

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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

PUBLIC MEETING AND PUBLIC HEARING
January 11, 2011
Start: 10:03am - End: 2:20pm

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

Board Members

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

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

2 CHAIRPERSON MOLDENHAUER: This meeting
3 will please come to order good morning ladies and
4 gentleman. This is the January 11, 2011, Public
5 Meeting of the Board of Zoning Adjustments for
6 the District of Columbia. My name is Meredith
7 Moldenhauer, Chairperson, joining me today to my
8 left is Vice Chair Nicole Sorg, Mayoral
9 Appointee, to my right is Jeffrey Hinkle,
10 Representative of the National Capital Planning
11 Commission and then to my left is Michael
12 Turnbull, Representative of Zoning Commission.
13 Copies of today's meeting agenda are available to
14 you and are located to my left in the wall bin
15 near the door. We do not take any public
16 testimony at our meeting unless the Board asks
17 someone to come forward. Please be advised this
18 proceeding is being recorded by a court reporter
19 and is also being webcast live, accordingly we
20 must ask you to refrain from any disturbing
21 noises or actions in the hearing room. Please
22 turn off all cell phones and beepers at this

1 time. Mr. Secretary, do we have any preliminary
2 matters?

3 SECRETARY MOY: Not for the Public
4 Meeting Session Madam Chair.

5 CHAIRPERSON MOLDENHAUER: Okay then we'll
6 proceed with our one case on the agenda.

7 **Application No. 18095**

8 MR. MOY: Good morning Madam Chairperson,
9 Members of the Board. The one case for decision
10 is the Applicants motion for reconsideration of
11 condition no. 1; this is a term period of five
12 years to Application No. 18095 of the Ronald
13 McDonald House Charities of Greater Washington,
14 DC, pursuant to Section 3126 of the Zoning
15 Regulations. The original application was
16 approved on September 14, 2010; this application
17 was pursuant to 11 DCMR 3104.1 for a special
18 exception to operate a religious group residence
19 for 96 persons under Section 215 in the R-1-B
20 District at premises 1326 Quincy Street, N.E.
21 (Square 3968, Lot 17). As the Board will recall
22 on November 30, 2010, the Board convened a

1 limited public hearing to allow the Applicant to
2 address more fully the motion to remove condition
3 number one which limited the special exception
4 use to a term of five years. After deliberation
5 the Board scheduled its decision to January 11,
6 2011, and the Board's second action the Board
7 allowed the Applicant to file a legal brief
8 attended to the Board's authority to impose time
9 limitations with a final deadline of January 4,
10 2011. That legal brief Madam Chair is in your
11 case folders identified as "Exhibit 40". The
12 second filing in this record was submitted
13 yesterday Monday January 10th, from ANC 5-A and
14 that document is identified as "Exhibit 41", the
15 Board is acting merits at the request for
16 reconsideration pursuant to the criteria in
17 Section 3126 of the Zoning Regulations, that
18 concludes the Staff's briefing Madam Chair.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much Mr. Moy, as you stated we are deliberating
21 on a case which was a motion for reconsideration
22 where we had imposed a five year term limit. The

1 Applicant came back before us and presented
2 testimony and then we've also received his
3 written submission as referenced by Mr. Moy.
4 They also have in our record a letter from the
5 ANC 5-A indicating their support of the
6 application and supporting no term limit or if
7 any term limit recommending a 10 year rather than
8 a 5 year term limit. The ANC letter also talks
9 about their concern and making sure that no
10 change or no change in ownership could occur
11 potentially on the property or that the property
12 could not change hands. That being said I'll
13 just kind of address that first then we'll go on
14 to the major merits in interest to the case.
15 Obviously the ANC letter will be given great
16 weight and we'll consider that but the request
17 for us to not permit any transferability of the
18 property is based on the court records invalid
19 per'se, we cannot restrict who could potentially
20 buy a property or who potentially the property
21 can be transferred to, but that being said
22 granting a special exception under Section 3104.1

1 does in of itself restrict the use to religious
2 group residents and so in that way I think that
3 the ANC should be satisfied but their specific
4 request in that regard is not something that we
5 can specifically appease or legally reference or
6 do. That being said I'll go more towards the
7 merits of the case and we'll all deliberate and
8 discuss this in more detail. The question is
9 really I think was our initial imposing of a five
10 year term limit something that one the Board had
11 the authority to do and then two, was it
12 reasonable? In the Georgetown College via the
13 BZA Case that was reference in the Appellant's
14 brief it indicates that implicit in the Board's
15 power to grant special exceptions is the
16 authority to place reasonable conditions upon
17 such approval. I think that as we stated before
18 on our deliberation when we imposed this five
19 year term limit, I think that the term limit is
20 reasonable based on the facts of the case. Then
21 the question is whether or not the authority to
22 impose this condition is supported by specific

1 facts, findings or support of such a condition.
2 I think that what Mr. Sullivan on behalf of the
3 Applicant is indicating is that we actually need
4 a witness to come down before us or we would need
5 a letter from a community member saying please
6 impose a term, we would need office of planning
7 to say please do this because it's going to have
8 an adverse effect. I disagree with that fact I
9 find that our job as a Board based on the cases
10 that we review and based on our experiences in
11 reviewing all these multiple cases is to evaluate
12 each and every case on the same standards, our
13 duty is to apply that special exception standard
14 uniformly throughout all cases whether or not we
15 have a specific individual coming forward and
16 testifying but imposing that standard uniformly
17 and imposing that duty upon the applicant to show
18 us that there's going to be no adverse effect on
19 the property in the future. I think that here
20 there was a question based on one, the large
21 extent of the increase of the intensity of the
22 use, we're going from 58 persons to 96 persons, I

1 think that was indicated in the initial
2 deliberation and during questioning on this
3 motion for reconsideration and that intensity was
4 something that we were all concerned about or
5 that gave rise to reasoning to impose a term
6 limit for potential adverse effects on the
7 community in the future. The second would be the
8 change in use, this is a change in use to a new
9 use the new use would be obviously operating the
10 religious group residence and since that's never
11 been operated before there's a brand new type of
12 use that's being imposed or brought into this
13 community and the question then is in our
14 evaluation, how is that potentially going to
15 adverse the effect of effect the neighboring
16 properties. I think based on that we need to
17 look at it and say would a term limit be
18 reasonable, would a term limit potentially
19 provide a conduit and opportunity for the
20 neighboring communities to come back if there is
21 potentially a concern in the future. I think
22 that it provides a benefit to both the applicant

1 and the community so that they do have a forum in
2 which they can come back to if there is one
3 needed, if there isn't then I think also one of
4 the reasons why I would more be inclined to look
5 at a 5 year rather than a 10 year is I think any
6 implication or any effect of an adverse impact
7 would occur during the initial operation of the
8 property. Since this is obviously as I said
9 earlier a new operation, a new type of use that
10 would occur in the first 5 years thus maybe after
11 that there would be no need for one, I don't know
12 I can't foresee the future but I do foresee
13 reasons and facts which support a finding for a
14 term. That being said I will open it up to
15 additional deliberations from other Board
16 Members.

17 MR. TURNBULL: Thank you Madam Chair, I
18 would totally concur with your analysis so far
19 and I think it's excellent I think it does
20 describe my position on this right now. But just
21 going back looking at some notes and I think
22 what's unpredictable here is the amount of

1 people, I think when they originally were
2 discussing it and testimony I think it's in some
3 other literature, they talked about in the
4 beginning how there could be maybe only 20 people
5 or 40 and we see a range going 20, 40, 50, 60,
6 70, 80, up to a maximum of 96 so I think there is
7 an unpredictability in the number of people that
8 could be there at any one time, so with that, I
9 think from my standpoint then there is a little
10 bit of uncertainty as to what's really happening
11 with the organization and how do they structure
12 it. I think the ANC in fact it was in the OP
13 report and I believe its again reference in
14 "Exhibit 41" by the ANC which talks about that if
15 there are large gatherings they are to notify the
16 ANC, although the ANC is supportive I think
17 they're still a little bit concerned about large
18 gatherings and I think that this order, they're
19 to be congratulated for their work but this is
20 not a monastic or contemplative group it's not
21 cloistered, their mission is to be active in the
22 community and they are going to be out, they will

1 be in the neighborhood in fact I think they
2 invite the neighborhood in for informal
3 gatherings, and I think the five year term limit
4 is reasonable in light of not knowing exactly how
5 that's going to work. I think this is something
6 new for the neighborhood in a situation like this
7 and I think it offers maybe a little bit of
8 protection or a little bit of ground for not only
9 the neighborhood but for the Applicant, I think
10 just to see how the relationship is going to be
11 within the neighborhood. I think there is
12 uncertainty, there's unpredictability, and it's
13 certainly doubling, almost doubling the amount of
14 people which was with the Ronald McDonald House.
15 So I think the five year term just from the
16 standpoint of the usage and the type of usage
17 it's a little different, I think a five year term
18 is a reasonable expectation just to for the
19 protection or just for the overall time limit,
20 time to get people to really see how this
21 organizations works within the neighborhood.

22 MS. SORG: Thank you Madam Chair and Mr.

1 Turnbull, I agree with both of your assessments
2 and don't have a great deal to add but would sort
3 of I think reiterate that I think all of us in
4 our deliberation on this case have given the ANC
5 support and comments great weight and as well I
6 think I would echo Mr. Turnbull's comments you
7 know the activities of the applicant here based
8 on their testimony through these hearings seems
9 to be something that is going to be evolving from
10 20 people they were uncertain of their program
11 and so in this case I think any other conditions
12 that we would have applied would have gone
13 towards mitigating currently concretely
14 foreseeable adverse impacts. But the term limit
15 I think allows us to have a moment in the future
16 to reassess the initial approval based on the
17 uncertainty that we're seeing here and the
18 significance of the increase in the intensity of
19 use.

20 MR. HINKLE: Madam Chair I'll note that
21 I'm in agreement with the rest of the Board here
22 I believe. There is a large increase in the

1 intensity of use in terms of the number of people
2 at this property that's contemplated, also it is
3 a change in use and with that I agree that we
4 don't necessarily know what is any adverse
5 impacts it might have in the future, so the five
6 year term I think is reasonable because as we
7 noted if there is something adversely to occur at
8 this property it will probably occur within the
9 next few years and then the five year term allows
10 both us and the public an opportunity to
11 readdress this issue, that's all I have to add.

12 CHAIRPERSON MOLDENHAUER: Well thank, I
13 think that we have definitely addressed a lot of
14 the issues here and have fully deliberated on
15 this. If we're all then in agreement I will
16 submit a motion, a motion to deny application No.
17 18095's motion for reconsideration of a five year
18 term limit. A motion has been made is there a
19 second?

20 MS. SORG: Second.

21 CHAIRPERSON MOLDENHAUER: A motion has
22 been made and seconded, all those in favor say

1 aye, aye.

2 CHORUS: Aye.

3 MR. MOY: Staff would record the vote as
4 4 to 0 to 1, this is on the motion of the
5 Chairperson Ms. Moldenhauer to deny the motion
6 for reconsideration of Condition No. 1 to Order
7 No. 18095, second motion Ms. Sorg, the Vice
8 Chairperson, also in support of the motion Mr.
9 Hinkle and Mr. Turnbull, no other Board Members
10 are participating. So again the vote is 4o to 0
11 to 1.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much Mr. Moy I think that concludes our agenda
14 for the Public Meeting.

15 MR. MOY: Yes indeed.

16 **Begin Public Hearing**

17 CHAIRPERSON MOLDENHAUER: Thank you,
18 then, this hearing will please come to order,
19 good morning ladies and gentleman, this is the
20 January 11, 2011, Public Hearing of the Board of
21 Zoning Adjustments for the District of Columbia.
22 My name is Meredith Moldenhauer, Chairperson.

1 Joining me today to my left will be Nicole Sorg,
2 Vice Chair, Mayoral Appointee, to my right is
3 Jeffrey Hinkle, Representative of National
4 Capital Planning Commission, and to my left
5 Representative of the Zoning Commission Mr.
6 Michael Turnbull. Copies of today's meeting
7 agenda are available to you and are located to
8 the left in the wall bin near the door. Please
9 be advised this proceeding is being recorded by a
10 court reporter and is also being webcast live.
11 Accordingly we must ask you to refrain from any
12 disturbing noises or actions in the hearing room.
13 When presenting information to the Board please
14 turn on and speak into your microphone first
15 stating your name and home address. When you are
16 finished speaking please turn off your microphone
17 so that your microphone is no longer picking up
18 sounds or background noise. All persons planning
19 to testify either in support or in opposition are
20 to fill out two witness cards these cards are
21 located to my left on the table near the door and
22 on the wall bins near the door. Upon coming

1 forward to the Board please give both cards to
2 the court reporter sitting to my right. The order
3 of procedure for special exceptions and variances
4 are as follows: 1. Statement of the Applicant and
5 Applicant's witnesses. 2. Parties and Persons in
6 support. 3. Parties and Persons in Opposition. 4.
7 Government Reports. 5. ANC within which the
8 property is located. 6. Rebuttal and closing
9 statements of the Applicant. The order of
10 procedures for an Appeal Application are as
11 follows: 1. Statement of the Appellant and the
12 Appellant's witnesses. 2. The Zoning
13 Administrator or other Government Officials case.
14 3. Case of the owner, leasee, and operator of
15 the property involved, if not the Appellant. 4.
16 Other intervener's in the case permitted by the
17 Board. 5. ANC in which the property is located.
18 6. Rebuttal and closing statements by the
19 Appellant. Pursuant to Section 3117.4 and 3117.5
20 the following time constraints will be
21 maintained: The Applicant, Appellant, persons and
22 parties except an ANC in support and including

1 witnesses will be permitted 60 minutes
2 collectively. The Appellees persons and parties
3 except an ANC in opposition including witnesses
4 will be given 60 minutes collectively.
5 Individuals will be given 3 minutes and
6 organizations will be given 5 minutes. These
7 time restrictions do not include cross
8 examinations or questions from the Board. Cross
9 examination of witnesses is permitted by the
10 Appellant, Applicant or the parties and the ANC
11 within which the property is located is
12 automatically a party to a special exception or
13 variance case. Nothing prohibits the Board from
14 placing reasonable restrictions on cross
15 examination including time limitations, and
16 limitations on the scope of cross examination.
17 The record will be closed at the conclusion of
18 each case except it will remain open for any
19 materials specifically requested by the Board.
20 The Board and the staff will specify at the end
21 of each hearing exactly what is expected and the
22 date when the person must submit this

1 documentation to the Office of Zoning. After the
2 record is closed no other information will be
3 accepted by the Board. The Sunshine Act requires
4 that the public hearing on each case be held in
5 the open before the public. The Board may
6 consistent with its rules and procedures and the
7 Sunshine Act enter into Executive Session during
8 or after a hearing on a case for purposes of
9 reviewing the record or deliberating on a case.
10 The decision of the Board as in these contested
11 cases must be based exclusively on the record, to
12 avoid any appearance to the contrary the Board
13 requests that persons present not engage the
14 members of the Board in conversation. Please
15 turn off all beepers and cell phones at this time
16 as to not disturb these proceedings. At this
17 time the Board will consider any preliminary
18 matters, preliminary matters relate to whether a
19 case should or will be heard today such as a
20 request for postponement, continuance or
21 withdrawal or whether proper or adequate notice
22 of a hearing was given. If you are not prepared

1 to go forward today now is the time to raise such
2 a matter. Mr. Secretary, do we have any
3 preliminary matters?

4 MR. MOY: Yes we do Madam Chair attendant
5 to the second case in the morning which is Appeal
6 18152 with respect to a couple of motions as well
7 as other issues surrounding that Application so
8 the Board can either take that up as preliminary
9 now or address those issues and motions when we
10 call the case.

11 CHAIRPERSON MOLDENHAUER: We'll address
12 that when we call the case. So all individuals
13 wishing to testify today please stand and the
14 oath will be administered.

15 MR. MOY: Do you solemnly swear or affirm
16 that the testimony that your about to present at
17 this preceding is the truth, the whole truth, and
18 nothing but the truth? Ladies and gentlemen you
19 may consider yourselves under oath.

20 CHAIRPERSON MOLDENHAUER: Thank you very
21 much Mr. Moy, if we can call the first case.

22 **Application 18156**

1 MR. MOY: That case Madam Chair would be
2 Application No. 18156 of Capitol City Real Estate
3 Group, LLC, pursuant to 11 DCMR 3103.2 for a
4 variance from the off street parking requirements
5 under (Subsection 2101.1) to allow the new
6 construction of a flat, a two family dwelling in
7 the R-4 District at premises 1613 6th Street, N.W.
8 (Square 477, Lot 801).

9 CHAIRPERSON MOLDENHAUER: Thank you very
10 much Mr. Moy. If the parties can please
11 introduce themselves for the record.

12 MS. FULLER: Good morning my name is
13 Carlin Fuller, I'm the attorney representing the
14 Applicant, and my address is 1127 Abby Place,
15 N.E. Washington, DC 20002.

16 MR. FLACK: Good morning my name is Chris
17 Flack, I'm an agent with the owner, and my
18 address is 2703 12th Street, N.E., Washington, DC
19 20018.

20 MR. PARDO: Good morning Jason Pardo, I'm
21 an agent for the owner; my address is 9837 LeDuke
22 Drive, Kensington, MD 20895.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much, Ms. Fuller if you would like to present
3 your case.

4 MS. FULLER: Thank you Madam Chair, this
5 morning we are here requesting a variance from
6 the off street parking requirement (Subsection
7 2101.1) for the proposed construction of a two
8 unit flat in an R/4 District at 1613 6th Street,
9 N.W. it is (Square 477, Lot 801) in the Old City
10 II neighborhood and it's ANC 2-C O2 in Ward 2.
11 Currently that site is a vacant parcel of land
12 and it's in the middle of a row of attached
13 single family and two unit flat dwellings on the
14 east side of 6th Street bounded by R Street to the
15 north and Q Street to the south. It's a narrow
16 rectangular site and it fronts 6th Street. The
17 lot area is 1821 square feet. The matter of
18 right in this zone is detached and semi-detached
19 row dwellings and flats so we're just seeking a
20 variance on the bases of the off street parking
21 requirement which requires one space for every
22 two units. With regard to the test that we must

1 meet. The physical characteristics of the
2 property are what make it difficult for the
3 owners to use this property in compliance with
4 the off street parking requirement. The property
5 as I stated is situated in the middle of a long
6 row of single family and two unit dwellings and
7 the property is land locked there is no alley
8 behind the property that would allow rear access
9 to a parking space. So the owners would be
10 required to put a curb cut in the front of the
11 property in order to meet this requirement.
12 Prior to applying to BZA the owners applied for a
13 building permit with DCRA and that's when they
14 were informed by the Department of Transportation
15 that a curb cut would not be allowed in the front
16 of this property, so that is one of the things
17 that makes it difficult. Prior to purchasing
18 this property the owners did do a little due
19 diligence in that they noted that there were
20 other two unit flats in this same block and that
21 there have been building permits issued for these
22 properties allowing the two unit flats without

1 appearance before BZA so they were under the
2 mistaken impression that they would be allowed as
3 a matter of right to come and not have to have
4 any additional requirements and it wasn't until
5 they applied for the building permit that they
6 were instructed by the Zoning Administrator that
7 they wouldn't be required to come to BZA to get
8 the variance. So based on that information that
9 they had prior to applying for the building
10 permit that is what induced them to purchase one
11 of the factors that induced them to purchase the
12 property. So factoring in the increased cost of
13 construction they were looking at the fact that
14 there's a robust condo market in the District so
15 these were the factors that led them to design
16 the property the way as a two unit flat. Finally
17 the proposed two units flat will improve this
18 eyesore that has been on this block for many
19 years as a vacant property. It will not be a
20 detriment to the public good, there's not public
21 harm that will result in this variance and no
22 adverse impact on the neighborhood. Then

1 granting the application we don't believe
2 inconsistent with the general intent and purpose
3 of the zoning regulations as I stated there are
4 at least two other dwellings on this block along
5 the same row that have already been converted to
6 two unit flats and the overall design of the two
7 unit flat will be consistent with the existing
8 structures along the row and will provide much
9 needed esthetic relief to the block. We've met
10 with the ANC on January 5th, I contacted the ANC
11 as soon as I received our notice of our hearing
12 date in November and I spoke with the Single
13 Member District Commissioner Kevin Chapel and he
14 indicated that he would put us on the January
15 agenda versus the December agenda so that meeting
16 was just last week and they voted in favor of our
17 application unanimously and indicated that they
18 would send a letter to the Board, so I'm not
19 sure, I did not receive a copy so I'm not sure if
20 that letter was transmitted or not.

21 CHAIRPERSON MOLDENHAUER: No we don't have
22 one in our record as of yet. We're double

1 checking but...

2 MR. MOY: No Madam Chair it's not in the
3 record.

4 CHAIRPERSON MOLDENHAUER: Thank you.

5 MS. FULLER: That pretty much is our case
6 this morning, thank you.

7 CHAIRPERSON MOLDENHAUER: Thank you; do
8 Board Members have any questions for the
9 applicants?

10 MR. TURNBULL: Madam Chair I have one,
11 I'm looking at "Exhibit 23", I'm just curious I'm
12 looking at the second page it shows a photograph
13 of the site, how long has this been vacant?

14 MR. FAULK: To our knowledge I believe
15 it's been vacant for five to six years.

16 MR. TURNBULL: I mean I see cones out
17 there, I see a mound of dirt, I see plywood. My
18 first glance upon looking at this, it looks like
19 it's been active not that long, I mean unless all
20 this debris has been around since that time, but
21 it looks like, as I say I'm just curious how
22 long, but to your knowledge your saying it's been

1 five years it's been vacant?

2 MR. FAULK: Yes five years if not longer.

3 MR. TURNBULL: I'm just clarifying; the
4 Applicant did not tear up the property?

5 MR. FAULK: No sir, no sir.

6 MR. TURNBULL: Okay thank you.

7 CHAIRPERSON MOLDENHAUER: Just to kind of
8 follow up on that question. Do you know what
9 existed in this location prior to five or six
10 years ago?

11 MR. FAULK: To our knowledge it was a
12 single family home previously, somewhere along
13 the line it's been torn down, the only thing we
14 really saw on site there seems to be some old
15 footer still in the ground but the District
16 records show it was previously at some point a
17 single family dwelling.

18 CHAIRPERSON MOLDENHAUER: Did you purchase
19 it from, the owners you purchased it from are
20 they the ones that tore down the building or..

21 MR. FAULK: I don't know, now the
22 purchaser it was a foreclosure so it was

1 purchased it from a lender, I'm not sure what it
2 was, if the prior borrowers if they are the ones
3 who did that.

4 So is there any unique aspect in regards
5 to, that's fine. Any other questions from Board
6 Members? Seeing none then what we'll do is we
7 will turn to see if there are any individuals in
8 the audience in support or in opposition to this
9 case, if so please come forward. Seeing none,
10 then we'll turn to the Office of Planning for
11 their report.

12 MR. MORTON: Good morning I'm Stephen
13 Morton with the Office of Planning and the
14 subject application is in conformance with
15 provisions for the granting of a variance because
16 subject property has no alley access which
17 results in a practical difficulty because three
18 sides of the lot adjoin private property
19 precluding access, DDOT informed the applicant
20 that it would not approve a curb cut at the
21 subject property and the requested variance would
22 allow the applicant to develop the sign in

1 conformance with all other provisions of the R-4
2 District. Therefore the Office of Planning
3 recommends approval of the variance request
4 reduce the off street parking requirement from 1
5 to 0, thank you.

6 CHAIRPERSON MOLDENHAUER: Does the
7 Applicant have any questions for the Office of
8 Planning?

9 MS. FULLER: No ma'am.

10 CHAIRPERSON MOLDENHAUER: Do any Board
11 Members have any questions for OP?

12 MS. SORG: Thank you Madam Chair, I have
13 one question. So you went quickly through your
14 report, so what you are indicating is that in
15 your view the lack of alley access is the
16 exceptional situation?

17 MR. MORTON: I think the lack of alley
18 access and also that DDOT has informed the
19 applicant that they would not approve a curb cut
20 therefore there is no way to get a vehicle onto
21 the property.

22 MS. SORG: I agree and then my next

1 question is there any dwelling that can be built
2 on this site that wouldn't require at least one
3 parking?

4 MR. MORTON: No if they were to construct
5 a row house, a one family row house one parking
6 space would be required.

7 MS. SORG: Thank you.

8 MR. HINKLE: Just a quick question Madam
9 Chair. To get to whether or not the granting of
10 this relief would be a detriment to the public
11 good, could you describe a little bit the
12 opportunities for public transportation in the
13 area as well as public street parking.

14 MR. MORTON: Well there is public street
15 parking that is available on 6th Street in front
16 of the property, assuming that it were available
17 the Applicant could park there. The area is
18 served by transit, the Applicant's could walk to
19 buses, take buses, so and it's a developed
20 neighborhood with sidewalks so it is a
21 neighborhood where if the Applicants determined
22 that they didn't want to have a car, they

1 wouldn't have to have a car, but the zoning
2 requires that one parking space be provided.

3 MR. HINKLE: Thank you.

4 MS. SORG: I have one follow up question
5 and perhaps this is to the Applicant. I think
6 there's a metro station pretty close to the site,
7 right, how far away from metro are you?

8 MR. FAULK: Yes, I believe the closest
9 metro point would be the Howard Shaw stop and it
10 would be about three blocks to the north of this
11 site, three blocks to the north and one block to
12 the east.

13 MS. SORG: Okay thank you.

14 CHAIRPERSON MOLDENHAUER: Are there no
15 further questions from the Board? Seeing none,
16 then we'll turn to the ANC is anyone present from
17 the ANC for this case? Seeing no one we already
18 heard testimony from the Applicant that they did
19 receive a unanimous vote but obviously having
20 nothing in writing we'll obviously take that
21 under advisement but we can not provide any
22 weight to that. Then last do you have any

1 closing remarks from the Applicant?

2 MS. FULLER: Thank you Madam Chair we
3 just request approval, this flat has been vacant
4 for a number of years and the Applicant is
5 seeking to address the esthetic view of the city.

6 At the ANC meeting there was a member of the
7 community who was quite happy that there was
8 going to be something built on this site now
9 after looking at a vacant lot for so many years,
10 so we just hope the Board will be in agreement
11 with your application, thank you.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much. I see no other questions from the Board so
14 at this time we'll conclude this hearing, what
15 we'll do is we'll enter immediately into
16 deliberation and I'll turn to Ms. Sorg to start
17 us off.

18 MS. SORG: Thank you Madam Chair, I think
19 that you know the combination of some of the
20 submissions that we received in this file and the
21 testimony that we've heard today leads me to lean
22 towards supporting this application, we've seen

1 today that there hasn't been any opposition in
2 the community and the Applicant has testified
3 that they met with the ANC on January 5th, and
4 received their support and hopefully we may be
5 getting a letter in our record also. I think
6 it's been demonstrated adequately to me that the
7 exceptional situation in this property which I
8 think is if there is a hump to get over in the
9 variance test is the first problem that we need
10 to look at arises from a combination like we've
11 heard the lack of the alley access as well as the
12 long narrow lot and the refusal that's been
13 testified to of DDOT to provide a curb cut that
14 would allow access for parking here. I also
15 would note that OP has testified and as we know
16 there is not a dwelling type that can be built
17 here that doesn't require at least one parking
18 space and this type of flat is common in this
19 area and also this neighborhood is very close to
20 multiple modes of public transportation so with
21 that I would urge the Board to approve this
22 application.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much Ms. Sorg, is there any additional
3 deliberation from any other Board Members?

4 MR. TURNBULL: Thank you Madam Chair I
5 would agree with Ms. Sorg entirely, she went
6 through all the aspects of it very clearly and
7 although I know that the planning and zoning in
8 D.C. is one of the easiest to understand in the
9 country, I think we have here a Catch 22, where
10 you have a lot that you can build upon and people
11 want to build on it and your required to have a
12 parking space but guess what you can't have that
13 parking space, I think there's a conundrum right
14 there and I think that it's unfortunate but if
15 there is a quirk, I would agree whole heartedly
16 with Ms. Sorg and go along with the approval for
17 this variance.

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much Mr. Turnbull, I would like to add, that I
20 agree, I don't know if I totally agree with the
21 overall approach in regards to the approach that
22 OP took that just having no alley access and

1 having DDOT deny, I think that it's more for me
2 in reviewing the case a confluence of factors. A
3 fact that this Applicant is not the Applicant
4 that actually potentially removed an existing
5 building which would have been potentially
6 grandfathered if it had not been demolished
7 created a vacancy and all of a sudden now
8 considered new housing or a new development. I
9 think those factors to me created a unique
10 confluence of factors, the fact that I do
11 consider the fact that there is no alley access
12 and that DDOT denied a curb cut to contribute to
13 the confluence of factors but I think in and of
14 themselves without the initial one that I
15 mentioned, the fact that the property had been
16 demolished and that was a new vacant property
17 over the last five or six years, that is unique
18 and that is a factor that I think we have to look
19 at in regards to satisfying the first prong.
20 That being said I think that Ms. Sorg and Mr.
21 Turnbull summed up all the other factors for
22 satisfying the variance test and so I would also

1 be in support. Any further deliberation? Do we
2 have a motion?

3 MS. SORG: Thank you Madam Chair I would
4 submit a motion to approve Application No. 18156
5 for Capital City Real Estate Group, LLC for a
6 variance from off street parking requirements
7 under Section 2101.1 to allow the new
8 construction of a flat in the R-4 at 1613 6th
9 Street N.W.

10 MR. TURNBULL: Second.

11 CHAIRPERSON MOLDENHAUER: Motion has been
12 made and motion has been seconded, all those in
13 favor say aye, aye.

14 CHORUS: Aye.

15 MR. MOY: Staff would record the vote as
16 4 to 0 to 1, this on the motion of the Vice
17 Chairperson Ms. Sorg to approve the application
18 for a variance relief form the off street parking
19 requirements under Section 2101.1, second of
20 motion Mr. Turnbull, also in support of the
21 motion, Ms. Moldenhauer and Mr. Hinkle, no other
22 Board Members participating so again the vote is

1 4 to 0 to 1.

2 CHARIPERSON MOLDENHAUER: Thank you very
3 much Mr. Moy and seeing that there's no
4 opposition we would like to waive our
5 requirements and request a summary order.

6 MR. MOY: Thank you Madam Chair.

7 MS. FULLER: Thank you Madam Chair.

8 CHAIRPERSON MOLDENHAUER: Thank you, have
9 a good day.

10 **Appeal No. 18152**

11 MR. MOY: The next and last public
12 hearing case for the morning session Madam Chair
13 is Appeal No. 18152 of the Advisory Neighborhood
14 Commission 1-C and 1-D pursuant to 11 DCMR 3100
15 and 3101 from an August 17, 2010, decision by the
16 Department of Consumer and Regulatory Affairs to
17 grant a building permit allowing the renovation
18 and expansion of the existing Mt. Pleasant
19 Library in the R-5-D District, that premises is,
20 and this is a corrected address Madam Chair,
21 3160 16th Street, N.W. property located in (Square
22 2595, Lot 830).

1 CHAIRPERSON MOLDENHAUER: Good morning
2 everybody I'll let you get situated, it looks
3 like you've got all the parties at the table.
4 Okay what we'll do is we'll start off on my left
5 here and we'll work our way to my right and I'll
6 ask everybody to introduce themselves for the
7 record.

8 DR. EDWARDS: I'm Dr. Greg Edwards, I'm
9 here as an individual Commissioner representing
10 my District I've won five elections and not in my
11 role as the Chair of Advisory Neighborhood
12 Commission 1-D at Mt. Pleasant. I'm asking the
13 Board to delay...

14 CHAIRPERSON MOLDENHAUER: I'm sorry all
15 we're doing is introducing ourselves, so now let
16 me try to get this straight, you're can you say
17 again, are you, who are you here representing?

18 DR. EDWARDS: Myself as an individual
19 commissioner.

20 CHAIRPERSON MOLDENHAUER: What single
21 member District is that?

22 DR. EDWARDS: 1-D-4, I live across the

1 street from the library.

2 CHAIRPERSON MOLDENHAUER: 1-D-4 okay and
3 then so we'll now move on to my right, your left.

4 MR. OTTEN: Hi, my name is Chris Otten;
5 I'm formerly the Commissioner of SMD 1-C-02 2009-
6 2010, and a community organizer with the Ward 1
7 Library Coalition and initiator of the Appeal.

8 MS. BOTRICK: Catherine Botrick I'm here
9 representing Single Member District ANC 1-C-08.

10 MR. REYNOLDS: Good morning Madam Chair
11 and members of the Commission, Wilson Reynolds
12 representing Advisor Neighborhood Commission 1-C.

13 MR. DAVIS: Martice Davis...

14 CHAIRPERSON MOLDENHAUER: I'm sorry can I
15 go back to Mr. Reynolds I'm just trying to,
16 because I know this is a little bit of the
17 confusion here, so now you're the new
18 Commissioner representing all of 1-C?

19 MR. REYNOLDS: Thank you for the
20 compliment; I'm actually the old Commissioner,
21 the Chair of the Commission.

22 CHAIRPERSON MOLDENHAUER: So you're the

1 former chair of 1-C?

2 MR. REYNOLDS: No ma'am I am the current
3 Chair. I was also the former Chair.

4 CHAIRPERSON MOLDENHAUER: Okay so you're
5 the current chair of 1-C, thank you.

6 MR. DAVIS: Mr. Davis, Martice Davis, ANC
7 Commissioner 1-C, newly elected.

8 MR. LEGRANT: Good morning, Matthew
9 LeGrant, I'm the Zoning Administrator at DCRA.

10 MR. SURABIAN: Assistant Attorney General
11 Jay Surabian on behalf of DCRA.

12 MS. BOLEN: Good morning Madam Chair,
13 Members of the Board, Melinda Bolen General
14 Counsel for DCRA.

15 CHAIRPERSON MOLDENHAUER: Thank you all
16 for introducing yourselves as we're trying to get
17 everything squared away. As you all are aware we
18 have a couple of motions before us, a motion to
19 continue is the first preliminary matter, and Mr.
20 Moy is there any other preliminary matters?

21 MR. MOY: There's also a motion opposed
22 to that motion to dismiss by the Appellant.

1 CHAIRPERSON MOLDENHAUER: To oppose the
2 continuance, there's no motion to dismiss right
3 now, that's pending.

4 MR. SURABIAN: I'd like to make a motion
5 to dismiss.

6 CHAIRPERSON MOLDENHAUER: But there's no
7 written motion to dismiss that's in my file that
8 I had before I walked in this morning. Okay, I'm
9 just trying to make sure.

10 MR. SURABIAN: Actually just to in light
11 of the sort of this confusion and the
12 identification of who the parties are I think
13 that once we get that figured out it may result
14 in dismissal, so I think if we could address that
15 before we address the continuance it might make
16 sense.

17 CHAIRPERSON MOLDENHAUER: I think that's
18 one of the reasons why I was trying to figure out
19 who everybody is and we're going to get there.
20 So first what I'm going to do is I'm going to
21 turn to Mr. Otten since obviously you were the
22 individual who filed the initial appeal. There

1 was a question brought up in written opposition
2 about whether this appeal was submitted as an
3 individual rather than as an ANC and who exactly
4 the Appellant is in this case. So I'll turn to
5 you to initially address that issue and then
6 we'll go from there.

7 MR. OTTEN: Okay thank you Chair, umm you
8 know I had the documents that were submitted back
9 in October re-faxed to me back in January just to
10 make sure I was looking at the correct
11 information and looking at it I did file this as
12 an individual commissioner along with
13 Commissioner Greg Edwards as an individual
14 Commissioner back on October 12, 2010. I
15 received a reply letter sometime in late November
16 just before the holidays I didn't really get to
17 really look at it until early December at which
18 point I noticed it was advertised as ANC 1-C and
19 1-D. I think 1-D isn't actually a party but so I
20 sought the support of 1-C at the December the
21 last minute meeting in 2010, but we just couldn't
22 get something passed so something was recently

1 passed and submitted today by ANC 1-C in regard
2 to this case, that was passed on January 5th, that
3 was their first meeting of the year. So the
4 timing of this is a little awkward but you should
5 now have in front of you ANC 1-C's resolution
6 with regard to this case.

7 CHAIRPERSON MOLDENHAUER: I'm going to
8 ask a question and if you don't know the answer
9 maybe we'll turn to our OHE representative. If
10 you did not have the authority of the full
11 Commission of 1-C at the time and you were
12 submitting the appeal as an individual
13 Commissioner, as individual Commissioner did you
14 have the authority to do that or would that have
15 been more in your individual capacity as a local
16 resident?

17 MR. OTTEN: Good question, essentially I
18 was on the Commission starting 2009 to the end of
19 2010, and as my role on the Commission I
20 spearheaded several resolutions regarding the
21 library project all along including working with
22 the Public Services Committee to end the entire

1 Commission to get an expert report 92 page expert
2 architect report on the plans which kind of
3 started the whole process of relating concerns to
4 the various agencies in this case DCPL and DCRA.
5 We had sought and this is in, a lot of this
6 information is in my motion to deny DCRA's
7 request for denial of continuance if that makes
8 sense. But basically the report that our ANC had
9 commission raises serious questions about these
10 plans and we tried on several occasions to get
11 some information from DCRA to determine how this
12 report had changed those plans and we had heard
13 nothing that's when I filed as an individual
14 Commissioner.

15 CHAIRPERSON MOLDENHAUER: My question was
16 before not a question of the merits but a
17 question whether without having a resolution from
18 ANC 1-C as an Individual Commissioner do you have
19 the ability, the authority to file this appeal or
20 is it rather in your individual capacity as a
21 resident?

22 MR. OTTEN: Well Commissioner's are

1 residents, so in my capacity as Commissioner
2 following this particular project pretty tightly
3 for the last couple of years I filed this appeal
4 in hopes to get a hearing to address the Zoning
5 Regulations that are being broken by the plans.
6 I don't know the rules in complete detail for the
7 Zoning Regs...

8 CHAIRPERSON MOLDENHAUER: Ms. Glazer can
9 I turn to you, what I'm trying to get
10 clarification on is if ANC 1-C and ANC 1-D were
11 not initially the Appellant in this case then
12 obviously they can be brought in as interveners
13 that they can be brought in as the ANC in any
14 case that's fine. My question is who is then the
15 initial Appellant in this case, is it Mr. Otten
16 individually or is it the Commissioner of his
17 Single Member District?

18 MS. GLAZER: I'm not totally clear on all
19 the facts however it appear is that Mr. Otten
20 testified that he brought it as a resident, he
21 also happened to be a Single Member District
22 Commissioner, I don't see any reason why that

1 appeal would not survive on his behalf
2 individually and it seems like it's possible that
3 the case was mis-captioned, that it really was
4 not an appeal of the two ANC's and of course it's
5 up to the Board to decide what they want to do
6 about that, whether they want to give the ANC's
7 the opportunity to join in the appeal or not, as
8 you know the ANC Act is very specific about it's
9 requirements about what needs to be done in terms
10 of the ANCs. Also I have not had the benefit of
11 reading the filings that were just submitted a
12 few minutes ago from Mr. Otten and from, I'm not
13 who they're from but they're lengthy submissions
14 that contain facts that the Board might want to
15 review before making any final decision.

16 CHAIRPERSON MOLDENHAUER: Thank you, that
17 being said what I'm going to do is I'm going to
18 now turn to the District to address this initial
19 issue and then I'll turn back to any of the other
20 ANC Commissioners who are present to then have
21 any additional comments on this issue. I'm going
22 to first turn to the District and then we'll turn

1 back to ANC individuals.

2 MR. SURABIAN: Thank you, well when I saw
3 the appeal it certainly gave me the impression
4 that it was ANC 1-C and 1-D that were the
5 Appellants. The Office of Zoning was under the
6 same impression and I would imagine that Mr.
7 Otten did not pay a filing fee and if he didn't I
8 think that's an additional basis for dismissal.
9 I think it's clear that he did not have the
10 authorization of the organization to pursue this
11 appeal and he lacks standing as an individual.
12 Additionally...

13 CHAIRPERSON MOLDENHAUER: I don't see
14 how, how does Mr. Otten lack standing as an
15 individual, let me just kind of nip that question
16 in the bud right now.

17 MR. SURABIAN: He's a citizen of the
18 District but he hasn't explained how he's
19 especially affected by the building permit. He
20 needs to be effected in a way different than
21 other District Residents.

22 CHAIRPERSON MOLDENHAUER: Sorry I'll let

1 you continue now that you've address that one
2 specific question.

3 MR. SURABIAN: I can supplement with case
4 along that point but that's what the Board has
5 held in many prior cases.

6 CHAIRPERSON MOLDENHAUER: Anything
7 further?

8 MR. SURABIAN: Well also I'd like to hear
9 from the ANC, I only became aware of this issue
10 last night, Ms. Botrick called me and informed me
11 that the ANC had not in fact passed the
12 resolution authorizing this appeal which was, it
13 took me by surprise, if they've subsequently
14 passed the resolution to that they are interested
15 in the case and would like to intervene that's
16 fine but if the appeal is defective from it's
17 inception it has to be dismissed.

18 CHAIRPERSON MOLDENHAUER: Okay what I'm
19 going to do now is turn back to the ANC
20 individuals and what I'll do is let all the other
21 ANC individuals present then obviously Mr. Otten
22 we'll look back to you at the end. So I'll start

1 off with Mr. Edwards.

2 DR. EDWARDS: I would like to distinguish
3 myself from the other Commissioners from the
4 other people because and deny an allegation made
5 by the honorable council from DCRA. Number one,
6 my name was on the initial appeal as an
7 individual, and secondly I live across the street
8 from the library and so I have tangible and
9 direct bearing on it because I essentially I live
10 if not abutting within a few feet of abutting the
11 library so I believe that it is not just Otten
12 but my name also appeared on it and therefore I
13 think I should be accorded a different degree of
14 access. I come with a statement, the statement
15 by DCRA about this issue which was the first that
16 we've gotten from them, as the chair, speaking as
17 the Chair of the ANC for several years. We
18 submitted, I gave directly to DCRA to the Deputy
19 Director, now Director Designate, Nick Magete, a
20 copy of all of our ANC resolutions asking him for
21 a response and none has been forthcoming so they
22 are in deficit so the rest of this they have

1 given no notice contrary to all the laws of the
2 District of Columbia surrounding this and
3 yesterday afternoon was the first I got a copy of
4 anything from them and there is no time to
5 respond, I immediately submitted for the agenda
6 of next weeks meeting of ANC 1-D a two
7 resolutions asking that things be delayed and
8 that you in effect reject, or overrule the Zoning
9 Administrators rulings and therefore I think it's
10 unfair to proceed without allowing the manifest
11 interest. Of course there have been recent fires
12 there have been several people dead and as a
13 result of things in our consultants report which
14 is several times thicker than theirs and it
15 involves a lot more people on this issue that we
16 need time to put together our case and present it
17 to you because this is something dealing
18 immediately with the health and safety of perhaps
19 large numbers of people and it would be a shame
20 that on procedural grounds and lack of following
21 the law by the government which does not
22 therefore come to this hearing with clean hands

1 that this situation should continue. There are
2 significant issues that were raised by the
3 unanimous resolution of 1-C and that's also part
4 of my draft resolution to 1-D and I think that
5 we, that there's a lot of clearing up that needs
6 to be done and some good faith due diligence on
7 the part of everybody and I plead with you given
8 all these circumstances of neglect and failure to
9 follow the law that you give us a chance, all of
10 us a chance to clean this matter up so that it
11 can be decided fairly in the interest of health
12 and safety of my neighbors and the District of
13 Columbia.

14 CHAIRPERSON MOLDENHAUER: Let me ask you
15 a couple of questions, first we need to figure
16 out obviously who the parties are, first thing
17 we're doing is trying to figure out who exactly
18 the Appellant is then figure out who would be any
19 intervening or any adding ANCs and then we'll go
20 forward to then the question of continuance and
21 then if we can pass question of continuance then
22 we'll get to the question of merits. But just to

1 kind of address that issue obviously I'm going to
2 jump to merits and it's going to be the one that
3 we'll discuss at the end. You brought up some
4 concerns about safety, we have to, once we get
5 through those additional issues was all about
6 what the Board has authority and jurisdiction to
7 address, safety is not one of them per'se so
8 we'll get to that later on in regards to what our
9 jurisdiction is in regards to those issues.
10 Before I get there lets' talk about what we're
11 talking about right now. I do see obviously you
12 identify with that and you are on the initial
13 appeal on the second page, your name is
14 identified at the top as Greg Edwards, so Dr.
15 Edwards I do see that. You do indicate your
16 location which I do find unique to the property;
17 you said you're adjacent to the library. My
18 question though to you is if we get past that one
19 issue going then potentially to the question of
20 the continuance, you filed this appeal back in
21 October hasn't there been enough time for you to
22 get ready for this case, we're now in January,

1 that you would have all your ducks in a row for
2 this hearing today?

3 DR. EDWARDS: The DCRA has not come
4 through with its legal responsibilities to reply
5 to our ANC to supply us with the documentation.

6 CHAIRPERSON MOLDENHAUER: But you're the
7 Appellant, it's your obligation to prepare your
8 case it's not, the District is opposing the case
9 it's not their obligation as an Appellant it's
10 your duty to be able to come before the Board and
11 show us what the facts are. In what regard do
12 you not have what you need in order to present a
13 fair case today before the Board?

14 DR. EDWARDS: We never got the Zoning
15 Administrator letter for example, I got it
16 yesterday afternoon. I called other officers of
17 the commission.

18 CHAIRPERSON MOLDENHAUER: What letter are
19 you referring to, is there..

20 MR. OTTEN: Can I speak to that Chair;
21 this is a key piece of the denial of the appeal
22 by Mr. Surabian. He refers to the Zoning

1 Administrators Letter of determination regarding
2 the rear yards which ANC 1-C has pointed out now
3 as a concern in terms of the Zoning Regs, that
4 Zoning letter was not given to 1-D or 1-C to our
5 knowledge at all in any full matter or timely
6 manner to oppose it or address it at the time it
7 was penned.

8 CHAIRPERSON MOLDENHAUER: But that's the
9 merit of your case and you have a copy of that
10 now?

11 MR. OTTEN: We just got that on January
12 7th, when it was included in Mr. Surabian's
13 request to deny this appeal as part of the
14 exhibits. He uses that as a key piece to say why
15 the rear yard requirement is not required.

16 CHAIRPERSON MOLDENHAUER: I mean you have
17 the ability...

18 MR. SURABIAN: If I could clarify that
19 point...

20 CHAIRPERSON MOLDENHAUER: Okay let me
21 just ask one question, did you ever submit a FOIA
22 request?

1 MR. OTTEN: No.

2 CHAIRPERSON MOLDENHAUER: Okay so you
3 didn't do your due diligence when you submitted
4 this application, submitting the FOIA request
5 trying to ask the District for whatever
6 documentation they have regarding this case?

7 MR. OTTEN: I can only speak to what ANC
8 1-C did and that was two resolutions, one in July
9 and one in September asking DCRA for information
10 regarding how the plans have changed so that they
11 could issue the permit and we never got it, well
12 we got a response in late November which I
13 believe our Chair could speak to if you like.
14 But that's part of the exhibits and the response,
15 what we did get the information was not
16 intelligible it was internal documentation, dated
17 documentation that had not reflection of this
18 letter of determination.

19 CHAIRPERSON MOLDENHAUER: So one thing
20 you're saying, I'm trying now to get back to the
21 issue of potential continuance. You're saying
22 that you're being prejudiced because you just got

1 an integral piece of evidence what, three days
2 ago that you need to have more time to review?

3 MR. OTTEN: Right because it's the key
4 component of the argument for why the appeal
5 should be denied.

6 CHAIRPERSON MOLDENHAUER: But I guess my
7 question is, I have to look at this letter, what
8 exhibit is this letter in, and does somebody have
9 an exhibit number, Mr. Moy?

10 MS. GLAZER: I don't think they're marked
11 yet, they just came in today and Mr. Moy just
12 told me it's possibly attached to..

13 MR. SURABIAN: It's "Exhibit E" in my
14 filing.

15 CHAIRPERSON MOLDENHAUER: I don't think I
16 have a copy of the District's prehearing
17 statement.

18 MR. SURABIAN: I filed it Friday morning.

19 CHAIRPERSON MOLDENHAUER: Mr. Moy do we
20 have a copy of the District's prehearing
21 statement?

22 MR. MOY: I'm looking for the exhibit

1 number Madam Chair.

2 MR. SURABIAN: It's "Exhibit E".

3 CHAIRPERSON MOLDENHAUER: Just bear with
4 us for one moment.

5 MR. MOY: It should be "Exhibit No. 18",
6 Madam Chair.

7 CHAIRPERSON MOLDENHAUER: Okay I'm going
8 to turn to Mr. Surabian to just address this new
9 issue that we're talking about.

10 MR. SURABIAN: Issue regarding the letter?

11 CHAIRPERSON MOLDENHAUER: Yes, in regards
12 to how this would potentially prejudice the
13 Appellant.

14 MR. SURABIAN: First off the letter is in
15 the permanent file at DCRA which you don't even
16 need to do a FOIA request you can just walk up to
17 the window on the second file and review it. The
18 building permit was issued in August and that
19 letter has been in there since then.

20 Additionally Mr. Otten has had my contact
21 information; he could have reached out to me at
22 any point. As well as the Zoning Administrator

1 just passed me a note indicating that he emailed
2 the letter to Mr. Edwards in November. So the
3 issue that's discussed in the letter is the rear
4 yard set back which is the very issue that they
5 are appealing so they're obviously aware that
6 whether there was a re-designation or some kind
7 of designation regarding the front and rear of
8 the property had they done any kind of minimal
9 diligence in determining how that was done they
10 said it was done arbitrarily they could have
11 emailed the Zoning Administrator and found out,
12 they did nothing and now they're raising it today
13 as a basis for continuance I think they had more
14 than enough time to prepare for this.

15 CHAIRPERSON MOLDENHAUER: Let me just
16 turn back to Dr. Edwards, did you in fact receive
17 a copy of that letter in November?

18 DR. EDWARDS: I try to check my email
19 pretty consistently because I have a large amount
20 of traffic I get almost 1000 emails a day and I
21 would have looked for it, there's always a
22 possibility that I could have mistaken it but I

1 will say that I have not seen it.

2 CHAIRPERSON MOLDENHAUER: When was the
3 first time that you actually saw the letter to
4 your recollection?

5 DR. EDWARDS: Yesterday afternoon.

6 CHAIRPERSON MOLDENHAUER: Let me know
7 just give an opportunity for Ms. Botrick and the
8 other ANC that are here today to address the
9 question of one, if under their understanding if
10 they are obviously intervening or adding to the
11 case as an ANC or did they believe they were
12 initially part of the case and then two, any
13 issue in regards to the continuance, in that
14 order if you could address those two issues.

15 MR. REYNOLDS: There is a bit of
16 confusion here so I would just like to stay on
17 message and just with clarity on this. The ANC
18 did not sign on to request case 18152; the ANC
19 did not take any action to weigh in on case 18152
20 either in support or in opposition.

21 CHAIRPERSON MOLDENHAUER: Okay, so even
22 as of this point today right now, you're saying

1 that ANC 1-C has not yet made a final resolution
2 to add on to this case.

3 MR. REYNOLDS: It has taken no position.

4 CHAIRPERSON MOLDENHAUER: No position on
5 this case, I appreciate that clarity Mr.
6 Reynolds.

7 MR. SURABIAN: Madam Chair if I could
8 just confuse things a little bit more. The
9 library is actually located in ANC 1-D; it's not
10 located in ANC 1-C. The ANC 1-C was certainly
11 involved..

12 CHAIRPERSON MOLDENHAUER: If they're an
13 adjoining ANC they have the right to, I
14 appreciate the point of clarity but at the same
15 time they are an adjoining ANC they have the
16 right obviously to be involved. Let me go back
17 to Mr. Reynolds I'm trying to obviously clarify
18 the record with the testimony so we can go
19 forward in a clear manner. We have a letter that
20 was dated yesterday January 10th, saying that the
21 ANC 1-C held a hearing on January 5th, with a
22 quorum and voted 7 out of 8 members present voted

1 for a motion to request the action in regards to
2 this appeal.

3 MR. REYNOLDS: I will address that.

4 CHAIRPERSON MOLDENHAUER: Okay because
5 I'm just confused because you're saying that
6 you're not taking any action but then I have a
7 resolution before me which obviously recognizes
8 this appeal so I'm just trying to clarify exactly
9 what ANC 1-C's position is.

10 MR. REYNOLDS: Thank you Madam Chair,
11 this is a separate issue. On January 5th, the
12 Commission met and voted to support a motion to
13 request clarity on some specific points to the
14 Zoning Code itself which is the attached motion,
15 at the bottom of that motion is reference made
16 that there is no prejudice made in regard to case
17 18152, it is merely a question for clarifications
18 on point regarding rear yards and courts, it is
19 not taking a position on this case.

20 CHAIRPERSON MOLDENHAUER: I see that I
21 see no reference to the case; it says without
22 prejudice to case 18152, okay I appreciate that.

1 So then Mr. Davis.

2 MR. DAVIS: I am the newly elected ANC 02
3 Commissioner; I have been looking at the
4 background materials related to the library
5 question since June or July of this past year
6 before I even decided to run. The question
7 intrigued me because I've spent nearly a decade
8 at ARP looking at the issue of the frail elderly
9 and the disabled. When I read through both the
10 original reports and the consulting report that
11 ANC 1-C actually did I was shocked to find that
12 things were going ahead and I attempted to
13 counsel Commissioner Otten at the time as to how
14 best to proceed and to that end I promised to
15 take and extend this case if possible, obviously
16 we have four new Commissioners in the interim,
17 not familiar with the information, we have not
18 been able to press the kind of case that would be
19 necessary for a Board such as yours to consider
20 in rebuttal to what the library people are
21 putting forward so we're requesting time to look
22 at it because we have four new Commissioners so

1 that's our challenge is to try to do that, so we
2 are asking for your mercy in that particular end.

3 MS. BORTRICK: I came today partly in my
4 role as ANC 1-C-08 and also because I'm a member
5 and have been a member of the Planning, Zoning
6 and Transportation Committee for ANC 1-C for four
7 years and wanted to be available. I did speak
8 with the counselor yesterday because I understood
9 that there has been a lot of confusion as to
10 whether we were a party in this and whether we
11 weren't so I just wanted to be available because
12 I have a good understanding of the timeline and
13 what motions were taken up when.

14 CHAIRPERSON MOLDENHAUER: Thank you I
15 appreciate that.

16 DR. EDWARDS: May I just add one short
17 thing that is last night we too at 1-D has had an
18 election and half of the Commission is new as it
19 is with 1-C, I discussed the issue with two
20 people, I was able to reach two others, so I know
21 of three votes that would be in favor of asking
22 for a continuance when we have our formal meeting

1 and very likely one other that had expressed
2 outrage about the whole issue and the need to a
3 new Commissioner to proceed, so I think it's very
4 likely that the Commission will vote to become a
5 party and to ask for that the Zoning
6 Administrators ruling be overturned.

7 CHAIRPERSON MOLDENHAUER: Thank you
8 everybody I think what we're going to do right
9 now is we're going to deliberate on this issue
10 and talk a little bit about, what we'll do is
11 we'll take a quick 10 minute break, we'll come
12 back at 11:31, I guess and reconvene and discuss
13 this issue in more depth in regards to who we
14 determine, obviously I think right not it sounds
15 like these testimony that Dr. Edwards and Mr.
16 Otten were the initial Appellants and that the
17 ANC's 1-C and 1-D have not yet joined but may
18 eventually once they have time review the facts
19 and the new Commissioners are able to review
20 that. Let me review the motions that are before
21 us and the facts now that we have them clarified,
22 what we'll do is we'll come back out in about 10

1 minutes.

2 **10 minute break**

3 CHAIRPERSON MOLDENHAUER: Okay what we're
4 going to do is we're going to at this point
5 deliberate amongst the Board Members we won't be
6 at this point accepting any new testimony on the
7 preliminary issues that we have. First we have
8 the question of who does the Board find to be the
9 initial Appellant in this case and based on
10 reviewing our "Exhibit No. 1" and looking at the
11 question of standing I would determine that Mr.
12 Otten and Dr. Edwards were both the initial
13 Appellants since they at the time and still
14 currently to day do not have formal resolutions
15 from their ANC as a whole, they then obviously
16 were not acting under the official capacity as
17 the ANCs and thus were acting defacto in their
18 individuals capacities as residents of the
19 District. I would find that they have standing
20 to address this issue that they were uniquely
21 effected by this potential issue in regards to
22 the permit and so then in regards to how we look

1 at the different ANC's I think that it's clear on
2 the record this morning from having, and I
3 appreciate having all of the different
4 individuals present today to try and help clarify
5 some of these issues. From Mr. Reynolds
6 statements and Mr. Matice's statements I think
7 that it's clear that obviously ANC 1-C has not
8 yet intervened or joined in this case but that
9 they may in the future. With that being said
10 I'll kind of open that up as an initial question
11 for any other Board Members to either add on to
12 or to have any additional deliberation comments.

13 MS. SORG: Thank you Madam Chair, I agree
14 with your statements and your conclusion that
15 this appeal is brought by two individuals of the
16 District and that the participation of ANC 1-C
17 and 1-D would be as interveners in the case and
18 not as the Appellant.

19 CHAIRPERSON MOLDENHUAER: That being said
20 let me just see if I can look to the other Board
21 Members to see if we have a consensus on that
22 issue.

1 MR. HINKLE: I agree with that.

2 MR. TURNBULL: I would also.

3 CHAIRPERSON MOLDENHAUER: So then in that
4 regard what I would just indicate is that to
5 clear our record up I would ask the Office of
6 Zoning to revise the title of the case and to
7 revise the caption of the case to be the appeal
8 of Chris Otten and Dr. Greg Edwards, I would also
9 ask them to work with the two Appellants in
10 regards to resolving the issue of the filing fee.

11 There would be an individual filing fee of
12 \$1040.00, the Appellants could not with the Board
13 but with the Director request or require about a
14 potential waiver for that fee but its not
15 something that the Board has any authority to do
16 and obviously if this was then withdrawn I think
17 that there would be a question in the future I
18 can't obviously forecast there would be a
19 question obviously of timeliness in the future if
20 this was withdrawn for any future issues. That
21 being said I think that were all in consensus on
22 that and that would be our final determination on

1 who has standing and who the Appellant is on this
2 manner, as I think we all agree that based on
3 that, that a reasonable conclusion or next step
4 is that if the ANC members from 1-C or 1-D
5 wanted to intervene in the case they could
6 obviously following formal resolutions and the
7 next question that we have to get to is do we
8 grant or deny the current pending motion for
9 continuance. In this case the question really
10 weighs on who has the burden and who potentially
11 is prejudice or is anybody prejudice in this
12 case. We've heard testimony obviously from the
13 Appellants that they need additional time that
14 they had not yet received. The Districts letter
15 from the Zoning Administrator articulating its
16 findings which was attached to the Districts
17 prehearing statement as "Exhibit No. E", we heard
18 that counter testimony from Mr. Surabian stating
19 that Mr. LeGrant had forwarded an email in
20 November to Dr. Edwards, Mr. Edwards indicated
21 that obviously he had not, under oath he said
22 that while he may have gotten it, he does not

1 know and he had not actually seen it until a
2 couple of days ago. My initial inclination is
3 that if it's an Appellant who's filing a motion
4 you have the burden it's your case to prove, it's
5 your case to do the due diligence. I do see Mr.
6 Surabian indicated that obviously this letter was
7 part of the filing permit; it's the individual's
8 obligation to go and seek what they can get in
9 regards to public information. That being said
10 my question is what prejudice is there to the
11 District to postpone this a few days. I don't
12 see any currently in regards to what prejudice
13 would exist for a short continuance and since we
14 do have Mr. Edwards under oath indicating that he
15 had not yet reviewed it, I think that in looking
16 at the exhibit myself it is a document that I
17 would need a couple of days to review or
18 potentially I maybe want to get an expert to kind
19 of review or discuss with that. In addition to
20 that Board Members I think that the question is
21 also, we have some documentation that we want to
22 review in this case and I think that also want to

1 take a look and give an opportunity for the other
2 two ANC's to potentially intervene in this case
3 if they so choose. We will open up to other
4 Board Members to add additional deliberations or
5 discussions.

6 MS. SORG: Thank you Madam Chair, the
7 only thing that I might add to the questions that
8 you've posed in your deliberation on this portion
9 is question of timeliness and I would just note
10 for the Board it looks like August 13, 2010, is
11 the date that the permit was issued. The appeal
12 was filed by these two individuals on October 12th
13 now on January 11, 2011, so there has been a lot
14 of time that has elapsed.

15 CHAIRPERSON MOLDENHAUER: Any further
16 deliberations from any Board Members?

17 MR. TURNBULL: Madam Chair I wanted to
18 just question Ms. Sorg saying that they should be
19 given more time or are you saying that they've
20 already had enough time?

21 MS. SORG: I think that they've had
22 enough time, I mentioned actually given that this

1 letter and the permanent filings are part of the
2 public record, I mean I can go down there and get
3 them, so I think a lot of time has elapsed here
4 and it's clear from the filings that the
5 Appellants have made that they've been working on
6 this issue among the community of the Mt.
7 Pleasant Library and their various concerns since
8 the beginning of this project which is I think at
9 least a couple of years old.

10 MR. TURNBULL: Okay I just wanted to
11 clarify.

12 CHAIRPERSON MOLDENHAUER: Mr. Turnbull
13 are you in agreement with Ms. Sorg or what's...

14 MR. TURNBULL: I'm kind of torn both
15 ways, I can see both sides of this but I will
16 admit that there has been a little bit of time,
17 especially for people who have been involved in
18 the process. For you and I suddenly looking at
19 the fresh record like this I think we would be
20 given more time, but some of the people who have
21 been involved yeah I think there probably has
22 been enough time.

1 MS. SORG: If I could just add one more
2 thing Madam Chair, I agree with you that and I
3 also see your points that it is possible that we
4 could also use more time to review the things
5 that we received, and that's why I didn't exactly
6 indicate in my previous comments.

7 MR. HINKLE: You know Madam Chair I
8 understand what Ms. Sorg's stating in terms of
9 timeliness, there has been a lot of time that has
10 passed but we did hear as you know that the
11 Appellant only recently received this letter and
12 we haven't reviewed it, we have a lot of
13 materials here that we haven't reviewed and I
14 don't think that the District would necessarily
15 be prejudice if we added a little more time to
16 this discussion.

17 CHAIRPERSON MOLDENHAUER: From what I'm
18 hearing from the Board Members let me throw out
19 two different ideas and tell me what you guys
20 think. One our afternoon cases look pretty
21 small, we could push this to the afternoon and
22 allow both ourselves the time over lunch to

1 review the record and allow the parties
2 themselves a couple of hours to make sure that
3 they're ready and give them the time necessary to
4 pull together their thoughts and prepare their
5 statements, that being said we could also find
6 the next most recent date which I think would be
7 the afternoon of February 1st, which is what two
8 hearings from now, three weeks, two hearings from
9 now, so I think those are kind of our two
10 options, I think it's either here this afternoon
11 and give ourselves and the Appellant a time as
12 indicated by Ms. Sorg and the other Board Members
13 that they've had already enough time to prepare
14 and but give them some additional time to kind of
15 pull this all together or to push this off to
16 February 1st.

17 MR. TURNBULL: I don't want to be the
18 spoiler but I would prefer February 1st, I do have
19 a couple of things I would like to do this
20 afternoon in my office but, so I would go for the
21 1st.

22 MR. HINKLE: Madam Chair I think, we did

1 talk about the possibility of these ANCs becoming
2 interveners in this case and I think if we went
3 to the February 1st date that might be some time
4 for them to look into that.

5 CHAIRPERSON MOLDENHAUER: Ms. Sorg just
6 to make sure I think we have then a consensus of
7 the Board to continue the case on the 1st.

8 MS. SORG: Yes actually and I think based
9 on also the question regarding the filing fee
10 because to hear something without having that
11 resolved.

12 CHAIRPERSON MOLDENHAUER: So then what
13 we're going to do is then based on the consensus
14 of the Board Members we'll continue this case to
15 February 1st in the afternoon session, the 1pm
16 session. No I'm sorry we're going to continue to
17 the first as to that Mr. Turnbull is gone that
18 day, we're going to put on the 9:30 first slot of
19 the a.m. session so that way I think Mr. Turnbull
20 is already on a decision case for that morning so
21 put it on the first slot for the 9:30am session.

22 MR. TURNBULL: I'll make myself available.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much.

3 MR. MOY: Before you move on just for the
4 Staff's clarification and the segways on Mr.
5 Hinkle's comment when he made reference to the
6 intervener's 1-C and 1-D, so my understanding
7 from Staff is that 1-C and 1-D were granted
8 intervener status?

9 CHAIRPERSON MOLDENHAUER: No they have
10 not requested to join the case so thus we cannot
11 yet give them intervener status. What I would
12 say I know that obviously ANC meetings only
13 happen once a month, it's always hard, but
14 considering the unique circumstances that have
15 occurred with this case I strongly encourage the
16 ANCs if you want to get involved in this case
17 your going to have to have an emergency session,
18 get together, figure out whether your want to
19 obviously pass resolution and get that into our
20 office. What I'll do is give you a deadline date
21 of, so we would have to have a request into our
22 office by lets say the 28th of January which I

1 know is a very quick turnaround for ANCs and I
2 appreciate that, but the fact that you are all
3 present today obviously indicating your level of
4 involvement in this already. Obviously the same
5 goes for ANC 1-D and so if there's any additional
6 status in that regard, that being said if any
7 ANCs do decide that they want to join they will
8 be limited only to the matters that are apart of
9 the initial appeal, that being said let's while
10 we're addressing these preliminary matters is
11 there, I think that there was potentially maybe
12 an oral motion by the District to maybe to
13 dismiss in regards to jurisdiction is there or
14 no?

15 MR. SURABIAN: The motion I made earlier
16 was with regards to standing and which you did
17 resolve with respect to timeliness and my count
18 could be off but I think they filed on the 60th
19 day from the issuance of the permit which is
20 timely but I could be wrong. I do object to the
21 fact that they filed this appeal, they created
22 this confusion and now sort of receiving the

1 benefit of having done that, they didn't make any
2 filings with the Board on time and then I was
3 waiting for them to make their filing so I could
4 even really see what they were appealing, and
5 they filed a one page appeal, when it came time I
6 made my filing putting out the rationale for the
7 decision that was made and they haven't countered
8 that with any other substantive filings. The
9 fact that they didn't pursue this investigate it,
10 make any filings, they shouldn't receive the
11 benefit of more time to present their case and
12 this is a multi-million dollar project that's
13 being constructed now, and the library needs a
14 finality. In regards to the letter just one more
15 point I'm sorry, that the Zoning Administrator
16 passed me another note that Mr. Edwards
17 acknowledged the receipt of the email in response
18 and I will gladly present those emails. So if
19 the Boards determination was made on the fact
20 that they didn't receive the letter that's just
21 not true and the Zoning Administrator will
22 testify to those facts.

1 MS. GLAZER: Madam Chair I don't want to
2 interject too much but you did say that there was
3 no more testimony so if you're even considering
4 testimony at this point you'd have to reopen the
5 record for that.

6 CHAIRPERSON MOLDENHAUER: Yes and we
7 would Mr. Surabian was using a motion to
8 reconsider our prior decision by presenting
9 additional new evidence that the Board had not
10 previously heard.

11 MR. SURABIAN: Would it help the Board to
12 hear from the Zoning Administrator or the
13 Representatives from the library who are here who
14 came today?

15 CHAIRPERSON MOLDENHAUER: We would
16 obviously have to then as I said provide an oral
17 motion to reconsider the decision that the Board
18 just came to and I'm not sure if we are willing
19 to do that. The Board is going to commit a
20 very, the Board is inclined potentially to hear
21 out the District and to potentially reconsider
22 hearing the case this afternoon. That being said

1 what we're going to do is we're going to allow
2 the District to put on some additional evidence,
3 I do have to say we did give you some time
4 previously and I wish you would have jumped in
5 and put forth a full argument before if you had
6 some additional information. That being said
7 lets not waste anymore time. What I'm going to
8 do is give the District 10 minutes to present
9 their argument and any additional witnesses that
10 they want to provide and I'm going to turn to the
11 Appellant's who are Mr. Otten and Dr. Edwards and
12 give you 10 minutes to then rebut that and then
13 we will come back and reconsider this issue and
14 make a determination whether to go forward this
15 afternoon or whether to go forward as we
16 indicated previously on the 1st of February. If
17 we go forward this afternoon Mr. Turnbull's
18 already indicated that this conflict will be
19 resolved. We will start the clock at 12:05.

20 MR. SURABIAN: Thank you, since I already
21 argued earlier that this appeal was filed and
22 then, I'm sorry.

1 CHAIRPERSON MOLDENHAUER: Okay...

2 MR. REYNOLDS: Madam Chair, Commissioner
3 Botrick and I need to leave would that be
4 acceptable?

5 CHAIRPERSON MOLDENHAUER: Absolutely
6 right now you both are not parties to the case
7 you were here and I appreciate you coming down,
8 based on whatever happens today I hope that if
9 you both need to leave if we continue the case
10 this afternoon it would be great to have one of
11 the three of you present to either provide an ANC
12 perspective on the case, if not, and we may or
13 may not, I don't know what we're going to do,
14 leave the record open for some additional
15 submissions to that effect if we hear the case
16 today if we don't you already know the deadline
17 for the future date, thank you have a good
18 afternoon. Mr. Surabian you're going to be on
19 the clock, Ms. Glazer if we can get a clock for
20 10 minutes. Okay Mr. Surabian.

21 MR. SURABIAN: I won't repeat the legal
22 argument that I just made with respect to

1 postponing the appeal. What I will do is I'll
2 call the Zoning Administrator as a witness
3 quickly.

4 MR. SURABIAN: Please state your name for
5 the record.

6 MR. LEGRANT: Matthew LeGrant.

7 MR. SURABIAN: Where do you work?

8 MR. LEGRANT: I work for the Department
9 of Consumer Regulatory Affairs in the District of
10 Columbia.

11 MR. SURABIAN: Are you familiar with the
12 subject of this appeal?

13 MR. LEGRANT: I am.

14 MR. SURABIAN: And what is that property?

15 MR. LEGRANT: This is the Mt. Pleasant
16 Library 3160 16th Street, N.W.

17 MR. SURABIAN: And, did you write a
18 determination letter regarding the (inaudible).

19 MR. LEGRANT: I did.

20 MR. SURBIAN: And is that letter
21 contained in the permit file?

22 MR. LEGRANT: Yes it is.

1 MR. SURBIAN: And have you see that
2 permit file?

3 MR. LEGRANT: Yes I have.

4 MR. SURBIAN: And did you ever provide a
5 copy of that letter to Mr. Edwards?

6 MR. LEGRANT: Yes, in my best
7 recollection I had an email exchange with Dr.
8 Edwards in November, I'm sorry I don't have the
9 date before me, Dr. Edwards made an inquiry about
10 the umm, I think he had heard of the
11 determination and I emailed, in response to his
12 email I PDF'd a copy of the letter to him.

13 MR. SURBIAN: And did he reply to that
14 email?

15 MR. LEGRANT: He did, he emailed me back,
16 and I think posed a question something on the
17 lines of was there any process that the ANC could
18 have been made aware of this earlier?

19 MR. SURBIAN: Did you ever communicate,
20 have you ever been contacted either by Mr. Otten
21 or Mr. Edwards aside from that?

22 MR. LEGRANT: My best recollection I

1 think I may have dealt with then Commissioner
2 Otten back in the spring but I don't recall
3 specifically.

4 MR. SURABIAN: And since either before or
5 after this appeal was filed did they ever contact
6 you in regards to the subject matter of this
7 appeal?

8 MR. LEGRANT: Not following the appeal.

9 MR. SURABIAN: Did they ask for documents
10 or information from you?

11 MR. LEGRANT: Not to my knowledge.

12 MR. SURABIAN: Do you know if a FOIA
13 request was every filed?

14 MR. LEGRANT: I'm not aware of a FOIA
15 request being filed, usually when a FOIA request
16 is filed our FOIA Officer for DCRA informs all
17 the relevant divisions including my office to
18 search and produce records, I do not recall a
19 FOIA request for this property.

20 MR. SURABIAN: Thank you, I don't have
21 any further questions for that witness. I would
22 like to call the representative of the PCPL.

1 Good morning please state your name for the
2 record.

3 MR. BONVECHIO: Jeff Bonvechio.

4 MR. SURABIAN: Mr. Bonvechio what is your
5 position?

6 MR. BONVECHIO: I'm Director of the
7 Libraries Capital Project Office.

8 MR. SURABIAN: And have you been involved
9 in the renovation of the Mt. Pleasant Library?

10 MR. BONVECHIO: Yes I have.

11 MR. SURABIAN: And for how long?

12 MR. BONVECHIO: Since probably late 2007.

13 MR. SURABIAN: And are you familiar with
14 Dr. Edwards and Mr. Otten?

15 MR. BONVECHIO: Yes I am.

16 MR. SURABIAN: You've spoke to them
17 before?

18 MR. BONVECHIO: Yes.

19 MR. SURABIAN: And can you briefly
20 describe the steps that the library took in terms
21 of, did the library ever engage ANC 1-C or 1-D or
22 any of the Commissioners from those ANCs?

1 MR. BONVECHIO: Yes back in December of
2 2007 Commissioner Edwards was part of the
3 library's architectural selection committee for
4 the renovations of the Mt. Pleasant neighborhood
5 library. We've had subsequent have attended ANC
6 meetings throughout the design process.

7 MR. SURABIAN: Did Mr. Otten attend any
8 meetings as well?

9 MR. BONVECHIO: Yes he attended numerous
10 community meetings that were held as part of this
11 project.

12 MR. SURABIAN: And what did you discuss
13 at those meetings?

14 MR. BONVECHIO: The design of the
15 library.

16 MR. SURABIAN: And did any issues with
17 respect to the addition being built into a rear
18 yard ever come up?

19 MR. BONVECHIO: The location of the
20 addition came up at the very first meeting that
21 we had for the library and was subsequently
22 changed to a different location based on

1 community input.

2 MR. SURABIAN: And has DCPL made other
3 changes to the plans in response to community
4 input?

5 MR. BONVECHIO: Yes we have.

6 MR. SURABIAN: Could you describe those
7 maybe just very briefly?

8 MR. BONVECHIO: Sure there were numerous
9 concerns regarding ADA access and through the
10 work of Council Member Jim Graham we held several
11 meetings regarding ADA issues and numerous
12 changes in terms of the entrance to the library
13 actually being moved to the side of the building
14 which is the ADA ramp entrance to the building so
15 everyone will enter from the same part of the
16 building as well as minor changes in terms of
17 adding a call box at the bottom of the ADA ramp.
18 We also subsequently met with the DC Office of
19 Disability Rights regarding the ADA ramp and the
20 concerns that were brought up for that as well as
21 the Department of Justice regarding concerns on
22 ADA accessibility issues.

1 MR. SURABIAN: And approximately how many
2 meetings do you think you've had that were open
3 to the community in respect to the design?

4 MR. BONVECHIO: There were a total of six
5 library hosted design meetings that we had and
6 then we also participated in four ANC meetings.

7 MR. SURABIAN: And after the building
8 permit was issued did you receive any comment
9 from any ANC members, any concerns, or comments?

10 MR. BONVECHIO: No concerns in regards to
11 the actual building permit.

12 MR. SURABIAN: And what's the total cost
13 of the project?

14 MR. BONVECHIO: Approximately 10 million
15 to 10.5 million dollars.

16 MR. SURABIAN: And is construction
17 underway?

18 MR. BONVECHIO: Yes it is.

19 MR. SURABIAN: What's the status of the
20 construction?

21 MR. BONVECHIO: The selective demolition
22 work has nearly completed and excavation of the

1 addition is underway.

2 MR. SURABIAN: Is the library open to the
3 public?

4 MR. BONVECHIO: Yes there's and interim
5 library facility located on Mt. Pleasant Street
6 directly behind the library.

7 MR. SURABIAN: But is it a different
8 structure?

9 MR. BONVECHIO: It is an interim new
10 facility, yes.

11 MR. SURABIAN: And how would, can you
12 describe how maybe postponing resolution of this
13 case would harm the library?

14 MR. BONVECHIO: Given that the
15 construction is already underway we would
16 obviously we would want to continue the work but
17 we understand that it would be at risk and any
18 changes would come at a great cost both dollar
19 wise and time wise to the library as well as
20 providing full service library services back to
21 the Mt. Pleasant community.

22 MR. SURABIAN: Thank you no further

1 questions.

2 CHAIRPERSON MOLDENHAUER: Thank you I'll
3 give the Appellant's an opportunity to cross
4 examine both witnesses and then an opportunity to
5 provide remarks.

6 DR. EDWARDS: The first step I'm trying
7 to follow your corrections is to ask the current
8 witnesses right?

9 CHAIRPERSON MOLDENHAUER: If you'd like,
10 you don't have to, if you have any questions you
11 can cross examine both witnesses yes.

12 DR. EDWARDS: Thank you for the reminders
13 let me just say I had a stroke and my memory is
14 recovering and I now vaguely remember, I
15 certainly knew of the letter and I don't have a
16 specific memory of the exchange that you state
17 but I will accept that as probably the case. Did
18 you answer my queries about how would the ANC
19 know?

20 MR. LEGRANT: First of all...

21 DR. EDWARDS: Because I still don't
22 remember the exchange but it sounds plausible.

1 MR. LEGRANT: I'm sorry to hear of your
2 ailment but my recollection I'm sorry I don't
3 have the emails here, I believe the first email
4 was, as a general was there a determination
5 letter sent about this and I responded, yes in
6 March of 09' I issued a determination letter and
7 I attached it as a PDF and then as I best recall
8 again you emailed back and said, well was there a
9 process in which the ANC would have input or been
10 noticed of that letter and frankly I don't recall
11 if I responded to that or if, I'd have to check
12 my own emails back to see if I made a response in
13 that regard. But the initial exchange was you'd
14 heard of a letter and I provided a letter back to
15 you.

16 DR. EDWARDS: Thank you, may I now
17 respond?

18 CHAIRPERSON MOLDENHAUER: You can cross
19 examine the other witness if you have any
20 questions and then at the end of cross
21 examination I'll then turn to you and I'll put
22 the clock on for your personal statements.

1 DR. EDWARDS: Alright, let me, I take it
2 that the attorney for the opposition is here let
3 me address him.

4 CHAIRPERSON MOLDENHAUER: He's not a
5 witness so he, the Director is here Mr.
6 Bonvechio; you can ask Mr. Bonvechio who is a
7 witness any questions.

8 DR. EDWARDS: Alright, are you aware that
9 the, of the roll up resolution submitted to your
10 office on the 20th of April, actually it was given
11 to Archie Williams shortly thereafter asking for
12 the library to respond to about 150 points that
13 has been raised by ANC 1-D?

14 MR. BONVECHIO: Sorry if the resolution
15 was given to Archie I'm sure he has shared that
16 with me.

17 DR. EDWARDS: Are you aware of the
18 promise made by, in the oversight hearings that
19 the library would be pressured by the committee
20 oversight to actually answer this resolution?

21 CHAIRPERSON MOLDENHAUER: Mr. Edwards can
22 I just, Dr. Edwards let me just jump in here I

1 want to make sure that we stay focused.

2 DR. EDWARDS: Alright let me explain what
3 I'm trying to do.

4 CHAIRPERSON MOLDENHAUER: Yeah, let me
5 just make a comment and then you can explain if
6 the issues here. What it sounds, your kind of
7 getting more into the more of maybe the merits of
8 your case some of the background of your case and
9 what we're trying to do right now is trying to
10 understand what information you were privy to and
11 what correspondence occurred back and forth with
12 both yourself and Mr. Otten in regards to
13 timeframe for whether this case should go forward
14 this afternoon and whether or not the library and
15 the District might be prejudiced by a
16 continuance. Those are the points and if your
17 question is getting on to this point maybe you
18 can...

19 DR. EDWARDS: Then let me explain why.
20 Putting aside personal illness and other issues
21 that where now is the time that I have time and
22 health to address the issue. The fundamental

1 issue that I'm concerned with here is that we
2 still do not have the details about the plans and
3 the rationale for the plans and we need to be
4 able to get those. We've tried many times to try
5 to get the range of things that come in and to
6 find out what are the procedures, how do they fit
7 together and so-on and all attempts up to now to
8 get this information including work direct
9 appeals to Nick Mejette, the Director, to the
10 oversight committee etc. have failed to get us
11 the details and I hoping that this case will
12 afford us the chance to actually get out the
13 details that we need in order to put together a
14 good case and we've been trying for years to get
15 this, to get this information and they have
16 stonewalled us all along. The ANC 1-C has
17 submitted resolution asking for information they
18 have not gotten it. We have asked for
19 information, we've given them direct points, they
20 have not responded and without that kind of
21 response it is almost impossible to put together
22 a case that is logically tight and where the

1 arguments are based in evidence and that's the
2 purpose of my question was to see if we could,
3 whether or not to establish that they have failed
4 to give us that and that we do lack significant
5 information and the appeal to the Board to help
6 us get that information so that we can give you a
7 reasonable case.

8 CHAIRPERSON MOLDENHAUER: What documents
9 specifically are you looking for or have you
10 requested?

11 DR. EDWARDS: We've requested the
12 detailed plans on which the Zoning Administrator
13 would make a determination.

14 CHAIRPERSON MOLDENHAUER: Okay so plans,
15 building plans are available and can be obtained
16 have you gone down and gotten a copy of the plans
17 at DCRA that are the stamped approved plans?

18 DR. EDWARDS: It is my contention that
19 and our ANCs contention actually and resolution
20 is that they had the responsibility to give us
21 those plans.

22 CHAIRPERSON MOLDENHAUER: This is where,

1 Dr. Edwards this is where it was very important
2 initially to clarify who was the Appellant. I
3 understand that you hold, you have two hats, but
4 for purposes of this hearing the only hat you
5 have on is your individual hat, you as an
6 individual. And you as Dr. Edwards don't have
7 the authority to make or ask the, anybody for
8 copies you would have to actually go down and get
9 a copy and those are available to anybody down at
10 DCRA, so the plans could be obtained by you and
11 Mr. Otten at any point in time whether we
12 continue this case or not, so what is another
13 document that your asking that you have not
14 received other than the plans?

15 DR. EDWARDS: We wanted to get their file,
16 we have not been able to get the fire safety
17 reports and that is relevant because the origin
18 of the Zoning Laws and the clearances arose out
19 of fire safety issues.

20 CHAIRPERSON MOLDENHAUER: Okay, so you're
21 saying that the merit of the case in regards to
22 the rear yard potentially any adverse effect of

1 the rear yard or any issue if there was relief
2 that was required would address fire safety?

3 DR. EDWARDS: We'd also like to get the
4 reports on the impacts of how they are able to
5 side step the ADA requirements in this issue.

6 CHAIRPERSON MOLDENHAUER: Okay, ADA is
7 not something that our Board has jurisdiction
8 over so that would not be something that we could
9 address in this hearing at all nor is it
10 something we could have the authority potentially
11 to request or review documents about, so what
12 other issue other than that.

13 DR. EDWARDS: It does speak to the issue
14 of whether there should be, whether they can
15 ignore the requirements of the law that they
16 provide that kind of side space which is the
17 reasons behind having the extra access space, the
18 side yards and the neighboring yards.

19 MS. GLAZER: Just to alert the Board
20 you've gone well beyond the 10 minutes that
21 you've asked for.

22 CHAIRPERSON MOLDENHAUER: I thought maybe

1 you were going to jump in and say something about
2 the ADA.

3 MS. GLAZER: Nothing on that.

4 CHAIRPERSON MOLDENHAUER: I know that but
5 we're starting to ask questions now and I know
6 we've gone beyond that, I'm trying to keep us to
7 a schedule I've violated it myself. Okay other
8 than the fire safety as I said the ADA we have no
9 authority. Any other documents that you would
10 need in order to go forward.

11 DR. EDWARDS: Any internal memos that
12 they have about how the Zoning Administrator came
13 to this decision.

14 CHAIRPERSON MOLDENHAUER: Okay but that's
15 the letter that they say they have.

16 DR. EDWARDS: Well there's apparently
17 according to Nick Majete they consulted with many
18 other District Agencies and before making the
19 determination to go forward with this and we
20 would like to have a copy of that information
21 because, in fact there are arguments to be made
22 about this efficiency of their process whether

1 they followed the Administrative Process Act and
2 actually having a rational consideration of these
3 things and also that will speak to the issue of
4 well let me just, I'm trying to cut my comments
5 down.

6 CHAIRPERSON MOLDENHAUER: Anything
7 further from you Dr. Edwards?

8 DR. EDWARDS: I will stop on the interest
9 on taking my share of time.

10 CHAIRPERSON MOLDENHAUER: Then we'll turn
11 to Mr. Otis and we'll give you a few moments.

12 DR. EDWARDS: Otten by the way.

13 CHAIRPERSON MOLDENHAUER: Otten I'm
14 sorry, with Moldenhauer I apologize because, it's
15 Mr. Otten.

16 MR. OTTEN: First as pointed out there
17 really is no prejudice to the District in this
18 case even despite this appeal doesn't seem they
19 have stopped. We are talking timeliness on this
20 issue and I guess I would like to cross examine
21 the Zoning Administrator Mr. LeGrant. You said
22 you penned the letter in March of 2009?

1 MR. LEGRANT: That's correct.

2 MR. OTTEN: And yet sent the letter more
3 than 18 months later to the affected ANC
4 Commissioner did you say November of 2010 was it
5 sent by email?

6 MR. LEGRANT: In response to Dr. Edwards
7 request he was made aware of the letter and in
8 response to his request I provided him a copy.

9 MR. OTTEN: The permit documents that you
10 talked about at DCRA would you, could you
11 guesstimate how many documents are actually
12 there, if somebody were to go in off the street
13 and sit down what's the volume of documents we're
14 talking about?

15 MR. LEGRANT: In terms of the subject
16 application that's before the Board today there
17 is a file of the building permit application with
18 my guess is approximately 15 to 20 pages of
19 documents.

20 MR. OTTEN: It's my experience was I did
21 go down there with the ANC 1-C hired architect
22 back just before the permit was issued, this was

1 early August and there were hundreds of pages of
2 documents of internal documents that DCRA
3 produces and establishes, somewhere in there was
4 apparently was your letter I didn't see it and
5 I'm just hearing today that the affected
6 Commission just got the letter in November even
7 though it was penned in March of 2009. So we're
8 talking about timeliness of this. We're here
9 today ANC leadership from 1-C and 1-D so that
10 they may need a few more weeks for an important
11 matter like this just to intervene. We're
12 talking about timeliness, I mean one of the
13 questions I wanted to put to maybe Mr. LeGrant
14 would know this. Were you aware that ANC 1-C
15 submitted two resolutions both in July of 2010
16 and in September of 2010, asking DCRA for a
17 response regarding how the plans had changed?

18 MR. LEGRANT: I tell you what I do recall
19 going back to May of 2010, then Director Argo met
20 with me and other members of DCRA regarding the
21 concern about the handicap ramp and that because
22 that was a building code issue those individuals

1 involved with building code issues with DCRA
2 specifically the manager of the permitting
3 divisions would address that and I think at the
4 meeting was okay this is the concern that's been
5 raised about ADA compliance that is a building
6 code issue and I think I was dismissed from that
7 meeting because that's not a zoning matter so
8 that's my recollection.

9 MR. OTTEN: Okay I just want to get
10 clarity that you were aware, so the ANC 1-C has
11 been attempting to get information from DCRA
12 since July of 2010.

13 MR. SURABIAN: Objection, he does have
14 authority to speak for ANC 1-C, they were here
15 and they didn't take a position on the case and
16 he's trying to again just as he did from the
17 beginning step in the shoes of ANC 1-C, he's not
18 ANC 1-C.

19 MR. OTTEN: Excuse me at the time I was a
20 Commissioner on the Commission fully enabled by
21 the Charter to be a Commissioner, voted with the
22 Commission unanimously on the two resolutions

1 seeking information from DCRA, pertinent
2 information that we needed for this case.

3 MR. SURABIAN: Objection.

4 CHAIRPERSON MOLDENHAUER: I think that I
5 understand your objection, I think that Mr. Otten
6 is just indicating as I said their both wearing
7 multiple hats...

8 MR. SURABIAN: Well they're wearing one
9 hat as citizens.

10 CHAIRPERSON MOLDENHAUER: They're only
11 wearing one hat with regards to this case but in
12 regards to requesting information at that time
13 they...

14 MR. SURABIAN: This is outrageous he said
15 that he was there with the permit file in his
16 hands and did nothing, where are we going to draw
17 the line here this is outrageous.

18 MR. OTTEN: The point is in terms of
19 timeliness we as Commissioner and has residents,
20 as the public, we have not gotten pertinent
21 information to fully explore what was intuitive
22 sense about zoning regs on this which the ANC did

1 on January 5th appropriately point out any
2 resolution there are two key ones the rear yards
3 which has direct correlation to that Zoning
4 Administration letter that apparently was sent in
5 November of 2010, still not a lot of time but
6 DCRA has continually been tardy..

7 MR. SURABIAN: Objection, no request was
8 ever made for documents.

9 MR. OTTEN: But how would we know to
10 request it if we didn't know they existed.

11 MR. SURABIAN: Because you filed an
12 appeal claiming error.

13 CHAIRPERSON MOLDENHAUER: Okay let's
14 maintain a level of decorum, I hear your
15 objection.

16 MR. SURABIAN: Sorry the stories keep
17 changing and they are mischaracterizing the
18 entire process of what's happening and they've
19 never made a request for any documents.

20 CHAIRPERSON MOLDENHAUER: And your
21 objection is noted, I want Mr. Otten to just
22 complete his oral testimony, I think we've

1 definitely gone over so if you can just wrap it
2 up in regards to your position in regards to why
3 again we're talking about the continuance not the
4 merit of the case.

5 MR. OTTEN: Okay again, timeliness, I
6 want to clarify and maybe ask question of Jeff
7 Bonvechio you mentioned six design meetings to
8 the current design plans that received permits
9 with the addition into the rear yard, how many
10 design meetings do you recall showing that
11 particular plan to the public. I mean DCPL
12 hosted design meetings.

13 MR. BONVECHIO: I believe there wasn't any
14 DCPL hosted meetings but meetings hosted by
15 Council Member Graham with his committee of
16 selected community individuals those plans were
17 shared as part of those meetings.

18 MR. OTTEN: How many people would you say
19 were involved in those meetings?

20 MR. BONVECHIO: It first started off I
21 think there was close to and you were there
22 probably 12 to 15 at the very first one and then

1 at subsequent meetings there were anywhere from
2 that number to slightly less, I can't recall
3 exactly the number.

4 DR. EDWARDS: Details.

5 CHAIRPERSON MOLDENHAUER: Dr. Edwards
6 it's not your opportunity to talk, I'd ask you to
7 refrain from jumping in, please Mr. Otten.

8 MR. OTTEN: I guess the point of that
9 question was to show that a lot of people didn't
10 really see the extent of these plans before
11 discussion was shut down and DCPL sought approval
12 for various agencies. The point about the Zoning
13 Administration letter if we didn't know about it
14 there would be nothing to seek through FOYA or
15 any of this sort of stuff. We are hoping that
16 the ANCs do intervene at this point, the ANCs has
17 already expressed interest 1-D is meeting next
18 week and the continuance would really help us get
19 those parties involved and allow perhaps a lawyer
20 to come and finally seal all this up but those
21 few weeks would help us do that.

22 CHAIRPERSON MOLDENHAUER: Thank you, I

1 think all parties have now had an opportunity to
2 speak on this motion to potentially reconsider
3 the issuance of t he continuance. The Board is
4 now going to officially..

5 MR. SURABIAN: If I could just do a quick
6 redirect with Mr. Bonvechio?

7 MR. OTTEN: I object, I mean what else
8 are we going to ascertain.

9 MR. SURABIAN: It was point with all the
10 mischaracterizations they made with respect I
11 need to ask more clarifying questions.

12 CHAIRPERSON MOLDENHAUER: I typically we
13 do allow redirect if there was a new point
14 brought up I will limit it to one question.

15 MR. SURABIAN: Mr. Bonvechio did DCPL or
16 its representatives ever provide plans of the
17 proposed project to an architect representing ANC
18 1-C?

19 MR. BONVECHIO: As part of their request
20 when they did hire an architect we made sure that
21 the architect of record for the project did
22 provide their consultant with a full set of

1 construction documents as part of the project.

2 DR. EDWARDS: I have evidence to the
3 contrary.

4 CHARIRPERSON MOLDENHAUER: Again this is
5 not, we have to maintain a level of decorum, I
6 think that concludes everything we're not going
7 to allow a re-cross. The Board I believe has
8 some questions so we're going to turn to Board
9 Members.

10 MS. SORG: Thank you Madam Chair, hmmm
11 lots of questions and it would be great if we
12 kept the answers short because I have questions
13 that can be answered with short answers I think.
14 Mr. Edwards did you attend any of the library
15 hosted meetings or the four ANC meetings that Mr.
16 Bonvechio testified were held.

17 DR. EDWARDS: Yes.

18 MS. SORG: Mr. Otten did you attend any
19 library hosted or ANC meetings that Mr. Bonvechio
20 testified to?

21 MR. OTTEN: ANC once he requested it
22 because we were lacking information...

1 MS. SORG: Okay, so you did, okay,
2 thanks. What documents did the ANC 1-C hired
3 architect use to generate the report that they
4 made to you?

5 MR. OTTEN: Those documents were
6 submitted I'm presuming by Jeff Bonvechio to the
7 architect.

8 MS. SORG: So they used detailed plans to
9 make their report?

10 MR. OTTEN: That's right and that
11 subjective report was finalized, the second
12 report was finalized just before the permits were
13 issued, still raising the same questions of want
14 in terms of the fire safety and the rear yard.

15 MS. SORG: Okay so you did in fact
16 receive detailed drawings.

17 DR. EDWARDS: Not true.

18 MR. OTTEN: The architect did but the
19 Commission did not, not detailed architectural
20 drawings, but the architect did.

21 MS. SORG: Okay...

22 DR. EDWARDS: These reports were denied

1 because supposedly we didn't have the latest
2 information so they argue both sides of their
3 mouth on this and we've never been able to get
4 the details and under oath the chief librarian
5 testified in a public hearing before the DC
6 Council that only that they were available
7 because somebody was able to find them on the
8 website, not that we searched and we couldn't
9 find them but she said well somebody, they had
10 records to say that somebody was actually able to
11 find them.

12 MS. SORG: Okay thanks. Mr. Bonvechio
13 when will you be finished with your demo?

14 MR. BONVECHIO: The selective demolition
15 work is complete.

16 MS. SORG: Okay thank you.

17 MR. TURNBULL: Mr. Bonvechio what stage
18 completion were the drawings, were they 90%
19 construction drawings?

20 MR. BONVECHIO: They were 100%
21 construction drawings, they were the permit
22 drawings.

1 MR. TURNBULL: They were okay thank you.

2 CHAIRPERSON MOLDENHAUER: So Mr.
3 Bonvechio sorry you're stating that you did
4 provide the permit drawings that have not been
5 substantially changed at all to the architect
6 that was representing the ANC?

7 MR. BONVECHIO: That's correct.

8 CHAIRPERSON MOLDENHAUER: And you
9 provided all the detailing for them, the
10 mechanical pages, all the different, were they
11 provided in CAD electronically?

12 MR. BONVECHIO: I'm not sure of the exact
13 file method that they were provided to the
14 architect but I do believe they were a complete
15 set of the construction drawings from landscape
16 plants through mechanical, electrical and
17 plumbing.

18 CHAIRPERSON MOLDENHAUER: And in the
19 different meetings that you had you went through
20 a full set of plans as well?

21 MR. BONVECHIO: Those meetings did they
22 primarily addressed the issues that were at hand

1 and those issues obviously as you've heard
2 involved the fire access and ADA which were all
3 issues from the beginning.

4 CHAIRPERSON MOLDENHAUER: So they were
5 more pointed meetings rather than going through
6 and providing everything or all the
7 documentation?

8 MR. BONVECHIO: They pertained to those
9 issues that were brought up by the community.

10 CHAIRPERSON MOLDENHAUER: Mr. Bonvechio
11 do you have a fire safety report that you had
12 generated in regards to working on this project?

13 MR. BONVECHIO: Not a report per'se but
14 the plans have been reviewed by former Chief
15 Ruben and Chief Foust for fire safety.

16 CHAIRPERSON MOLDENHAUER: But you don't
17 have an actual report or a written document or
18 correspondence or memorandum that could be
19 considered a report?

20 MR. BONVECHIO: Not that to that extent
21 but there is the code safety sheet within the
22 plans as well as the sign off from the fire

1 marshal as part of permit process.

2 CHAIRPERSON MOLDENHAUER: Do any Board
3 Members have any other questions for any of the
4 witnesses or any of the party's.

5 MR. TURNBULL: I just have one which is
6 do the side yards provide access for vehicles to
7 the rear of the building?

8 MR. BONVECHIO: Our, the side access is 15
9 feet I wouldn't be able to make a determination
10 for the fire department on if a 12 foot truck
11 could fit down there or not that would be for
12 their determination.

13 MR. TURNBULL: Okay thank you.

14 CHAIRPERSON MOLDENHAUER: Okay thank you
15 do any...

16 DR. EDWARDS: You have a consultant's
17 report that answers that in the negative.

18 CHAIRPERSON MOLDENHAUER: Okay again, Dr.
19 Edwards I'm going to have to say if you continue
20 to jump in and add comments we have a certain
21 level of decorum that we must respect and I'm
22 this close, you have to respect it if you, we're

1 at a point where we're not taking additional
2 comments were asking questions thank you. That
3 being said I think what we need to do now is the
4 Board, I'm going to ask the Board to start
5 deliberating on the dais about this issue, we've
6 obviously heard I think lengthy testimony, and
7 we're not going to hear any additional testimony.
8 The question before us is; 1. Do we grant the
9 continuance, do we hear the case this afternoon?
10 Is there prejudice and I think that's kind of
11 the major question in regards to is there
12 prejudice to the District, to the DC Public
13 Libraries, in regards to the fact that new
14 evidence has been presented, in regards to the
15 timing of this, in regards to construction and
16 the whether or not any delay in this case would
17 potentially effect that. That being said I'll
18 open up the floor to any deliberation.

19 MS. SORG: Thank you Madam Chair, I think
20 given the evidence raised in the testimony that
21 we've heard regarding the request for continuance
22 I feel that, you know, I think it sounds like the

1 library is going to have to start work under
2 their construction permit now or pretty soon and
3 a delay caused by what is in my opinion a
4 disorganized appeal it will cost dearly in time
5 and schedule as he testified so I would be in
6 favor of going forward this afternoon.

7 MR. HINKLE: Yeah Madam Chair I'm still
8 of the opinion that I think there should be an
9 opportunity for the ANCs to consider weighing in
10 on this case. We did hear from the library they
11 are beginning construction and their willing to
12 do that at their own risk at this point. I don't
13 think you know if we're looking at a February 1st,
14 date I don't think that would be prejudicial to
15 the District at all.

16 MR. TURNBULL: Well no matter what
17 happens I'm not going to be here this afternoon
18 so I will read the record for if you continue on.
19 I sort of see both my colleagues point of view, I
20 think this case has become more confusing than it
21 should have been, this should be fairly straight
22 forward but I think through a series of errors

1 and bad presentation on both parts I think that,
2 I would feel uncomfortable going ahead with it
3 myself, just trying to go back and sift through
4 some of these documents but I guess I agree with
5 Mr. Hinkle that three weeks in order to give the
6 ANC time to weigh in may not, is not as
7 prejudicial as what it could be, it could be
8 worse but I don't think three weeks is going to
9 totally put the project at risk. I don't think
10 their going to stop construction.

11 MS. SORG: I agree with you on that Mr.
12 Turnbull but in my opinion from what we've heard
13 today I also from the testimony that we got from
14 ANC 1-C and to my understanding they've resolved
15 that 1-C doesn't want to be involved in this
16 appeal so they've already made their
17 determination or we've received a resolution and
18 you know, on that point I feel that enough time
19 has gone by for them to have taken an active
20 interest in this appeal or not.

21 MR. TURNBULL: Well one of the
22 Commissioners is vigorously shaking his head no,

1 so...

2 MS. SORG: Certainly the elections have
3 complicated this matter.

4 CHAIRPERSON MOLDENHAUER: Well Board
5 Members how about I suggest maybe a splitting the
6 baby kind of analogy (maybe a bad analogy for me
7 to be making) but nonetheless what about if we, I
8 think that there is sufficient evidence that
9 there would be, that the Appellants had time and
10 should have been prepared to go forward today, I
11 don't see the fact that they really provided us
12 much evidence as to why we should continue the
13 case, that being said I don't really see at the
14 same time a lot of issues in regards to their
15 prejudice in regards to the District however
16 there are some factors that were brought up, what
17 if we start hearing the case, I don't think we're
18 going to hear the whole case today. I think that
19 there are a lot of issues that need to be
20 clarified, I think I would eventually like to
21 leave the record open to have ANCs weigh-in, so
22 my recommendation is that we at least get started

1 on this case and it may help us parse through
2 some of these issues on the merits by at least
3 getting us here, starting to go through the
4 issues this afternoon and that way at least we
5 can move forward on the case, we can gain some
6 comprehension on exactly what the issues are,
7 what I'll say is that if we go forward today, I'm
8 going to say we'll probably only hear half the
9 case today we're not going to hear the whole case
10 and we'll leave the record open most likely to go
11 forward to hear some additional issues. What do
12 my other Board Members think about my potential
13 option?

14 MR. TURNBULL: I won't be here.

15 CHAIRPERSON MOLDENHAUER: Do any of my
16 Board Members want to weigh in on that? I think
17 we need to make a vote on this and move forward,
18 it's 10 to 1 we have a 1 o'clock cases going on
19 this afternoon and the Board still needs to grab
20 something to eat, we're not taking anymore
21 testimony.

22 MR. OTTEN: I just had a point, a point

1 of process in terms of today part of what we need
2 is some of our experts like the person who did
3 the report and he is disabled himself, I don't
4 know if we can get him here today but he would
5 certainly need an interpreter because he's deaf,
6 we need the time.

7 CHAIRPERSON MOLDENHAUER: You haven't
8 brought this up before now, I asked you why, why
9 you would want the continuance and you've never
10 once said that you have experts that you didn't
11 know were obviously eligible to come forward
12 today, you knew you had the hearing today and you
13 know it should have been prepared to go forward
14 if we obviously didn't grant your continuance.
15 That being said we're at this point we're making
16 a decision, the Board we're going to have a vote.

17 MR. OTTEN: We were really thinking that
18 the ANCs would get a chance to weigh-in given the
19 timing.

20 CHAIRPERSON MOLDENHAUER: We decided this
21 is not a case of the ANC this is the case of
22 Otten and Edwards's v the District and the ANCs

1 have not yet become parties. That being said if
2 all of those who feel as if they want to move
3 forward this afternoon and take a partial portion
4 of the hearing is there second for that?

5 MS. SORG: Second.

6 CHAIRPERSON MOLDENHAUER: All those in
7 favor say aye, aye.

8 MS. SORG: Aye.

9 MR. HINKLE: Opposed.

10 CHAIRPERSON MOLDENHAUER: Then I'll submit
11 a new motion then since that motion would fail
12 for 2 to 2 a motion to continue the case to
13 February 1st, at 9:30am is there a second?

14 MR. HINKLE: Second.

15 CHAIRPERSON MOLDENHAUER: Motion has been
16 made and seconded, all those in favor. Aye.
17 Okay, so the motion then passes...I'm sorry Mr.
18 Moy.

19 MR. MOY: The vote count would be 3 to 1
20 to 1.

21 CHAIRPERSON MOLDENHAUER: So that being
22 said then we are then continuing this case to

1 February 1st at 9:30am at that point in time I
2 expect the Appellants to be ready to go forward
3 have whatever witnesses they need, the documents
4 that you referenced in these discussions either
5 you need to obtain through your own due diligence
6 or you need to obviously put in writing so that
7 if we want to see them then obviously maybe we
8 request them and I'll look to the District to
9 make sure they have some these documentations and
10 we may ask for some of this information that's
11 been thrown out in discussion so you might be
12 advised to maybe have that on hand if we
13 potentially need to look at it or something to
14 that effect. That being said the issues on the
15 appeal are going to be those issues that we have
16 jurisdiction over, we do not have jurisdiction
17 over building code, specifically life safety
18 that's not addressing any zoning issues or do not
19 stem from zoning issues we do not have
20 jurisdiction over ADA compliance. The only
21 issues on this appeal will be rear yard and a
22 parking variance both of those issues were issues

1 that were mentioned in the initial appeal letter,
2 that one page letter, those will be the limit of
3 the appeal and if the ANCs wish to join those
4 will be the issues that the ANCs have the ability
5 to join that and nothing further. That being
6 said we'll conclude this case until...

7 MR. OTTEN: Just to clarify, the
8 resolution, at least the resolution I saw from
9 what he mentions...

10 CHAIRPERSON MOLDENHAUER: Mentions
11 something else which was not part of your appeal
12 that's thus not part of your appeal wouldn't be
13 timely if you want to add it, it would have to be
14 added procedurally and we'd have to determine
15 whether we could do that, I'm not going to get
16 into that right now but right now the only issues
17 on appeal are those that were mentioned timely
18 and put into your initial appeal which are the
19 rear yard and the parking variance.

20 MR. SURABIAN: Just one more point of
21 procedure I would ask the Board to that if the
22 filing fee is not paid before the first then it's

1 dismissed on those grounds.

2 CHAIRPERSON MOLDENHAUER: I would advise
3 the Appellant to work with the Office of Zoning,
4 talk with them about what procedures you have
5 available to you and to correctly and
6 procedurally in writing if necessary follow those
7 prior to January 21st I'm going to say in regards
8 to this filing because if this filing fee issue
9 is not resolved I want to know far in advance.
10 So the filing fee issue has to be resolved or in
11 writing to some degree by January 21st and then
12 the ANCs have the ability to intervene which asks
13 that they get anything in by the 28th. The
14 Appellant if you have a prehearing statement
15 obviously consult the rules, make sure that both
16 of you are now the case is going to be re-titled
17 into your individuals names so make sure that
18 obviously corresponds and service goes back and
19 forth amongst the parties. Thank you that then
20 concludes this mornings hearing. We'll reconvene
21 at 1:30 for the afternoon hearings.

22 **Afternoon Hearing Session**

1 CHAIRPERSON MOLDENHAUER: This hearing
2 will please come to order, good afternoon ladies
3 and gentleman, this is the January 11, 2011,
4 Public Hearing of the Board of Zoning Adjustments
5 for the District of Columbia. My name is
6 Meredith Moldenhauer, Chairperson, joining me
7 today to my left will be Nicole Sorg, Vice Chair,
8 Mayoral Appointee, to my right is Jeffrey Hinkle,
9 Representative of National Capital Planning
10 Commission, and joining us today also is Greg
11 Selfridge, Representative of the Zoning
12 Commission. Copies of today's meeting agenda are
13 available to you and are located to my left in
14 the wall bin near the door. Please be advised
15 this proceeding is being recorded by a court
16 reporter and is also being webcast live.
17 Accordingly we must ask you to refrain from any
18 disturbing noises or actions in the hearing room.
19 When presenting information to the Board please
20 turn on and speak into your microphone first
21 stating your name and home address. When you are
22 finished speaking please turn off your microphone

1 so that your microphone is no longer picking up
2 sounds or background noise. All persons planning
3 to testify either in support or in opposition are
4 to fill out two witness cards these cards are
5 located to my left in the wall bin near the door
6 and the witness table. Upon coming forward to
7 speak to the Board please give both cards to the
8 court reporter sitting to my right. The order of
9 procedure for special exceptions and variances
10 are as follows: 1. Statement of the Applicant and
11 Applicant's witnesses. 2. Parties and Persons in
12 support. 3. Parties and Persons in Opposition. 4.
13 Government Reports. 5. ANC within which the
14 property is located. 6. Rebuttal and closing
15 statements of the Applicant. Pursuant to Section
16 3117.4 and 3117.5 the following time constraints
17 will be maintained: The Applicant, Appellant,
18 persons and parties except an ANC in support and
19 including witnesses will be permitted 60 minutes
20 collectively. The Appellees persons and parties
21 except an ANC in opposition including witnesses
22 will be given 60 minutes collectively.

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

1 the open before the public. The Board may
2 consistent with its rules and procedures and the
3 Sunshine Act enter into Executive Session during
4 or after a hearing on a case for purposes of
5 reviewing the record or deliberating on a case.
6 The decision of the Board as in these contested
7 cases must be based exclusively on the record, to
8 avoid any appearance to the contrary the Board
9 requests that persons present not engage the
10 members of the Board in conversation. Please
11 turn off all beepers and cell phones at this time
12 as to not disturb these proceedings. The Board
13 will make every effort to conclude the public
14 hearing as near as possible to 6pm, if the
15 afternoon cases are not completed at 6pm the
16 Board will assess whether it can complete the
17 pending cases or case on the agenda. At this
18 time the Board will consider any preliminary
19 matters, preliminary matters relate to whether a
20 case should or will be heard today such as a
21 request for postponement, continuance or
22 withdrawal or whether proper or adequate notice

1 of a hearing was given. If you are not prepared
2 to go forward today now is the time to raise such
3 a matter. Mr. Secretary, do we have any
4 preliminary matters? I believe that we do have
5 preliminary matters but we'll address those as we
6 hear each case but what we have to do is swear in
7 any witnesses for the afternoon. Any individuals
8 wishing to testify please raise your left hand to
9 take the oath, sorry right hand.

10 MS. GLAZER: I'm Sherry Glazer, Assistant
11 Attorney General with the Office of the Attorney
12 General and I hope I'm empowered to swear the
13 witnesses in, oh Mr. Moy has arrived I think I'll
14 let him do it.

15 MR. MOY: Do you solemnly swear or affirm
16 that the testimony you're about to present in
17 this proceeding is the truth, the whole truth and
18 nothing but the truth. Ladies and gentleman you
19 may consider yourself under oath.

20 CHAIRPERSON MOLDEHAUER: Mr. Secretary
21 could you call the first case for this afternoon.

22 **Application No. 18124**

1 MR. MOY: Good afternoon Madam Chair,
2 Members of the Board, that would be Application
3 No. 18124 of Adams-Connecticut 1 LLC, pursuant to
4 11 DCMR 3103.2 for a variance from the off-street
5 parking requirements under (Subsection 2101.1) to
6 construct an apartment building with ground floor
7 retail in the C-3-A District at premises 4469
8 Connecticut Avenue, N.W. property's in (Square
9 2046, Lot 803).

10 CHAIRPERSON MOLDENHAUER: Thank you very
11 much Mr. Moy. The parties are seated at the
12 table if you could just introduce yourselves
13 starting on my left.

14 MR. STRASBURG: Hi I'm Murray Strasberg;
15 I live at 3531 Yuma Street, N.W. which is a block
16 and a half off Connecticut Avenue almost directly
17 opposite to the property involved. I have been
18 living there for 43 years.

19 MS. PERRY: Karen Perry ANC 3-F 3003
20 VanNess Street, N.W.

21 MS. BRAY: Kinley Bray with the law firm
22 of Arrent Fox on behalf of the property owner

1 immediately adjacent to the subject property Park
2 and Shop, LLC and the Franklin Montessori School.

3

4 MR. SHER: Steven E. Sher, Director of
5 Zoning and Land Use Services with the law firm of
6 Holland and Knight; we represent the Applicant in
7 the case, Adams-Connecticut 1, LLC.

8 CHAIRPERSON MOLDENHAUER: Thank you and
9 we have a preliminary matter in this case which
10 is a request for a postponement filed on January
11 10th, our "Exhibit 41" by Cynthia Giadonno on
12 behalf of the Applicant indicating that all the
13 parties are requesting this postponement, I'm
14 just confirming that all parties are in agreement
15 then with the postponement.

16 MS. BRAY: That's correct actually Madam
17 Chair if I may, I don't think either B.F. Saul or
18 Park n' Shop and the Franklin Montessori School
19 have been entered as parties in this case, I
20 don't think we've conducted a discussion about
21 whether anybody should be entered as parties but
22 all perspective parties and the Applicant, I

1 believe, are in agreement that we should
2 postpone.

3 CHAIRPERSON MOLDENHAUER: Thank you Ms.
4 Bray, I believe you are correct I don't think
5 we've actually finalized that.

6 MS. PERRY: I was just going to say the
7 ANC which is a party concurs.

8 CHAIRPERSON MOLDENHAUER: Okay the ANC
9 which is obviously automatically a party concurs.

10 MR. SHER: Not to withdraw this any
11 longer but Ms. Gordano doesn't represent the
12 Applicant she represents the owner of the
13 property to the south but she wrote the letter
14 indicating that the Applicant joins in the
15 request for postponement which we do.

16 CHAIRPERSON MOLDENHAUER: I appreciate
17 that there's a lot of parties in this case and we
18 had, or a lot of perspective parties, yes thank
19 you guys. Now the question of course there's no
20 statement in here as to what the timing would be
21 for a continuance, this case has been continued
22 once before, I look to the individuals to see are

1 we close to obtaining some sort of resolution to
2 the issues that we can go forward with this case.
3 I'd rather not have to postpone this again so
4 I'm trying to figure out what a date would be
5 where we can at least hold your feet to the fire
6 so we can get something resolved but at the same
7 time not have to put it so close to this hearing
8 date that we come back and have to ask again for
9 another continuance.

10 MR. SHER: The Applicant would be
11 amenable to in effect going to the end of the
12 line and my discussion with Mr. Nero earlier was
13 that would put us at the first hearing in April
14 that would be fine with us and I believe that's
15 consistent with where Ms. Gordano would be also,
16 she's unable to be here but she's talked to both
17 Kinley and to us and I think that's where we are
18 on that. I think there is a very distinct
19 possibility that you won't have to hear this case
20 at all but that's what's going on right now in
21 terms of discussions and we just would want to
22 enough time to make sure that can happen one way

1 or the other.

2 CHAIRPERSON MOLDENHAUER: Okay well then
3 why don't we put this for the first case on April
4 5th in the morning at 9:30. I would just say that
5 what we'll do just so that we don't have to,
6 there are no issues this will be the last
7 continuance and that way if the issues haven't
8 been resolved or something and the case hasn't
9 yet been withdrawn we just have to knock it out
10 at that point in time and just so the record is
11 clear this will be the last continuance we'll put
12 it on. I don't think that should be a problem
13 but that way we just have that resolved for April
14 5th in the morning.

15 MR. SHER: Thank you Madam Chair.

16 MS. GLAZER: Is the Board inclined to
17 hear the party status request if in fact it does
18 go to hearing, I don't know what the parties want
19 with respect to that.

20 CHAIRPERSON MOLDENHAUER: I think what
21 we're going to do is we're going to wait for the
22 party status until April 5th and right now we're

1 just obviously working with all the, as Ms. Bray
2 indicated perspective parties. We'll still wait
3 and if this goes forward on the 5th and there are
4 still unresolved issues we'll have to address
5 party status at that time and all the other
6 potential issues at that time. Thank you so much
7 everybody for coming down and we'll see you on
8 the 5th.

9 **Application No. 18150**

10 CHAIRPERSON MOLDENHAUER: Mr. Moy
11 whenever you're ready we can call the next case.

12 MR. MOY: The next and final case for the
13 afternoon session Madam Chair is Application No.
14 18150 of Mariana Darwazeh, pursuant to 11 DCMR
15 3104.1 for special exception to construct a rear
16 addition to an existing one family detached
17 dwelling under Section 223 not meeting lot
18 occupancy, Section 403 and rear yard Section 404
19 in requirements in the R-1-B District at premises
20 4626 Charleston Terrace, N.W. property is located
21 in (Square 1368, Lot 57).

22 CHAIRPERSON MOLDENHAUER: Thank you very

1 much Mr. Moy. Good afternoon if you can
2 introduce yourself for the record.

3 MR. GHAZI: Hi my name is Tony Ghazi and
4 I represent the owner of 4626 Charleston Terrace.

5 CHAIRPERSON MOLDENHAUER: Thank you, see
6 here last time before we started there was a
7 party status with an individual named Kathleen
8 Horvath; did you have an opportunity to speak
9 with her?

10 MR. GHAZI: We actually met with her this
11 past Friday with the architect and she agreed for
12 us to extend the deck there was no opposition
13 anymore.

14 CHAIRPERSON MOLDENHAUER: Obviously she's
15 not present today so we'll have to just infer
16 that. The other question was Commissioner
17 Turnbull was here last time and he had asked you
18 for some updated architectural plans. We haven't
19 received any additional submissions what's the
20 status of that. I think Ms. Darwazeh is going to
21 be here a week from now, we're going to meet with
22 her and with the architect and actually go over

1 the plans and then finalize them and resubmit
2 them for approval.

3 CHAIRPERSON MOLDENHAUER: Have the plans
4 changed since?

5 MR. GHAZI: They will change, they
6 haven't changed.

7 CHAIRPERSON MOLDENHAUER: They will
8 change?

9 MR. GHAZI: Exactly.

10 CHAIRPERSON MOLDENHAUER: Okay, then I
11 think the reality is if they're going to change
12 and we don't have a copy of these new plans we
13 really can't go forward today until we have a
14 copy of what its going to look like the plans if
15 your representing that they're going to change,
16 then I think what we need to do is we need to set
17 this for a date following your ability to confirm
18 that these plans will be finalized, give you time
19 for you to then get us a copy of the plans in
20 advance of the hearing so you need to get us the
21 plans, you know, a week before the hearing. So
22 when do you think you'll have the plans finalized

1 by?

2 MR. GHAZI: We're thinking by the end of
3 February.

4 CHAIRPERSON MOLDENHAUER: Okay finalized
5 by the end of February.

6 MR. GHAZI: So maybe the March 8th
7 hearing date, I spoke to Mr. Moy yesterday, or
8 March 18th, there were two dates in March that we
9 could make.

10 CHAIRPERSON MOLDENHAUER: So what we'll
11 do is we'll put it in the afternoon for March
12 15th.

13 MR. GHAZI: Okay.

14 CHAIRPERSON MOLDENHAUER: Okay so then
15 this case will be continued to the afternoon of
16 March 15th, and Mr. Ghazi you will then need to
17 get us the plans by March 8th, okay so any revised
18 plan need to be submitted to our office no later
19 than March 8th.

20 MR. GHAZI: Alright.

21 CHAIRPERSON MOLDENHAUER: Thank you very
22 much.

1 MR. SELFRIDGE: Madam Chair would it be
2 possible to get some sort of suggested indication
3 from the opposition that they no longer oppose, I
4 think that would be helpful, we're looking at
5 March 15th.

6 CHAIRPERSON MOLDENHAUER: Yeah I think
7 that's plenty of time for you to at least get
8 either an email or a letter or something
9 confirming that they've met with you in writing
10 and that they no longer oppose that, wonderful.
11 We do have in our record the ANCs letter of
12 support, so that's already in our record.

13 MR. MOY: Just to add if I may Madam
14 Chair the party opponent could also withdraw her
15 party status opposition as well.

16 MR. GHAZI: Okay, so I'll ask her.

17 CHAIRPERSON MOLDENHAUER: You can talk
18 with her, it would be very highly recommended to
19 talk to her and say would you either withdraw
20 your status or write a letter submitting a
21 statement stating that you support the
22 application and you no longer have any issues,

1 it's an either, or whatever she feels most
2 comfortable with. Have a good day. And that
3 concludes our hearing for today, thank you.

4 End 2:20pm

5 llz

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