is the
10 process that we go through. Everybody has an
11 opportunity to improve. We have an
12 opportunity to continue the hearing and that
13 is what we are doing.

14 And I think that if -- when is your
15 next ANC meeting? You have one this week,
16 which that, obviously, is not going to be
17 possible. Your next ANC meeting is what day
18 in October?

19 MS. GRANT: Okay. The fourth
20 Wednesday is October 27th. So with all due
21 respect, Madam Chair, if what I'm hearing is
22 why can't we deny this and then if he wants to

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1 start over and submit his plans --

2 CHAIRPERSON MOLDENHAUER: I --

3 MS. GRANT: If you are giving him a
4 way to, then that would be a new application.

5 But can't we close this out, because
6 significantly, the drawings are going to be
7 completely different. So why don't we close
8 this out with all due respect?

9 CHAIRPERSON MOLDENHAUER: I am not
10 taking any additional testimony, at this time.

11 We have made a decision that we are going to
12 continue this case and that is how it is going
13 to go forward. I will provide the ANC time to
14 meet on the 27th. That will give them from the
15 time of the 7th, in which Mr. Sikder should
16 provide copies of any changes, to the 27th when
17 you have your meeting.

18 And then what we will do is -- do
19 we have a November 2nd time frame? Can we fit
20 it on the calendar on November 2nd?

21 MR. MOY: Yes, we can do. We have
22 time in the afternoon, Madam Chair.

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1 CHAIRPERSON MOLDENHAUER: Okay.
2 Fabulous. So it will be on the afternoon of
3 November 2nd.

4 MS. GRANT: Oh, that's Election
5 Day, correct?

6 CHAIRPERSON MOLDENHAUER: November
7 2nd, is it?

8 MR. MOY: Yes, it is.

9 MS. GRANT: I just -- I mean, ANC
10 isn't up for that.

11 MS. GLAZER: I believe she is
12 correct.

13 MR. MOY: Yes.

14 MS. GRANT: This is crazy.

15 CHAIRPERSON MOLDENHAUER: Well, we
16 still have Board meetings on Election Day.

17 MS. GRANT: And that's fair. But
18 with all due respect, again, I feel like the
19 applicant has been given so much leeway
20 entitlement for the fact that August 3rd was
21 not even given to consideration, me, who was a
22 party to this because I wasn't never told you

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1 guys to approve -- to have the hearing on
2 August 3rd when I knew full well I wasn't going
3 to be able to attend.

4 CHAIRPERSON MOLDENHAUER: Okay. I
5 have to --

6 MS. GRANT: Because I --

7 CHAIRPERSON MOLDENHAUER: I
8 appreciate your comments, but, at this point
9 in time, we need to move forward.

10 We will have the hearing on, I hear
11 that it is Election Day, but we have cases and
12 I have to have certain dates in which, you
13 know, we have cases and I can't stop our
14 hearings, unfortunately, so it will still be
15 on November 2nd, which will provide the ANC
16 time to have their meeting on the 27th.

17 That will conclude this hearing, at
18 this point in time. I appreciate it and we
19 try to consider all the different issues and
20 perspectives. I thank you all. That
21 concludes our hearing for today.

22 (Whereupon, the Public Hearing was

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1 concluded at 5:05 p.m.)

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