

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

NOVEMBER 24, 2009

+ + + + +

The Public Hearing convened in
Room 220 South, 441 4th Street, N.W.,
Washington, D.C. 20001, pursuant to notice at
9:30 a.m., Marc D. Loud, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD	Chairman
SHANE L. DETTMAN	Vice Chairman
	(NCPC)
MERIDITH MOLDENHAUER	Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

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

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
MICHAEL GIULIANI
STEPHEN MORDFIN
KAREN THOMAS
STEPHEN VARGA

This transcript constitutes the
minutes from the Public Hearing held on
November 24, 2009.

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

2 9:53 a.m.

3 CHAIRMAN LOUD: This hearing will,
4 please, come to order. Good morning, ladies
5 and gentlemen. This is the November 24th
6 Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Marc D. Loud,
9 Chairperson, and the other Members of our dias
10 will now introduce themselves.

11 VICE CHAIRMAN DETTMAN: Shane
12 Dettman, Vice Chair, representing the National
13 Capital Planning Commission.

14 MEMBER MOLDENHAUER: Meridith
15 Moldenhauer, Mayoral Appointee.

16 COMMISSIONER HOOD: Anthony Hood
17 representing the Zoning Commission.

18 MR. MOY: My name is Clifford Moy.
19 I'm the Secretary for the Board of Zoning
20 Adjustment. Good morning.

21 MS. NAGELHOUT: I'm Mary Nagelhout
22 of the Land Use and Public Works Section of

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1 the Office of the Attorney General.

2 MS. BAILEY: Beverley Bailey, staff
3 member with the Office of Zoning.

4 CHAIRMAN LOUD: Thanks to each of
5 you.

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

9 Please, be advised that this
10 proceeding is being recorded by a Court
11 Reporter and is also webcast live.
12 Accordingly, we must ask you to refrain from
13 any disruptive noises or actions in the
14 hearing room. When presenting information to
15 the Board, please, turn on and speak into the
16 microphone, first, stating your name and home
17 address. When you are finished speaking,
18 please, turn your microphone off, so that your
19 microphone is no longer picking up sound or
20 background noise.

21 All persons planning to testify
22 either in favor or in opposition are to fill

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1 out two witness cards. These cards are
2 located to my left on the table near the door
3 and on the witness tables. Upon coming
4 forward to speak to the Board, please, give
5 both cards to the reporter sitting to my
6 right.

7 The order of procedure for special
8 exceptions and variances is as follows:
9 Statement and witnesses of the applicant;
10 Government reports, including the Office of
11 Planning, the Department of Public Works,
12 etcetera; the report of the Advisory
13 Neighborhood Commission; parties or persons in
14 support; parties or persons in opposition; and
15 finally, closing remarks by the applicant.

16 Pursuant to sections 3117.4 and
17 3117.5, the following time constraints will be
18 observed this morning: The applicant,
19 appellant, persons and parties, except an ANC,
20 in support are allotted, including witnesses,
21 60 minutes and that's collectively. The
22 appellees, persons and parties, except an ANC,

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1 in opposition, including witnesses, are
2 allotted 60 minutes collectively. Individuals
3 are allotted 3 minutes and organizational
4 witnesses are allotted 5 minutes.

5 These time restraints do not
6 include cross examination and/or questions
7 from the Board. Cross examination of
8 witnesses is permitted by the applicant or
9 parties only.

10 The ANC within which the property
11 is located is automatically a party in the
12 special exception or variance case.

13 Nothing prohibits the Board from
14 placing reasonable restrictions on cross
15 examination, including time limits and
16 limitations on the scope of cross.

17 The record will be closed at the
18 conclusion of each case, except for any
19 material specifically requested by the Board.

20 The Board and staff will specify at the end
21 of the hearing exactly what is expected and
22 the date when the persons must submit the

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1 evidence to the Office of Zoning.

2 After the record is closed, no
3 other information will be accepted by the
4 Board.

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

11 Please, turn off all beepers and
12 cell phones, at this time, so as not to
13 disrupt these proceedings.

14 The Board will now consider any
15 preliminary matters. Preliminary matters are
16 those which relate to whether a case will or
17 should be heard today, such as requests for
18 postponement, continuance or withdrawal or
19 whether proper and adequate notice has been
20 given.

21 If you are not prepared to go
22 forward with a case today or if you believe

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1 the Board should not proceed, now is the time
2 to raise such a matter.

3 Does the staff have any preliminary
4 matters?

5 MS. BAILEY: Mr. Chairman, Members
6 of the Board, to everyone good morning. Yes,
7 sir, it has to do with one of the cases that
8 was withdrawn, Application 17925. This is the
9 application of Carlos M. Hernandez and others.
10 That application, Mr. Chairman, was withdrawn
11 yesterday.

12 CHAIRMAN LOUD: Thank you, Ms.
13 Bailey. Why don't we proceed with the
14 swearing in of witnesses? All individuals who
15 are wishing to testify on this morning's
16 calendar, could you, please, rise to take the
17 oath? And Ms. Bailey will administer the oath
18 to you.

19 MS. BAILEY: Please, raise your
20 right hand.

21 (Whereupon, the witnesses were
22 sworn.)

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1 MS. BAILEY: Thank you.

2 CHAIRMAN LOUD: When you are ready,
3 Ms. Bailey.

4 MS. BAILEY: Thank you, Mr.
5 Chairman. The first case is Application
6 17997. It's the Application of Jane V.
7 Saunders and it's pursuant to 11 DCMR §
8 3104.1, for a special exception to allow a one
9 story rear addition to an existing one-family
10 row dwelling under section 223, not meeting
11 the lot occupancy requirements of section 403,
12 rear yard requirements of section 405, and
13 court requirements of section 406. The
14 property is in the D/R-1-B District at
15 premises 1681 32nd Street, N.W., Square 1281,
16 Lot 19.

17 CHAIRMAN LOUD: Thank you, Ms.
18 Bailey. I would like to ask before we get
19 formally started, is the ANC present this
20 morning? And it looks like the ANC is not
21 present. If the applicant could come forward
22 and take your seat and in a moment you can

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1 state your name for the record.

2 And as a preliminary matter, we do
3 have, at least in the file, a request for
4 party status and that would be from, I hope
5 I'm pronouncing this correctly, Ms. Simanek.
6 It is our Exhibit 22. Is Ms. Simanek present?

7 Okay. It does not appear that she is
8 present.

9 She did, however, request party
10 status in a prehearing submission, Exhibit 22,
11 dated October 5, 2009. Among her concerns was
12 that she lives in the rear, I believe, of the
13 property and the addition would potentially
14 alter the light available to her garden. It
15 would also change potentially her views of the
16 applicant's backyard through the loss
17 potentially of some trees.

18 And if I understand it correctly,
19 her views of her own garden might be
20 jeopardized as well, because they would appear
21 against a new backdrop of the one story
22 structure as opposed to the current

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1 landscaping that is in the backyard.

2 But she is not here. And one of
3 the privileges of having party status is that
4 you can participate in the hearing. You get
5 to present witnesses. You can cross witnesses
6 presented by the applicant and/or the ANC.
7 And it just seems to me that not being here,
8 the proposed party status applicant would not
9 be able to take advantage of the real reasons
10 to be a party.

11 So I would not be in favor of
12 granting party status to an applicant that is
13 not present this morning.

14 Colleagues?

15 MS. NAGELHOUT: Mr. Chair?

16 CHAIRMAN LOUD: Yes, ma'am?

17 MS. NAGELHOUT: Just a correction.

18 The letter was from Barbara Simanek, but the
19 request actually came from Helen Lee
20 Henderson.

21 CHAIRMAN LOUD: Thank you, Ms.
22 Nagelhout. Is Helen Lee Henderson here?

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1 Again, so it doesn't appear that the party
2 status applicant is here, Ms. Helen Lee
3 Henderson, I stand correct. And in light of
4 her not being here, the Board, I think,
5 through consensus has ruled against her
6 application for party status.

7 And with that, we turn now to you,
8 Mr. Saunders?

9 MS. ZAPATKA: I'm the agent for the
10 property owner, Christian Zapatka.

11 CHAIRMAN LOUD: Oh.

12 MS. ZAPATKA: And architect in
13 Washington, D.C.

14 CHAIRMAN LOUD: All right. Will
15 you be presenting a witness this morning or
16 you will be presenting the entire case?

17 MS. ZAPATKA: I will present the
18 case.

19 CHAIRMAN LOUD: Okay. Well, why
20 don't we begin with you then? We'll turn it
21 over to you.

22 MS. ZAPATKA: Okay. I guess

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1 starting with the question of neighbors'
2 responses, the property owner, Jane Saunders,
3 did speak to her immediately adjacent
4 neighbors on 32nd Street and we do have three
5 letters of approval from two neighbors
6 immediately south and one north.

7 CHAIRMAN LOUD: Are those three
8 letters currently in our record or those are
9 additions to?

10 MS. ZAPATKA: These are additions
11 to.

12 CHAIRMAN LOUD: Okay.

13 MS. ZAPATKA: You do not have them
14 in your files.

15 CHAIRMAN LOUD: Okay. It would be
16 good if you have copies to make sure that Ms.
17 Bailey gets copies.

18 MS. ZAPATKA: Right.

19 CHAIRMAN LOUD: And she can make
20 sure we get them.

21 MS. ZAPATKA: We're going to make
22 copies.

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1 CHAIRMAN LOUD: Okay. Thank you.

2 MS. ZAPATKA: Yes. But otherwise,
3 yes, it's a pretty straightforward case. You
4 have the drawings, I believe, and again, it's
5 a curious condition of a row dwelling within
6 and R-1-B District that normally doesn't
7 permit row dwellings. So it's existing from
8 1880s, approximately.

9 And the proposal to make a small
10 one story rear addition and to fill in the
11 existing side court at the two levels of the
12 house are what we're presenting here. And as
13 a design concept, this has already been
14 approved by the Old Georgetown Board. And so
15 we are here to seek relief from the following
16 items: Lot occupancy, side yard and
17 enlargement or addition to a nonconforming
18 structure.

19 And I can answer any questions that
20 the Board may have.

21 CHAIRMAN LOUD: Thank you. I
22 believe that the Office of Planning is here

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1 and they have done an outstanding report
2 showing how, at least from their perspective,
3 the project meets the requirements of section
4 223. So you don't have to walk through every
5 element.

6 I did want to ask you a question
7 about the revision. I think you revised the--

8 MS. ZAPATKA: Yes.

9 CHAIRMAN LOUD: -- submission,
10 October 1. And in the revision, you state
11 that you are going to extend the addition to
12 the south property line, which would result in
13 greater lot occupancy?

14 MS. ZAPATKA: It's really to fill-
15 in the present side court. So the -- I'll
16 pull up the plan. In the --

17 CHAIRMAN LOUD: I believe Ms.
18 Bailey may have a portable microphone. Yes,
19 there is it.

20 MS. ZAPATKA: This -- here is the
21 proposed first floor plan. The present
22 structure is in this form with the side court

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1 here and that's the proposed projecting
2 addition. And this portion is within the line
3 of existing back of the house.

4 So it's really filling in to the
5 side on the south, rather than any further
6 projection into the rear lot on the south
7 side.

8 CHAIRMAN LOUD: And as I understand
9 it, you were already at about 49 percent lot
10 occupancy before the revision?

11 MS. ZAPATKA: Right.

12 CHAIRMAN LOUD: And the 223 allows
13 you to get up to is it 50 percent in this
14 zone?

15 MS. ZAPATKA: It's --

16 CHAIRMAN LOUD: I believe it is 50
17 percent or so.

18 MS. ZAPATKA: It is.

19 CHAIRMAN LOUD: And so even with
20 the revision of October 1, you are already at
21 49 percent and you represented that it would
22 result in greater lot occupancy. Are you

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1 still below 50 percent?

2 MS. ZAPATKA: Let's see --

3 CHAIRMAN LOUD: And, OP, that's
4 probably a question that we would be looking
5 to ask you as well.

6 MS. ZAPATKA: We are awfully close
7 already. One thing I am aware of though is
8 that side courts that are less than 6 feet in
9 width are already counted towards lot
10 occupancy. So whether we are filling it in or
11 not, it's already counted as part of the lot
12 occupancy.

13 If we are doing nothing at all,
14 that empty side court would be considered part
15 of the lot occupancy.

16 CHAIRMAN LOUD: Okay.

17 MS. ZAPATKA: So it really -- I
18 guess the answer is it doesn't really change
19 it.

20 CHAIRMAN LOUD: Okay. Thank you.
21 I didn't have any further questions. Let's
22 see if Board Members have any and then we'll

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1 turn to the Office of Planning.

2 Unless, Mr. Dettman, did you have
3 any questions? Okay. All right. So we will
4 turn to OP and if we have questions from Board
5 Members, we'll come back.

6 MR. GIULIANI: Good morning, Mr.
7 Chair, Members of the Board. Again, I'm
8 Michael Giuliani with the Office of Planning.

9 And what we are talking about is an
10 application for a special exception pursuant
11 to section 223 to permit a one story rear
12 addition to an existing row dwelling.

13 Again, we are recommending approval
14 of the application. The property does fall
15 within an R-1-B Zone, as the applicant's agent
16 mentioned, and is in the Georgetown Historic
17 District. And the site does include a one-
18 family row dwelling, which is a nonconforming
19 structure in the zone.

20 In our review of the tests, we
21 found the following: With respect to the
22 light and air test, the scale of the addition

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1 at one story would have minimal impact to the
2 light access of the adjacent properties, and
3 simply because of the existing orientation of
4 the house in relation to the sun.

5 And the enclosure of the existing
6 light court is not impeding on any adjacent
7 properties. There is no windows on the
8 adjacent properties, so that should have no
9 impact on their access to light or air.

10 The addition will result in no
11 greater impacts than the current home does
12 with respect to the privacy and use and
13 enjoyment of the neighbor's properties.

14 And in regard to the visual
15 intrusion, the addition is at the rear. It
16 cannot be seen from the main street and from
17 the alley. We find that it is consistent with
18 the additions that have occurred, a few to the
19 south have already occurred. And this was
20 further supported by the Old Georgetown Board.

21 And the applicant provided all the
22 necessary information for us to complete our

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1 assessment. And I guess just to follow-up on
2 regard to the lot occupancy, we concur with
3 the applicant's agent that in the initial
4 submission, although a court was proposed, it
5 would have been included in the measurement of
6 the standard for percentage of lot occupancy,
7 so by amending the proposal, they are not
8 changing the value, which they are requesting
9 relief for.

10 That concludes my presentation. If
11 you have any questions, I would be happy to
12 answer them.

13 CHAIRMAN LOUD: Thank you. Board
14 Members, are there any questions?

15 VICE CHAIRMAN DETTMAN: Just one,
16 Mr. Chairman. Good morning, Mr. Giuliani.

17 MR. GIULIANI: Hi.

18 VICE CHAIRMAN DETTMAN: I'm just
19 looking at page 2 of your report, the table
20 and then immediately under section 3 where it
21 says "The addition is going to be 10.9 x 16.11
22 resulting in the square footage of 184. And

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1 then you have a final building footprint of
2 936. However, in the table you have an
3 existing of 786.

4 MR. GIULIANI: My numbers don't add
5 up?

6 VICE CHAIRMAN DETTMAN: It just
7 looks like you have a total building footprint
8 of 970 instead of 936 and was wondering what
9 percentage of lot occupancy that turns out to
10 be.

11 MR. GIULIANI: Could you run down
12 those numbers again, so I could --

13 VICE CHAIRMAN DETTMAN: The
14 footprint square footage you have 184.7. The
15 existing square footage you have 786.

16 MR. GIULIANI: Okay.

17 VICE CHAIRMAN DETTMAN: And then
18 the proposed you have 936.

19 MR. GIULIANI: Okay. I do concur
20 with the assessment of your numbers. I'm just
21 going to look back at the plan and review to
22 see where the error might have occurred, may

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1 have occurred.

2 I'm almost there. I believe where
3 the error is is actually in the representation
4 of what the existing square footage is at 786.

5 Just by reviewing the applicant's plans, you
6 can see that the existing dwelling is,
7 approximately, 44 feet 3 inches in depth and
8 the lot width is at 16 feet 11 and $\frac{3}{4}$ inches.

9 So when I complete the math, that
10 ends up just around 751 square feet. And if
11 we add the sum of the addition, then we would
12 end up with the proper number, which is 936
13 square feet.

14 CHAIRMAN LOUD: Thank you for the
15 clarification.

16 MR. GIULIANI: Sure.

17 CHAIRMAN LOUD: Are there any
18 additional questions from Board Members? And
19 did you have any questions for the Office of
20 Planning?

21 MS. ZAPATKA: I don't.

22 CHAIRMAN LOUD: Okay. Then the ANC

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1 is not here, but they did submit a report,
2 ANC-2E Chairman Ron Lewis submitted a report
3 that is dated November 5. It is our Exhibit
4 24. In the report, they support your
5 application. It was noticed properly and
6 there was a quorum, so it will receive great
7 weight.

8 Are there any persons in the
9 audience who are either in favor of this
10 application or who are opposed to this
11 application?

12 Okay. But you weren't sworn in to
13 testify as a witness. Okay. I should say are
14 there any persons in the audience who want to
15 testify either in favor or in opposition to
16 this application?

17 And there do not appear to be any.

18 So what we would do is turn back to you now
19 for your closing remarks.

20 MS. ZAPATKA: Yes, thank you for
21 your time with this matter. Just in response
22 or following up with Mr. Giuliani's

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1 recalculations in the initial application,
2 yes, the existing conditions were described as
3 751.3 square feet, so that explains the
4 calculation.

5 But otherwise, thank you for your
6 consideration.

7 CHAIRMAN LOUD: And we thank you
8 and we thank you for your patience this
9 morning in terms of our getting to your case.

10 I think we are ready to deliberate
11 on the case. I believe the record is full.
12 I'm going to turn to Mr. Dettman to lead us
13 off.

14 VICE CHAIRMAN DETTMAN: Thank you,
15 Mr. Chairman. In lieu of me actually going
16 through each of the provisions of 223, I'll
17 essentially just state for the record that I
18 think the applicant has met its burden under
19 223, as well as the general special exception
20 criteria of Chapter 31, and incorporate by
21 reference OP's report.

22 I think that OP's report states it

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1 pretty clearly that the applicant has also met
2 its burden. And thank you to the Office of
3 Planning for such a well-written report and
4 for the clarification on the lot occupancy.

5 I'll also note for the record that
6 we haven't seen them yet, but the applicant
7 stated that they have reviewed the plans with
8 their adjacent neighbors and have secured
9 their support. Those letters will be
10 forthcoming.

11 The ANC-2E, at our Exhibit No. 24,
12 states that they have no objection to the
13 application.

14 And finally, we did receive that
15 one letter from Ms. Helen Lee Henderson
16 indicating her client's opposition to the
17 application. However, given the relatively
18 small scale of the addition, it's one story,
19 and the location of where Ms. Simanek lives, I
20 don't see any potential for adversely
21 affecting that particular property owner nor
22 any property owner in the immediate vicinity

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1 with respect to light and air and privacy.

2 So again, I think the applicant has
3 met its burden and I'm supportive of the
4 application.

5 CHAIRMAN LOUD: Thank you, Mr.
6 Dettman. Is there further discussion? Is
7 there a motion, Mr. Dettman?

8 VICE CHAIRMAN DETTMAN: I'll move
9 for approval of Application No. 17997,
10 pursuant to 11 DCMR 3104.1, for a special
11 exception to allow a one story rear addition
12 to an existing one-family row dwelling under
13 section 223, not meeting lot occupancy
14 requirements of 403, side yard requirements of
15 405, and the nonconforming structure
16 provisions of 2001.3, located at the premises
17 of 1681 32nd Street, N.W.

18 MEMBER MOLDENHAUER: I second.

19 CHAIRMAN LOUD: The motion has been
20 made and seconded. Is there further
21 deliberation?

22 Hearing none, all those in favor

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1 say aye.

2 ALL: Aye.

3 CHAIRMAN LOUD: All those who are
4 opposed? Ms. Bailey, can you read back the
5 vote for us, please?

6 MS. BAILEY: Surely, Mr. Chairman.

7 The vote is recorded as 4-0-1 to grant the
8 application. Mr. Dettman made the motion,
9 Board Member Moldenhauer supported the motion.
10 Mr. Loud and Mr. Hood support the motion as
11 well.

12 CHAIRMAN LOUD: Thank you. And
13 congratulations to you. This is not an
14 opposed application, so a summary order would
15 be appropriate.

16 MS. BAILEY: Summary order it is,
17 sir.

18 CHAIRMAN LOUD: And you should
19 receive that in the next couple of days or so.
20 Okay.

21 MS. ZAPATKA: Thank you very much.

22 CHAIRMAN LOUD: All right. Thank

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1 you. And I believe, Ms. Bailey, when you are
2 ready, we can call the next case.

3 MS. BAILEY: Mr. Chairman, the next
4 case is Application 18000, it's the
5 Application of Christopher and Jean Whaley,
6 and it's pursuant to 11 DCMR § 3104.1, 3103.2
7 and 1202.1, for a special exception to allow a
8 two story rear addition to a one-family semi-
9 detached dwelling under section 223, not
10 meeting the lot occupancy, side yard and
11 nonconforming structure requirements of the
12 regulations, that's section 403, section 405
13 and subsection 2001.3.

14 The application was also advertised
15 in the alternative for variance relief from
16 sections 403, 405 and 2001.3. The property is
17 located in the CAP/R-4 District at 321 6th
18 Street, S.E., Square 844, Lot 810.

19 Members of the Board, as you know,
20 there are several requests, a little more than
21 several, four requests for party status in
22 this application.

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1 CHAIRMAN LOUD: Thank you, Ms.
2 Bailey. Can I ask that if the ANC is present,
3 ANC-6B, that they would come to the table in
4 front as well? It doesn't appear they are
5 here. And I believe, as you indicated, there
6 are four party status applications: Mr. and
7 Mrs. Pastis, hope I'm pronouncing that
8 correctly, Exhibit 24, Ms. Vogt, I think,
9 Exhibit 25, Mr. Mois, Exhibit 27, and I don't
10 have the first name for the Ness party status
11 application, Exhibit 26.

12 Are any of those persons present?
13 Okay. Why don't you come forward? Yes, come
14 forward to the table and the mike. I think as
15 a preliminary matter, we want to review your
16 request for party status.

17 And if you could introduce
18 yourself? Yes, you've got to press the mike.

19 A green light will come on and you will know
20 you're in business.

21 MS. VOGT: My name is Nancy Vogt.
22 I live at 323 6th Street, S.E. My home shares

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1 the party wall with these people. And I have
2 also been empowered to represent Melanie Ness
3 and Jerry Mois.

4 CHAIRMAN LOUD: Okay. And,
5 counsel, can you introduce yourself for the
6 record?

7 MS. BRAY: Good morning. I'm
8 Kinley Bray with the Law Firm of Arent Fox on
9 behalf of the applicants, Christopher and Jean
10 Whaley.

11 We have reviewed the request for
12 party status and a point of clarification. I
13 don't see an authorization for Melanie Ness to
14 be represented by Ms. Vogt. And also, I was
15 informed late last night by Dr. and Mrs.
16 Pastis' counsel that they will not be
17 appearing today.

18 CHAIRMAN LOUD: Why don't we take
19 up the first concern that you raised first.
20 Is the counsel for Mr. Pastis here? We do
21 have a letter that the Pastis family would not
22 be here, but they are represented by local

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1 counsel here in Washington, D.C., Paul Pascal.

2 I'm not certain why the lawyer wouldn't be
3 here, but, okay.

4 MS. BRAY: As I said, I spoke with
5 the lawyer yesterday evening and he indicated
6 that neither would be here today.

7 CHAIRMAN LOUD: Okay. All right.
8 Well, let's turn back to, is it pronounced,
9 Vogt? Okay. Let's turn back to Ms. Vogt.
10 You live next door. You are raising some
11 obstruction of view, I think, in light and air
12 impacts and loss of privacy impacts.

13 Is there a concern regarding her
14 application?

15 MS. BRAY: We do not object to Ms.
16 Vogt's application. I do have concerns about
17 Ms. Ness and Mr. Mois, but seeing as neither
18 of those are here, and at least one has
19 authorized Ms. Vogt, I don't think an
20 objection is in order, but I would like
21 clarification on Ms. Ness' authorization.

22 CHAIRMAN LOUD: Okay. Just hold on

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1 for 2 seconds. So you are fine with Ms. Vogt
2 and Ms. Mois or Mr. Mois, I should say. And
3 the question for you, at least, would be Ness.

4 Okay. I don't know how Board Members feel,
5 but I just wanted to get a good read on where
6 you are with that.

7 MS. VOGT: There was a letter along
8 with her form for party status application.
9 It was just a one page letter that
10 specifically authorizes me. I don't know if
11 you received a copy of that.

12 MS. BRAY: I have the letter in
13 front of me, but it does not authorize Nancy
14 Vogt to speak for her. Oh, I'm sorry, it
15 does. I withdraw my objection on that ground.

16 But I actually do object, given that Ms. Ness
17 has not raised any basis for standing as a
18 party. There is, in fact, nothing entered on
19 the request for party status application which
20 indicates that she has a distinct interest
21 from that of the general public in this case.

22 CHAIRMAN LOUD: What about her

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1 allegation that she is going to lose a very
2 unique view that, I guess, the general public
3 wouldn't necessarily have?

4 MS. BRAY: Well, I'm concerned
5 because Ms. Vogt would clearly be coming in as
6 a party in opposition. And Ms. Ness' letter
7 clearly states that she is neither in
8 opposition nor in support of the change. And
9 she raises no specific issue other than a
10 change in view as a concern.

11 So I think that, you know, whatever
12 concerns she has that have created the need to
13 have Ms. Vogt represent her will be adequately
14 addressed by Ms. Vogt on behalf of herself.

15 MS. VOGT: I would disagree. I
16 mean, she specifically wanted to write that
17 letter and she also specifically -- you know,
18 because she is friends with both of the
19 parties involved, she did say that she
20 specifically did not want to be taking a
21 position in opposition or supporting, but she
22 did want her views to be represented.

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1 CHAIRMAN LOUD: Let me just ask
2 you, Ms. Vogt, how do you intend to represent
3 their views, just in terms of procedure, how
4 this would play out?

5 MS. VOGT: I really would just say
6 that she is concerned about the view that she
7 will be losing from her property.

8 CHAIRMAN LOUD: So you would share
9 her kind of sort of what's already in the
10 record by way of Exhibit 26, you would place
11 that on the hearing transcript record and then
12 you just have one set of questions perhaps to
13 ask the applicant, that would cover both
14 yourself and Mr. Mois and Ms. Ness?

15 MS. VOGT: I'm not really sure I
16 understand about sets of questions.

17 CHAIRMAN LOUD: Well, typically,
18 when someone requests party status, you know,
19 you can be opposed to the application and not
20 necessarily seek party status.

21 MS. VOGT: Yes.

22 CHAIRMAN LOUD: You can offer

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1 testimony against the application and as a
2 part of our procedure for the special
3 exception, where you would be allowed to come
4 up and put that on the record.

5 MS. VOGT: Yes.

6 CHAIRMAN LOUD: The difference
7 between that and party status is when you are
8 requesting party status, you are also asking
9 for the opportunity to cross examine the
10 applicant and/or the applicant's witnesses as
11 well as to present your own witnesses.

12 So it's a slightly more elevated
13 level of participation in the application.

14 MS. VOGT: Yes. Well, I'm not
15 really sure. I know that Melanie's concern is
16 primarily that she will be losing the view.
17 And she does have a specific request for
18 lowering of the height of the addition, so I
19 guess that would be the only question I would
20 be asking on her behalf would be how they
21 would feel about, you know, the fact that the
22 views to the south would be affected and would

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1 they consider that in terms of lowering the
2 height of their addition.

3 CHAIRMAN LOUD: Okay. Ms. Bray?

4 MS. BRAY: I continue to be
5 concerned about a party opponent representing
6 someone who has clearly stated in their
7 request for party status that they are neither
8 opposed nor in support of the application. So
9 I think the concerns have been -- will be
10 adequately represented by Ms. Vogt. And we
11 again, have no objection to Ms. Vogt coming in
12 as a party.

13 I would also like to raise that
14 both Ms. Ness and Jerry Mois, who resides at
15 329 6th Street, S.E., are not immediately
16 adjacent to the subject property. In fact,
17 are in a bank of row houses which are removed
18 by at least one house to the south from Ms.
19 Vogt's property.

20 And what views those row houses
21 maintain, I think, are limited. Half of the
22 subject property or any properties to the

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1 north of the subject property are limited.
2 And in fact, I'm not sure that either Ms. Ness
3 or Mr. Mois coming in on their own would be
4 able to express a concern distinct from that
5 of the general public in this case.

6 That having been said, again, we
7 are not in objection to Ms. Vogt coming in.
8 We see that Mr. Mois is also a party --
9 requested party status in opposition and has
10 specifically authorized Ms. Vogt to act on his
11 behalf.

12 So I think our only concern is with
13 respect to Ms. Ness.

14 MEMBER MOLDENHAUER: Ms. Vogt, I
15 just have a quick question for you. If you
16 were, let's say -- Chairman Loud just
17 explained to you the difference between being
18 a party status and representing somebody like
19 Ms. Ness in a party status aspect or just
20 representing her during a separate 3 minute
21 witness opposition statement, if you were to
22 just simply represent her during that 3 minute

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1 explanation statement, do you think that you
2 could adequately describe her view and provide
3 her representation in that time frame?

4 MS. VOGT: I do think so. I guess
5 my one question is like in the 3 minute party
6 statement, is that for me personally or do I
7 get like an extra 30 seconds to represent
8 Jerry Mois or Melanie or is it all within the
9 same 3 minutes? I mean, I could certainly --
10 I mean, I have a photograph of the -- they
11 have a very clear view, in fact, of the rears
12 of the property from that lot.

13 And so I think that --

14 MEMBER MOLDENHAUER: Yes, my
15 recommendation is that the Board would be to
16 allow you, obviously, you have party status on
17 your own, but then, you know, if you feel that
18 that would be appropriate to then not have Ms.
19 Ness as a party status, but have her as an
20 opposing party witness. And then allow Ms.
21 Vogt to testify on her behalf during that 3
22 minute period for Ms. Ness, on behalf of Ms.

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1 Ness.

2 CHAIRMAN LOUD: I think that's a
3 great idea.

4 MEMBER MOLDENHAUER: Would that be
5 okay?

6 CHAIRMAN LOUD: That would allow--

7 MEMBER MOLDENHAUER: Is that
8 something that you feel would represent, I
9 guess, your representations and your
10 presentation on behalf of Ms. Ness adequately?

11 MS. VOGT: Yes, I think I could in
12 a couple of sentences certainly summarize
13 Melanie's concerns.

14 I guess my concern with what you
15 just stated is that I don't want to be
16 misrepresenting her as taking a position in
17 support or opposition. In general, she just
18 has concerns about the view. And she
19 specifically -- because she is friends with
20 both of us, I don't to be misrepresenting her
21 or misstating her as being in opposition.

22 MEMBER MOLDENHAUER: I meant I

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1 think that's clear from her letter that she is
2 not in opposition.

3 MS. VOGT: Okay.

4 MEMBER MOLDENHAUER: That she has,
5 I would consider them, concerns or conditions.

6 MS. VOGT: Okay.

7 MEMBER MOLDENHAUER: And because
8 right now she is not supporting it either, she
9 would have concerns or conditions upon her
10 potential support. And I think that, you
11 know, you can be very clear about that. I
12 think that Ms. Bray has brought up that point
13 and we, obviously, know that this is not an
14 absolute opposition, but it's more rather an
15 opportunity to present --

16 MS. VOGT: Sure.

17 MEMBER MOLDENHAUER: -- the issues
18 of a view and conditions.

19 MS. VOGT: I think that's fine. I
20 think the important thing is just to register
21 that there is another person with a view or,
22 you know, an opinion of this case. I think

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1 that's fine.

2 CHAIRMAN LOUD: Okay.

3 MEMBER MOLDENHAUER: Okay. Thank
4 you.

5 CHAIRMAN LOUD: I think where we
6 are now is that Ms. Vogt would qualify for
7 party status and would proceed as a party this
8 morning. She would, in that capacity,
9 represent herself and Mr. Mois. Ms. Ness
10 would not be a party this morning and later
11 after OP has given its report, Ms. Vogt would
12 be given an additional 3 minutes to speak to
13 the views of Ms. Ness. And then we would need
14 to turn to Dr. Pastis and their application,
15 once we resolve this.

16 VICE CHAIRMAN DETTMAN: Mr.
17 Chairman, I think that's a fine way to
18 proceed. Though just for the record, I do
19 question just looking at our 3106.3, which
20 stipulates that in order to qualify as a party
21 status, the Board needs to consider whether
22 the person's interests would likely be more

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1 significantly, distinctly or uniquely affected
2 in character or kind by the proposed zoning
3 relief than those other persons in the general
4 public.

5 I think that Ms. Ness as well as
6 Jerry Mois, I think that another alternative
7 could be that we consider their party status
8 applications as testimony in the record, that
9 we can consider in deliberating the case.

10 But I don't see how, what they have
11 expressed in Exhibit 26 and 27, that is more
12 significantly, distinctly and uniquely
13 affected in character than anyone else in the
14 general public. I certainly think that Ms.
15 Vogt qualifies as a party.

16 But to incorporate the other two
17 persons into this party status application,
18 when, in fact, their concerns are not
19 significantly, distinctly and uniquely
20 different, I think it actually weakens the
21 party status application. But also I don't
22 think it fits squarely within 3106.3.

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1 CHAIRMAN LOUD: Let me suggest
2 something. I think I shared those concerns or
3 I have had those concerns as well about
4 Exhibits 27 and 26 not being unique. In fact,
5 they both make representations regarding the
6 same impact, which would suggest that it's not
7 that unique.

8 There have to be other homeowners
9 on that square that would have that same
10 concern about the loss of the view.

11 So I believe we have been fully
12 briefed on the issue of party status. We
13 probably can make a decision on it. I'm
14 inclined to support what Mr. Dettman has said
15 regarding granting Ms. Vogt party status.

16 As to Mr. Mois and Ms. Ness not
17 granting them party status. First, because
18 neither appears to have an interest that is
19 more uniquely or significantly or distinctly
20 affected than other persons, based on what is
21 contained in Exhibits 27 and 26.

22 Also, neither is here. And Ms.

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1 Vogt has indicated that she is willing and the
2 letters give her authority to speak to the
3 concerns raised by Mr. Mois and Ms. Ness. And
4 Ms. Ness, in fact, does not want to be
5 identified as being opposed to the
6 application.

7 So it would be kind of strange to
8 have her as a party opponent. So that if, Mr.
9 Dettman, you would make a motion regarding Ms.
10 Vogt and her approval of her application for
11 party status, I think we can vote on that. We
12 will see where the votes line up and then we
13 can move on to the issue of Dr. Pastis.

14 VICE CHAIRMAN DETTMAN: With
15 respect to the party status application of Ms.
16 Nancy Vogt, I would move to approve that
17 particular request.

18 CHAIRMAN LOUD: Motion seconded.
19 Motion has been made and seconded. Is there
20 further deliberation or discussion?

21 Hearing none, all those in favor
22 say aye.

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1 ALL: Aye.

2 CHAIRMAN LOUD: All those who
3 oppose? Ms. Bailey, can you read back the
4 vote, please?

5 MS. BAILEY: Mr. Chairman, the
6 Board has voted 4-0-1 to grant party status to
7 Nancy Vogt. The motion was made by Mr.
8 Dettman, seconded by Mr. Loud, Mrs.
9 Moldenhauer and Mr. Hood support the motion.

10 CHAIRMAN LOUD: Okay. Thank you.
11 Now, point of clarification. Can I make a
12 motion now to disapprove party status
13 applications of both Mr. Mois and Ms. Ness?

14 MS. BAILEY: Yes.

15 CHAIRMAN LOUD: As one motion?

16 MS. BAILEY: Yes, sir.

17 CHAIRMAN LOUD: Okay. Then I would
18 like to move that we deny the party status
19 applications of Mr. Mois, Exhibit 27, and Ms.
20 Ness, Exhibit 26.

21 VICE CHAIRMAN DETTMAN: Second.

22 CHAIRMAN LOUD: The motion has been

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1 made and seconded. Any discussion?

2 Hearing none, all those in favor
3 say aye.

4 ALL: Aye.

5 CHAIRMAN LOUD: All those who
6 oppose? Ms. Bailey, can you read back the
7 vote on that?

8 MS. BAILEY: Mr. Chairman, the vote
9 is 4-0-1 to deny party status to Jerry Mois
10 and Melanie Ness. The motion was made by Mr.
11 Dettman, seconded by Mr. Loud. Mrs.
12 Moldenhauer, Commissioner Hood support the
13 motion.

14 CHAIRMAN LOUD: Thank you, Ms.
15 Bailey. Now, that leaves the remaining
16 preliminary issue as to the question of Dr.
17 Pastis' application for party status, that's
18 our Exhibit 24.

19 He is a next door neighbor and he
20 is alleging light and air impacts, shadowing
21 along the southern facade of the property,
22 privacy impacts and tied into all of that, I

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1 think, are some personal feelings of loss
2 given, the history of the garden and the back
3 having been planted by his father 60 years
4 ago.

5 The standard, as Mr. Dettman
6 represented, is under section 3106, that "A
7 person have an interest that is more
8 significantly, distinctly or uniquely affected
9 than members of the general public."

10 In this case, if he were here,
11 there would be no question in my mind about
12 granting him party status. I'm leaning
13 against it now, because he is not here and his
14 attorney is not here. And they really won't
15 be able to participate at all as a party not
16 being present.

17 So these are very significant
18 concerns that are raised. I think they are a
19 part of our record and we can take them into
20 our consideration and weigh them
21 appropriately, whether Dr. Pastis is a party
22 or not. But I'm leaning in the direction of

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1 denying the request, given the would-be party
2 applicant is not here to participate. But I
3 would like to hear from others on it.

4 VICE CHAIRMAN DETTMAN: I agree,
5 Mr. Chair.

6 COMMISSIONER HOOD: Mr. Chair, I'm
7 trying to remember, I think this -- I know the
8 Commission or may be the Board was faced with
9 something like that before and I'm just trying
10 to remember. This person is a next door
11 neighbor. And I'm trying to think, we have
12 done that.

13 The only thing is, as you said,
14 they won't be able to participate in the
15 process. But I think this person is affected.

16 And I think once before this Board or even
17 the Commission did grant party status and I
18 think it was for a reason outside of the --
19 which may go -- Ms. Nagelhout may be able to
20 speak to it.

21 I think there is some issues that
22 may go to court and I think that's why they

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1 had requested -- I'm not sure if this is the
2 case here. But I do think they are affected.

3 I just don't want to just turn them down
4 flat.

5 CHAIRMAN LOUD: Thank you, Chairman
6 Hood. We definitely appreciate your insight
7 and history on that.

8 MEMBER MOLDENHAUER: Yes, I believe
9 they passed the standard for being a party
10 status. You know, I don't really know why
11 they are absent. Ms. Bray made reference
12 about that she spoke with them and that they
13 are absent. I don't know if -- it seems like
14 they are still opposed to it, but they are
15 still absent.

16 So I think, you know, while we have
17 these documents in the record, it doesn't
18 really hurt to make them a party and then, you
19 know, we can just refer to whatever we have in
20 the record. Obviously, they are not going to
21 be participating. But at the same time, they
22 have submitted the paperwork and they have

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1 qualified.

2 And if we are looking at those
3 factors, you know, they should then be granted
4 party status.

5 CHAIRMAN LOUD: Well, I think they
6 definitely have an interest that is more --
7 that meets the criteria of 3106.

8 Just let me ask this question, Ms.
9 Nagelhout. In terms of the hearing and how we
10 proceed forward today, if they are granted
11 party status, when we get to their, what would
12 normally have been, opportunity to
13 participate, do we acknowledge the exhibits
14 and just keep on going or what would be the
15 protocol?

16 MS. NAGELHOUT: You could do it
17 that way. They aren't here. They cannot
18 participate today, if they are not here. I
19 think what Mr. Hood was referring to is if
20 they wanted to file an appeal, and whether
21 they are a party here or not doesn't affect
22 whether or not they can file an appeal.

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1 So you do have their paperwork in
2 the record. It's something you can consider
3 in your deliberations. If they were here,
4 they would have to split time with Ms. Vogt.
5 So I don't know, it's up to you.

6 CHAIRMAN LOUD: Okay. Well, I
7 guess I would be inclined to support granting
8 party status. They would not qualify to seek
9 a reconsideration, unless they are a party,
10 correct?

11 MS. NAGELHOUT: That's correct.

12 CHAIRMAN LOUD: All right. So at a
13 minimum, I guess, they could file for
14 reconsideration as a party, which they could
15 not do if we don't grant them party status.
16 But clearly, they have lost all meaningful
17 opportunity to participate today.

18 Do we need to have a vote on this?

19 Is there a general consensus or do we want to
20 vote it out or further deliberation? It
21 sounds like there is three Members who would
22 be supportive of granting party status and one

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1 Member that would not. And for very good
2 reasons, I think there are good reasons on
3 both sides of the issue.

4 So why don't we go ahead and vote
5 and make it formal, since it's not universally
6 agreed to up here?

7 I would like to move that we admit
8 the party status applicant, Dr. Pastis,
9 Exhibit 24, as a party opponent in this case,
10 given the fact that he lives next door to the
11 applicant's property and that the allegations
12 that he raised in his Exhibit 24 demonstrate
13 that he has an interest that is more
14 significantly affected than members of the
15 general public. Is there a second?

16 MEMBER MOLDENHAUER: I second.

17 CHAIRMAN LOUD: The motion has been
18 made and seconded.

19 All those in favor say aye.

20 MEMBER MOLDENHAUER: Aye.

21 CHAIRMAN LOUD: Aye.

22 COMMISSIONER HOOD: Aye.

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1 CHAIRMAN LOUD: All those who
2 oppose?

3 VICE CHAIRMAN DETTMAN: Oppose.

4 CHAIRMAN LOUD: Ms. Bailey, can you
5 read back the vote, please?

6 MS. BAILEY: Mr. Chairman, the vote
7 is recorded as 3-1-0 -- I'm sorry, 3-1-1 to
8 grant the request for party status from
9 William Pastis. The motion was made by Mr.
10 Loud, seconded by Mrs. Moldenhauer. Mr. Hood
11 supports the motion. Vice Chairman Dettman is
12 opposed.

13 CHAIRMAN LOUD: Thank you, Ms.
14 Bailey. All right. I think that resolves the
15 only other preliminary matter that had been
16 pending. Is there anything further before we
17 go into the case?

18 Okay. Why don't we turn to you,
19 Ms. Bray and you can start us off with your
20 presentation of applicant's case?

21 MS. BRAY: Mr. Chairman, with the
22 Board's indulgence, we would like just a

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1 minute or two to set up a PowerPoint
2 presentation --

3 CHAIRMAN LOUD: Okay.

4 MS. BRAY: -- from our architects.
5 If that would be all right?

6 CHAIRMAN LOUD: Okay. Why don't we
7 take a 3 minute break and give you an
8 opportunity. 5 minutes?

9 MS. BRAY: 3 minutes would probably
10 be fine.

11 CHAIRMAN LOUD: Okay. Let's take a
12 3 minute break and we will come back in 3
13 minutes.

14 MS. BRAY: Thank you very much.

15 CHAIRMAN LOUD: Thank you.

16 (Whereupon, at 10:44 a.m. a recess
17 until 10:49 a.m.)

18 CHAIRMAN LOUD: Good morning again.
19 We are back in session. And I just wanted to
20 say to Ms. Vogt, you are a party now, so you
21 can join the other parties at the table.

22 MS. BRAY: We will be taking up

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1 substantially less space in just a moment. So
2 Ms. Vogt can join us.

3 CHAIRMAN LOUD: Yes. Can she join
4 you right now? Come on up, you're a party.
5 And if we need to move one of the witnesses
6 until they are called to give their testimony,
7 we'll just move one of the witnesses, but Ms.
8 Vogt is a party.

9 All right. Ms. Bray?

10 MS. BRAY: Thank you, Mr. Chairman,
11 Members of the Board. Good morning again. My
12 name is Kinley Bray, for the record, with the
13 Law Firm of Arent Fox on behalf of the
14 applicants, Christopher and Jean Whaley.

15 We are here today on a request for
16 a special exception pursuant to section 223
17 for a rear addition on the first and second
18 floors of a nonconforming structure in the R-4
19 Zone.

20 The property predates most of the
21 buildings in the square. It is the only wood-
22 frame house, which is part of the duplex or it

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1 has a sister house in the square and we
2 believe it was constructed earlier than the
3 1882 estimate of construction made by historic
4 staff and, I think, found elsewhere in our
5 references.

6 We have found an earlier site which
7 dates the property to 1860. It certainly
8 predates the Zoning Regulations, which were
9 first applied at least 50 years after
10 construction. This block, the entire square,
11 has been Zoned R-4 since at least 1958.

12 The lot is clearly designed for row
13 dwellings. It is 19 feet wide, just under
14 2,000 square feet in land area. Semi-detached
15 dwellings require wider lots and a greater
16 minimum square footage of land area. Yet,
17 because of an unusually small setback along
18 the north side of the home, in fact, it is an
19 unusually small setback on both sides of the
20 duplex, under our Zoning Regulations, this
21 building type is actually a semi-detached
22 dwelling.

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1 And the classification renders the
2 property nonconforming as to virtually every
3 area requirement under the R-4 Regulations.

4 The applicants are proposing an
5 addition on the second floor, essentially,
6 over the existing first floor footprint, but
7 the existing rear addition is actually two
8 separate additions that have been made to the
9 house.

10 We believe the first may have been
11 a coal shed, which was later converted to
12 habitable space. And then the second extended
13 the property into the rear.

14 The Whaley's are proposing to
15 modernize their half of the home, of the
16 duplex, including providing additional fire
17 protection for both houses entirely on their
18 property by removing the existing first floor
19 additions and reconstructing on just a
20 slightly enlarged footprint.

21 We are looking at a change of,
22 approximately, 100 square feet on the first

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1 floor and then an addition of 400 square feet
2 on the second floor where there is currently
3 no floor area.

4 This represents an 8 percent
5 increase in the lot coverage of the home. And
6 as set forth in our filings and as we will
7 present in testimony today, the application
8 meets the requirements of section 223 for a
9 special exception, as it will not unduly
10 compromise the privacy or use and enjoyment of
11 other adjacent or abutting properties nor will
12 it substantially limit the light, air and
13 circulation available to those adjacent
14 structures.

15 We have also requested in the
16 alternative two unique circumstances relating
17 to this property a variance. We have done
18 that because section 223 was enacted in
19 recognition of the fact that many homeowners
20 in the District of Columbia own nonconforming
21 properties and were coming in for variance
22 relief to extend very modestly and to expand

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1 their existing floor area.

2 The Zoning Commission determined
3 that it was appropriate to make that relief a
4 special exception as opposed to a variance for
5 nonconforming lots, provided that certain lot
6 occupancy was not exceeded.

7 And in this case, while we
8 certainly meet the test for special exception,
9 we believe we also meet the test for
10 variances, which, as you know, carries a much
11 higher burden. So we have asked for that in
12 the alternative, based on the fact that the
13 semi-detached nature of the structure, the
14 fact that it predates other buildings in the
15 square and has an extremely narrow existing
16 side yard, just 1 foot 8 inches, we believe we
17 meet that higher burden. So we have asked for
18 that in the alternative.

19 And with that, I would like to
20 introduce Christopher Whaley, the applicant,
21 who will testify on exactly what they propose
22 to do on the home.

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1 MR. WHALEY: Good morning, Mr.
2 Chairman, Members of the Board. I'm
3 Christopher Whaley and this is Jean Whaley, my
4 wife, and we live at 321 6th Street, S.E., and
5 we have lived there since 1990 and we very
6 much like living on Capitol Hill. It is close
7 to the Metro. It's close to Eastern Market.
8 We can walk downtown to the mall and we plan
9 to continue living there indefinitely.

10 To do so, we want to make some
11 changes to our house and to improve it and we
12 want to do this whilst preserving the historic
13 nature of the original mid-1800 structure,
14 which still retains many of its original
15 features.

16 Our reasons for wanting to make
17 these changes, currently we have two bedrooms
18 in the main part of the house, the two story
19 part of the house, which have an
20 interconnecting double door, so that limits
21 the privacy and we only have one full bathroom
22 and that makes it very tricky when our

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1 children and their friends visit and also my
2 father who is visiting for Thanksgiving finds
3 the stairs increasingly difficult and we might
4 do so also as we age.

5 So if we're making these changes
6 now, we believe it will enable us to go on
7 living there until we reach an advanced old
8 age or at least we hope so.

9 What we would like to do is two
10 things, as Kinley outlined. First, on the
11 second floor, we would like to add a third
12 bedroom and a bathroom. And on the ground
13 floor, first floor, we would like to put in an
14 updated kitchen, a family room and again a
15 full bathroom.

16 The reason for that is if one of us
17 became infirm, then we could set up living
18 arrangements on the ground floor, which would
19 avoid having to use the stairs.

20 In addition to those two things, we
21 put in air conditioning, which we don't have
22 at present time. We put in energy efficient

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1 windows, installation and new hot water
2 heating system.

3 And another thing is about
4 firewalls. When we were planning the
5 addition, we found that the rear party wall
6 between our house and Nancy's of the two
7 buildings that stand out, the back of the one
8 story addition doesn't have a firewall. So
9 it's part of the -- what we -- renovations
10 that we would do, we would put in a fire rated
11 separation wall along our side of the property
12 boundary.

13 We have been planning this
14 renovation for some time and, of course, we
15 are aware of the concerns which Nancy has
16 expressed and also Billy and Martha Pastis at
17 317. And in consequence with that, we have
18 revised what we originally planned to do to
19 try and accommodate their concerns.

20 We have done two things. One is we
21 have gone for a two story addition, rather
22 than a three story addition to bring the

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1 height down. And we have also lowered the
2 pitch of the roof. And we have made
3 reasonable efforts, I think, therefore, to
4 minimize any impacts which might otherwise be
5 imposed on either of the adjacent properties.

6 We have also had shadow studies
7 done, which our architect, Nuray Anahtar, will
8 go through in a minute, which indicate that
9 there would be a negligible effect on the
10 adjacent properties from the proposed
11 extension.

12 We have met with the Capitol Hill
13 Restoration Society and the ANC several times
14 in the past year. Both voted unanimously to
15 support the application from a historic
16 preservation standpoint and for the relief
17 which we are requesting.

18 The Historic Preservation Review
19 Board approved the design in concept earlier
20 this year and delegated the authority to
21 review and approval final permit plans to
22 their staff.

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1 So in summary, the renovation will
2 bring our house up to modern day standards and
3 will ensure that it continues to provide us
4 with comfortable living accommodation on
5 Capitol Hill. Thank you.

6 CHAIRMAN LOUD: Thank you. Why
7 don't we see if Board Members have any
8 questions and if so, we can take them now, if
9 not, we can go through your other witnesses.
10 There doesn't appear to be any questions.

11 MS. BRAY: Thank you. Our next
12 witness is Nuray Anahtar, who is the Whaley's
13 architect. And I have --

14 CHAIRMAN LOUD: Ms. Bray, let me
15 just interrupt you for one second.

16 MS. BRAY: Okay.

17 CHAIRMAN LOUD: Mrs. Moldenhauer
18 has reminded me that Ms. Vogt, as a party,
19 also has the privilege to cross examine the
20 witness if she would like to, at this point in
21 time. Okay.

22 MS. BRAY: Okay. Ms. Anahtar is an

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1 architect in the District of Columbia and
2 Maryland and, in fact, Virginia as well. And
3 we would like to offer her as an expert in the
4 field of architecture. I have her résumé here
5 and could provide a copy to Ms. Vogt as well
6 as the Board Members.

7 CHAIRMAN LOUD: Thank you. Please.
8 Has she appeared before BZA before? Okay.
9 Mr. Chairman, while we are waiting on that, I
10 would also -- we also plan to offer Ms.
11 McCarthy as an expert in planning and zoning.

12 CHAIRMAN LOUD: Okay.

13 MS. BRAY: And so I'll provide the
14 résumé for Ms. McCarthy also, who has appeared
15 before this Board many times.

16 CHAIRMAN LOUD: Many times, many
17 times. Ms. Vogt, did you have any questions
18 or concerns regarding Mrs. Anahtar's admission
19 into the case as an expert in architecture?
20 All right. Okay. Board Members, any
21 concerns, questions? All righty. And yes?

22 VICE CHAIRMAN DETTMAN: Sorry, Mr.

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1 Chairman, just one question for Ms. Anahtar.

2 In your testimony, will you be
3 taking the Board through the shadow study?

4 MR. ANAHTAR: Excuse me?

5 VICE CHAIRMAN DETTMAN: In your
6 testimony, will you be taking the Board
7 through and describing --

8 MR. ANAHTAR: Yes.

9 VICE CHAIRMAN DETTMAN: -- the
10 shadow study?

11 MR. ANAHTAR: Yes, I will.

12 VICE CHAIRMAN DETTMAN: And did you
13 conduct the shadow study?

14 MR. ANAHTAR: I did.

15 VICE CHAIRMAN DETTMAN: You did.
16 Okay. Thank you.

17 CHAIRMAN LOUD: Okay. And turning
18 to Ms. McCarthy, do you have any questions,
19 Ms. Vogt regarding her qualifications as an
20 expert? Okay. Board Members? All right.

21 Then what I would like to do is
22 rule that both Ms. Anahtar and Ms. McCarthy be

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1 admitted as experts. And with that, we can
2 turn now back to Ms. Anahtar.

3 MR. ANAHTAR: Good morning. I'm
4 Nuray Anahtar with NOA Architects and
5 Planners. I'm going to walk you, first,
6 through the drawings and then share all the
7 information that I have that also address the
8 neighbor's questions including the shadow
9 studies.

10 The 321 6th Street is a two story
11 historic structure with two one story
12 additions in the back. The adjacent property,
13 which is the 323 6th street, is a mirror image
14 of this property. Both structures are semi-
15 detached buildings, because of the less than 2
16 foot side setbacks along the historic
17 structures.

18 If I can control this. There. The
19 existing setbacks are 42 inches in the back, 8
20 foot 2 inches on the northern side of the
21 additions and 1 foot 8 inches at the main
22 structure.

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1 Yes, please, yes. Oh, I'm sorry,
2 yes. Okay. Thanks. Okay. Great. The lot
3 area is 1,996.52 square feet. And existing
4 building footprint is 809 square foot with a
5 45 percent lot coverage area, which is
6 existing, and the proposed design is going to
7 increase it to 53 percent, which is an 8
8 percent increase.

9 The other neighboring property is
10 317 6th Street is a three story end row house
11 with 3,408 square foot lot and 3,945 square
12 foot living area, according to D.C. Tax
13 records. The lot width is about 32 foot 5
14 inches and the setbacks are, in the rear, 33
15 feet, side is like 17 feet at this point and
16 then 8 feet here and 3 feet at the bay window.

17 This setback 33 feet, rear setback
18 is less than what we are going to have after
19 building an addition, the new addition in the
20 back.

21 Existing first floor of the house,
22 the historic part, which is the front part is

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1 the historic portion, it has an entry hallway,
2 a living room and a dining room. And the
3 existing two phase additions in the back, the
4 first phase has a kitchen, at this point, a
5 utility room and the second phase off the
6 existing addition has a small room with a half
7 bath.

8 The proposed first floor plan does
9 not change anything in the historic structure.

10 And in the new addition that replaces the
11 existing ones with a larger footprint has the
12 kitchen, a washer and dryer closet and a
13 utility closet here, a new guest room/family
14 room with a full bath on the first floor.

15 Existing second story of the
16 historic house has two bedrooms that are open
17 to each other with a door without having
18 complete privacy and a bathroom. And these
19 are the roofs of the first floor additions.

20 Proposed second floor plan again it
21 doesn't change anything in here. The
22 connection is created at the stairs landing

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1 here and this will be a transition area where
2 it will be an office desk and some closet
3 space and a full bath and a new master
4 bathroom.

5 We have second story deck here,
6 which was as a gesture mainly to improve the
7 air and light for the neighboring building,
8 the next door neighboring building.

9 This is the roof plan. Existing
10 roof stays and the new roof is sloping towards
11 north and the roof water is being collected
12 here with a gutter and rain -- downspouts, so
13 that there is no rain water going towards the
14 neighboring property.

15 The new roof is going to have
16 architectural standing roof system.

17 This is the north side elevation,
18 which has matching painted wood siding with 6
19 over 6 double hung windows to match the
20 original structure. And this is the proposed
21 deck with painted wood railing.

22 This is the rear elevation of the

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1 proposed addition. These are the patio doors
2 for the lower level family room, patio doors
3 for the new master bedroom and this is the
4 door through the kitchen.

5 This shows the twin home and the
6 existing additions which is again mirrored on
7 this property right now.

8 This is going to be -- this
9 elevation was prepared to show that we are
10 going to have matching siding on this side.
11 It does not show the neighbor's existing
12 additions here, for clarity, but they are
13 shown in the renderings.

14 These photos show the view from the
15 street. This is 317 6th street. This is the
16 subject property and the twin home next to it.

17 And you can see that visibility from the
18 street right now is very limited, mostly due
19 to the bushes and also at the eye level, you
20 know, there is a fence and more greens.

21 This is the view from the back,
22 existing addition, historic house and this is

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1 317 6th Street, the neighboring house. And
2 again, this shows part of the property only.

3 I wanted to show how the visibility
4 of the proposed addition will be. And I used
5 Google Sketchup for this. Since it is such a
6 narrow angle, of course, you know, you can't
7 show much, but this is how it starts. As you
8 walk a little bit more, you get to see this
9 much. And then you see this much of the new
10 addition. And then you can't see it. You
11 cannot see it any more.

12 This is the 3-D rendering of the
13 proposed addition. Again, historic house in
14 the back, 317 6th Street here and the twin
15 house 323 6th Street is on this side.

16 This is another view. This is
17 showing the existing additions, neighbor's
18 existing additions here and the side wall, how
19 it is going to look after the new addition is
20 completed.

21 This Google image shows the scale
22 of this property, which is this half, and

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1 together with the twin house together. And
2 this is 317 6th Street neighboring house, a
3 three story structure and all the row
4 buildings around it. You can see how small
5 the scale is.

6 I had used Google Sketchup to
7 develop my renderings, so I used Sketchup
8 again to do the shadow studies.

9 Google Earth helps you locate the
10 building in exact location. So this rendering
11 is located in exact location what is correct
12 altitudes and longitudes. So the sun's
13 movement around the building is accurate, is
14 very accurate, basically.

15 I performed these studies for
16 December 21st, March 21st, June 21st and
17 September 21st for four different times: 9:00
18 a.m. in the morning, noon, 3:00 p.m. in the
19 afternoon and 6:00 p.m. in the afternoon.

20 These are the -- I mean, I chose
21 these dates because these are the dates at
22 which the sun's rays hit the location at the

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1 lowest, highest and medium angles.

2 I would like to remind you that
3 both of the neighboring buildings are south
4 facing buildings. This property is -- south
5 is this way, north is this way. So this
6 property, 323, is south facing property. And
7 also this one is a south facing building
8 versus our property is facing north only and
9 we have some windows on the west.

10 So this one shows the December
11 21st, 9:00 a.m. This is -- this shows the
12 existing building and how the shadows are at
13 9:00 a.m. on December 21st. And this shows the
14 proposed addition. You can see that the first
15 part of the neighboring building is not
16 affected at all and there is no proposed work
17 along the historic building anyway.

18 But it's only this portion where
19 the new story, two story addition will be
20 located. You can see that there is no impact
21 on the second floor of this property. There
22 will be some impact on the lower level only.

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1 In December, sun's angles are low.

2 Oh, sorry, why did that slide to
3 the left? Okay.

4 CHAIRMAN LOUD: Would it help you
5 to have the light put back on? Ms. Bailey,
6 can we cut the light on for a moment, please?

7 MS. BRAY: With the Board's
8 indulgence, we will get this restarted.

9 CHAIRMAN LOUD: Okay.

10 MS. BRAY: I'm very sorry.

11 CHAIRMAN LOUD: That's okay. It
12 happens.

13 MR. ANAHTAR: Okay. You will get
14 to see my daughters. I can see them. Okay.
15 They're back.

16 So next slide shows December, oh,
17 okay, 21st, noon. Again, you can compare the
18 two slides and there is not a big difference
19 between these two. Here, maybe there is more
20 sun, but there is a little bit of shadow again
21 on the first level porch.

22 I need to point out the fact that

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1 this building has been designed in a way that
2 minimizes the sunlight into the living spaces
3 with these two porches with deep overhangs.
4 So, you know, where there is a shadow here is
5 actually not much affecting the living spaces
6 here.

7 December 21st at 3:00 p.m., the sun
8 is moving and there is actually no change here
9 again between the two drawings. And by 6:00
10 p.m., it's dark.

11 March 21st at 9:00 a.m., the sun's
12 angle has changed. It is higher than it was
13 in December, which you can see in the existing
14 condition. And same, almost the same here for
15 the proposed addition.

16 March 21st noon, again, there is no
17 significant difference between these two.

18 March 21st at 3:00 p.m., the sun is
19 on this side, so this building is not
20 affected.

21 And 6:00 p.m. now same condition.

22 June 21st, the sun is higher,

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1 directly above. So there is no difference,
2 visible difference between these two by 9:00
3 a.m., I'm sorry.

4 By noon, the sun is directly above.

5 And again, you can't see that. These spaces
6 are already shaded because of the large
7 overhangs.

8 And by 3:00 p.m., the sun has moved
9 to the west and there is a little bit of
10 sunlight in both of them.

11 And by 6:00 p.m., again, there is
12 no significant difference.

13 September 21st, which is similar to
14 March 21st, again, there is no major difference
15 between the existing and proposed design.

16 And by noon, the amount of sunlight
17 looks exactly the same.

18 By 3:00 p.m., again, and 6:00 p.m.

19 So what I can show from these
20 studies knowing that they are as accurate as
21 this program offers, there is no major impact
22 of this new addition on the neighboring

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1 building.

2 There will be some impact on the
3 lower level maybe, but it's not a huge impact
4 as it was explained by the neighbors.

5 So I think I'm done with my
6 presentation. I can take any questions.

7 MS. BRAY: Ms. Anahtar, I have a
8 couple of questions for you.

9 Have you reviewed the statement
10 submitted by the Pastis family with
11 photographs taken from their property?

12 MR. ANAHTAR: Yes, I looked at them
13 and I don't know which program they used.
14 They are not as -- they didn't seem as
15 accurate as the ones that I did, but we're not
16 -- but just by simply looking at the
17 conditions that they show, for example, for
18 June for noon, there is no way you can get a
19 shadow like it was shown on those drawings,
20 because we all know that it's summertime. By
21 noon, sun is at the highest point.

22 So, you know, if we know that -- we

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1 all know that the sun rises in the east and
2 moves to the west during the day. And we know
3 the orientation of these buildings. So if you
4 add them up, they don't look right to me.

5 MS. BRAY: Okay. And one other
6 question. Much was made in the statement
7 submitted by the Pastis family regarding the
8 area immediately adjacent to their porches
9 where there is a rose garden.

10 MR. ANAHTAR: Yes.

11 MS. BRAY: Are you familiar with
12 that area?

13 MR. ANAHTAR: I'm not, but --

14 MS. BRAY: Okay.

15 MR. ANAHTAR: -- I can understand
16 that.

17 MS. BRAY: Is there any point at
18 which, based on your shadow studies --

19 MR. ANAHTAR: Yes.

20 MS. BRAY: -- that the -- in the
21 summer months --

22 MR. ANAHTAR: Yes.

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1 MS. BRAY: -- growing season, there
2 would be complete shadow in that area all day
3 long?

4 MR. ANAHTAR: I don't think so. By
5 looking at these renderings, there is always
6 some amount of sun as long as it is a sunny
7 day.

8 MS. BRAY: Would it be reasonable
9 to think that at least for 5 to 6 hours during
10 a sunny day that that garden would have
11 exposure?

12 MR. ANAHTAR: It is in the
13 afternoon I can say, because, I mean, this
14 addition does not affect anything -- the
15 facade of that building on the west, so and
16 sun is -- if -- you know, in the afternoon,
17 sun moves to the west, so I don't see any
18 reason for them not having any sunlight.

19 MS. BRAY: Okay.

20 MR. ANAHTAR: But I don't know the
21 exact location, but even for -- I mean, I can
22 say just for the overall building, that it

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1 will get the sun and it was clear from these
2 drawings.

3 MS. BRAY: When you showed your
4 first slide, you had some calculations
5 regarding the lot coverage.

6 MR. ANAHTAR: Yes.

7 MS. BRAY: And you stated it was
8 going to be an 8 percent change overall.

9 MR. ANAHTAR: Yes.

10 MS. BRAY: But your lot occupancy
11 was calculated at, I think for the addition,
12 53 percent.

13 MR. ANAHTAR: Yes.

14 MS. BRAY: Did that include the
15 side yard area?

16 MR. ANAHTAR: No.

17 MS. BRAY: Okay.

18 MR. ANAHTAR: No.

19 MS. BRAY: And with the side yard,
20 the Office of Planning's report, for instance,
21 mentions that including the side yard, the
22 total lot coverage would be something like 58

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1 percent. Is that correct? Have you looked at
2 those calculations?

3 MR. ANAHTAR: Well, it will be 1.66
4 times about 30 feet, so, yes, I mean, it will
5 be 48 square feet more, I think.

6 MS. BRAY: Okay.

7 MR. ANAHTAR: On each level.

8 MS. BRAY: Okay. Thank you.

9 MR. ANAHTAR: But my calculation
10 was based on the building footprints, so I did
11 not have that added.

12 MS. BRAY: Okay. I have no further
13 questions right now.

14 CHAIRMAN LOUD: Thank you, Ms.
15 Bray. Ms. Vogt, did you have any questions
16 for the expert witness, Ms. Anahtar? I think
17 you will need to speak into the microphone and
18 make sure it's on.

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20 MS. VOGT: It's on. I guess I
21 would just ask why the actual dimensions of
22 the Pastis' house were never changed in your

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1 rendering?

2 MR. ANAHTAR: Well, actually, I
3 looked at -- first of all, I don't have any
4 information regarding their property. I went
5 to the Surveyor's Office to find a wall check.
6 It wasn't available.

7 So all I could find was the GIS
8 Atlas and I used that information. When I
9 compared it with my drawings, the only
10 difference is the extension of the building.
11 And I looked at my shadow studies to see if
12 anything would change because of that
13 difference, because I did this on Friday, so I
14 didn't have time to redo everything.

15 But no, it would have been the
16 same. So, I mean, I don't have a survey of
17 that property. That information is not
18 available to me. My renderings were
19 reflecting what the Google Earth gave me
20 initially, but the latest information was the
21 GIS Map and it wouldn't have changed anything.

22 I mean, I can show the reason maybe

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1 quickly.

2 MS. VOGT: I guess I'm also just
3 wondering, because I think when I saw the
4 original drawings from 2004, that was the same
5 dimension that was used for the Pastis' house
6 or maybe that was done later.

7 MR. ANAHTAR: That was a different
8 architect, so I have nothing to do with that,
9 if they showed anything.

10 MS. VOGT: It seems to be the same
11 drawing that you are continuing to use, I
12 guess, is what I'm saying.

13 MR. ANAHTAR: Well, no, no. I
14 don't know. Did they show -- I don't think
15 they showed anything. Those drawings did not
16 show anything for that property. They did
17 show your's, but not the Pastis' property.

18 MS. VOGT: Okay.

19 MR. ANAHTAR: At least, I don't
20 have that information. Maybe you have seen
21 something that I haven't seen.

22 MS. VOGT: Well, I didn't see the

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1 drawings until like last year, so I don't know
2 if they were done last year or if they are
3 actually dated from 2004.

4 CHAIRMAN LOUD: Thank you, Ms.
5 Vogt. Any further questions?

6 MS. VOGT: I guess I would have a
7 question for the Board. I just received this
8 yesterday, as I think you did, that the Pastis
9 have also actually done a shadow study, so I
10 wonder if you have received that as well?

11 CHAIRMAN LOUD: Yes.

12 MS. VOGT: You have, okay.

13 CHAIRMAN LOUD: We do. In fact, I
14 think that was what -- is that what the
15 witness was referring to a few moments ago?

16 MS. VOGT: Yes.

17 CHAIRMAN LOUD: So I think we ought
18 to just put that in the record, because there
19 is no exhibit number on it, that when you
20 commented on the June 3rd, I think, 12:00 noon
21 shadow study, you were talking about the
22 November 20, 2009 Pastis' residence sun study,

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1 so those looking at the transcript will know.
2 Okay.

3 MR. ANAHTAR: Yes, that --

4 CHAIRMAN LOUD: Ms. Bailey is
5 clarifying for me that it is a part of --

6 MR. ANAHTAR: -- is the obvious
7 one.

8 CHAIRMAN LOUD: -- Exhibit 35. It
9 should be an attachment. It was submitted
10 into our record as a part of Exhibit 35, so
11 again, I know the Pastis parties are not here.
12 They are going to want to know what we are
13 referring to.

14 Are there any questions from Board
15 Members?

16 VICE CHAIRMAN DETTMAN: Ms.
17 Anahtar, just to clarify one little
18 discrepancy I see in the two different shadow
19 studies.

20 MR. ANAHTAR: Yes.

21 VICE CHAIRMAN DETTMAN: Have you
22 had a chance to look at the Pastis' shadow

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1 study?

2 MR. ANAHTAR: Yes, briefly.

3 VICE CHAIRMAN DETTMAN: A little
4 bit?

5 MR. ANAHTAR: Yes.

6 VICE CHAIRMAN DETTMAN: Which one
7 is the more accurate representation of the
8 Pastis' house? It looks like the one that was
9 submitted by them, the porch, you know, falls
10 short of the rear of the house.

11 MR. ANAHTAR: Yes.

12 VICE CHAIRMAN DETTMAN: Here it
13 looks like their actual porch -- in your
14 study, it looks like it extends all the way to
15 the end of the porch. So do you have any
16 reason for the reason in the discrepancy?

17 MR. ANAHTAR: Can I see their
18 drawings to compare?

19 MS. BRAY: I have --

20 VICE CHAIRMAN DETTMAN: It almost
21 looks like there was an addition put on to the
22 Pastis' house, which isn't reflected in your

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1 shadow study.

2 MR. ANAHTAR: I think you are
3 talking about the portion, yes, with that
4 larger setback on the side.

5 VICE CHAIRMAN DETTMAN: Yes.

6 MR. ANAHTAR: So you know, shadows
7 cannot even reach that part, that was my
8 conclusion after receiving that GIS Map from
9 the Surveyor's Office. Then, you know, that's
10 what I looked at to understand the
11 acquiescence of my drawings.

12 I mean, there is a difference, but
13 can the shadows reach there? My answer is no.

14 VICE CHAIRMAN DETTMAN: Okay.

15 MR. ANAHTAR: And you can see, I
16 mean, from the drawings that there is no
17 condition when, you know, the shadow can be
18 that long in there. That's why --

19 VICE CHAIRMAN DETTMAN: So --

20 MR. ANAHTAR: -- I thought, you
21 know, I could present these drawings today.

22 VICE CHAIRMAN DETTMAN: -- the

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1 Pastis' shadow study is a little bit more
2 accurate of a reflection of their house?

3 MR. ANAHTAR: Maybe their house,
4 for their house, I'm not sure how accurate
5 theirs --

6 VICE CHAIRMAN DETTMAN: Okay.

7 MR. ANAHTAR: -- is either. I
8 don't know which software they used for this.
9 Maybe it is, but if you look at the
10 photographs, I don't know, maybe it's because
11 of the angle of the drawing here. But I mean,
12 if you look at the photographs that I had, the
13 view from the backyard which shows the
14 existing condition, you can see that it's not
15 a small porch.

16 VICE CHAIRMAN DETTMAN: Yes.

17 CHAIRMAN LOUD: I think while we
18 are on this point, if the Whalens -- I'm
19 sorry, is it Whalens or Whaley?

20 MR. ANAHTAR: Whaley.

21 CHAIRMAN LOUD: Whaley. You would
22 probably know if this addition is on the back

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1 of the Pastis' property. And I think, Ms.
2 Vogt, did you have a picture of the current --
3 the existing condition?

4 MS. VOGT: Yes, I do. I have two
5 pictures. One which I took from the parking
6 lot and you can clearly see that the porch
7 doesn't extend to the end of the entire
8 building.

9 What you can't see here is that
10 this section is setback.

11 MR. ANAHTAR: Yes.

12 MS. VOGT: But this is a better
13 depiction of what the actual length of the
14 porch is.

15 CHAIRMAN LOUD: Okay. All right.

16 MS. VOGT: And then this shows a
17 little bit better the setback of that rear
18 part of the house.

19 CHAIRMAN LOUD: Okay.

20 MS. VOGT: So I think their shadow
21 study in terms of depicting their house is
22 much more accurate.

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1 CHAIRMAN LOUD: Thank you.

2 MR. ANAHTAR: I understand. But my
3 original intention to show that building when
4 I was preparing my renderings is just to show
5 the scale of that house and again, what I
6 found from Google Earth. I wasn't trying to,
7 you know, draw the neighbor's house exactly.

8 But then when I did my shadow
9 studies, you know, I could see that. You
10 know, if the impact was big, then I would have
11 been maybe more worried about the exact
12 dimensions. But when I saw my findings, I
13 wasn't that worried, because it's obvious that
14 shadows cannot be that deep.

15 VICE CHAIRMAN DETTMAN: Yes. My
16 question wasn't going towards the --

17 MR. ANAHTAR: Yes.

18 VICE CHAIRMAN DETTMAN: -- accuracy
19 of your shadow study. I just noticed a
20 difference and wanted to get clarification on
21 that.

22 MR. ANAHTAR: Yes, I know that.

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1 Nancy has that concern. Yes, I mean, it's not
2 accurate.

3 VICE CHAIRMAN DETTMAN: Yes.

4 MR. ANAHTAR: I did not show the
5 neighbor's building accurately.

6 VICE CHAIRMAN DETTMAN: Yes. Okay.

7 MR. ANAHTAR: But it is close
8 enough --

9 VICE CHAIRMAN DETTMAN: And I'm
10 familiar with the --

11 MR. ANAHTAR: -- to explain.

12 VICE CHAIRMAN DETTMAN: Right. I'm
13 familiar with the data sets that you used to
14 do this as well.

15 MR. ANAHTAR: Yes.

16 VICE CHAIRMAN DETTMAN: One other
17 question I have is, and I'm looking at your
18 June renderings --

19 MR. ANAHTAR: Yes.

20 VICE CHAIRMAN DETTMAN: -- I think
21 you have stated that we all know the sun rises
22 in the east and sets in the west.

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1 MR. ANAHTAR: Yes.

2 VICE CHAIRMAN DETTMAN: And it
3 always tends to the south a little bit.

4 MR. ANAHTAR: Yes.

5 VICE CHAIRMAN DETTMAN: Because we
6 are in the northern hemisphere.

7 MR. ANAHTAR: Yes.

8 VICE CHAIRMAN DETTMAN: It almost
9 looks like in your 6:00 p.m. in June --

10 MR. ANAHTAR: Yes.

11 VICE CHAIRMAN DETTMAN: -- that the
12 Pastis' property is actually casting shadows
13 on the Whalens.

14 MR. ANAHTAR: Yes.

15 VICE CHAIRMAN DETTMAN: And so it
16 almost looks like the sun is in the north.
17 And I don't know that to be accurate.

18 MR. ANAHTAR: No, no. No, but you
19 can see that the shadow is here and --

20 VICE CHAIRMAN DETTMAN: Right. The
21 Whalens' house is actually casting a southern
22 shadow. And based on my knowledge of doing

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1 shadow studies, it is always the case that the
2 Whalens' house would cast a northerly shadow
3 in all days, in all parts of the day.

4 MR. ANAHTAR: I don't know, let me
5 see.

6 MS. BRAY: Ms. Anahtar?

7 MR. ANAHTAR: Yes?

8 MS. BRAY: On June 21st at 6:00
9 p.m., where is the sun located in the sky? Is
10 it --

11 MR. ANAHTAR: West.

12 MS. BRAY: It's on the west?

13 MR. ANAHTAR: Yes.

14 MS. BRAY: And is it -- in relation
15 to a north/south access, is it due west or is
16 it slightly northwest, slightly southwest?

17 MR. ANAHTAR: Yes, I think slightly
18 southwest maybe. I mean, it is west, but --

19 MS. BRAY: And if the sun is coming
20 from the west --

21 MR. ANAHTAR: Yes.

22 MS. BRAY: -- in which direction

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1 would the Whaley's house cast a shadow?

2 MR. ANAHTAR: It should be the way
3 it is shown here, which is southeast, I
4 believe.

5 VICE CHAIRMAN DETTMAN: Well, that
6 goes to my specific question.

7 MR. ANAHTAR: Yes.

8 VICE CHAIRMAN DETTMAN: If the sun
9 actually at 6:00 p.m. in June --

10 MR. ANAHTAR: Yes.

11 VICE CHAIRMAN DETTMAN: -- the sun
12 would be setting slightly to southwest.

13 MR. ANAHTAR: Yes.

14 VICE CHAIRMAN DETTMAN: So the
15 shadow would not be going to the southeast.
16 It would be going to the northeast. Just like
17 when it rises slightly to the southeast --

18 MR. ANAHTAR: Yes.

19 VICE CHAIRMAN DETTMAN: -- it casts
20 a shadow slightly to the northwest.

21 MR. ANAHTAR: But --

22 VICE CHAIRMAN DETTMAN: Like your

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1 9:00 p.m. shows. 9:00 a.m., I'm sorry.

2 MR. ANAHTAR: If you look at all
3 the others, I mean, just understand the
4 accuracy of these --

5 VICE CHAIRMAN DETTMAN: Not this
6 way.

7 MR. ANAHTAR: -- they are always on
8 the same side, you know, in all of them at
9 6:00 p.m. They are always on the same side,
10 but at different lengths and angles. December
11 it's dark, obviously, but in September it is
12 less and June it is more.

13 VICE CHAIRMAN DETTMAN: Well, let
14 me refer to the Pastis' shadow study.

15 MR. ANAHTAR: Okay.

16 VICE CHAIRMAN DETTMAN: In June at
17 3:00.

18 MR. ANAHTAR: I didn't see that
19 one, because I mean --

20 VICE CHAIRMAN DETTMAN: June at
21 3:00.

22 MR. ANAHTAR: -- Google Sketchup,

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1 the building was located in the right exact
2 location and orientation and this is what the
3 program gave me.

4 VICE CHAIRMAN DETTMAN: I
5 understand that.

6 MR. ANAHTAR: So it's not --

7 VICE CHAIRMAN DETTMAN: But if you
8 look at --

9 MR. ANAHTAR: Yes.

10 VICE CHAIRMAN DETTMAN: -- the
11 shadow at 3:00 in June on the Pastis' study,
12 three hours later, and I know they don't show
13 6:00 --

14 MR. ANAHTAR: Yes.

15 VICE CHAIRMAN DETTMAN: -- but
16 three hours later, the sun would not be
17 casting a shadow in the direction that you are
18 showing at 6:00.

19 MR. ANAHTAR: Yes. You know, I did
20 something actually, what I did is -- I mean, I
21 don't know about the accuracy of these, I
22 mean, Pastis' drawings or mine, but just to

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1 make sure for myself, just to test my
2 drawings, what I did is I was looking at my
3 photos, the ones that I took, and I have put
4 to save them under February 4, 2005, so exact
5 date and the time.

6 So I created the same time for my
7 rendering and they looked identical. So
8 that's how I tested the accuracy of my
9 drawings. But I'm not sure, I mean, what you
10 are saying. I understand what you are saying,
11 but this is what the program gave me. And
12 when I look at that drawing to compare the
13 existing actual photograph with the simulated
14 one, they look the same.

15 VICE CHAIRMAN DETTMAN: Have you
16 conducted several of these studies? Is this
17 your first one?

18 MR. ANAHTAR: No, this is the first
19 one that I did.

20 VICE CHAIRMAN DETTMAN: Do you know
21 -- you said you used Google Sketchup?

22 MR. ANAHTAR: Yes.

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1 VICE CHAIRMAN DETTMAN: Do you know
2 that whether or not -- there is a setting in
3 Google Sketchup --

4 MR. ANAHTAR: Yes.

5 VICE CHAIRMAN DETTMAN: -- that you
6 have to put to make the software know that you
7 are looking at Washington, D.C. as opposed to
8 --

9 MR. ANAHTAR: Exactly.

10 VICE CHAIRMAN DETTMAN: And you did
11 that?

12 MR. ANAHTAR: Yes, yes.

13 VICE CHAIRMAN DETTMAN: Okay.

14 MR. ANAHTAR: I mean, you go to--
15 you open Google Earth at the same time and
16 then import the location.

17 VICE CHAIRMAN DETTMAN: Right.

18 MR. ANAHTAR: And I checked it.
19 And I did not only select Washington, D.C.,
20 but just put the exact altitude and longitude
21 information in there.

22 VICE CHAIRMAN DETTMAN: Okay.

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1 MR. ANAHTAR: But that's why I have
2 more confidence of what I was doing. But just
3 to test the accuracy, that's what I use,
4 that's why I didn't doubt, but I don't know if
5 there is anything wrong with the program
6 itself, I don't know.

7 VICE CHAIRMAN DETTMAN: I'm just
8 trying to get familiar with your process.

9 MR. ANAHTAR: Yes.

10 VICE CHAIRMAN DETTMAN: That's all.

11 MR. ANAHTAR: No. I mean, I can
12 show you.

13 VICE CHAIRMAN DETTMAN: Okay.
14 Well, thank you.

15 MR. ANAHTAR: Yes.

16 MS. BRAY: Ms. Anahtar, I know we
17 have all had limited opportunity to review the
18 Pastis' sun studies, because they came in very
19 late. And in fact, none of us have a color
20 copy in hard copy.

21 MR. ANAHTAR: Yes.

22 MS. BRAY: So we're looking at it

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1 electronically here. Are the shadows that are
2 shown in these drawings, you stated before
3 that they were -- your conclusions were that
4 regardless of whether the Pastis' home is
5 depicted differently than in your drawings, it
6 didn't make a difference because the shadows
7 thrown were not as long as to affect the
8 buildings. Is that right?

9 MR. ANAHTAR: Well, I -- to me, the
10 most accurate one that I thought would be was
11 the one for June noon.

12 MS. BRAY: Right.

13 MR. ANAHTAR: And it did not look
14 right.

15 MS. BRAY: And --

16 MR. ANAHTAR: So I don't know which
17 program they use and the way they were
18 presented on the paper just did not -- I mean,
19 like the way I presented mine, the existing
20 versus proposed design, was a very clear way
21 of doing.

22 MS. BRAY: And did it have --

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1 MR. ANAHTAR: But I don't see the
2 same thing for them, but I don't know what
3 they used, how they performed their studies.

4 MS. BRAY: In any event, the
5 shadows that are shown, are they mostly on the
6 ground or are they shown on the buildings?

7 MR. ANAHTAR: Well, they looked on
8 the ground. So I don't know.

9 MS. BRAY: And would that have an
10 adverse impact in the light and air available
11 to the adjacent buildings, if the shadows were
12 mostly shown on the ground?

13 MR. ANAHTAR: No. I mean, I don't
14 think so.

15 MS. BRAY: Okay. Thank you.

16 MR. ANAHTAR: So I don't know if
17 they just used photographs that are 2-D
18 pictures of drawings to do these studies,
19 because looking at the detail of our drawing
20 on their drawings, I don't think they
21 recreated the drawing in Sketchup or in any
22 other software.

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1 So you know, there are -- you can
2 draw shadows into the drawings and you can
3 actually show them in any direction that you
4 want, if you are doing it by hand on a 2-D
5 drawing.

6 CHAIRMAN LOUD: Thank you. Are
7 there any additional questions for Ms. Anahtar
8 from the Board? I would like to ask Mr.
9 Whaley one question. When you started
10 testifying, you mentioned that you had reduced
11 the roof line. And I just wanted to ask you
12 just in terms of specifics, when did you
13 reduce the roof line and from what to what or
14 to Ms. Anahtar.

15 MR. ANAHTAR: We had the HPRB
16 meeting and this was a concern raised by Nancy
17 Vogt, so we lowered the roof slope and we
18 resubmitted the drawings to HPRB or HPO.

19 CHAIRMAN LOUD: And do you recall
20 the dimensions you lowered it from what to
21 what?

22 MR. ANAHTAR: It was -- I don't

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1 remember the exact slope, but it's very low.
2 I mean, lower than normally HPO would like to
3 see for historic purposes and from the
4 Historic Preservation point of view, but in
5 this case, the concerns were more important
6 than meeting the design guidelines for
7 historic structure.

8 CHAIRMAN LOUD: And was the purpose
9 of that related to light impacts on the 317
10 property? Did it impact?

11 MR. ANAHTAR: No, this was mostly
12 done for 323, Nancy Vogt's property.

13 CHAIRMAN LOUD: Okay.

14 MR. ANAHTAR: Rather than 317.
15 They had no concerns then. The neighbors were
16 not as involved in that process.

17 CHAIRMAN LOUD: Okay.

18 MR. ANAHTAR: The Pastis.

19 CHAIRMAN LOUD: And it was done for
20 323, for the purposes of what light and air or
21 visual?

22 MR. ANAHTAR: Light.

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1 CHAIRMAN LOUD: As you recall.

2 MR. ANAHTAR: Light and for all of
3 them, I guess.

4 MS. BRAY: Ms. Anahtar, was there
5 specific information in the HPRB report which
6 referenced a lowering of the roof or asked
7 that the applicant lower the roof pitch?

8 MR. ANAHTAR: I think that was --
9 we were told at the end of the meeting, right,
10 that that -- and I was in touch with Amanda
11 Molson throughout the process.

12 MS. BRAY: If I can refresh your
13 memory?

14 MR. ANAHTAR: Yes.

15 MS. BRAY: This is the staff report
16 from March 26, 2009.

17 MR. ANAHTAR: Yes.

18 MS. BRAY: Do you recall reviewing
19 this at HPRB?

20 MR. ANAHTAR: Yes, yes.

21 MS. BRAY: And on the last page it
22 makes reference, it says "The height has been

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1 largely addressed through the elimination of
2 the third story. A further reduction in
3 height of the second story by several feet
4 through a change in roof slope allows the
5 addition to be deferential to the historic
6 house." Is that what you recall the change
7 being designed to address?

8 MR. ANAHTAR: Yes, I believe so.

9 MS. BRAY: And we can submit the
10 HPRB --

11 MR. ANAHTAR: Yes, exactly, yes.

12 MS. BRAY: -- report into the
13 record.

14 MR. ANAHTAR: Yes, yes.

15 CHAIRMAN LOUD: I think it is a
16 part of OP's report. Maybe we can ask them
17 about it. I believe it is a part of the OP
18 report. But it sounds like it was done more
19 to make the design more compatible with the
20 twin property or no?

21 MR. ANAHTAR: No, no.

22 CHAIRMAN LOUD: No. Okay.

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1 MR. ANAHTAR: Mostly to address the
2 neighbors' concerns about the height of the
3 wall and --

4 CHAIRMAN LOUD: Okay.

5 MS. VOGT: Can I add also that it
6 was a concern of CHRS to reduce the pitch of
7 the roof? And it was reduced not by several
8 feet, but by 2 feet and there was an
9 additional request from HPRB to reduce it, to
10 see if they could reduce it further.

11 CHAIRMAN LOUD: Thank you for that
12 clarification. I don't have any additional
13 questions. Did you have another witness?

14 MS. BRAY: Yes. I would like to
15 call Ms. McCarthy. But I would also like to
16 introduce that HPRB report from March 26, 2009
17 into the record.

18 CHAIRMAN LOUD: Okay.

19 MS. VOGT: Can I ask a quick
20 question?

21 CHAIRMAN LOUD: Yes.

22 MS. VOGT: If -- I'm wondering like

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1 if the Board has the staff report from the
2 March 26th if they also have this document that
3 is called "HPRB Actions," where they direct
4 them to restudy the roof even further?

5 CHAIRMAN LOUD: Let me just tell
6 you what I have. It's part of Exhibit 33,
7 which is the Office of Planning's report, and
8 it has evaluation recommendations. I don't
9 see anything that says actions on it.

10 MS. VOGT: No, this is from HPRB.
11 It's just a summary of the actions that the
12 Board took on that date, March 26th. And it
13 just said there they stated a directive for
14 restudy of the roof height to see if it could
15 be further minimized.

16 CHAIRMAN LOUD: Again, I don't see
17 it. What I have from March 26 is Historic
18 Preservation Review Board staff report and
19 recommendations.

20 MS. VOGT: Yes, no, there is --

21 CHAIRMAN LOUD: Is that what you
22 are --

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1 MS. VOGT: -- but there is also
2 like the actual outcome --

3 CHAIRMAN LOUD: Okay.

4 MS. VOGT: -- of the hearing.

5 CHAIRMAN LOUD: I don't believe
6 that is in our record.

7 MS. VOGT: Okay. I only have --

8 CHAIRMAN LOUD: So --

9 MS. VOGT: -- one copy of it.

10 CHAIRMAN LOUD: Well, when we get
11 to your case, your part of the case, because
12 you have a part where you can introduce
13 exhibits --

14 MS. VOGT: Okay.

15 CHAIRMAN LOUD: -- you can
16 introduce that into the record and Ms. Bailey
17 will make copies --

18 MS. VOGT: Okay.

19 CHAIRMAN LOUD: -- for Ms. Bray and
20 for ourselves.

21 MS. VOGT: Okay.

22 CHAIRMAN LOUD: Okay. So just hang

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1 on to that. Machine malfunction? Okay. If I
2 had known, I would have set my laptop up over
3 where you are.

4 MS. BRAY: Mr. Chairman?

5 CHAIRMAN LOUD: Yes.

6 MS. BRAY: I apologize, but we are
7 still having technical difficulties here.
8 Might we take a few minute break to --

9 CHAIRMAN LOUD: Okay.

10 MS. BRAY: -- get this resolved?

11 CHAIRMAN LOUD: Why don't we do
12 that then? About a 5 minute break?

13 MS. BRAY: That would be great.

14 CHAIRMAN LOUD: Okay.

15 MS. BRAY: Thank you.

16 CHAIRMAN LOUD: Five minutes.

17 (Whereupon, at 11:51 a.m. a recess
18 until 11:59 a.m.)

19 MS. MCCARTHY: Good morning,
20 Chairman Loud and Members of the Board. My
21 name is Ellen McCarthy. I'm the Director of
22 Planning and Land Use at Arent Fox and I have

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1 over 30 years of experience in planning and
2 zoning.

3 And let me just cut to the chase,
4 since we have -- our technology programs have
5 taken so much time. Oh, look at that. All
6 right. Let's see, hope springs eternal.

7 What I wanted to have the visual to
8 do was to be able to show you a straight on
9 view of this house in relation to the
10 neighbors around it, which I think makes a
11 very compelling case for how small and how
12 unusual this house is in the context of that
13 R-4 Zone in Capitol Hill.

14 It also shows you the relative --
15 the enormous scale difference between the
16 Whaley's house and 317 next to them and the
17 scale difference even between 323, the partner
18 house, and the houses next to that.

19 So as we have noted, this house was
20 built in -- I think this is a very compelling
21 picture because it really gives you a sense of
22 the scale juxtaposition between the two houses

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1 that we are talking about. And then when you
2 look at this picture, it gives you an idea of
3 the juxtaposition and scale of the house on
4 the other side of the Whaley's house and the
5 row of houses that are next to that.

6 So I would like you to keep that
7 picture in mind as we go through some of the
8 issues.

9 As you have heard before, this
10 house was built in 1860, only the very
11 narrowest of side yards, 20 inches, separates
12 this house, the widest part of this house from
13 the property line.

14 If that were not there, if the
15 house went to the property line, it would be a
16 row dwelling, not a semi-detached house. It
17 is Zoned CAP/R-4 as is the rest of the square
18 and, in fact, virtually all of the
19 neighborhood, except for the sliver that goes
20 along the C-2-A sliver that goes along
21 Pennsylvania Avenue.

22 I think you are familiar with the

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1 relief that is sought, so let me skip to the
2 particular criteria for the relief for a
3 special exception first from Square 223.

4 First of all, the general test for
5 special exception. Is it in harmony with the
6 general purposes and intent of the Zoning
7 Regulations and Map?

8 As the description of the R-4
9 Regulations makes clear, and I won't read the
10 long description that I put into the report,
11 but, basically, the purpose of the R-4 was
12 designed to take existing row house
13 neighborhoods that could have been R-3 in
14 scale and to limit the amount of conversion
15 between the changing single-family row houses
16 into flats or apartments.

17 So the major distinction between R-
18 3 and R-4 is that you have to have at least
19 900 square feet of ground for every unit that
20 you create.

21 The addition is definitely in
22 harmony with the intent of the regulations,

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1 since this addition would be permitted as a
2 matter-of-right if the Whaley's house were
3 only 1 foot 8 inches wider, which would have
4 made it a row dwelling. Were it not a
5 historic building, and likely to have been
6 prohibited by HPRB from adding a visible
7 connection portion to the property line, the
8 Whaleys, in fact, could have done just that.

9 They wouldn't need to be before you
10 today. They could have simply filled in that
11 gap, put in an addition, even larger than the
12 one we are talking about. It would have been
13 a matter-of-right project. There would have
14 been no review to assure that any adverse
15 effects be abated as much as possible.

16 Clearly, the Zoning Regulations
17 contemplated that additions substantially
18 larger than what is proposed should be
19 permitted. In the R-4 District, row dwellings
20 permit a minimum -- require a minimum lot size
21 of 1,800 square feet for row dwellings. This
22 is 1,900, almost 2,000. Row dwellings are

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1 permitted a maximum lot occupancy of 60
2 percent, even with the addition, this house,
3 this project is less than that.

4 And of course, in the R-4 Zone,
5 there is no side yard, so there would have
6 been no setback of the addition or would not
7 have needed to have been any setback from an
8 addition from the Pastis' house on the other
9 side.

10 Even that portion that extends the
11 width of the original portion of the house is
12 reduced slightly in width extending only 10
13 feet back from the main width of the house,
14 but the bulk of the addition is setback an
15 additional 62 inches from the property line,
16 much more than the additional house -- the
17 original house and much more than would have
18 had to have been the case had the Whaleys
19 simply done an addition to the back of their
20 house, if they were a row dwelling.

21 Lastly, in terms of the scale and
22 privacy and views that we are talking about,

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1 the minimum rear yard in the R-4 District is
2 20 feet, even with the proposed addition, the
3 rear yard is more than 30 feet on this house.

4 So there is still a sizeable amount of open
5 space, light and air, even with the addition.

6 So it is definitely in harmony with
7 the provisions of 3104.

8 The proposed project is also in
9 harmony with the intent of 223, which was
10 created explicitly for additions like this
11 one. The project conforms to the strictures
12 of 223, since it is well within limitations of
13 lot occupancy. 223 would permit up to 70
14 percent. And again, this is less than 60.

15 In this case, the only -- and it is
16 also well within the limitations in terms of
17 visibility from the public way, since the only
18 public way we are talking about there is 6th
19 Street. There is no alley or other public way
20 behind the house.

21 In addition, the proposed -- this
22 construction is in harmony with the purposes

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1 of the Zoning Regs, because it will continue
2 the single-family residential use and scale,
3 the residents will be able to remain and age
4 in place with the possibility of converting a
5 bedroom and having a full bath on the first
6 floor, if needed.

7 The rear yard of more than 30 feet
8 will continue the rhythm of the other
9 properties in the square as is evident if you
10 look at the aerial photo that is attached as
11 Attachment E in our original application.

12 So it is in harmony with the
13 regulations and it is consistent with the
14 overall regulations for 3104 for the R-4 Zone
15 and for 223.

16 Now, in terms of adverse impact.
17 There is no undue adverse impact on
18 neighboring properties. The proposed addition
19 is very modest. It's like 400 square feet
20 more than what exists on the site, at this
21 point in time.

22 In the rear, it extends only 4 feet

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1 beyond the footprint of the property as it is
2 now. There is -- the second floor has the --
3 the second floor has been shortened, pulled
4 back 8 feet 6 inches in terms of the dimension
5 of the deck in order to further reduce any
6 intrusion in -- visual intrusion or light and
7 air and the height of the roof was lowered to
8 no higher than the existing second floor roof
9 line.

10 Of course, when you are in a dense
11 neighborhood like Capitol Hill with lots that
12 are frequently only 18 or 19 feet wide,
13 expectations of complete privacy or complete
14 absence of shadows are just not realistic.

15 The Zoning Commission in drafting
16 223 recognized that permitting reasonable
17 additions, their words, on certain
18 nonconforming properties were likely to have
19 some impacts. So they tempered that by
20 putting language directly into 223, such as
21 not wishing to see "substantially adverse
22 impacts and that light and air available to

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1 neighboring properties shall not be unduly
2 affected."

3 Virtually anything that you do is
4 going to have some effect, but the regulation,
5 I think, gives us some pretty clear guidance
6 of saying is it undue? Is it substantially
7 adverse? And I would certainly maintain that
8 the impacts we are talking about from this
9 addition are not that.

10 But even if we left aside the
11 densities of the characteristic of the
12 neighborhood, there is little impact with
13 regard to light and air for the property at
14 223, since it is located -- at 323, Ms. Vogt's
15 property, since it is located south of the
16 subject property.

17 As the shadow studies indicate, any
18 reduction in light is limited to late
19 afternoon sun in the winter and that affects
20 only a small portion of the property.

21 With respect to privacy, the
22 proposed addition has no windows on the south

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1 elevation, which provides substantial privacy.

2 No one will be standing there looking down.

3 There is a balcony on the second level, but

4 that's not -- no different from the balcony of

5 the neighbor on the other side of Ms. Vogt.

6 And in fact, all of those row houses that you

7 saw next to Ms. Vogt have balconies at the

8 second level at the rear of their properties,

9 which also allow them to look out over their

10 property, Ms. Vogt's property, the parking lot

11 that she alluded to.

12 And, of course, the balconies on

13 the -- on 317 do the same thing. So some of

14 those, in fact, that have party status have

15 balconies that would, by Ms. Vogt's reasoning,

16 interfere with the privacy or the private

17 enjoyment of her property.

18 In general, if you look carefully

19 at Ms. Vogt's letter, the major objection

20 seems to be the addition will be there, not

21 that there are really undue adverse impacts.

22 And in fact, not only will there not be a

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1 significant adverse impact, but there will be
2 a significant safety enhancement to Ms. Vogt's
3 property at no expense to her.

4 The buildings are separated. As
5 you have heard, the buildings are separated by
6 a party wall that has no fire wall, despite
7 the fact that at that portion, the kitchens
8 are on either side of the wall from each
9 other. Certainly, the portion of the house
10 which would be most likely to develop a fire.

11 So the Whaleys plan to fireproof
12 the wall when the addition is constructed and
13 will be of serious benefit to the immediate
14 neighbor.

15 So if we don't have significant
16 impacts in terms of light and air and privacy
17 on 323, let's look at the house at 317 on the
18 other side, the one that is owned by Mr.
19 Pastis.

20 His counsel submitted a statement
21 in opposition claiming that the addition would
22 have serious adverse impacts, particularly the

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1 loss of sunlight on the rose bushes and
2 veranda and loss of privacy.

3 There are a number of errors in Mr.
4 Pascal's statement. His major argument is to
5 show that the shadows cast by the existing two
6 story portion of the applicant's house on Mr.
7 Pastis' house to show those shadows and then
8 say, you know what, we're going to have those
9 same shadows from the addition.

10 And maybe I can illustrate this
11 best by going to the north side elevation,
12 which is listed as No. 5 in the application.
13 If you look at the pictures which Mr. Pastis--
14 Mr. Pascal submitted, he is talking about
15 shadows from this portion of the house, which
16 is, as you can see, the tallest portion and
17 it's the roof line is not setback at all, so
18 that this is a flat wall, essentially, and it
19 butts up against -- this is where the house is
20 only 1 foot 8 inches from the property line on
21 the Whaley side.

22 It butts up against this portion of

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1 the house where there is a bay window that
2 juts out substantially leaving only 3 feet of
3 side yard on Mr. Pastis' house.

4 So what he does is to take the
5 shadows that are cast in that portion where
6 both properties are absolutely the closest
7 together and where the Whaley's house is
8 absolutely at the highest point and then say
9 those are the kinds of shadows that are going
10 to occur from the addition.

11 The problem with that is the
12 addition is setback for the bulk of its length
13 6 feet 2 inches from the property line, not 1
14 foot 8 inch from the property line and the
15 roof slats 4 feet from the base of the roof up
16 to the top, again away from Mr. Pastis' house.

17 So that during summertime, when the
18 sun is coming down during the daylight, there
19 is no -- those shadows that Mr. Pascal was
20 showing in his report will not have the
21 opportunity to occur, because the, let me find
22 my math here, Whaley's addition will be

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1 setback 6 foot 2 inches and the veranda and
2 rose bushes that Mr. Pastis is talking about
3 are, approximately, 8 feet from the property
4 line.

5 So we are, basically, talking about
6 14 feet of clear space between those two
7 properties. Highly unlikely to have any
8 impact in terms of light, shadow or air on Mr.
9 Pastis' house.

10 I would also point out, it's very
11 important that the shadows which Mr. Pastis'
12 counsel had submitted on page 4 and 5 of his
13 submission, were those pictures were taken in
14 October, which is pretty well past rose
15 growing season and also the time when the sun
16 being lower in the sky would be creating
17 greater shadows on the -- it's lower in the
18 sky, so it creates greater shadows.

19 I would also add that last night I
20 did a lot of research on roses on the
21 Internet. I learned more about roses than I--
22 I wouldn't say than I ever wanted to know,

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1 because maybe I've got a few clues as to why
2 mine always do so badly, but the general
3 conclusion of the experts on roses and
4 sunlight, were that roses need between 5 and 6
5 hours of sunlight a day in order the flourish.

6 I think no matter how much there
7 might be slight discrepancies between the
8 shadow studies, it's pretty clear there will
9 always be at least 5 or 6 hours of sunlight on
10 the entire area where the rose bushes are
11 planted.

12 Which gets me to the second error
13 that is in Mr. Pastis' submission. He states
14 on page 6, bearing in mind the shadowing
15 effects caused by the existing two story
16 section of the Whaley home, the proposed rear
17 addition, which consists of two stories and
18 will be the same depth as the Pastis' home
19 will similarly block most, if not all, of the
20 direct and ambient sunlight into the Pastis'
21 property.

22 In fact, even with the proposed

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1 addition, the Whaley home is still shorter
2 than Mr. Pastis' house, number one. And the
3 height in terms of the effect that he is
4 suggesting the two stories will have is
5 truncated a further 8 feet 6 inches, which is
6 the depth of the balcony.

7 So his allegation that there will
8 be somehow this two story wall which will
9 continue the full length of the length of his
10 property is not correct.

11 And so we have dealt with the
12 sunlight on the roses, then in terms of the
13 sunlight to the interior of the building. As
14 Nuray pointed out, there is no reduction in
15 direct sunlight to the actual living area,
16 because the house was designed during a period
17 of time when Washington didn't have central
18 air conditioning.

19 So there are large overhangs and
20 porches specifically designed to keep the sun
21 from flooding in and unduly heating up that
22 property, that's why they are on the south

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1 side of the building to help keep it cool in
2 the summertime.

3 In addition, because of the low
4 profile of the addition, the shadow studies
5 indicate minimal effect of shadows on 317,
6 which is substantially taller, I would also
7 remind you, than the proposed addition.

8 Now, Mr. Pastis' counsel also talks
9 about privacy issues. And with respect to
10 privacy, even with a slight extension of the
11 length of the addition, it still does not go
12 as far into the rear yard as its neighbor to
13 the north.

14 It should be noted that the
15 building at 317 has numerous windows and an
16 elevated veranda that have looked out over the
17 applicant's property for at least the past 20
18 years that they have lived there.

19 It takes a certain amount of
20 temerity to suggest that the small deck at the
21 back of the Whaley's second story presents a
22 problem in terms of privacy, but the lengthy

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1 verandas of Mr. Pastis' house, which are
2 higher and more extensive than the proposed
3 deck, do not.

4 It also should be noted that with
5 respect to any loss of privacy from the
6 extension of the family room and the bath at
7 the lower level, there is a tall fence, which
8 will cut off views into the rear yard of the
9 neighboring property.

10 Lastly, with regard to adverse
11 impact, I know the Board leans heavily on
12 community groups and the input that they
13 provide to the Board and I think it is quite
14 significant that because I know that you are
15 well aware that the Capitol Hill Restoration
16 Society and the ANC on Capitol Hill will not
17 hesitate to inform you if they feel there is
18 an adverse impact from a proposed project.

19 And I think it's significant that
20 both of those bodies have unanimously voted
21 for both the HPRB and to the BZA that they
22 supported this project.

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1 So that's basically the test for
2 the special exception.

3 Now, with regard to the variance,
4 the first issue, of course, is uniqueness.
5 And I think we have to put this in context.
6 The reason for the uniqueness is not to say
7 that this is absolutely one of a kind, never
8 occurs any place else in the District, the
9 reason for the uniqueness criteria is so that
10 the Board of Zoning Adjustment is dealing with
11 individual situations that are not so
12 widespread that the relief that you grant in a
13 particular -- the variance that you grant in a
14 particular situation would be applicable to a
15 large number of cases throughout the District.

16 And in effect, make the BZA into the Zoning
17 Commission in terms of you making law.

18 So regardless of whether or not
19 there may be within Capitol Hill one or two
20 other properties that are about as small,
21 maybe one or two other properties that are
22 semi-detached in an R-4 Zone with only 1 foot

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1 8 inches of side yard, I think that it is
2 clear from the aerials that I have submitted
3 with my testimony, both the smaller scale
4 aerial on page 8 and the larger scale aerial
5 on page 9, that we are talking about an area
6 which is overwhelmingly a row house
7 neighborhood.

8 And when you have a property that
9 was built 100 years before the R-4 Zoning was
10 applied to this area, and where the R-4 Zoning
11 was so clearly designed for a situation not
12 like the house that we are talking about, that
13 it is -- that this property is unique for
14 purposes of the Zoning Regulations and for
15 purposes of the variance.

16 Mr. Pascal suggested in his letter
17 several properties which he felt were similar
18 and we could submit this later for the record,
19 but since we just found or just got Mr.
20 Pascal's color submission yesterday, I guess I
21 would point out the marker that is here in
22 blue on the map is the Whaley's house. Red is

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1 -- remind me of our color scheme here, oh,
2 right.

3 These -- the red pins indicate
4 houses which he said were semi-detached. IN
5 fact, a closer review of property quest, real
6 quest, the GIS aerials, the Google Street View
7 indicate that all of those are row properties.

8 The yellow it's not exactly clear
9 from consulting with all of those sources.
10 And the green is there is only one property
11 which is exactly similar to the situation that
12 we are talking about.

13 So I don't know if there is really
14 such a term as pretty unique, but I would say,
15 in this case, we are talking about a situation
16 that is unique enough to satisfy the
17 requirements of the Zoning Regulations.

18 We also have to show in order to
19 meet the test of the variance that there are
20 significant practical difficulties. Well,
21 this unique situation of the size and the
22 placement of this house is, in fact, directly

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1 correlated with the practical difficulty
2 experienced by the applicants in trying to
3 modernize their house.

4 Were the subject property a row
5 house, the addition could be constructed, as
6 we pointed out, with minimal or no relief.
7 Were it a semi-detached house on a conforming
8 lot in an R-2 Zone, it could be expanded to
9 meet the applicants' needs.

10 The problem is it's a semi-detached
11 house on an R-4 lot that cannot be expanded to
12 meet just kind of basic modernization needs.

13 It is -- the property is unduly and
14 uniquely affected by the R-4 Zoning. The lot
15 size precludes it being able to do a
16 conforming addition, even though most of the
17 other structures in the square and adjoining
18 squares are substantially larger.

19 In addition, in fact, I believe
20 that all of the structures in the square are
21 at least four stories or are at the most four
22 stories and the smallest ones are two stories

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1 with an English basement. So there are no
2 other properties in this square that are as
3 small and short of space as the Whaley's
4 property and their neighbors.

5 Unlike many row dwellings, there is
6 no alley or public way to the rear. So if the
7 Whaleys were to extend their house to the
8 property line, assuming they could even get
9 the Historic Preservation Review Board to
10 approve that, there is no public access to the
11 rear of their house.

12 So lawn mowers and the rest of it
13 would have to go through the house to cut the
14 grass in the back after they had finished with
15 the front.

16 In terms of practical difficulty,
17 we are not talking about something which is a
18 large addition. We are adding one bedroom and
19 one full bath on the downstairs where there is
20 now a half bath and one bedroom or a family
21 room/bedroom on the lower level and taking two
22 very small bedrooms, 13 x 15 at the most,

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1 combining them and then adding an additional
2 master bedroom with a full bath.

3 To not be able to modernize the
4 kitchen, to not be able to have sufficient
5 closet space and storage space, to not be able
6 to have a living space on the ground floor
7 when one has an elderly relative that visits
8 and when one recognizes that is where you want
9 to age in place, do seem, to me, to be serious
10 practical difficulties if one cannot even make
11 those kinds of modest additions to one's house
12 because of an anomaly in the Zoning
13 Regulations.

14 The last set of tests for the
15 variance about harmony with the general
16 purpose and intent of the Zoning Regulations
17 and lack of adverse impact, I believe we have
18 covered above with regard to the special
19 exception.

20 So I would conclude we have a
21 property that has a relatively modest
22 addition. There is no adverse impact in terms

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1 of light and air or privacy to the neighbors.

2 It is a unique property, which is unduly
3 affected by being out of place, a building
4 type that is not -- was not contemplated by
5 the imposition of the R-4 Zone and there would
6 be a serious practical difficulty in trying to
7 modernize the house without getting relief
8 from the Board in terms of a variance.

9 So for all of these reasons, I
10 would say that in my opinion as an expert
11 witness in zoning and planning issues, this
12 case does justify the variance and special
13 exceptions are justified and I would urge the
14 Board to approve these applications.

15 CHAIRMAN LOUD: Thank you, Ms.
16 McCarthy. Ms. Vogt, did you have any follow-
17 up questions for Ms. McCarthy?

18 CROSS EXAMINATION

19 MS. VOGT: I would just make two
20 comments. One would be that I really don't
21 agree that the -- what you are proposing as a
22 decorative balcony is exactly the same as the

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1 houses that are on the other side of me.

2 The houses on the other side of me
3 have a very shallow deck and they are 11 feet.

4 They are like 13 feet away from the property
5 line and another 6 feet away from the house.
6 And this will sit exactly on the property line
7 and overlook my yard and my patio.

8 And the other thing --

9 MS. MCCARTHY: Well, although those
10 balconies are off the living areas of those,
11 whereas, this deck is off of a bedroom. So
12 unlikely to be used in any kind of a regular
13 through the day use.

14 MS. VOGT: I don't know how they
15 are going to use that room, so I mean, I can't
16 speak to how they are allocating their space.

17 And the other comment I would make
18 is that I think that I think you really go a
19 little bit too far when you say it's
20 impossible to modernize your kitchen or get
21 living space on the ground floor without
22 having an addition of this size and magnitude.

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1 You can certainly go further around
2 on the back floor and I don't understand why
3 you can't modernize the kitchen as it is now
4 without going up two floors. And I know the
5 kitchen isn't on the second floor, but I just
6 don't think that is a fair statement to make.

7 MS. MCCARTHY: Well, when the
8 Commission created 223, it created the
9 possibility for people to have reasonable
10 additions, recognizing that because they are
11 on lots that are nonconforming, they otherwise
12 would not be able to do that.

13 And I think it would be difficult
14 to say that a 400 square foot addition is an
15 unreasonable addition. But I understand that
16 we disagree.

17 MS. VOGT: I'm not saying it's an
18 unreasonable addition. I'm just taking issue
19 with your statement that you can't modernize
20 the kitchen without doing it some other way.

21 CHAIRMAN LOUD: Ms. Vogt, I think,
22 at this point of the process, there would

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1 normally be a question from you of her
2 specifically. And I think she sort of is
3 trying to construe your comment as a question
4 and trying her best to respond to it.

5 But the actual testimony where you
6 take issue with her testimony comes later in
7 our proceeding where you are given the
8 opportunity to testify, as opposed to right
9 now where it is really designed for you to ask
10 questions of her.

11 Okay. So did you have any
12 additional questions? Okay. Board Members
13 are there any questions? All righty.

14 Why don't we now turn to the Office
15 of Planning?

16 MS. BRAY: Mr. Chairman?

17 CHAIRMAN LOUD: Yes?

18 MS. BRAY: I do have one question
19 for Ms. McCarthy on redirect.

20 CHAIRMAN LOUD: Yes, okay.

21 MS. BRAY: Ms. Vogt mentioned that
22 she doesn't agree that the property can't be

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1 modernized in place. But is that a threshold
2 question in the analysis of the Zoning
3 Regulations and the additions compliance with
4 those regulations?

5 MS. McCARTHY: No, it is not. As I
6 indicated, the test is, the language 223 is,
7 specifically related to a reasonable addition
8 and the zoning test for a variance is would
9 there be a serious practical difficulty for
10 proceeding or expanding your property when you
11 have got this kind of -- to live within the
12 existing Zoning Regs?

13 The existing Zoning Regs, because
14 it is a nonconforming property, would not
15 permit any expansion of the property.

16 MS. THOMAS: Good afternoon, Mr.
17 Chairman, Members of the Board. Karen Thomas
18 with the Office of Planning. I wouldn't go
19 too much further into our report. We believe
20 that the applicant successfully met the
21 special exception criteria for the addition.

22 And I would stand on the record and

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1 be happy to take any questions.

2 CHAIRMAN LOUD: Thank you. Let us
3 turn to Ms. Vogt to see if she has any
4 questions of the Office of Planning? And then
5 if you have any questions, Ms. Bray, then we
6 will come to the Board last.

7 Ms. Bray?

8 MS. BRAY: No questions.

9 CHAIRMAN LOUD: Board Members? I
10 have one question regarding the whole battle
11 over light impacts on what is it 3 -- on Dr.
12 Pastis' property, 317.

13 When you look at the sort of
14 competing studies that have been made a part
15 of the record, in your own observations, and
16 you have made a conclusion that there are no
17 undue light impacts. What are you basing your
18 opinion on? And how do you sort out the
19 different, the conflicting evidence in the
20 record?

21 MS. THOMAS: Well, first of all, I
22 didn't focus too much on the light studies.

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1 We have had this type of addition throughout
2 the R-4 before. We based it on the separation
3 that creates sort of a court-like situation,
4 the addition does.

5 And the purpose of a court is for
6 light and air. And we believe that a
7 separation between the two homes, which would
8 be about more than, I think, 10 feet apart was
9 sufficient to preserve light and air to the
10 existing resident to the north.

11 But even with that, the second
12 story addition wouldn't have passed any
13 egregious shadows to any other house.

14 CHAIRMAN LOUD: Thank you. I don't
15 have any additional questions.

16 We would now go to the ANC for its
17 report. And the ANC is not present, but the
18 ANC did submit a report. It is our Exhibit
19 30, I believe. And in our Exhibit 30, they
20 voted to support the application, as I
21 understand it. So that report will be given
22 great weight.

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1 And with that, I think we will turn
2 now to the party status opponent for
3 presentation of your case.

4 MS. VOGT: And it's my
5 understanding I get 3 minutes? Is that --

6 CHAIRMAN LOUD: No, actually, you
7 don't get 3 minutes. You are not limited to 3
8 minutes, because you are a party. On behalf
9 of the persons that you are going to be
10 speaking on behalf of, I think Mr. Mois and
11 Ms. Ness --

12 MS. VOGT: Yes.

13 CHAIRMAN LOUD: -- you can speak 3
14 minutes for them. And you can combine it and
15 do 3 minutes total for them. But in terms of
16 yourself, you can -- you get more than 3
17 minutes.

18 MS. VOGT: All right. Well, I just
19 have a very brief statement. I have already
20 submitted something, too. I don't have any
21 technology, so I just have a statement and a
22 couple of pictures.

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1 And this statement is basically a
2 summary of what I have already submitted to
3 the Board. So I'll just read it.

4 Their proposed addition has a
5 hugely negative and significantly
6 disproportionate impact on my home by virtue
7 of the fact that it cuts fully in half the
8 area open view from all three of my second
9 story windows and it replaces that view with a
10 30 foot long, two story south facing wall that
11 will both reduce air flow around and reflect
12 heat back onto my property.

13 In addition to creating an
14 exceptionally awkward and unsightly new
15 connection between the two houses for several
16 feet along the main roof line, which will be
17 visible only to the neighbors to the south of
18 the applicant.

19 The proposed addition also will
20 severely compromise the existing privacy and
21 use and enjoyment of my home by placement of a
22 large open deck that will essentially sit on

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1 the property line directly overlooking my
2 backyard and side patio areas.

3 It also will require that all
4 future repair and maintenance of the huge new
5 south facing wall be performed from my
6 historic tin roofs and it will impose
7 significant potentially costly and wholly
8 unwanted new maintenance concerns along both
9 the large horizontal and vertical expanses of
10 the new structure.

11 Additionally, I remain extremely
12 troubled by the ongoing manner in which the
13 applicants have consistently failed to
14 communicate directly with any of the affected
15 neighbors and/or share relevant information in
16 a timely or appropriate manner.

17 Throughout this protracted process,
18 I have also been very concerned by various
19 instances of statements or assertions made by
20 the applicants in both written and verbal
21 presentations that have been either
22 unsubstantiated, misleading or confusing and

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1 request that these be resolved before any
2 final decisions are made on this case.

3 Finally, in the event of a decision
4 in favor of the applicants, it would also be
5 desirable for them and helpful for the
6 neighbors for the applicants to actually
7 acknowledge the huge impact their project is
8 going to have and to provide the appropriate
9 resources to adequately compensate them for
10 their losses.

11 And I just have just a couple of
12 pictures. I have one picture which is taken
13 from -- I think it was in the package, but
14 it's one picture that was taken from my second
15 story window, which shows what I can currently
16 see out of my second story window. This will
17 be totally replaced by a blank wall,
18 approximately, 1 foot from my window.

19 And then in terms of just making a
20 very brief statement on behalf of Melanie Ness
21 and Jerry Mois, the addition will be extremely
22 visible from their parking lot and from their

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1 decks in the rear.

2 I did take this picture standing in
3 the parking lot, which is not on their decks,
4 but you can see that it will be extremely
5 visible.

6 And their primary objection is that
7 as it is currently proposed, it will just be a
8 huge -- they have a very pleasing and
9 appealing view now of the Pastis' porch. It
10 is very pretty. It is very leafy. And this
11 proposal will replace that with just a large
12 flat blank expensive wall, which is very out
13 of place in this setting.

14 CHAIRMAN LOUD: Thank you, Ms.
15 Vogt. Did you have copies of that picture
16 that you wanted to enter into the record?

17 MS. VOGT: I think that --

18 CHAIRMAN LOUD: We can --

19 MS. VOGT: -- there were smaller
20 versions that were already in my statement.

21 CHAIRMAN LOUD: Okay. All right.

22 MS. VOGT: And then the other short

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1 document that I mentioned before and she made
2 just a couple -- well, she made copies of it -
3 -

4 CHAIRMAN LOUD: Okay.

5 MS. VOGT: -- is the statement of
6 HPRB Actions from March 26, which directed the
7 applicants to restudy the roof height to see
8 if it could be further minimized. And in the
9 eight months since that hearing, there hasn't
10 been any movement on that as far as I'm aware.

11 CHAIRMAN LOUD: Have you provided
12 Ms. Bray with a copy of this?

13 MS. VOGT: I --

14 CHAIRMAN LOUD: She is taking a
15 look at it. If she has any additional
16 questions for you, she will have an
17 opportunity to ask you. As she reviews that,
18 Board Members, are there any questions for Ms.
19 Vogt?

20 MEMBER MOLDENHAUER: I just have a
21 quick question. You are testifying as to the
22 view out to the north and, obviously, that's

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1 where the new structure would be out of your
2 windows. Do you currently have a view out to
3 your south of those second floor bedroom
4 windows? Can you describe what that is?

5 MS. VOGT: There is a large open
6 space where that small parking lot is and
7 then, basically, you see the backyards and the
8 trees for the people that live on 5th Street.
9 And basically, most of them have very large
10 trees in the backyard, so it's very leafy and
11 pleasant.

12 CHAIRMAN LOUD: Ms. Bray, did you
13 have any questions for Ms. Vogt?

14 MS. BRAY: I do.

15 CHAIRMAN LOUD: Okay.

16 MS. BRAY: Thank you.

17 CROSS EXAMINATION

18 MS. BRAY: Ms. Vogt, I was looking
19 at your pictures. I personally had a question
20 about this picture. I know it's probably
21 going to be hard to see when I hold it up to
22 you, but it looks like it was taken from your

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1 backyard facing the rears of the house.

2 Can you identify which of these
3 windows is your bedroom window?

4 MS. VOGT: The one closest to the
5 Whaleys is my hallway window and the other two
6 are bedroom windows.

7 MS. BRAY: The other two are
8 bedroom windows. So in the photograph you
9 referenced here --

10 MS. VOGT: Yes.

11 MS. BRAY: -- looking out your
12 bedroom window, which window?

13 MS. VOGT: It's probably the middle
14 window.

15 MS. BRAY: I thought you said that
16 was the hallway window? No? Really? The one
17 on the right is the hallway window?

18 MS. VOGT: Yes.

19 MS. BRAY: The other two are
20 bedroom?

21 MS. VOGT: I did -- I can't be
22 exactly sure which picture that is. I mean, I

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1 took pictures both out of the hallway window
2 and the bedroom windows.

3 MS. BRAY: Okay. And so from this
4 view where you are looking out your bedroom
5 window over the ridgeline of the two one story
6 additions on either side of the --

7 MS. VOGT: Yes.

8 MS. BRAY: -- property line, is
9 there any addition which would preserve this
10 view? Any second floor addition on the Whaley
11 home which would preserve this view?

12 MS. VOGT: I think part of the view
13 would be preserved if the roof was shorter,
14 yes.

15 MS. BRAY: And by the roof being
16 shorter, what do you mean? Do you mean
17 horizontally shorter or lower in altitude?

18 MS. VOGT: What's the difference
19 between horizontally shorter and lower in
20 altitude?

21 MS. BRAY: Well, when you say if
22 the roof were shorter, do you mean if the roof

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1 were lower or if the roof did not extend as
2 far out into the yard? I'm trying to --

3 MS. VOGT: Well, certainly there
4 would be more view if it terminated say over
5 the present kitchen, because you would be able
6 to see that. But then, yes, if it terminated
7 just under the eaves instead of like extending
8 up above where the gutter line is --

9 MS. BRAY: Yes.

10 MS. VOGT: -- part of that view,
11 yes, would be present. You can look out that
12 window and you see that church on the corner,
13 on the far corner of 5th Street.

14 MS. BRAY: Okay. You also
15 mentioned that this photograph that was taken
16 from behind the Mois and --

17 MS. VOGT: Ness.

18 MS. BRAY: -- Ness property is
19 taken from a parking lot. Is that right?

20 MS. VOGT: Yes.

21 MS. BRAY: I just want to clarify.
22 But do you understand that -- this to be on

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1 private property or its a public way?

2 MS. VOGT: It's private, but it's,
3 I mean, not entire private since it has to
4 always remain open and available for utility
5 people.

6 MS. BRAY: And these fences, they
7 are fences that create a barrier between the
8 backyards and this parking lot?

9 MS. VOGT: Yes.

10 MS. BRAY: And these houses. Okay.
11 So this is taken from outside the backyard of
12 this house?

13 MS. VOGT: Yes.

14 MS. BRAY: Okay.

15 MS. VOGT: I mean you can sort of
16 see the edge of the brick building. I mean, I
17 wasn't standing on their deck. But if you
18 were standing on the deck, then the view --
19 they would have an even more straight on view
20 of where the addition would be.

21 MS. BRAY: Of the Pastis' home?

22 MS. VOGT: Yes.

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1 MS. BRAY: Okay. I have nothing
2 further, but I would like the opportunity to
3 call Ms. Anahtar back as a rebuttal witness to
4 talk about the HPRB action.

5 CHAIRMAN LOUD: She's going to
6 speak specifically just to the recommendation
7 about the height, revisiting the height slope?
8 Okay.

9 MS. BRAY: Ms. Anahtar, did you
10 have a chance to review what Ms. Vogt
11 submitted, the actions report from the March
12 26th meeting of 2009 from the HPRB?

13 MR. ANAHTAR: Yes.

14 MS. BRAY: And did you see it says
15 "The Board also stated a directive for the
16 restudy of the roof height to see if it could
17 be further minimized by reducing the slope."

18 Did you do that?

19 MR. ANAHTAR: Yes. They had asked
20 for lowering the roof height together with the
21 approval of the application. And I go to roof
22 height and sent the drawings to Amanda Molson,

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1 so they had it in record.

2 MS. BRAY: And you have not
3 submitted yet for final permit drawings. Is
4 that right?

5 MR. ANAHTAR: That's right.

6 MS. BRAY: Okay. So is it your
7 understanding the HPRB would review any
8 revisions to the concept at the time of final
9 permit drawings?

10 MR. ANAHTAR: Yes.

11 MS. BRAY: Okay. Thank you very
12 much.

13 MS. VOGT: Can I just clarify?
14 It's my understanding that, okay, the date of
15 the hearing that we were last at the HPRB was
16 March 26th. And what I understood at that
17 hearing was that you had submitted a slight
18 reduction in roof prior to that meeting?

19 MR. ANAHTAR: That's right.

20 MS. VOGT: Right. That was like--

21 MR. ANAHTAR: That was the first
22 effort. But you said you wanted a further

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1 reduction --

2 MS. VOGT: Right.

3 MR. ANAHTAR: -- so that's what --

4 MS. VOGT: And I would clarify
5 also, it was also the architects on the board
6 that were interested in that. It wasn't just
7 myself.

8 MR. ANAHTAR: I'm sorry?

9 MS. VOGT: It was the architects on
10 the HPRB Board that were also concerned about
11 --

12 MR. ANAHTAR: Well, after your
13 concerns, yes.

14 MS. VOGT: Okay. I'm just --

15 MR. ANAHTAR: Yes.

16 MS. VOGT: So there was a slight
17 reduction and then they requested to see if it
18 could be reduced further.

19 CHAIRMAN LOUD: Okay.

20 MR. ANAHTAR: Can I also remind --

21 CHAIRMAN LOUD: No.

22 MR. ANAHTAR: -- one more thing?

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1 That we had a previous design before this
2 application for this addition, which had --
3 which was a stepdown solution to offer more
4 area light to Nancy Vogt's property, but she
5 said that she would rather see a two story
6 structure than a stepup or stepdown design
7 with a loft level.

8 So this was -- yes, this design was
9 as a response to your concerns.

10 MS. VOGT: Can I -- I have a --

11 CHAIRMAN LOUD: Thank you. Yes,
12 Ms. Vogt?

13 MS. VOGT: -- comment about that.
14 I think it is important to also note that the
15 three story design was unanimously rejected by
16 CHRS, the ANC, Planning and Zoning and the
17 HPRB itself. So --

18 MS. BRAY: I think I have to
19 object. We are not looking at a three story
20 design. And I think it just confuses the
21 record, at this point, to refer to that.

22 I think the question has been asked

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1 and answered. Ms. Anahtar actually responded
2 to the directive of the HPRB. Whether that
3 came from the concerns of Ms. Vogt or the
4 architects on the board is irrelevant.

5 The permit drawings have not yet
6 been submitted, but they have the concept and
7 the plans before the board reflective of
8 reduction and roof slope asked for by HPRB.

9 MS. VOGT: I understand that. I
10 just don't --

11 CHAIRMAN LOUD: Okay. Thank you.

12 MS. VOGT: -- think it's entirely
13 irrelevant that, you know, you are always
14 attributing any change to me when, in fact,
15 there were all these other agencies involved
16 in saying that that three story design wasn't
17 acceptable.

18 CHAIRMAN LOUD: Thank you. I'm
19 sorry. And I think on that note, we do want
20 to refocus back on today's proceeding, the
21 design and the site plan, that is before us.
22 And Historic Preservation will go into some

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1 issues that really don't involve us at all in
2 terms of the 223 analysis.

3 So in terms of reorienting
4 ourselves back to this morning's hearing, I
5 think you had concluded your testimony, Ms.
6 Vogt? Okay. And you don't have any
7 additional? Okay. You brought one rebuttal
8 witness.

9 So then what we do now or what we
10 will do is turn back to you for any closing.

11 MS. BRAY: Thank you, Mr. Chairman.

12 Given the late hour, I doing to dispense with
13 a summary of the facts that you have heard,
14 but I will highlight that the application
15 clearly meets the standard for 223.

16 I mean, the language in 223 does--
17 is qualified in so far as any compromise on
18 the privacy or use and enjoyment of
19 neighboring properties shall not be unduly
20 compromised. And any impacts on the
21 surrounding properties, which are adverse,
22 must not be substantially adverse.

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1 And I think the record in this case
2 is long and is clear and full and actually
3 clearly demonstrates that there will be no
4 substantial adverse impacts or undue
5 compromise in the use or enjoyment of
6 surrounding properties.

7 We have heard that these types of
8 additions are common throughout the District
9 of Columbia, but the expectations of privacy
10 and shadows in the close living situations on
11 Capitol Hill of this type of addition is quite
12 common.

13 And the Zoning Commission
14 explicitly provided for these types of
15 additions to be reviewed by the -- by special
16 exception which carries a lower burden, as you
17 well know.

18 I would like to point out with
19 regard to the shadow studies that the ultimate
20 conclusions of the professional architect, who
21 prepared the shadow studies, were that despite
22 the discrepancies, any discrepancies which may

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1 appear between the two versions, one submitted
2 by the Pastis' family, unfortunately, the
3 person who prepared that is not here for us to
4 cross examine to ask about their methodology
5 and how they prepared them, and Ms. Anahtar's
6 shadow studies are not so great as to alter
7 the conclusion.

8 They also demonstrate that the sun,
9 and I think the Board can take administrative
10 notice of this fact, moves not just from east
11 to west in the sky, but also along an axis
12 from the southeast to the northwest in certain
13 months from the northeast to the southwest in
14 other months as we go through the seasons of
15 the year. And therefore, shadows aren't
16 always reflected due north, but can appear on
17 other facades and other portions of the
18 property depending on the time of year and the
19 time of day.

20 With that, I would just like to
21 conclude by saying the application clearly
22 demonstrates that although there will be some

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1 impact on the visual massing -- the massing
2 clearly creates some impact in terms of the
3 visual aesthetic as well as the light and air
4 available to other properties. That impact
5 does not rise to the level of an undue
6 compromise in the use and enjoyment of
7 properties surrounding the subject property
8 nor does it substantially adversely impact
9 those surrounding properties.

10 And with that, we would urge the
11 Board's approval of the application.

12 CHAIRMAN LOUD: Thank you, Ms.
13 Bray. I believe that the record is full and I
14 believe we are going to deliberate this
15 morning and make a decision on it. And I
16 think Mr. Dettman is going to get us started.

17 I think what we will do, Mr.
18 Dettman, if it's okay with you, is we will
19 deliberate the special exception and depending
20 on the outcome there, we will know what to do
21 with respect to the alternative request, the
22 request for alternative relief as a variance.

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1 VICE CHAIRMAN DETTMAN: Thank you,
2 Mr. Chairman. And I think that's the right
3 approach. This is a request, as we all know,
4 for an addition onto an existing semi-detached
5 dwelling located at 321 6th Street, S.E.

6 In order for the Board to grant the
7 requested special exception, the applicant
8 needs to demonstrate that they can meet the
9 burden under section 223.

10 I think the Office of Planning
11 report lays out a very thorough and well-
12 thought out analysis. And so I'm going to
13 rely upon their report pretty heavily, in that
14 I come out with the same conclusion that they
15 do.

16 Based on the record and the
17 testimony that has been provided, I'm inclined
18 to recommend approval for the application.

19 I think that with respect to the
20 burden that needs to be met, again, 223 allows
21 for reasonable additions onto existing
22 dwellings, whether they be a row dwelling,

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1 whether it be a semi-detached, 223 does not
2 distinguish between the two.

3 What it does is it distinguishes
4 between what zone the particular property is
5 in and what the allowable maximum lot
6 occupancy is. And in this particular zone,
7 being an R-4, the applicant can achieve by way
8 of special exception a lot occupancy of 70
9 percent where what is being proposed is an
10 increase from 47.6 to 56.8.

11 Essentially, the addition replaces
12 the existing one story addition to the rear of
13 the property with a two story addition.
14 Essentially, maintaining the same footprint
15 with a slight little extension. I believe the
16 extension out the rear of the property is an
17 additional 4 feet, but the required rear yard
18 requirement is still being met.

19 I think that the applicant has met
20 its burden with respect to demonstrating that
21 the proposed addition is not going to have a
22 substantially adverse affect on the use and

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1 enjoyment of neighboring properties with
2 respect to light and air.

3 We do have shadow studies from the
4 neighbor to the north as well as the
5 applicant. And the thing about shadow studies
6 is that the results is all dependent upon the
7 quality of the data that goes in and the
8 settings and the software.

9 So where I don't put a lot of
10 weight in the shadow studies that have been
11 submitted to make my determination, I think
12 that we can look to them to see whether
13 without question it is going to be an enormous
14 impact or whether it is going to be a little
15 bit of impact.

16 I think I agree with Ms. McCarthy.

17 It's an addition that is going to be a slight
18 enlargement, so there is going to be a little
19 bit of a change from the status quo. So
20 everything has a little bit of impact.

21 But again, the standard is a
22 substantial affect and an undue impact. So I

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1 don't see in the information that has been
2 presented in the shadow studies. And again,
3 looking at it the way DCOP did, that they
4 looked at separation.

5 We are looking at OP said 10. I
6 think the applicant said 14. 14 feet of
7 separation between the north facade of the
8 addition and the south facade of the Pastis'
9 property. I think that that's adequate for
10 the provision of enough light and enough air
11 between these two properties and into the
12 Pastis' property, into their dwelling.

13 With respect to the privacy of use
14 and enjoyment of the abutting properties, just
15 looking to the north, I think that, again, the
16 applicant states that there is already views
17 into the properties in the north yard. And
18 these two properties have coexisted for a very
19 long period of time.

20 And the property to the north has
21 plenty of windows and an outdoor veranda that
22 has views into the neighbor's -- the

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1 applicant's yard. I mean, this is a very
2 dense urban neighborhood. Those are the kinds
3 of things we need to take into consideration
4 when we choose to live in a dense urban
5 neighborhood like this.

6 And I don't see the proposed
7 addition and the second story rear deck, the 8
8 foot rear deck, having such an enormous impact
9 on the privacy, use and enjoyment on the
10 abutting properties to lead me to recommend
11 denial of the application.

12 With respect to views, I think the
13 applicant showed some renderings from the
14 front of the property. You won't see it from
15 the public right-of-way. There isn't a public
16 right-of-way in the rear of the property, such
17 as an alley.

18 I think it has been well-
19 coordinated with the Historic Preservation
20 Office, so that it maintains kind of its -- in
21 appearance, it's secondary to the historic
22 structure. And its design won't have any kind

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1 of impact to use from public rights-of-way.

2 I have already stated that what the
3 lot occupancy is being pursued. It is going
4 from 47.6 to 56.8. So the applicant has found
5 a way to meet their needs in terms of
6 providing enough space for their family
7 members and providing enough space for them to
8 continue on living in this property for a
9 substantial amount of time without actually
10 maximizing the lot occupancy that is allowed
11 under 223.

12 So I think that there is a balance
13 that has been made there that is appropriate.

14 Finally, my last comment goes to
15 Ms. Vogt's property to the south. No doubt
16 there is going to be a change in the view. I
17 think that the photographs that Ms. Vogt
18 provided to us attached to her application for
19 party status clearly demonstrate the view that
20 she has now.

21 And if we could just kind of
22 visualize what it is going to look like after

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1 the addition is constructed, there certainly
2 is an impact.

3 I don't see that there is going to
4 be a substantial impact to light and air, as
5 Ms. Vogt's property is located to the south.
6 And we had some discussion about how the sun
7 moves, you know, throughout the sky.

8 And privacy, there is not going to
9 be any windows along the southern facade of
10 the addition. The 8 foot rear deck, I don't
11 think is going to have an undue impact on the
12 privacy of use and enjoyment on Ms. Vogt's
13 property.

14 Just by the looks of it, it looks
15 like the applicant would have to go through or
16 partake some sort of effort in order to really
17 kind of bend their head around and try to look
18 into the rear widows of Ms. Vogt's property.

19 The applicant has stated already
20 that these additions are not uncommon in the
21 city and in the Capitol Hill neighborhood.
22 And it's essentially what was contemplated

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1 when the Zoning Commission passed 223 instead
2 of requiring people to go forward and try to
3 pursue a much more difficult standard by way
4 of a variance.

5 So that being said, Mr. Chairman, I
6 can give it back to you and other Board
7 Members for comments.

8 CHAIRMAN LOUD: Thank you, Mr.
9 Dettman. That was an excellent analysis.
10 Board Members, are there any additional
11 comments?

12 MEMBER MOLDENHAUER: I feel that
13 Mr. Dettman provided a fabulous summary
14 touching on all the points. And I guess one
15 thing that I definitely agree with him on and
16 I just wanted to add was the issue of the
17 unduly impacting of the neighbor, especially
18 Ms. Vogt, that has been before us today.

19 I feel that, you know, this will
20 impact her. I think that Mr. Dettman is duly
21 noting that. And I think that, you know,
22 especially considering the urban environment,

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1 you know, there would have been a factor if
2 this was the only view or enjoyable view from
3 the rear of a property.

4 But it seems though from her
5 testimony that there is an open air space to
6 her south, on the opposite side of the house
7 to the south, and thus, you know, while this
8 is going to impact her, it's not going to
9 unduly impact her by just taking away any
10 possible view or enjoyment of light outside of
11 her bedroom windows.

12 And I believe also that the window
13 closest to this new structure is a hallway
14 window, which also would limit the aspect of
15 whether it would unduly impact that property.

16 Other than that, I agree with the
17 analysis of Mr. Dettman.

18 CHAIRMAN LOUD: Thank you.
19 Anything further? Commissioner Hood, I'm
20 sorry, did you have anything to add?

21 COMMISSIONER HOOD: I don't think I
22 have anything to add. I will tell you that

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1 I've reviewed Ms. McCarthy's submission and I
2 think she did a fabulous job along with the
3 Office of Planning. But I don't have anything
4 to add, no.

5 CHAIRMAN LOUD: Thank you. And I
6 think all that I would add to echo Board
7 Member Moldenhauer is that Mr. Dettman did an
8 outstanding job taking us through the analysis
9 and the application of 223.

10 I just wanted to note for the
11 record that in addition to 223, OP's report
12 takes into consideration section 1202, because
13 this is part of the CAP Overlay District. And
14 in that regard, there is a letter on file from
15 Mr. Michael G. Turnbull who is representing
16 the Architect of the Capitol and speaks to one
17 of the sections of 1202.

18 And I'm not going to go through it
19 all, just generally to note that the report
20 takes into consideration the 1202 requirements
21 as well.

22 I had to smile a little bit when

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1 Ms. McCarthy testified about how long it would
2 take for -- how many hours of sunlight roses
3 needed after we qualified her as an expert in
4 land use planning, but I think that, as Mr.
5 Dettman said, these shadow studies from the
6 different applicants were all over the board
7 and sort of in conflict with one another.

8 And to me, OP is a neutral party
9 and they don't have a stake in the outcome,
10 unlike the applicant, unlike the parties, and
11 their conclusion that there would not be a
12 light or air impact, particularly since a 10
13 foot separation, I think, was the testimony is
14 enough to preserve light and air was
15 persuasive for me.

16 So I tended to lean a little on the
17 OP report as well.

18 If there is nothing further, is
19 there a motion?

20 VICE CHAIRMAN DETTMAN: Certainly,
21 Mr. Chairman. I just wanted to make one last
22 statement.

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1 It sounded as if the applicant is
2 going to need to go back to HPRB for a final
3 review and whatnot. I can drop the comment
4 and just continue on to the motion.

5 I'll move for approval of
6 Application No. 18000, pursuant to 11 DCMR
7 3104.1, for a special exception to allow a two
8 story rear addition to a one-family semi-
9 detached dwelling under section 223, not
10 meeting the lot occupancy requirements of 403,
11 side yard requirements of 405 and
12 nonconforming structure requirements of
13 2001.3, in the CAP/R-4 District at premises
14 321 6th Street, S.E., and I'll also incorporate
15 the provisions of section 1202, the special
16 exception under the CAP Overlay.

17 CHAIRMAN LOUD: Thank you, Mr.
18 Dettman. Is there a second?

19 MEMBER MOLDENHAUER: I second.

20 CHAIRMAN LOUD: The motion has been
21 made and seconded. Is there further
22 deliberation?

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1 Hearing none, all those in favor
2 say aye.

3 ALL: Aye.

4 CHAIRMAN LOUD: All those who
5 oppose? Ms. Bailey, can you read back the
6 vote for us, please?

7 MS. BAILEY: Mr. Chairman, the vote
8 is recorded as 4-0-1 to grant the application.
9 Mr. Dettman made the motion, Mrs. Moldenhauer
10 seconded, Mr. Loud and Commission Hood support
11 the motion.

12 CHAIRMAN LOUD: Thank you, Ms.
13 Bailey. In light of the Board having voted
14 affirmatively on the special exception
15 application, I don't think that we feel the
16 variance relief would be appropriate or,
17 obviously, even necessary.

18 So we will disregard the request
19 for relief under that.

20 MS. BAILEY: Mr. Chairman, there
21 was one final note for the applicant. We
22 don't have in the record the Surveyor's Plat.

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1 We do have the Surveyor's Plat, but we don't
2 have one that was signed by the Surveyor. So
3 if we could get a document that was signed by
4 the D.C. Surveyor for the record, that would
5 be appreciated.

6 CHAIRMAN LOUD: Thank you.

7 MS. BAILEY: Thank you, sir.

8 CHAIRMAN LOUD: Thank you, Ms.
9 Bailey. Ms. Bray, can you work with your
10 client, okay, and get that into our record?

11 This will not be a summary
12 decision, because of the opposition in it, so
13 we will make every effort to get the decision
14 out as promptly as we can. But you will have
15 a little time to get that signed Surveyor's
16 Plat in.

17 Thank you very much. I think we
18 can close the morning calendar and adjourn the
19 morning calendar.

20 And how about, what to you think
21 about, a 20 minute break? Okay. We're going
22 to take a 20 minute break for those that are

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1 coming in for the -- 30 minute break for those
2 who are coming in for the afternoon calendar,
3 which would normally start at 1:00. We are
4 going to start now at about 1:35.

5 MS. BRAY: Thank you.

6 CHAIRMAN LOUD: The morning's
7 calendar is adjourned.

8 (Whereupon, the Public Hearing was
9 recessed at 1:06 p.m. to reconvene at 1:55
10 p.m. this same day.)
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:55 p.m.

3 CHAIRMAN LOUD: This hearing will,
4 please, come to order. Good afternoon, ladies
5 and gentlemen. This is the November 24th
6 Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Marc D. Loud,
9 Chairperson. And my fellow colleagues up here
10 on the dias will now introduce themselves.

11 VICE CHAIRMAN DETTMAN: Shane
12 Dettman, Vice Chair, representing NCPC.

13 MEMBER MOLDENHAUER: Meridith
14 Moldenhauer, Mayoral Appointee.

15 COMMISSIONER HOOD: Anthony Hood
16 representing the Zoning Commission.

17 MS. NAGELHOUT: Mary Nagelhout with
18 the Land Use and Public Works Section of OAG.

19 MS. BAILEY: Beverley Bailey,
20 staff, Office of Zoning.

21 CHAIRMAN LOUD: Thank you to
22 everyone. I just want to note that Chairman

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1 Hood is also the Chair of the Zoning
2 Commission in addition to representing the
3 Zoning Commission.

4 Copies of today's hearing agenda
5 are available to you and are located to my
6 left in the wall bin near the door. Please,
7 be aware that this proceeding is being
8 recorded by a Court Reporter and is also
9 webcast live. Accordingly, we must ask you to
10 refrain from any disruptive noises or actions
11 in the hearing room.

12 When presenting information to the
13 Board, please, turn on and speak into the
14 microphone, first, stating your name and home
15 address. When you are finished speaking,
16 please, turn your microphone off, so that your
17 microphone is no longer picking up sound or
18 noise.

19 All persons planning to testify
20 either in favor or in opposition are to fill
21 out two witness cards. These cards are
22 located to my left on the table near the door

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1 and on the witness tables. Upon coming
2 forward to speak to the Board, please, give
3 both cards to the reporter sitting to my
4 right.

5 The order of procedure for special
6 exceptions and variances is: Statement and
7 witnesses of the applicant; Government
8 reports, including the Office of Planning, The
9 Department of Transportation, etcetera; report
10 of the Advisory Neighborhood Commission;
11 parties or persons in support; parties or
12 persons in opposition and, finally, closing
13 remarks by the applicant.

14 Pursuant to Sections 3117.4 and
15 3117.5, the following time constraints will be
16 maintained: The applicant, persons and
17 parties, except an ANC, in support, including
18 witnesses, 60 minutes collectively. Persons
19 and parties, except an ANC, in opposition,
20 including witnesses, 60 minutes collectively.
21 Individuals 3 minutes and persons
22 representing organizations 5 minutes.

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1 These time restraints do not
2 include cross examination and/or questions
3 from the Board. Cross examination of
4 witnesses is permitted by the applicant or
5 parties only. The ANC within which the
6 property is located is automatically a party
7 in a special exception or variance case.

8 Nothing prohibits the Board from
9 placing reasonable restrictions on cross
10 examination.

11 The record will be closed at the
12 conclusion of each case, except for any
13 material specifically requested by the Board.

14 The Board and the staff will specify at the
15 end of each hearing exactly what is expected
16 and the date when the persons must submit the
17 evidence to the Office of Zoning. After the
18 record is closed, no other information will be
19 accepted by the Board.

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

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

4 Please, turn off all beepers and
5 cell phones, at this time, so as not to
6 disrupt these proceedings.

7 The Board will make every effort to
8 conclude the Public Hearing today as near as
9 possible to 6:00 p.m. In fact, it does not
10 appear as though we will run until 6:00. But
11 if for some reason the afternoon cases are not
12 completed at 6:00, the Board will assess
13 whether it can complete pending case or cases
14 remaining on the agenda and take appropriate
15 action to either finish the case out or
16 continue it to the next available date on the
17 calendar.

18 At this time, the Board will
19 consider any preliminary matters. Preliminary
20 matters are those that relate to whether a
21 case will or should be heard today, such as
22 requests for postponement, continuance or

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1 withdrawal or whether proper and adequate
2 notice of the hearing has been given. If you
3 are not prepared to go forward with a case
4 today or if you believe the Board should not
5 proceed, now is the time to raise such a
6 matter.

7 Does the staff have any preliminary
8 matters?

9 MS. BAILEY: Mr. Chairman, Members
10 of the Board and to everyone, good afternoon.
11 Sir, I do not.

12 CHAIRMAN LOUD: Thank you, Ms.
13 Bailey. Then why don't we swear in the
14 witnesses? So all individuals who are going
15 to be testifying in any of the cases scheduled
16 for this afternoon, if you could, please, rise
17 and Ms. Bailey will administer the oath to
18 you.

19 (Whereupon, the witnesses were
20 sworn.)

21 MS. BAILEY: Mr. Chairman, thank
22 you. The first case of the afternoon is

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1 Application 17998, it's the Application of
2 Ruth H. Lawrence, and it's pursuant to 11 DCMR
3 § 3103.2, for a variance from the floor area
4 ratio requirements under section 771, a
5 variance from the side yard requirements under
6 section 775, and a variance from the off-
7 street parking requirements under subsection
8 2101.1, to construct through renovation and
9 addition a new three story office building.
10 The property is located in the C-2-A District
11 at 3010 Martin Luther King, Jr. Avenue, S.E.,
12 Square 5952, Lot 44.

13 And, Mr. Chairman, I was given this
14 afternoon a copy of the applicant's
15 introductory statement, which I'll pass out at
16 this time.

17 CHAIRMAN LOUD: Thank you, Ms.
18 Bailey. Are the parties here in the Lawrence
19 case? The case that has just been called? If
20 you could, please, step forward and take a
21 seat at the table. Is ANC-8C here? They are
22 not here.

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1 Good morning or I should say good
2 afternoon actually. And if you could
3 introduce yourselves for our record? I don't
4 know if your microphone is on, Mr. McGee.

5 MR. MCGEE: No. My name is Willy
6 J. McGee. I'm the architect of record for
7 this project.

8 CHAIRMAN LOUD: Good afternoon.

9 MS. LAWRENCE: And I'm Ruth
10 Lawrence. I'm the owner of the property at
11 3010 Martin Luther King Avenue in Southeast.

12 CHAIRMAN LOUD: Good afternoon to
13 you as well, Ms. Lawrence.

14 MS. LAWRENCE: Thank you.

15 CHAIRMAN LOUD: I will say from
16 looking at the record that it is a very full
17 record and that you have the support of both
18 the ANC in this area as well as the Office of
19 Planning. And it doesn't appear, I'll let my
20 colleagues correct me if I'm wrong, that you
21 need to go through a full presentation of your
22 case.

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1 I think if you want to highlight
2 certain aspects of the project and then
3 perhaps we can probably turn to the Office of
4 Planning and not have you here an
5 extraordinarily long time.

6 MR. McGEE: Thank you, Mr.
7 Chairman. I would just want to say briefly
8 that there are three concerns we have and
9 perhaps the most or we're concerned about is
10 the parking situation at that particular site.

11 And of course, as we say in our -- out here
12 to you that we feel that there are -- because
13 of the importance of the site and the
14 difficulty in getting cars in and out the
15 site, we would find it most difficult to go
16 ahead and put -- and get parking in
17 concurrence with the present code.

18 However, we have shown, and as you
19 have in your hands there, a handout that shows
20 seven parking spaces that we can get and
21 manipulate those spaces within the confines of
22 that trapezoidal-shaped lot.

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1 And I think that is essentially
2 what we would consider to be the most
3 burdensome part of our project.

4 The other thing is the FAR, the
5 floor area ratio. And I point out in that
6 particular handout that if we were to take
7 into consideration the fact that we have all
8 of the non-occupancy spaces, such as the
9 elevator we put into the building, the area we
10 have for corridors and handicapped or what
11 have you, and use those particular dimensions
12 and those areas to, in a sense, calculate the
13 FAR.

14 We would find that it would be
15 almost no problem at all, because we would
16 have less FAR than we have without that. So
17 those are the essential parts of this
18 particular report.

19 CHAIRMAN LOUD: Thank you, Mr.
20 McGee. Ms. Lawrence, did you care to add
21 anything to that?

22 MS. LAWRENCE: No, thank you.

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1 CHAIRMAN LOUD: Okay. Let's see if
2 Board Members have any general questions
3 regarding the project for either of you. It
4 doesn't appear as such. So why don't we turn
5 to the Office of Planning? Good afternoon.

6 MR. MORDFIN: Good afternoon. I'm
7 Stephen Mordfin with the Office of Planning.
8 And the subject property is unique as a result
9 of its small size, the shape of the property
10 resulting in a triangular-shaped rear yard and
11 the existence of a nonconforming 2.5 foot deep
12 side yard on the south side of the building
13 that was constructed in 1934, prior to the
14 adoption of the Zoning Regulations.

15 This uniqueness results in
16 practical difficulties with respect to FAR,
17 side yard and on-site parking. The practical
18 difficulty resulting from the maximum FAR 1.5
19 is that the majority of the building addition
20 would be devoted to support services for the
21 building and not to office space, the main
22 intended use of the building.

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1 It would be a practical difficulty
2 to the applicant to have to devote a
3 significant amount of floor space to accessory
4 building uses. The granting of this variance
5 should not have an adverse impact on the Zone
6 Plan, because it would allow the applicant to
7 construct a modern handicapped accessible
8 office building on a commercially zoned
9 property.

10 The practical difficulty resulting
11 from the side yard requirement to provide
12 either a 6 foot deep side yard or no side yard
13 at all on the south side of the building is
14 that the existing side yard measures only 2.5
15 feet. To provide this side yard, the
16 applicant would either have to construct --
17 I'm sorry.

18 To provide a side yard in
19 compliance with the Zoning Regs, the applicant
20 would either have to construct a 30 inch wide
21 building addition or remove the south wall of
22 the building, both of which would be a

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1 practical difficulty.

2 A provision of the 6 foot wide side
3 yard at the front of the building would also
4 result in a nonconforming open court, which
5 would also require an area variance.
6 Therefore, it would be a practical difficulty
7 to the applicant to provide the side yard as
8 required by the Zoning Regulations.

9 And the granting of this variance
10 should not have an adverse impact on the Zone
11 Plan, because it would allow the applicant to
12 align the building with the commercial
13 structures to the south.

14 In addition, the south side of the
15 lot abuts a public alley, eliminating the
16 possibility of the construction of a building
17 on an adjoining lot with only 2.5 feet between
18 them.

19 And the practical difficulty that
20 results from the shape of the lot and the
21 location of the existing building and lot is
22 with respect to the provision of parking.

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1 In combination, the applicant is
2 unable to provide the number of parking spaces
3 required by the Zoning Regulations because of
4 the shape of the lot and because of the
5 location of the building and, therefore, it
6 would be a practical difficulty to the
7 applicant to be required to provide 14 parking
8 spaces on-site.

9 And the granting of this variance
10 should not have an adverse impact on the Zone
11 Plan because six spaces would be provided for
12 those that do drive to the site. The site is
13 accessible by public bus and is located,
14 approximately, one-half mile from the Congress
15 Heights Metrorail Station.

16 Therefore, the Office of Planning
17 recommends approval of this application.
18 Thank you.

19 CHAIRMAN LOUD: Thank you. That
20 was an excellent report. Let's see if Board
21 Members or the applicant have any questions
22 for you.

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1 COMMISSIONER HOOD: Mr. Chairman, I
2 just wanted to ask Mr. Mordfin, you mentioned
3 that the applicant is providing six spaces in
4 relief of eight spaces. But then I look on
5 page 4 of your report, maybe I'm just missing
6 something, you said that 2101.1 requires 21
7 off-street parking spaces.

8 The applicant proposed to provide
9 six. So are they supposed to provide 21 or
10 are they supposed to provide 14?

11 MR. MORDFIN: It's 14. That's an
12 error on page 4.

13 COMMISSIONER HOOD: Okay. All
14 right. Gotcha. Thank you.

15 CHAIRMAN LOUD: Thank you, Chairman
16 Hood. Are there any additional questions for
17 the Office of Planning?

18 VICE CHAIRMAN DETTMAN: Good
19 afternoon, Mr. Mordfin. I was just wondering,
20 I think the applicant just stated that they
21 were going to provide seven spaces. And the
22 drawing that they handed out to us today shows

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1 seven. So just a clarification on that.

2 MR. MORDFIN: Okay. This drawing
3 shows that they can provide seven, so
4 therefore, I would say that the variance
5 should be to reduce the parking to seven.

6 CHAIRMAN LOUD: Mr. McGee or Ms.
7 Lawrence, did you have any questions for the
8 Office of Planning?

9 MR. MCGEE: No, I do not.
10 Actually, I would like to say that I
11 appreciate having dealt with the Office of
12 Planning during this process and, of course,
13 we have done community services in the area
14 and gotten their concurrence in what we were
15 doing here. So I think we have done all we
16 can do in this. And appreciate it very much.

17 CHAIRMAN LOUD: Thank you. The ANC
18 for this project is ANC-8C under the
19 leadership of Commissioner Cuthbert, who I
20 believe was here this morning and had to
21 leave, but they did submit a report. It's our
22 Exhibit No. 22, dated October 29, 2009.

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1 It indicates that there was a
2 proper notice for the meeting, that they had a
3 quorum and that they voted 4-0 to unanimously
4 support the application. So we commend you
5 for your work in the community, work with the
6 ANC to garner their support.

7 At this time, are there persons in
8 support in the audience that would like to
9 testify on behalf of this project?

10 Are there persons in the audience
11 that would like to testify in opposition to
12 this project?

13 Then we turn back to you, Mr.
14 McGee, for any closing remarks.

15 MR. MCGEE: Well, I would like to
16 say that I want to offer my appreciation. I
17 learned some years ago in dealing with the BZA
18 that you don't come to BZA without the ANC's
19 approval. And of course, I certainly want to
20 say that we have worked with the community out
21 there immensely at meetings and all.

22 And this gentleman here, I have

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1 talked with him several times in this area and
2 I was pleased to understand -- I mean, to know
3 that how understanding people have been about
4 this project. And Mrs. Lawrence joined me in
5 saying that we certainly do appreciate having
6 your all's concurrence in this matter.

7 CHAIRMAN LOUD: Thank you. Please,
8 tell Commissioner Cuthbert that Marc Loud said
9 hello. They are a very thorough Commission
10 out there. We have had a couple of cases from
11 her Commission in the last month and I think
12 this is the first one that had unqualified
13 support. So it just shows how hard you are
14 working with her Commission.

15 I believe --

16 MR. MCGEE: Mr. Chairman?

17 CHAIRMAN LOUD: Yes, sir?

18 MR. MCGEE: If we could just say
19 that we all said hello, but we don't want to
20 get in trouble with Ms. Cuthbert.

21 CHAIRMAN LOUD: If you insist. I
22 was trying to get some brownie points for me,

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1 because I know I'll see her in the community.

2 But again, it just shows your level of
3 engagement with Commissioner Cuthbert and it
4 opens doors, as you indicated.

5 I think because the record has been
6 so full and you've got the support of the
7 Office of Planning on the variance relief and
8 the ANC as well and there is no opposition to
9 it, that we probably will deliberate today, a
10 brief deliberation today.

11 And I think Mr. Dettman will start
12 us off.

13 VICE CHAIRMAN DETTMAN: Thank you,
14 Mr. Chairman. Very quickly, I think the
15 variance test, the three prongs of the
16 variance test have been met for all three
17 areas of relief, being relief from the maximum
18 FAR requirements under 771.2, the side yard
19 requirements under 775.5 and the minimum off-
20 street parking requirements of 2101.1.

21 And I'll simply just incorporate by
22 reference OP's very well-prepared report in

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1 lieu of my articulation of the three prongs of
2 the variance test.

3 I think in the absence of any
4 opposition in the audience, from the
5 community, and you had already mentioned our
6 Exhibit No. 22 from ANC-8C expressing their
7 support for the project, I think the applicant
8 has met their burden, again for all three area
9 variances that are being requested.

10 And I'm prepared to make a motion
11 in support of the project.

12 CHAIRMAN LOUD: Thank you, Mr.
13 Dettman. Why don't you move to your motion?
14 If we have further deliberation, we'll take it
15 up as part of the motion.

16 VICE CHAIRMAN DETTMAN: Okay. I
17 move for approval of Application No. 17998,
18 pursuant to 11 DCMR 3103.2, for variances from
19 the FAR requirements, the side yard
20 requirements and off-street parking
21 requirements of 771, 775 and 2101.1,
22 respectively, to construct through renovation

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1 and addition, a three story office building in
2 the C-2-A District at 3010 Martin Luther King,
3 Jr. Avenue, S.E.

4 COMMISSIONER HOOD: Second.

5 CHAIRMAN LOUD: A motion has been
6 made and seconded. Is there further
7 deliberation?

8 Hearing none, all those in favor
9 say aye.

10 ALL: Aye.

11 CHAIRMAN LOUD: All those who
12 oppose? Ms. Bailey, can you read back the
13 vote, please?

14 MS. BAILEY: Mr. Chairman, the vote
15 is recorded as 4-0-1 to grant the application.

16 The motion was made by Board Member Dettman,
17 seconded by Commissioner Hood, Members Loud
18 and Moldenhauer support the motion.

19 CHAIRMAN LOUD: Thank you, Ms.
20 Bailey. And I do believe that this would be
21 appropriate for a summary order.

22 MS. BAILEY: Yes, sir.

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1 CHAIRMAN LOUD: Okay. So why don't
2 we do that? And congratulations to you.

3 MR. MCGEE: Thank you.

4 MS. LAWRENCE: Thank you.

5 CHAIRMAN LOUD: All right. Ms.
6 Bailey, when you are ready, we can call the
7 next case, which I believe is the Saint
8 Episcopal School case, yes.

9 MS. BAILEY: Mr. Chairman, that's
10 Application 17996, again, it's the Application
11 of the Protestant Episcopal Cathedral
12 Foundation of the District of Columbia, and it
13 is pursuant to 11 DCMR § 3104.1, for a special
14 exception to establish a child development
15 center for 60 children as a private school use
16 at Beauvoir School, a previously approved
17 private school, under section 205, and
18 flexibility to increase the number of Beauvoir
19 faculty and staff to 130. The property is
20 Zoned R-1-B. It is located at 3500 Woodley
21 Road, N.W., Square 1944, Lot 25.

22 CHAIRMAN LOUD: Thank you, Ms.

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1 Bailey. And good afternoon.

2 MS. BROWN: Good afternoon.

3 CHAIRMAN LOUD: I see we're being
4 handed out something. Is the ANC here for
5 this case? Good afternoon. Why don't you
6 join us at the table, because you are
7 automatically a party. You have an
8 opportunity to ask any questions, if you have
9 them. We understand from the filing that the
10 ANC is supportive of the proposed relief.

11 So why don't we start with an
12 introduction of who is at the table?

13 MS. BROWN: Good afternoon, Mr.
14 Chairman, I'm Carolyn Brown with the Law Firm
15 of Holland and Knight here on behalf of the
16 applicant, which is the Protestant Episcopal
17 Cathedral Foundation on behalf of Beauvoir
18 School. Immediately to my left is Paula
19 Carreiro, the head of Beauvoir School. And to
20 her left is Dan Van Pelt of Gorove/Slade
21 Traffic Engineers.

22 CHAIRMAN LOUD: And representing

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1 the ANC-3C?

2 MS. MacWOOD: Nancy MacWood, ANC-
3 3C09. I represent the SMD, Mr. Chairman,
4 directly across the street from Beauvoir.

5 CHAIRMAN LOUD: Okay. And are you
6 here on behalf of the full Commission?

7 MS. MacWOOD: Yes.

8 CHAIRMAN LOUD: Thank you.

9 MS. MacWOOD: I'm authorized in the
10 resolution to represent the Commission.

11 CHAIRMAN LOUD: Okay. Good
12 afternoon, Commissioner.

13 I think I would suggest we start
14 out like this, because we have reviewed the
15 file as well in your case and I think each of
16 us has some questions regarding possible gaps
17 in the record. It could be gaps, could be
18 things that we are just overlooking, so I
19 think each of us has some questions we're
20 going to ask you before you get started, so
21 that we can zero in, I think, on what is at
22 issue in the case. So let me say that at the

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1 outset.

2 Secondly, I think because we are
3 talking about two independent requests for
4 relief for two independent uses, establishing
5 the use for a child development center, which
6 will no longer be accessory, as well as the
7 expansion of faculty for the private school,
8 that from our perspective, it would just help
9 us, I think, manage the case better if we were
10 to hear the evidence for 205 and 206 and those
11 cases made separately.

12 We are not going to call two
13 separate hearings. I think all the witnesses
14 are here, so we will do it all right now. But
15 also, that the case captions, we will simply
16 add a case caption so that we will have a
17 17996 and a 17996A. And to the extent that
18 the special exception is approved for the 205
19 and there are issues in the future with the
20 205, only that would need to come back and
21 ditto for the 206, only that would need to
22 come back if there were some concerns about

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1 the 206.

2 Do you have any concerns about
3 proceeding along those lines or any additional
4 thoughts?

5 MS. BROWN: That would be fine, Mr.
6 Chairman.

7 CHAIRMAN LOUD: Okay. Then let me
8 start in terms of just my questions going
9 through the record and just trying to be
10 really, really clear on everything before you
11 get started.

12 First, I just want to confirm some
13 information. The private school is going to
14 add 24. Is that correct? Going from 85 to
15 109?

16 MS. BROWN: That's correct.

17 CHAIRMAN LOUD: All right. Now, of
18 that 24, 16 of those bodies are already on-
19 site?

20 MS. BROWN: Correct.

21 CHAIRMAN LOUD: Okay. And the CDC
22 is only going to add 14?

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1 MS. BROWN: Correct.

2 CHAIRMAN LOUD: All right. So we
3 are talking about --

4 MS. BROWN: I'm sorry, faculty/
5 staff.

6 CHAIRMAN LOUD: 14 faculty/staff.

7 MS. BROWN: Correct.

8 CHAIRMAN LOUD: But the children
9 that are being added to the CDC presumably are
10 being brought by parents that are already
11 coming to the private school anyway?

12 MS. BROWN: Correct.

13 CHAIRMAN LOUD: Okay.

14 MS. BROWN: That's correct.

15 CHAIRMAN LOUD: So by my count
16 then, you are adding a total of 22 bodies?

17 MS. BROWN: Yes, that's correct.

18 CHAIRMAN LOUD: Okay. Now, when
19 the pleadings talk about going from 85 to 130,
20 are there 85 at the private school now and
21 seven at the CDC or are the seven that are
22 currently at the CDC part of that 85?

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1 MS. BROWN: The seven are separate
2 from the 85.

3 CHAIRMAN LOUD: So --

4 MS. BROWN: So there are 85 under
5 the existing C of O for Beauvoir Elementary
6 School. The accessory CDC use has seven
7 staff, separate from that 85 count.

8 CHAIRMAN LOUD: So you're going
9 from 92, in terms of bodies on-site, to
10 roughly 130? Not from 85?

11 MS. BROWN: Correct.

12 CHAIRMAN LOUD: Okay. Now, the
13 DDOT report talked about peak hour traffic
14 counts. And I'm assuming that what we were
15 just handed out is the DDOT report that talked
16 about reviewing a Gorove/Slade report that had
17 peak hour traffic data in it. And I'm
18 assuming that what we just got is that?
19 Because we didn't have it in our file.

20 MS. BROWN: Correct. We met with
21 DDOT starting last year and, unfortunately,
22 when they wrote the report, I think that, they

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1 were focusing on the July 7, 2009 letter and
2 may not have had the -- our prehearing
3 statement in front of them or the supplemental
4 information.

5 So we have handed out the
6 supplemental report that we provided to DDOT
7 as well as the Commuter Rewards Program that
8 the Foundation has for all its schools. I
9 think we probably could have done a better job
10 of keeping DDOT informed of that, but we
11 wanted to make sure that we provided it again
12 for the record.

13 CHAIRMAN LOUD: Okay. And the
14 final question for me, at least for right now,
15 is so you have the 92, which is the 85 plus
16 the seven, plus you have five that you
17 mentioned in the pleadings that are already
18 on-site, so you really have 97 on-site now.
19 And you are going to take that up to? I'm
20 just trying to net out the real bodies.

21 Are we still talking about a net of
22 22 or do we need to subtract five from that?

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1 MS. BROWN: No. It's still a net
2 increase of 22. And if you look at our chart,
3 I may be stealing the thunder from Ms.
4 Carreiro, her testimony, but I think the chart
5 is helpful in delineating what we propose
6 here.

7 If you go on the left to the C of O
8 No. 1 in the yellow where it says "Beauvoir
9 Elementary School," you go down to the next
10 box and it says "Existing/Authorized," you
11 will see the number of students is 400 with a
12 current enrollment of about 387.

13 The next it says "Faculty/staff"
14 equals 90 max. Well, the C of O authorizes us
15 to have 85. There are five aftercare teachers
16 that are arriving earlier, so that's where we
17 get to the 90.

18 CHAIRMAN LOUD: Okay.

19 MS. BROWN: But the absolutely
20 total that you see down in the blue box is the
21 faculty/staff increase from both groups will
22 be a total of 130 people.

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1 CHAIRMAN LOUD: But if you are
2 going from 97 to 130, we're talking about a
3 plus of 33? Is that --

4 MS. BROWN: Yes. So it's 19 plus
5 14.

6 CHAIRMAN LOUD: Right. Okay. And
7 can you help me understand this one point?
8 Part of the 24 is this number 16. And within
9 that 16 are five that are being transferred
10 from the Foundation to the private school.

11 MS. BROWN: Correct.

12 CHAIRMAN LOUD: All right. So if
13 five are being transferred to the private
14 school, how come the numbers on the private
15 school are not reduced by five or am I just
16 not getting that? Is it because they are
17 custodians?

18 MS. BROWN: Yes. And that they
19 exist right now, but they are not counted
20 toward Beauvoir. They exist as part of the
21 Foundation staff. Once we switch them over to
22 the Beauvoir staff, we want to make sure that

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1 we are completely transparent and clear that
2 they belong to Beauvoir, so they have to be
3 added to the Beauvoir number.

4 CHAIRMAN LOUD: I don't understand
5 if they are part of the existing at the
6 Foundation and the existing is seven, right?

7 MS. BROWN: The existing?

8 CHAIRMAN LOUD: The existing staff
9 at the child development --

10 MS. BROWN: Oh, the CDC, yes.

11 CHAIRMAN LOUD: -- center is seven.

12 MS. BROWN: Yes.

13 CHAIRMAN LOUD: And so if you are
14 transferring five of those to the private
15 school --

16 MS. BROWN: That's where we --

17 CHAIRMAN LOUD: -- that's where I'm
18 lost.

19 MS. BROWN: Okay.

20 CHAIRMAN LOUD: Okay.

21 MS. BROWN: And I'm happy to
22 explain it. Maybe we can have it as testimony

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1 from Ms. Carreiro instead of me explaining,
2 whichever you prefer.

3 CHAIRMAN LOUD: Okay.

4 MS. BROWN: Do you want to take
5 over?

6 CHAIRMAN LOUD: If there is just a
7 real short explanation that I can sort of get
8 into my thick head as the case unfolds and
9 that way I can follow it a little bit better.

10 MS. CARREIRO: Well, if I could
11 respond? And just to say that the seven you
12 mentioned with the Cathedral Foundation are
13 faculty working with the children. They have
14 been, because we existed by-right, on the
15 Foundation payroll. We will be transferring
16 those to ours.

17 And that's in the right hand column
18 the CDC column. If you look in the left hand
19 column and you are looking at the proposed
20 increase of faculty and staff, you will see
21 19. And five of those are custodians that are
22 also being transferred.

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1 The Foundation is reducing its
2 staff. And so we are picking the five up on
3 our payroll, five custodians. Also, we have
4 been out-sourcing six -- we have been out-
5 sourcing our dining room, so that would be six
6 dining room staff.

7 And so we have then a total of 11
8 people of those 19 that are already here. So
9 we were looking at the increase. We are
10 actually proposing an additional eight over
11 time.

12 CHAIRMAN LOUD: I understand that.
13 I'm still not understanding my question, but
14 that's okay. I think listening to the
15 evidence I'll see if it comes out and if not,
16 I'll just ask the question again.

17 It is if you have seven at the
18 child development center, five of which you
19 are transferring over to the -- you are not
20 transferring five?

21 MS. BROWN: That's correct. The
22 five are always going to be on that left hand

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1 column for the Beauvoir Elementary School.

2 CHAIRMAN LOUD: Okay.

3 MS. BROWN: So the CDC we're
4 treating separately. Seven exist now for the
5 CDC that are on the Foundation payroll. Those
6 seven now will be Beauvoir payroll. In
7 addition to that, there will be 14 new hires
8 for the CDC on the right hand column of the
9 chart, which you see, so 21 total staff for
10 the CDC.

11 CHAIRMAN LOUD: Is it just that
12 they are switched over? There is a different
13 source paying for them?

14 MS. BROWN: Yes.

15 CHAIRMAN LOUD: But they stay on
16 the same C of O?

17 MS. CARREIRO: Right.

18 MS. BROWN: Correct. Yes.

19 CHAIRMAN LOUD: Okay. Okay. All
20 right. I think that's where I was getting a
21 little confused.

22 Let me know turn to other Board

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1 Members to see if there are any questions that
2 they have to help us sort of frame the case
3 for hearing.

4 VICE CHAIRMAN DETTMAN: I just have
5 one question. Ms. Brown, just I think when
6 you get to your traffic expert in testimony,
7 if you could just kind of articulate based on
8 the total number of staff for both uses,
9 what's the parking requirement, what does that
10 equal?

11 And then I think you had already
12 mentioned in your filings that you have 127
13 spaces, so the Board can get an idea of where
14 those spaces are and whether or not you are
15 providing enough for these two uses.

16 MS. BROWN: Yes.

17 VICE CHAIRMAN DETTMAN: Thank you.

18 MS. BROWN: We'll make sure to
19 focus on that. Thanks.

20 MEMBER MOLDENHAUER: You just
21 provided a new document which is the Cathedral
22 Closed Map and this shows on it Building No.

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1 5, the Beauvoir School. Are both the, I'm
2 assuming, but this wasn't specifically clear
3 in the documentation to date, elementary
4 school and the CDC are both located in the
5 same building?

6 MS. BROWN: That's correct.

7 MEMBER MOLDENHAUER: And are they
8 run jointly or are they run separately? Do
9 the children that attend, are they sitting in
10 the same classroom or are they completely
11 separately operated, managed and overseen?

12 MS. BROWN: They are separate.
13 They are in separate classrooms. They are
14 currently infants through age 3.

15 MEMBER MOLDENHAUER: Okay.

16 MS. BROWN: And so they are in two
17 classrooms.

18 MEMBER MOLDENHAUER: So that you
19 are saying --

20 MS. BROWN: So they are separate.
21 But they are located inside the building.

22 MEMBER MOLDENHAUER: Okay. So they

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1 are both --

2 MS. BROWN: They have their own
3 classrooms.

4 MEMBER MOLDENHAUER: They have
5 their own classrooms and so the students and
6 the faculty are separated?

7 MS. BROWN: That's right.

8 MEMBER MOLDENHAUER: Okay. So I'm
9 trying to find out, because these applications
10 were mixed, the question of really how much
11 overlay, how much -- I want to make sure that
12 I'm very clear you are mapping out two
13 different C of Os, but I want to just go
14 through some of that as Chairman Loud was
15 getting some clarification. I was just
16 curious about that also.

17 I think that's all I have for now
18 until we get started.

19 CHAIRMAN LOUD: Chairman Hood, yes,
20 sir?

21 COMMISSIONER HOOD: Thank you, Mr.
22 Chairman. Let me ask, Ms. Brown, is that the

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1 exact same chart that we have behind, I think,
2 Exhibit F?

3 MS. BROWN: Yes, absolutely. Same
4 chart just --

5 COMMISSIONER HOOD: And --

6 MS. BROWN: -- easier to see up
7 here on the --

8 COMMISSIONER HOOD: For some, for
9 those of us who have a glare, it's not that
10 easy.

11 MS. BROWN: Right.

12 COMMISSIONER HOOD: The other thing
13 is I'm hoping that when we get to -- as we
14 proceed, that we can kind of slow down. The
15 Chairman had said through his thick head, my
16 head may be thicker, because I'm not exactly
17 understanding who is over at the school and
18 who is over at the CDC, how those five are
19 moving around.

20 And if you can kind of just walk us
21 through that again, I know you did previously,
22 but if you could slow down and kind of walk us

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1 through that, I'll be greatly appreciative.
2 Thank you.

3 MS. BROWN: I'm glad to hear that I
4 was not the only one having trouble with this
5 back when we were first presented how to make
6 it the clearest possible presentation we
7 could, because I had -- it was difficult to
8 separate it out.

9 CHAIRMAN LOUD: I think on that
10 note, if you are ready to begin your case, we
11 will turn to you.

12 MS. BROWN: Thank you. Good
13 afternoon again, Members of the Board. We are
14 very pleased to be here this afternoon with
15 the support of the community, the ANC, the
16 Office of Planning, DDOT for the special
17 exception relief to increase the faculty and
18 staff at the Beauvoir Elementary School and
19 the special exception to extend the child
20 development center to serve siblings of
21 existing Beauvoir students.

22 In fact, we are not aware of any

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1 opposition to this case. So we will try to
2 keep our presentation very focused on the
3 points that you raised just now.

4 Our prehearing statement submitted
5 two weeks ago that you have mentioned fully
6 does go through the standards and how we meet
7 each element of relief requested.

8 As you know from our submission,
9 Beauvoir is one of three schools on the
10 Foundation Close, on the Cathedral Close. It
11 is the elementary school that feeds into St.
12 Albans School for Boys and the National
13 Cathedral School for Girls and I think in the
14 past five years, each school now has come in
15 for relief, so this kind of rounds things out
16 with Beauvoir today.

17 Fundamentally, for both the
18 elementary school and the child development
19 center or the CDC, we have to demonstrate that
20 there are no objectionable conditions to
21 adjacent properties or adjoining properties
22 with respect to traffic, parking or other

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1 objectionable conditions.

2 And as you will hear from our
3 witnesses today, the net increase in the
4 number of faculty and staff at the elementary
5 school and at the CDC, which is 22 new
6 employees, it will only have a negligible
7 affect on traffic and it will not affect the
8 level of service on Woodley Road, which is the
9 north boundary of the Cathedral Close and it's
10 the location of the ingress driveway and the
11 egress driveway for Beauvoir School.

12 Likewise, there is ample parking on
13 the Close to accommodate the faculty and staff
14 and visitors to the school. For both
15 programs, the total parking requirement is 78.

16 Now, in our statement, I think, we mentioned
17 80 and it's a typo for the CDC where we
18 calculated nine. I believe it is actually
19 five.

20 CDCs have the requirement of one
21 space for every four faculty staff, which
22 works out to about 5.25 added to the 73 that

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1 is required for the elementary school, that
2 comes to a total of 78.

3 So we are providing above and
4 beyond that 126 spaces. And Exhibit, I
5 believe it is, G calculates where those
6 parking spaces are located. And on the right
7 hand you will see a notation that says there
8 are 126 being provided.

9 I made sure to hand out a copy of
10 the Cathedral Close Map, because that parking
11 map is not clear. So the Cathedral Close
12 Visitor Parking Map is a better representation
13 of where the buildings are and how everything
14 lays out.

15 And you will see that it shows off
16 of Woodley Road the Beauvoir entrance
17 driveway, how it circles in front of school
18 where you see the No. 5 and how it then loops
19 back around past Building 6 out South Road to
20 a point farther west on Woodley Road where it
21 exits.

22 We have reviewed the DDOT report

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1 and while we are very pleased to have its
2 support, as I said, I think we probably could
3 have done a better job explaining the ample
4 transportation management programs that the
5 Foundation has implemented for several years
6 now.

7 That was another handout that you
8 received just moments ago. We also have
9 submitted the supplemental report from Gorove/
10 Slade which answered some of the other
11 questions raised by DDOT.

12 Because of the proposed faculty and
13 staff increase and the expansion of the CDC
14 does not create any objectionable conditions.

15 We don't believe there is any need to
16 supplement the Transportation Management Plan
17 that is already in place, so we have that one
18 slight disagreement with DDOT on what
19 additional measures might be needed. But our
20 traffic consultant will touch on that when it
21 is his turn to testify.

22 So as we proceed with our case in

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1 chief, we will be relying on the chart that we
2 have before you to help explain the program
3 requirements and also on the map of the
4 Cathedral Close to help orient you.

5 And with that, I will turn it over
6 to our first witness, Ms. Paula Carreiro.

7 MS. CARREIRO: Yes, hello. Good
8 afternoon. My name is Paula Carreiro and I'm
9 the head of school at the Beauvoir School on
10 the grounds of the National Cathedral here in
11 Washington.

12 Just a word about our school. It
13 was founded in 1933 and it was one of the
14 first schools to introduce a reading readiness
15 and map program for preschool children. The
16 school created a world-mindedness program in
17 the 1940s to teach children about establishing
18 a world view, emphasizing respect for
19 differences with others and that continues to
20 this day at Beauvoir in the form of a
21 widespread global studies program.

22 In the 1950s, Beauvoir was the

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1 first school affiliated with the Cathedral to
2 racially integrate and one of the first
3 schools in Washington to do so.

4 We are here today because we would
5 like to extend our operation to include 3
6 year-old siblings of Beauvoir students in its
7 existing child development program, number
8 one. And number two, to request a slight
9 staff increase in staff at the elementary
10 school.

11 And this might be a good time to
12 either turn to the chart or to Exhibit F in
13 your books.

14 MS. BROWN: And I'm going to help
15 out by pointing to the chart, so excuse me.

16 MS. CARREIRO: And what I would
17 like to focus on now is just the C of O No. 1,
18 where it says "Beauvoir Elementary School."
19 And let's just kind of walk through that a
20 bit.

21 To say at the moment we have a cap
22 of 400 students. We are not asking to expand

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1 that. We have 387 currently enrolled. We --
2 our C of O allows for 85 maximum. We are at
3 90 because just recently we required our after
4 school staff to come in a little bit early, so
5 there is about 30 minutes when there is an
6 overlap and there are five of those bringing
7 that number to 90.

8 If we go on down to the proposed
9 increase for faculty/staff and it says 19, I
10 would just like to make the point that
11 currently we are in the process of
12 transferring five custodians who have been on
13 the Foundation payroll to our payroll.

14 The Foundation no longer offers a
15 custodial service. So we need to bring those
16 people back to our payroll and there would be
17 five of those.

18 The same is true with the dining
19 room staff. We have been out-sourcing that,
20 but we need to bring six dining room people
21 back to our payroll. They are already on-site
22 and cooking, but we want to put them on our

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1 payroll. And so that gives a total of 11 of
2 those 19.

3 And then we would like to add over
4 time an additional eight members of our staff.

5 As an example, we know in years to come, we
6 will need another technology person. We will
7 need another librarian. And we're not really
8 sure what future demands will be in terms of
9 program.

10 But we wanted to make sure that we
11 were able to look at current research and
12 provide what our students need. Then going
13 down to the yellow box, the student number
14 stays at 400. And the faculty/staff number
15 goes to 109 with, basically, 16 of those new
16 people already being here. We would add -- we
17 ask for an additional eight, if possible. So
18 that's the C of O of No. 1.

19 CHAIRMAN LOUD: Let me just ask a
20 question and I'm not nitpicking, but you are
21 really increasing by 24. I think you have
22 said as much in your pleadings.

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1 MS. CARREIRO: That's right.

2 CHAIRMAN LOUD: Okay. Because the
3 five that are there from the --

4 MS. CARREIRO: After --

5 CHAIRMAN LOUD: -- that arrive
6 early --

7 MS. CARREIRO: After school
8 program.

9 CHAIRMAN LOUD: -- were not
10 calculated into the approval that was granted
11 previously, in terms of transportation
12 impacts, if any. It could be very negligible,
13 but I'm just saying from a realistic
14 standpoint, you are really adding 25.

15 MS. CARREIRO: That's right.

16 CHAIRMAN LOUD: Okay.

17 MS. CARREIRO: So those --

18 CHAIRMAN LOUD: 24.

19 MS. CARREIRO: -- folks used to
20 come at 3:00 and now the -- when the school
21 dismissed. And now they come at 2:30 to
22 prepare.

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1 CHAIRMAN LOUD: And how long has
2 that been in play?

3 MS. CARREIRO: Since last spring.

4 CHAIRMAN LOUD: Last spring. And
5 have you gotten any complaints from neighbors
6 or the ANC regarding the additional five that
7 have been over and above what had been
8 permitted before?

9 MS. CARREIRO: They certainly had
10 questions. We responded, but not complaints.

11 CHAIRMAN LOUD: Okay. All right.
12 Thank you.

13 MS. CARREIRO: Okay. And then I
14 would like to go to the right hand side,
15 Exhibit F or the chart, and talk a little bit
16 about our child development center, which
17 currently exists.

18 It really began in 2005 when
19 Beauvoir decided to support our faculty in
20 finding child care in the Washington area.
21 Then in 2006, we expanded the program to
22 include the children from St. Albans, National

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1 Cathedral School and the Cathedral.

2 Now, completing its fifth year, we
3 have, approximately, 20 children. We have the
4 possibility to have 28. We are at about 20,
5 ranging from infants to age 3. And it has
6 been instrumental in retaining our valuable
7 faculty and filling a void for our faculty,
8 but also Close-wide. It's also offered an
9 income stream for the school and that's a high
10 priority as we seek to have educational
11 programs within the reach of families across
12 the economic spectrum.

13 Well, like most families in
14 Washington, D.C., Beauvoir's Pre-K through
15 grade 3 student families are headed by working
16 parents who needed quality child care. And so
17 there were requests to expand the program to
18 include siblings.

19 And we would like to be able to
20 offer that. We see it as a wonderful
21 opportunity to meet the needs of our families,
22 while also expanding in a kind of measured and

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1 controlled way.

2 So if you look at the right hand
3 side, you will see the C of O No. 2, and
4 that's for the child development center, which
5 is housed in two separate rooms in Beauvoir
6 School.

7 And right now, you see that we
8 exist as a matter-of-right, because we have
9 just been serving Foundation employees. But
10 we would like to serve siblings. So the
11 reason we are here then, we currently are able
12 to serve 28 children. We would like to expand
13 that to 32.

14 We currently have seven staff. We
15 would like to expand that to 14. And that
16 brings the totals to 60 children, infants
17 through age 3, and the staff to work with
18 those children to 21. And then that joins the
19 request of the first C of O for the numbers
20 that you see, the total faculty and staff then
21 would be 130.

22 Now, in looking at that, it also

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1 leads to some -- the conditions. And we
2 worked very hard to look at the possible
3 objectionable conditions. And one, of course,
4 being parking with the additional employees.

5 And so what we know is that in our
6 elementary school, we need two spaces for
7 every three teachers and other employees. So
8 were we to go to 109, we would have to provide
9 73 spaces. And if we add to a total child
10 development staff of 21, we would have to
11 provide five parking places, because we have
12 one space for every four teachers and other
13 employees.

14 The combined total number of
15 required spaces then become 78 required
16 spaces. We will be providing 126 spaces to
17 accommodate faculty and staff.

18 CHAIRMAN LOUD: Will the other 88
19 spaces be reserved just for the private school
20 and the child development center and not any
21 of the other uses on the compound?

22 MS. CARREIRO: Yes.

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1 CHAIRMAN LOUD: Okay.

2 MS. CARREIRO: That's correct. And
3 that's the way it is marked currently.

4 CHAIRMAN LOUD: Okay.

5 MS. CARREIRO: We looked at our
6 distance from residential sections. We are
7 quite a ways away on a hill and so we believe
8 that the noise factor is contained. We have
9 had individual conversations and meetings with
10 neighbors. Those have been positive.

11 We have ANC support with the ANC
12 request that we give an annual update on the
13 sibling status of the students enrolled in the
14 new child development center. And we have
15 agreed to that.

16 We have Mr. Van Pelt here today to
17 talk about -- to talk further about the
18 traffic conditions. So I'll stop right there,
19 but certainly answer any questions if you
20 would like to ask before we move on.

21 MEMBER MOLDENHAUER: I've just got
22 a couple of questions. Can you go through the

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1 hours of operation for both the CDC and also
2 for the elementary school?

3 MS. CARREIRO: Yes. The current
4 hours of operation for the elementary school
5 are 8:00 to 3:00. We offer an after school
6 program that runs until 6:00. And we offer a
7 series of enrichment programs that run until
8 4:30.

9 MEMBER MOLDENHAUER: Do you know
10 generically what the breakup is? You know,
11 just rough percentages of how many students
12 actually stay until 3:00 and get picked up at
13 3:00 versus getting picked up at 4:30 versus
14 getting picked up at 6:00?

15 MS. CARREIRO: No. It varies day-
16 by-day. But I can say on average that close
17 to half our population stays for after school
18 and enrichments, so that's at 4:30. And then
19 I would say we probably have 15 students on an
20 average that stay until 6:00.

21 I would also add that that
22 staggered dismissal is one of the reasons that

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1 our driveway is clear within 15 to 20 minutes
2 at the end of the day. We also have such a
3 long drive that people are able to queue on
4 the property and thus not back into the
5 neighborhood.

6 We are thankful for those after
7 school programs, because otherwise everyone
8 would leave at 3:00 and that would cause
9 distress in the neighborhood.

10 The CDC program is people are able
11 to stay until 5:00. It's likely that the
12 children will either leave at 3:00 with
13 siblings or at 4:30 with siblings. Part of
14 the demand is that people only want to make
15 one trip.

16 MEMBER MOLDENHAUER: Okay. Thank
17 you. The other question is in regards to the
18 siblings, are these siblings just of Beauvoir
19 Elementary or are these siblings also of St.
20 Albans or NCS families?

21 MS. CARREIRO: Current Beauvoir
22 students.

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1 MEMBER MOLDENHAUER: Just Beauvoir?

2 MS. CARREIRO: Yes, right.

3 CHAIRMAN LOUD: Thank you, Mrs.
4 Moldenhauer. Anything additional? Any
5 further questions from the Board? Okay.
6 Thank you.

7 MS. BROWN: Thank you. We will
8 move on to our next and last witness, Mr. Van
9 Pelt.

10 MR. VAN PELT: Good afternoon. My
11 name is Dan Van Pelt and I'm a principal and
12 an owner of Gorove/Slade Associates, a
13 Transportation Planning and Engineering firm
14 located here in the District.

15 We have been working with the
16 Protestant Episcopal Cathedral Foundation and
17 Beauvoir School in support of the application
18 to expand staffing at Beauvoir and expand the
19 child development center to accommodate
20 younger siblings of existing students and
21 children of Beauvoir faculty and staff.

22 Gorove/Slade has a long history

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1 over many years working with the Cathedral
2 Foundation on the Close. In addition to this
3 application, we have been part of prior work
4 at Beauvoir, National Cathedral School, the
5 NCS Athletic facility, St. Albans School and
6 we assisted in the planning and design of the
7 new Cathedral parking garage and new bus
8 garage.

9 In Ms. Carreiro's testimony, she
10 described the changes that will result from
11 the proposed expansion. The Beauvoir student
12 enrollment cap of the elementary school is not
13 changing. The only change to the student
14 population is the enrollment increase of 32
15 children in the child development center.

16 The increase will not affect
17 traffic patterns, because these children will
18 be siblings of existing students or children
19 of Beauvoir faculty/staff. And as such, they
20 will get to Beauvoir by trips that are already
21 being made to the school.

22 From a traffic standpoint, it's

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1 really only net eight new faculty/staff at
2 Beauvoir and the 14 new child development
3 staff for a total of 22 net new faculty and
4 staff that could have an impact.

5 When you consider each of the
6 entities on the Cathedral Close today, the
7 Beauvoir School, National Cathedral School,
8 St. Albans School and all the other entities
9 of the Cathedral Foundation, the population of
10 the Close employees today is about 500.

11 So when you look at that, the
12 addition of the 22 new staff, that's really
13 about a 4 percent increase. And as traffic
14 engineers really look at things, plus or minus
15 10 percent is a normal fluctuation. You never
16 really get the same count when you do traffic
17 data collection twice.

18 So 10 percent really is kind of
19 where we look at it. Impact change of 4
20 percent, really we would see it as no
21 negligible change.

22 The Cathedral Foundation has a

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1 robust Commuter Rewards Policy in place that
2 has been successful in reducing single
3 occupancy vehicle trips. Employee incentives
4 for car-pooling, van-pooling, transit, biking,
5 walking, they are all part of the program.

6 Earlier this year, a survey of
7 Beauvoir faculty/staff showed that 42 percent
8 come by car-pool, transit, walking or biking.

9 This is 8 percent higher than the average for
10 the D.C. Metropolitan Service area based on
11 U.S. Census data.

12 If there was ever a reason to
13 believe that the new faculty and staff will
14 adopt the same mode choice, such that the 22
15 new really translates into about 13 single
16 occupancy vehicle trips.

17 Any potential vehicle -- any
18 potential impact is even further reduced when
19 you consider that these trips don't overlap
20 school pick-up and drop-off, which is when the
21 local traffic conditions are really peaking.

22 Considering all of this, it's our

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1 professional opinion that based on changes at
2 the Beauvoir School, it won't be noticeable
3 and really will have no impact on the neighbor
4 streets.

5 The Beauvoir School works very hard
6 to manage student pick-up and drop-off and as
7 such, all traffic is managed on-site. During
8 the 15 to 20 minutes in the afternoon at the
9 end of the school day when students are being
10 released, no queues spill out onto Woodley
11 Road.

12 And for those students that all
13 walk to school, Officer Armstrong is stationed
14 at 35th and Woodley to assist them in crossing
15 the street.

16 At the ANC meeting, I heard several
17 residents compliment Beauvoir's management on
18 the -- of the pick-up -- on how they manage
19 the pick-up and drop-off activity.

20 As relates to parking, zoning
21 requires that, as was stated earlier, Beauvoir
22 provide 73 spaces for the elementary school

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1 and five for the child development center for
2 a total of 78 spaces.

3 There will be 126 spaces designated
4 on the Close for Beauvoir. All parking need
5 is accommodated on-site and Beauvoir works
6 with parents and visitors to instruct them
7 where to park to discourage parking in the
8 neighborhood.

9 Gorove/Slade started our
10 involvement with this application by
11 contacting DDOT and meeting for the first time
12 in May of 2008. The proposed changes at
13 Beauvoir were discussed with DDOT staff and it
14 was decided that a full traffic study was not
15 warranted.

16 Things happening as they do, the
17 application did not move forward until this
18 year. Gorove/Slade issued a statement of no
19 traffic impact for the school expansion and
20 since a year had elapsed, we met with DDOT a
21 second time on July 30th to reconfirm that a
22 full traffic study would not be needed.

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1 DDOT indicated such and said they
2 would be back in touch should additional
3 information be required. Existing mode split
4 information was requested on November 9th from
5 DDOT and Gorove/Slade issued a memorandum
6 containing follow-up transportation
7 information on November 13th, which is what was
8 handed to you today.

9 This application has the support of
10 the ANC, the Office of Planning and
11 conditional support from DDOT. DDOT's support
12 is conditioned out of concern for the impact
13 that the faculty and staff will have on
14 traffic.

15 Respectfully, I must say that at
16 the time of issuing the staff report, I do not
17 believe that DDOT fully understood the small
18 net employment increase or the breadth of the
19 Transportation Management Plan that is
20 currently in place and will continue on with
21 the addition of new staff.

22 The practical reality is that

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1 faculty and staff changes proposed will have
2 no noticeable traffic impact. Further, the
3 Cathedral Foundation and Beauvoir continue to
4 work hard to be good neighbors by having a
5 Community Rewards Policy that is reducing
6 vehicle trips and a parking plan that
7 accommodates all parking needed on-site to
8 lessen any impacts in the neighborhood.

9 I appreciate your time in listening
10 to my testimony and would be happy to answer
11 any questions.

12 CHAIRMAN LOUD: Thank you. And
13 let's see if Board Members have any questions
14 of you. It doesn't appear as such. How about
15 the Commissioner, do you have any questions
16 for the transportation?

17 Okay. I just have a couple of
18 quick questions. I didn't get an opportunity
19 to review your written report in time for
20 today's hearing, the one that we were just
21 handed. So it sounds though like what you're
22 saying is that the net 22 results in only a 4

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1 percent increase in vehicle trips?

2 MR. VAN PELT: Well, in population.

3 CHAIRMAN LOUD: In population.

4 MR. VAN PELT: So when you think of
5 the overall population, it's about 4 percent
6 increase over really what is on the Close
7 today.

8 CHAIRMAN LOUD: Yes.

9 MR. VAN PELT: And then when you
10 further consider the mode split that the
11 employees --

12 CHAIRMAN LOUD: Yes, and you're
13 doing a 40 percent mode split?

14 MR. VAN PELT: 42 percent --

15 CHAIRMAN LOUD: 42 percent.

16 MR. VAN PELT: -- of employees
17 today take alternative modes of
18 transportation, besides single occupancy
19 vehicle.

20 CHAIRMAN LOUD: And in your
21 profession, it would be normal to extrapolate
22 that there would be a continuing 42 percent

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1 mode split without necessarily surveying?
2 Well, you can't survey it, because you don't
3 know where these employees are coming from,
4 the net 22 are coming from.

5 But I mean within your profession,
6 that's acceptable to do that?

7 MR. VAN PELT: Yes. I think that's
8 -- there is no reason to believe that the
9 pattern would change.

10 CHAIRMAN LOUD: Okay. That's it
11 for right now. I may have some additional
12 questions for you as I review your testimony
13 as against what DDOT had to say.

14 MR. VAN PELT: Okay. Thank you.

15 MEMBER MOLDENHAUER: Mr. Van Pelt,
16 I just have one question. You are saying that
17 it's only going to -- there won't be a
18 negligible change, because it's only 4 percent
19 over the entire Close. And I'm just looking
20 at this.

21 So you are looking at the entire
22 project, the entire, I guess, parcel which

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1 has, you know, access on Mass Ave., off Mass
2 Ave., access off Wisconsin, off of Garfield
3 and then for this project, off mostly, I
4 guess, Woodley and 34th Street.

5 But I mean, I guess, to get to that
6 4 percent, you are including the entire route?

7 But don't you think that most of the staff
8 that is coming to these two schools, the
9 elementary school and the CDC, would probably
10 not maybe be using the same roads as maybe
11 someone going to St. Albans?

12 MR. VAN PELT: Yes. I mean, I
13 think that there would be that traffic
14 increase that's going to be somewhat bias
15 towards Woodley Road. But there are other
16 ways onto the Close. And as you can see from
17 the parking map, the Beauvoir spaces for
18 faculty and staff are spread out a bit.

19 So I think we wouldn't really
20 necessarily assume that they would all come in
21 and out right off of Woodley Road.

22 MEMBER MOLDENHAUER: And you're

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1 talking, I'm sorry, about they are all laid
2 out a bit and that's looking at Exhibit G? Is
3 that correct?

4 MR. VAN PELT: Exhibit G, correct.

5 MEMBER MOLDENHAUER: Okay. But it
6 looks like, I guess, A through -- I don't even
7 see where A is to be honest. There is A.
8 It's a little confusing looking at this map.
9 So it looks like A through L, though, are all
10 pretty much off of right near the Beauvoir
11 School and right off of Woodley and -- you
12 know, off of Woodley Road.

13 The only addition is like 10
14 spaces, which are further up in the
15 underground parking. Is that correct?

16 MR. VAN PELT: Well, I mean, the
17 spaces such as H and I, K, all of those could
18 come in. They don't necessarily have to come
19 in off of Woodley.

20 MS. CARREIRO: They actually have
21 to come in somewhere else, because of the one-
22 way traffic.

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1 MR. VAN PELT: Exactly. Because--

2 MS. CARREIRO: So they will be
3 coming in from Mass.

4 MR. VAN PELT: Right.

5 MEMBER MOLDENHAUER: Can you --
6 this map on G's exhibit is a little hard to
7 read. So you are saying where would they be
8 coming in for those spaces?

9 MS. CARREIRO: If I could just
10 interrupt, if you refer back to the visitor
11 parking map, that gives the one-way directions
12 of all the roadways on the Close, so that will
13 help. When you match it up with Exhibit G,
14 you might be able to piece it together.

15 MEMBER MOLDENHAUER: So you are
16 saying that now I'm looking at South Road.
17 They wouldn't be able to drive back on South
18 Road, because South Road is a one-way street.

19 So in order to get to, I guess, parking
20 spaces H and I, you're going to have to come
21 from Wisconsin. Is that correct?

22 MR. VAN PELT: That's correct.

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1 MS. CARREIRO: Okay.

2 MEMBER MOLDENHAUER: I'm just
3 trying to see exactly how the impact would
4 affect the traffic issue. Thank you.

5 COMMISSIONER HOOD: Mr. Chairman,
6 I just wanted to ask. Looking behind Tab H
7 and comparing it with what was done a year or
8 so ago, it says currently 40 percent of the
9 Beauvoir staff take either transit, ride-
10 share, walk, bike to work. Is that still 40
11 percent and holding or has that improved any?

12 MR. VAN PELT: It is 42 percent.

13 COMMISSIONER HOOD: 42 percent.

14 MR. VAN PELT: We actually went
15 back and looked at the survey data and took a
16 little closer analysis of it. The 40 percent
17 was kind of a ballpark number. 42 percent is
18 the actual number looking from the survey
19 data.

20 COMMISSIONER HOOD: Okay. And just
21 curious, do you know about how many do bike to
22 work?

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1 MR. VAN PELT: We do have that data
2 actually.

3 COMMISSIONER HOOD: Okay. It may
4 be in here and I just missed it.

5 MR. VAN PELT: I don't think it is
6 in what you have.

7 COMMISSIONER HOOD: Okay. I see
8 here during the updated version that we got
9 today it does say 42 percent. Okay.

10 MR. VAN PELT: Yes.

11 COMMISSIONER HOOD: All right.

12 MR. VAN PELT: Actually if you look
13 in the supplement that you got today under
14 Figure 2, there is a pie chart on page 3 that
15 has the breakout. For the purposes of the
16 survey, they were lumped together as walk and
17 bike. So we know that of them about 15
18 percent -- well, let me get my color copy to
19 make sure that's the right number.

20 COMMISSIONER HOOD: I was going to
21 ask if you had a color copy, because --

22 MR. VAN PELT: Yes, hold on just

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1 one minute.

2 COMMISSIONER HOOD: -- my eyes are
3 pretty good, but I don't think they are that
4 good.

5 MR. VAN PELT: The 15 percent
6 actually corresponds, if you can see that,
7 it's the piece of the pie that is at the top.

8 COMMISSIONER HOOD: Top to the
9 left.

10 MR. VAN PELT: That is actually the
11 walkers and bikers.

12 COMMISSIONER HOOD: Walkers and
13 bikers.

14 MR. VAN PELT: And Beauvoir
15 provides parking, secure parking inside the
16 school for anyone that does bike to work.

17 COMMISSIONER HOOD: And 7 percent
18 only use public transportation?

19 MR. VAN PELT: That's correct.

20 COMMISSIONER HOOD: Okay.

21 MR. VAN PELT: I think a lot of the
22 benefit comes from the car-pooling. There is

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1 a lot of faculty and staff that opt to car-
2 pool.

3 COMMISSIONER HOOD: And which
4 number is car-pool?

5 MR. VAN PELT: Car-pool is the
6 piece of the pie on the lower left.

7 COMMISSIONER HOOD: 19 percent?

8 MR. VAN PELT: 19 percent.

9 COMMISSIONER HOOD: And 58 percent
10 is the single occupancy vehicle?

11 MR. VAN PELT: Correct.

12 COMMISSIONER HOOD: Okay. And do
13 you have bike racks?

14 MS. CARREIRO: No. We have a room
15 for bikes inside, so people just bring their
16 bikes in and we lock them up.

17 COMMISSIONER HOOD: Okay.

18 MS. BROWN: If I could clarify, I
19 believe there is a bike rack by the NCS
20 Athletic facility, so that those who bicycle
21 and want a shower would more likely use that
22 bike rack.

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1 COMMISSIONER HOOD: Okay. I just
2 kind of just knew that they had to shower
3 somewhere there. Okay. Thank you. Thank
4 you, Mr. Chairman.

5 CHAIRMAN LOUD: Yes, sir, Mr.
6 Chair. Are there any additional questions
7 from Board Members? And no questions from the
8 Commission? Okay. Was that the close of your
9 case?

10 MS. BROWN: Yes, that concludes our
11 direct --

12 CHAIRMAN LOUD: Okay.

13 MS. BROWN: -- presentation.

14 CHAIRMAN LOUD: Okay.

15 MS. BROWN: And we will be back
16 again for closing when appropriate.

17 CHAIRMAN LOUD: All right. Why
18 don't we now turn then to the Office of
19 Planning? Good afternoon.

20 MS. BROWN-ROBERTS: Good afternoon,
21 Mr. Chairman and Members of the Board. I'm
22 Maxine Brown-Roberts from the Office of

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1 Planning.

2 I am going to stand on the record
3 and let my report speak for itself. I don't
4 have any additional information. I think the
5 applicant has gone over most of the
6 information that is stated in our
7 recommendation.

8 And if you noticed, we did a
9 separate analysis for section 206 and section
10 205. And we recommended approval for both the
11 private school and the child development
12 center.

13 We also recommended some conditions
14 that, basically, go towards the number of
15 students and the faculty. And our
16 recommendation was also subject to the
17 recommendation of the issues that were brought
18 forth by DDOT would be discussed further.

19 And so we recommend approval of
20 both. Thank you, Mr. Chairman. And I'm open
21 for any questions.

22 CHAIRMAN LOUD: Thank you, Ms.

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1 Brown. In your report where you do break out
2 your 205 and 206 relief analysis, but you have
3 all of the parking spaces under 205, a total
4 of 126. Given that you sort of segregated out
5 the relief and that they have testified to
6 different requirements, 73 for the one and
7 then five for the other, what are your
8 thoughts about tying the parking requirement
9 to each criteria?

10 MS. BROWN-ROBERTS: Okay. Are you
11 saying that if I would have a problem with a
12 condition that would say that the CDC would
13 have so many parking spaces and would be
14 dedicated to the --

15 CHAIRMAN LOUD: Yes. Not so much
16 if you have a problem. Just your thinking
17 on --

18 MS. BROWN-ROBERTS: Oh, my thoughts
19 about it.

20 CHAIRMAN LOUD: -- tying each use's
21 parking to its own.

22 MS. BROWN-ROBERTS: I don't think

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1 it would -- I wouldn't have a problem if it
2 did, but my thinking is that the Beauvoir is
3 assigned 126 spaces. And I think it is
4 reasonable to say that either, you know,
5 people who are using the CDC or the school,
6 you know, could use any of those parking.
7 Otherwise, I think maybe we would have to go
8 around and mark the number of spaces
9 specifically for each of them. Either way is
10 fine.

11 CHAIRMAN LOUD: Do you see any --
12 all right. All right. I'll think about it
13 separately. But the way I understand the
14 testimony, there would be 73 spaces set aside
15 for the one use and then it would be five for
16 the child development center. And then the
17 other 88 would be reserved for either of those
18 two, exclusively. Not any of the other
19 schools on the Close. Is that how you
20 understood it?

21 MS. BROWN-ROBERTS: My
22 understanding is that they are providing 126

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1 spaces. Those 126 spaces could be used by
2 people who are coming or servicing either the
3 CDC or the school and they weren't going to
4 distinguish them to say okay, you know, these
5 five spaces over here are specifically for
6 CDC.

7 CHAIRMAN LOUD: Okay.

8 MS. BROWN-ROBERTS: Or something
9 like that. But I also understand where you
10 are going. If we are trying to separate the
11 applications into two.

12 CHAIRMAN LOUD: Yes.

13 MS. BROWN-ROBERTS: I also
14 understand that.

15 CHAIRMAN LOUD: Okay. Well, I will
16 reserve that question and ask it again of the
17 applicant. Okay. Are there any questions for
18 the Office of Planning?

19 Did the parties have? Okay. And,
20 Commissioner, do you have any questions? All
21 right. We will now then turn to the ANC for
22 your report. Good afternoon.

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1 MS. MacWOOD: Good afternoon, Mr.
2 Chairman, Members of the Board. My name is
3 Nancy MacWood. And I'm representing ANC-3C
4 today.

5 As you noted at the beginning of
6 the hearing, the ANC considered this
7 application at a meeting on October 18th, I
8 believe. We had a quorum and the meeting was
9 appropriately noticed.

10 The ANC agreed unanimously to
11 support this application, but we have a number
12 of conditions that we would like included in
13 the order.

14 We do have some traffic and parking
15 concerns. And the resolution of those
16 concerns, from our point of view, is very much
17 dependent on the population of the students
18 that would be accepted to the new CDC program.

19 The school has indicated that --
20 there was a little bit of discrepancy that
21 perhaps needs some clarification from what I
22 have heard today and what we heard at the ANC,

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1 but I don't think it is particularly material.

2 If the new students are Beauvoir
3 siblings or children of current faculty and
4 staff or existing faculty and staff, then we
5 have less concern. And it's on that basis
6 that we felt that we could support the
7 program.

8 If it is 60 new students without
9 that stipulation, then it's an entirely
10 different situation for us. So one of the
11 conditions that the ANC would like to see is a
12 reporting mechanism that the school, and the
13 school has actually agreed to do this, would
14 report to the ANC annually the students and
15 their relationship to existing Beauvoir
16 students.

17 Now, the ANC was under the
18 impression that also Foundation staff children
19 would be eligible to be accepted into the
20 program. What I heard today was that it is
21 all going to be Beauvoir, either Beauvoir
22 staff or Beauvoir siblings.

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1 We wouldn't have any objection to
2 either situation, but we do want a reporting
3 requirement so that we can track this and make
4 sure that, indeed, they are Beauvoir siblings
5 in the program. That's one condition.

6 Another condition is that we would
7 like a prohibition against Beauvoir being able
8 to sponsor any conferences, training sessions
9 or other large programs for outside groups
10 other than the type of programs that they,
11 that Beauvoir Elementary School, is already
12 providing. Under those CDC rules, they would
13 be eligible to sponsor some of these large
14 conferences and again, that would have
15 significant implications for parking and
16 traffic.

17 Again, we asked the school about
18 that and they have agreed that they would not
19 do that. There should be a letter between
20 myself and Mr. Smoltzski from the Protestant
21 Episcopal Cathedral Foundation that discusses
22 that, that should be with your packet.

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1 We would also like a condition that
2 they are indeed providing 126 parking spaces.

3 Again, we provided as an addendum to our
4 resolution an exhibit of the current parking
5 distribution on the Close. Because there are
6 three independent schools all subject to
7 different special exception orders, we think
8 it is very important that there be a uniform
9 parking plan and that that be included, all
10 the exhibits of all the orders for all of the
11 schools.

12 So we would like to see that
13 included for Beauvoir, so that those parking
14 spaces can be tracked and we will make sure
15 there isn't any double counting. The school
16 doesn't do that. I'm not suggesting that they
17 do, but just in order to make it efficient, we
18 think that's important.

19 CHAIRMAN LOUD: Before you go
20 further, just let me clarify that what you
21 submitted is exactly the same as what the
22 applicant has submitted in terms of the

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1 parking spaces. And can you just point me out
2 to your exhibit?

3 I'm looking at your ANC report and
4 I don't see an attachment to your ANC report.

5 MS. MacWOOD: It should have been -
6 - it should have accompanied the resolution
7 that was submitted to the Board. It should
8 have been the letter from Mr. Smoltzski to me
9 as well as the parking exhibit. Those should
10 have been included.

11 CHAIRMAN LOUD: Okay. I don't have
12 the Exhibit 28 with the listing of conditions.
13 I just don't have the exhibit showing a
14 diagram of where the parking spaces are that
15 you are talking about.

16 MS. BAILEY: Mr. Chairman, I have
17 the official filing. It's not here either.

18 CHAIRMAN LOUD: Okay. It would be
19 really helpful if we could -- perhaps what you
20 could do is look at the applicant's exhibit
21 that delineates how it sees those parking
22 spaces being captured. And if, in fact --

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1 MS. MacWOOD: It's the same.

2 CHAIRMAN LOUD: -- what you propose
3 is what they have proposed and at least we
4 know that we don't need any additional
5 information on that.

6 MS. MacWOOD: Was it G?

7 CHAIRMAN LOUD: Their's is Exhibit
8 G, right? It's Attachment G in their Exhibit
9 26.

10 MS. MacWOOD: Mr. Chairman, I used
11 to have this memorized practically. I can't
12 tell you how familiar I am with this, but it's
13 a little embarrassing to say how well I know
14 this. But this appears to be exactly the
15 same.

16 CHAIRMAN LOUD: Okay. All right.
17 So what you are saying is that you would want
18 the location -- how these are identified on
19 this exhibit, is exactly how you would want it
20 to stay during the life of the special
21 exception?

22 MS. MacWOOD: That's right. And if

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1 for some reason there were some situation that
2 required that those parking spaces be moved
3 from one location to another location, we
4 would simply suggest that the Zoning
5 Administrator would have to make that
6 decision, so that the fundamental numbers
7 don't change.

8 CHAIRMAN LOUD: And well, it sounds
9 like you're saying both the fundamental
10 numbers and the location?

11 MS. MacWOOD: And the location.

12 CHAIRMAN LOUD: Okay. We can talk
13 about the Zoning Administrator part of it
14 separately after hearing from Ms. Brown on
15 that. But I think at least we are clear that
16 we are talking about the same layout of
17 parking spaces.

18 MS. MacWOOD: Yes.

19 CHAIRMAN LOUD: Okay.

20 MS. MacWOOD: Another condition,
21 Mr. Chairman, that we would like in the order
22 is a disallowance of any parking in the fire

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1 lanes. I think Beauvoir is now enforcing that
2 particular restriction, but in the past, the
3 practice has been that there has been parking
4 in the fire lanes, so we brought that to your
5 attention in this resolution.

6 And then finally, I think we are
7 suggesting something that is along the lines
8 of what you have been talking about. We
9 really would like to see the zoning order
10 separate out the faculty and staff numbers for
11 Beauvoir Elementary School from the CDC staff
12 and enrollment numbers.

13 And that concludes my testimony,
14 Mr. Chairman, but I'm happy to answer any
15 questions.

16 CHAIRMAN LOUD: Thank you. Why
17 don't we see if the applicant has questions
18 for you or clarifications and then we can turn
19 to the Board.

20 MS. BROWN: No questions.

21 CHAIRMAN LOUD: Okay. Board
22 Members have any questions?

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1 COMMISSIONER HOOD: Mr. Chairman, I
2 just wanted to ask Commissioner MacWood that
3 the list of conditions, has the applicant had
4 a chance to see the conditions that you have
5 in your report, your resolution?

6 MS. MacWOOD: Yes, they have.

7 COMMISSIONER HOOD: Okay. And they
8 agree with all of them, as far as you know?

9 MS. MacWOOD: As far as I know,
10 yes, they do.

11 COMMISSIONER HOOD: I'm
12 particularly interested in No. 2. Can you
13 explain to me exactly how that is going to
14 work? Maybe I'm just not reading it
15 correctly. I'm just trying to figure out how
16 that is going to work.

17 MS. MacWOOD: Well, you know, we--
18 well, we probably don't know. But the ANC
19 currently gets enrollment numbers, ANC-3C
20 does, from two different independent schools
21 in our area for different reasons in each
22 case.

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1 We would simply like to -- now, I
2 don't know exactly how the school would do
3 this, but they could tell us that they have,
4 for example, 30 children in the CDC that are
5 siblings from grade 3 or they have two that
6 are siblings from kindergarten or they have
7 five students that are children of Beauvoir
8 faculty members.

9 I'm sure we could figure out how
10 the -- how it would be categorized without
11 jeopardizing any privacy issues.

12 COMMISSIONER HOOD: And that was my
13 concern. So you're not asking who is related
14 to who? We're not giving names or anything of
15 that nature?

16 MS. MacWOOD: No.

17 COMMISSIONER HOOD: Okay. All
18 right. Thank you, Mr. Chair.

19 VICE CHAIRMAN DETTMAN: Good
20 afternoon, Ms. MacWood. Two questions. One
21 is that if the Board were to go ahead and
22 grant the requested relief and then as we

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1 discuss your conditions, if we don't actually
2 incorporate all of these conditions, what does
3 that do to the ANC's support for this
4 application?

5 MS. MacWOOD: I think technically,
6 I've just reread the first resolve, the way
7 that it is written, we support the application
8 and we are separately supporting these
9 conditions.

10 VICE CHAIRMAN DETTMAN: Okay. The
11 second question is with respect to No. 2 and
12 4, if the Board thought that that was some
13 kind of reporting mechanism was a good idea,
14 however, perhaps it wasn't the ANC that would
15 receive this information, but rather maybe the
16 ZA.

17 MS. MacWOOD: Yes.

18 VICE CHAIRMAN DETTMAN: Are you
19 comfortable with that?

20 MS. MacWOOD: No.

21 VICE CHAIRMAN DETTMAN: Okay.

22 MS. MacWOOD: Can I explain why?

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1 The reason I'm not comfortable with that is
2 not because I don't have enormous respect for
3 the Zoning Administrator and for the Office of
4 the Zoning Administrator, but I also
5 appreciate how at times over-taxed the Zoning
6 Administrator's office is and that enforcement
7 is an inconsistent situation often that the
8 Zoning Administrator's office, simply because
9 they don't have the staff, to do enforcement.

10 So I would be reluctant to add yet
11 another bit of reporting and enforcement on
12 the Zoning Administrator's office. I think
13 the ANC is much better equipped in this
14 particular instance to deal with that
15 reporting requirement.

16 And as I said, we already have two
17 schools that are doing it.

18 VICE CHAIRMAN DETTMAN: But if the
19 ANC was to receive this information and find
20 out that Beauvoir wasn't exactly in compliance
21 with the order, how does the ZA -- or how does
22 the ANC effect enforcement?

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1 MS. MacWOOD: Well, we could file a
2 complaint with the office, the Zoning Office.

3 There is a mechanism in the Zoning Office to
4 investigate noncompliance with zoning
5 conditions. I think that would be our first
6 course of action to see if we could get it
7 worked out.

8 And if it couldn't be worked out,
9 then, obviously, the next step would be to go
10 to the Zoning Administrator.

11 VICE CHAIRMAN DETTMAN: Could the
12 reporting be done directly to the Office of
13 Zoning instead of the ANC?

14 MS. MacWOOD: It could, but I don't
15 know if there is any experience doing that. I
16 don't know how they would handle it.

17 VICE CHAIRMAN DETTMAN: Okay. Just
18 exploring the options. Thank you.

19 CHAIRMAN LOUD: Thank you. I would
20 like to turn to the applicant and just ask a
21 few questions about some of the proposed
22 conditions.

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1 But first, I wanted to clarify
2 something I thought I heard to make sure I'm
3 following it.

4 I thought that Commissioner
5 MacWood's understanding of the proposal was
6 that the child development center would not be
7 open to employees of the Foundation. Is that
8 correct or is that incorrect?

9 MS. BROWN: That's one of the
10 points we did want to clarify.

11 CHAIRMAN LOUD: Okay.

12 MS. BROWN: All of the Foundation
13 institution's employees can use the CDC.

14 CHAIRMAN LOUD: Okay.

15 MS. BROWN: In addition, Beauvoir
16 siblings will be allowed to use it as well.

17 CHAIRMAN LOUD: That's what I
18 thought. And in fact, I think the ANC's
19 report acknowledges that it would be open to
20 both. And nonetheless, as you indicated, the
21 ANC still supports it.

22 MS. BROWN: That's right.

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1 CHAIRMAN LOUD: Okay. So the
2 support is not conditioned upon these
3 additional slots being open only to siblings
4 of the private school.

5 MS. MacWOOD: No, the siblings and
6 children of faculty and staff of the PECF.

7 CHAIRMAN LOUD: Okay. All right.
8 Now, in terms of just turning to the ANC
9 report, Exhibit 28, and the five conditions
10 listed here, I just wanted to ask the
11 applicant to respond to each of these five
12 conditions.

13 The first one about siblings and
14 the, you know, I guess, children of the
15 employees of the PECF.

16 MS. BROWN: We're fine with that
17 condition.

18 CHAIRMAN LOUD: I think you have
19 already -- okay. And the No. 2 about how you
20 certify, how you figure out, basically, how
21 you verify that these are siblings that are
22 going in there. Has the applicant worked out

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1 language or an agreement with the ANC on that?

2 MS. BROWN: I think that we have,
3 now with Ms. MacWood's testimony today, gotten
4 better comfort with that condition. I think
5 that, you know, we don't mind having a report
6 to the ANC. I think National Cathedral School
7 has a report now on the student enrollment and
8 faculty staff on an annual basis in October,
9 so I don't think that that's a burdensome
10 condition.

11 I think it actually facilitates
12 good relations between the community and the
13 school, but we did have pause about whether
14 the names would be shared. And since Ms.
15 MacWood clarified that it wouldn't be names,
16 that we are fine with that condition.

17 CHAIRMAN LOUD: And just sort of
18 bringing in the loop, what will be shared in
19 this annual report to the ANC?

20 MS. BROWN: I believe it would be a
21 total number of children at the CDC and then a
22 notation of which ones -- and sibling or some

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1 sort of format to identify which are siblings.

2 CHAIRMAN LOUD: So if you don't see
3 the sibling denotation, it means that they are
4 a child of an employee? Is that --

5 MS. BROWN: Essentially.

6 CHAIRMAN LOUD: Okay.

7 MS. BROWN: Yes.

8 CHAIRMAN LOUD: Okay. And
9 Condition No. 3 regarding outside conferences,
10 training sessions?

11 MS. BROWN: That's fine. As long
12 as it's new, as Ms. MacWood clarified that
13 there are some existing programs and that my
14 understanding is that the ANC does not have
15 any problem with the existing programs.

16 CHAIRMAN LOUD: So that would be
17 except for programs existing as of today's
18 date?

19 MS. BROWN: Yes.

20 CHAIRMAN LOUD: Okay. Condition
21 No. 5 on not allowing parking in the fire
22 lanes.

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1 MS. BROWN: We are all about
2 complying with the fire regulations, so, yes,
3 we agree to that one.

4 CHAIRMAN LOUD: Okay.

5 MS. BROWN: That's easy.

6 CHAIRMAN LOUD: And then this
7 Condition No. 4 regarding not, as I understand
8 it, being allowed to relocate any of the 126
9 parking spaces without first going to the
10 Zoning Administrator?

11 MS. BROWN: We're not thrilled with
12 that condition. It's not that we are entirely
13 opposed to it. I think it does end up being
14 cumbersome for the Foundation that as internal
15 operations dictate, that they want to say
16 okay, now, we're going to switch these three
17 spaces from Beauvoir over to NCS and vice
18 versa.

19 As long as the minimum requirements
20 are met as set forth in the St. Albans Order,
21 from the National Cathedral School Order and
22 then from Beauvoir, I would hope that we would

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1 have the flexibility to move them around
2 without having to get some sort of approval.

3 And I think, you know, that
4 condition in the order is saying that you must
5 provide a minimum on the Close, X number of
6 spaces would be ideal for us. And we
7 certainly wouldn't mind sharing the
8 information with the ANC perhaps on an annual
9 basis when we give the enrollment for the CDC.

10 But I think that we would prefer
11 the flexibility to move that around as the
12 operations of the Foundation warrant.

13 CHAIRMAN LOUD: Let's turn to
14 Commissioner MacWood. Do you see any other
15 way to achieve the ANC's goal here without the
16 applicant having a requirement for the
17 relocation of any space? I mean, even one
18 space. The way it is worded now, they have to
19 come before the ZA and/or at least submit
20 something to the ZA for approval.

21 Is there a threshold number that
22 would concern the ANC?

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1 MS. MacWOOD: Perhaps you could --
2 perhaps there could be a threshold number, but
3 I want to take a stab at explaining again why
4 I think this is important.

5 This is a unique situation on the
6 Cathedral Close, particularly, because you
7 have got three special exceptions, three
8 special exception Board Zoning Orders that all
9 have parking requirements and that all use the
10 Cathedral Close surface parking as well as
11 the parking garage.

12 And there is no other -- it's all
13 on the Close. So in order to make sure that
14 all of those parking requirements are being
15 met, when you are using the same universe of
16 parking supply, you have to have some way of
17 dividing it out and demonstrating that there
18 aren't -- there isn't overlap.

19 And then in addition to the three
20 special exception orders, you also have the
21 Cathedral which has parking demand, which is
22 matter-of-right, and they obviously use their

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1 own parking supply to meet their particular
2 parking demand.

3 And then there is another
4 institutional use that is also matter-of-right
5 that uses parking on the Close. So it's not
6 as easy of a situation as if you only had one
7 institution and they had one parking
8 requirement. It would be pretty obvious that,
9 you know, they are only using this driveway or
10 they are only using that roadway, so it would
11 be obvious what was going on.

12 Here, it's a real juggling act. I
13 appreciate what the school is saying about the
14 potential burden of moving the parking, but
15 I'm also not sure why a situation would arise
16 that they needed to move the parking.

17 And as you can see, it's all pretty
18 tightly controlled, so one could imagine that
19 if you are changing to for Beauvoir, maybe
20 that is changing it also for NCS or it might
21 be changing it for St. Albans. So it's a
22 complicated situation. It's just not as easy

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1 as trying to be accommodating and not provide
2 burden.

3 You know, if there is a way to do
4 it, I think the ANC would be certainly willing
5 to consider it and agree to it. But quite
6 frankly, I don't know what that system would
7 be.

8 CHAIRMAN LOUD: Well, I think your
9 hands may be tied as a representative who has
10 to dutifully bring forward the ANC's position.
11 But just in terms of the dialogue we started
12 about maybe some kind of trigger threshold of
13 relocation. Would that ease some of the
14 practical considerations that the applicant
15 might have?

16 I mean, in other words, I hear
17 Commissioner MacWood saying why would you need
18 to just up and relocate 30 parking spaces?
19 But if on a given day or week or month you may
20 have to relocate five or something as a
21 practical matter, there is a big difference
22 between the two. Does it ease your burden any

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1 to have a trigger or a threshold requirement?

2 MS. BROWN: I think that would
3 help. I think though fundamentally what we
4 have is a map, albeit maybe it needs to be
5 cleaned up a little bit with the actual
6 calculations, but we do -- the Foundation does
7 maintain that map that is part of Exhibit G
8 that ensures that NCS has its allotted spaces,
9 that St. Albans has its allotted spaces and
10 that Beauvoir has its. That's why they have
11 the map.

12 It's available and I think that
13 simply having it submitted as part of an
14 annual reporting requirement would be
15 sufficient. And if spaces move around, as
16 long as the total number for Beauvoir is 126
17 and maybe it moved here or there, I don't see
18 why we need to have any greater control over
19 it if we meet the minimum requirements.

20 And I should also point out that,
21 you know, the Foundation controls that parking
22 garage. And periodically if a school, one of

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1 the schools wants to purchase additional
2 spaces, they have the opportunity to do that.

3 And that's part of the flexibility that, I
4 think, the Foundation itself would want to
5 have and some of the other schools on the
6 Close.

7 So perhaps they want to -- here
8 just for an example, Beauvoir has 126, but
9 they wanted to purchase another four, so then
10 they would really have 130, but that four
11 could be in play that they could then sell to
12 one of the other schools or get back into the
13 main pool. And that's sort of the
14 flexibility, I think. that operationally
15 belongs to the school.

16 And if there is no real
17 objectionable condition that is being thrust
18 upon the community, then there is really
19 nothing that needs to be fixed, as long as we
20 meet that minimum threshold.

21 CHAIRMAN LOUD: Okay. Yes, go
22 ahead.

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1 VICE CHAIRMAN DETTMAN: Ms.
2 MacWood, I'm wondering if, as part of the
3 annual reporting to the ANC that you requested
4 in Conditions 2 and 4, actually the parking
5 plan can be provided to the ANC on an annual
6 basis and any changes that have occurred over
7 the course of that year would be reflected in
8 that map? And that would allow the ANC to
9 make sure that, you know, of the schools that
10 are on the Close, including the Cathedral,
11 that there is no double dipping per se. That
12 there is no double counting of parking spaces.

13 Would that satisfy the ANC's
14 concern?

15 MS. MacWOOD: That certainly would
16 help, Mr. Dettman. You know, I think an
17 additional concern that certainly my
18 constituents have in the neighborhood is to
19 make sure -- this is an over 13 acre parcel.
20 So it's to make sure that the parking that is
21 set aside for the various institutions is
22 parking that will, indeed, be used by those

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1 institutions.

2 And presumably to those
3 institutions, it's in their self-interest to
4 make sure that they have parking that is
5 convenient for their users.

6 You know, if we just kind of throw
7 this up every year that well, the parking
8 arrangements can be redesigned every year and
9 Beauvoir's could move to the parking garage
10 and the surface parking near Beauvoir could
11 now be used by NCS for their athletic center,
12 you know, it depends on how drastic the
13 changes would be.

14 And I would certainly -- and again,
15 I'm speaking as an SMD Commissioner and not on
16 behalf of the ANC, because a resolution is
17 clear and you are going beyond what our
18 resolution addresses, I would like to see
19 perhaps a minimum number, so that we are not
20 looking at a complete redesign of the parking
21 plan, which has been worked out through
22 various zoning orders, you know.

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1 And I'm not sure, I don't even know
2 if the BZA can authorize through the Beauvoir
3 Zoning Order that Beauvoir exchange parking,
4 for example, with NCS, because there is an
5 exhibit in their order that shows the parking
6 where their parking will be.

7 You know, if they want to, the
8 parking garage, I guess, is kind of open
9 territory. I'm not sure that very much of
10 that has been claimed in any particular order.

11 So perhaps that's the place where changes
12 could be made.

13 But I would like to see some
14 control over this. But having an additional
15 reporting requirement annually, possibly could
16 be helpful to provide some accommodation to
17 the school.

18 CHAIRMAN LOUD: Thank you,
19 Commissioner MacWood. Are there any
20 additional Board questions for the ANC or
21 applicant questions?

22 Okay. Then if there are persons in

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1 the audience who are in support of this
2 application, now would be the time to come up.

3 There will be three minutes allotted.

4 Seeing none, if there are persons
5 in the audience who are in opposition, now
6 would be the time to come up.

7 And again, seeing none, we turn
8 back to you for closing remarks, Ms. Brown.

9 MS. BROWN: Thank you, Mr. Loud. I
10 think there was one outstanding issue that you
11 probably wanted to address and that's how to
12 segregate the parking spaces to the CDC and
13 the elementary school.

14 And I might suggest that we state
15 that the elementary school provides a minimum
16 of 73 spaces. Maybe we should word it this
17 way, that Beauvoir School provides 126 spaces
18 of which 73 will be devoted to, a minimum of
19 73 devoted to, the elementary school. Any
20 access may also be used by the elementary
21 school or the CDC, as demand warrants.

22 And then for the CDC, they must

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1 provide -- they will use five of the 126. The
2 minimum shall be devoted to the CDC. And that
3 they can use any access, that's my stab at it.

4 CHAIRMAN LOUD: I think you nailed
5 it pretty good. Beauvoir to provide 126, a
6 minimum of 73 for the private school and a
7 minimum of five for the CDC and shared access?
8 What was your language?

9 MS. BROWN: Yes, that any access
10 demand can be accommodated for either school.

11 CHAIRMAN LOUD: Okay. And that's
12 exclusive to those two schools?

13 MS. BROWN: Correct.

14 CHAIRMAN LOUD: For the access,
15 okay. All right. Well, if there is nothing
16 further on that, I think we can turn back to
17 you again for any closing.

18 MS. BROWN: Thank you. Based on
19 the evidence of record and the testimony you
20 have heard today, I believe that we have
21 demonstrated that we have met our burden of
22 proof for special exception relief under

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1 sections 205 and 206 for the increase in
2 faculty and staff at Beauvoir Elementary
3 School and the additional children at the
4 child development center and we would ask for
5 your approval.

6 And if it is appropriate, we would
7 certainly be happy with any deliberations this
8 afternoon. Thank you.

9 CHAIRMAN LOUD: Thank you. I'm not
10 certain if this will be a thing of beauty, but
11 I do think the record is full. And I think
12 that we can probably deliberate, but let me
13 check with my colleagues, because if we don't
14 have enough readiness -- okay. It looks like
15 everyone has a sense of readiness in terms of
16 moving forward.

17 I'll start us off. And I guess I
18 would like to start us off by requesting on
19 the record that the 206 relief carry the same
20 caption of the current case, which is 17996,
21 and that the 205 relief be recaptioned as
22 17996A.

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1 With respect to the 206 relief, I'm
2 going to lean heavily on the Office of
3 Planning report and just indicate that this
4 proposal is really driven by, I think, what
5 are some good practical considerations. I'm a
6 parent of young children and I split them up
7 in the morning. I have twins that go to
8 different schools, so I can understand the
9 practical drive for this. And I think it's a
10 good amenity to offer parents as well as
11 employees.

12 I think it is also good
13 transportation policy, because you are
14 pulling, I think, some vehicles off the road
15 that would be making these dual trips to get
16 their children to different schools.

17 So there is a good sound policy
18 basis for it, good practical reasons
19 supporting it. As the applicant has testified
20 and the Office of Planning has corroborated in
21 their section 206 analysis, this is a proposal
22 that would be permitted as a special exception

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1 in R-1 anyway.

2 It has already been approved as a
3 special exception. And all the applicant is
4 doing really is seeking to add an additional
5 24, yes, employees. The student cap remains
6 the same at 400. But 24 additional employees.

7 16 of those are already on-site. So we are
8 really talking about an additional eight
9 employees. And I think the record suggests
10 that two of those would be near-term, I think,
11 and the other six would be even, you know,
12 maybe 10 years down the road.

13 As the Office of Planning has
14 indicated, 206.2, the private school is
15 located so that it is not likely to become
16 objectionable to adjoining and nearby property
17 because of noise, traffic, number of students
18 or otherwise objectionable conditions.

19 The school currently operates a
20 Transportation Management Plan. The
21 additional employees that we are talking about
22 are negligible. That was testified to by

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1 their transportation expert.

2 And again, many of these, two-
3 thirds of these new positions are persons that
4 whose bodies are already on the campus. And I
5 think there was testimony from the ANC or
6 perhaps it was from the applicant that while
7 some of these are new and not covered by the
8 existing BZA Order, there has been dialogue
9 with the ANC about it, whatever issues there
10 were surrounding it were discussed. They were
11 resolved and the ANC, in fact, is here and has
12 offered its support with reservations.

13 In terms of the parking space
14 requirement, the requirement is that there be
15 ample parking space, but not less than the
16 required in Chapter 21. The required parking
17 spaces are 73. The applicant proposes a total
18 of 126, a minimum of 73 would be set aside for
19 the private school and there would be
20 exclusive and shared access to the balance of
21 88 for the private school and the child
22 development center. So that provision is met.

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1 And those are the requirements of
2 section 206.

3 I think what would be appropriate
4 now would be to discuss some of the conditions
5 for section 206 and then vote on 206 and then
6 come back and discuss section 205.

7 With respect to section 206, there
8 is universal support from the applicant, from
9 the ANC, from the Office of Planning to cap
10 the student population at 400. The faculty
11 and staff would be capped at 109, again,
12 that's an increase of 24 from the current 85
13 that is part of the existing BZA Order.

14 73 spaces, a minimum would be set
15 aside for the private school and again, they
16 would have a shared and exclusive access to
17 the balance of 88 in the bank of 126.

18 The ANC has suggested some
19 additional conditions, which the applicant has
20 agreed to, and the Office of Planning is on
21 board as well with the following:

22 First, that only siblings of

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1 Beauvoir students are allowed into the school
2 as the Beauvoir compliment to the new school.

3 Clearly, there are going to be employees of
4 the PEFC who have children that make up part
5 of the new population.

6 I'm sorry, I'm on the child
7 development center, 205.

8 So as part of segregating this out,
9 I'm going to leave that off of the private
10 school.

11 Some of these conditions pertain
12 only to the child development center, so
13 that's why I'm struggling through this and I
14 warned everybody that this would not be -- say
15 that again? Okay.

16 All right. No. 3 is a condition
17 that would apply to section 206. And this is
18 the condition that the school shall not offer
19 any conferences, training sessions or other
20 large programs for outside groups, except for
21 programs that are in existence as of today's
22 date.

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1 We have talked about the provision
2 of the parking spaces. And we are going to
3 come back to the issue of how to resolve the
4 annual report.

5 And then the condition regarding
6 not parking in the fire lanes, I think the
7 school is supportive of that. It would be
8 illegal anyway. But the school is supportive
9 of that.

10 And I think those were all of the
11 conditions that applied to the section 206
12 application.

13 Board Members, please, weigh in if
14 I overlooked something or we need to discuss
15 something in a little more depth.

16 VICE CHAIRMAN DETTMAN: Mr.
17 Chairman, just a quick question with respect
18 to the parking condition about it's going to
19 allocate 126 total spaces and I think it was
20 78 for the school. Did you want to work in to
21 that condition an annual reporting requirement
22 to the ANC? A parking plan and changes, any

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1 changes that have been done to the parking
2 plan?

3 CHAIRMAN LOUD: Yes, I think that
4 would be -- this would be a good location to
5 do that. I think the number is 73.

6 VICE CHAIRMAN DETTMAN: 73?

7 CHAIRMAN LOUD: Yes, 73 for the --
8 is that correct?

9 MEMBER MOLDENHAUER: 73 is correct.

10 CHAIRMAN LOUD: All right. 73 for
11 the private school. But this would be a good
12 place to put in the annual reporting
13 requirement regarding changes in the location
14 of the parking spaces identified.

15 Of course, that doesn't really hit
16 the nail on the head in terms of whether we
17 support the ANC's request to have this
18 submitted to the Zoning Administrator. I
19 think we have to flesh that out and, you know,
20 vote it up or down one way or the other just
21 so the ANC knows.

22 But I do think that, at least for

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1 me personally, the requirement for an annual
2 reporting mechanism and empowering the ANC
3 with the information that it would need to
4 pursue enforcement would be something that I
5 support.

6 I'm not certain that I would go as
7 far as to require the applicant to have to
8 submit this to the ZA, get approval beforehand
9 and then be able to implement the changes. I
10 just think it would be -- I think it can be
11 accomplished through less restricted means.

12 Is there additional you wanted to
13 add on that? Is there any additional on the
14 section 206 relief?

15 All right. Then what I would like
16 to do is move approval of Application No.
17 17996 for section 206, private school, relief
18 as a special exception, as conditioned by our
19 discussion. Is there a second or further
20 discussion?

21 VICE CHAIRMAN DETTMAN: I second.

22 CHAIRMAN LOUD: Okay. The motion

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1 has been made and seconded. Is there further
2 deliberation on it?

3 Hearing none, all those in favor
4 say aye.

5 ALL: Aye.

6 CHAIRMAN LOUD: All those who
7 oppose? And, Ms. Bailey, can you read back
8 the vote, please?

9 MS. BAILEY: Mr. Chairman, the vote
10 is recorded as 4-0-1 to grant approval, as
11 conditioned, for the private school. The
12 motion was made by Mr. Loud, seconded by Board
13 Member Dettman, Board Members Moldenhauer and
14 Hood support the motion.

15 CHAIRMAN LOUD: Thank you, Ms.
16 Bailey. And now, let's turn to section 205.
17 And let me just ask, is there a Board Member
18 who is bold enough to start us off on the
19 section 205 analysis? If not, I would be
20 happy to start us off.

21 All right. So under 205, factual
22 predicate being pretty much the same, and you

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1 can jump in Board Member Moldenhauer when you
2 are ready to, driven by some good policy and
3 some good practical considerations, the
4 essential proposal would be to establish the
5 child development center as a principal use,
6 it's currently an accessory use.

7 The population would be capped at
8 60 and that 60 would be limited to employees
9 of the -- children of employees of the
10 Foundation as well as siblings of current
11 Beauvoir students only. The staff cap would
12 be at 21, which is an increase of 14 from the
13 current seven.

14 The parking requirement would be
15 five and that would be met through the bank of
16 126 parking spaces that the private school is
17 going to be providing, as well as having
18 access to the additional 88 parking spaces
19 that are above and beyond the 73 needed by the
20 private school.

21 And let me just briefly incorporate
22 by reference the analysis contained by the

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1 Office of Planning in its report, which is our
2 Exhibit 29, which also walks through a section
3 205 analysis in great detail.

4 I'm not going to go through
5 everything that is in their report. I'll just
6 simply say that I adopt the analysis and the
7 findings of their report.

8 In terms of conditions for the
9 section 205 relief, the Office of Planning
10 recommends, I think I have mentioned it
11 previously, but again, capping the number of
12 students at 60 and limiting it as indicated in
13 my comments earlier to siblings and employees
14 of the foundation. Capping the number of
15 staff at 21 and again, making sure that 126
16 parking spaces overall are provided, five of
17 which would be reserved for the section 205
18 use.

19 In terms of the ANC, the ANC's
20 conditions for supporting the -- not for
21 supporting. The ANC supports the relief, but
22 the ANC's focus in supporting the section 205

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1 relief was that only siblings and children of
2 active Foundation employees are authorized to
3 be accepted into the program.

4 The applicant has agreed to that.
5 The ANC wants to see a cap of 60 children.
6 The applicant has agreed to that. The ANC and
7 the applicant have agreed on, what I think is
8 some rough language, which I'll toss out here,
9 that there shall be an annual report to the
10 ANC in October with the total number of
11 children that are in the child development
12 center, and a notation next to I'm not certain
13 if it was a name of a child currently
14 enrolled, but a notation, I guess, as to the
15 number of grade children who have siblings in
16 the child development center. I think is the
17 way we discussed it.

18 And I'm sure there will be better
19 wordsmiths than me who actually write out this
20 condition. But essentially, it was that there
21 would be an annual report in October. It
22 would note the number of children with

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1 siblings that are in the child development
2 center.

3 In addition to which, there would
4 be an annual report on the location of the
5 parking spaces, similar to what we discussed
6 for the section 206 relief, that would provide
7 the ANC with information about any changes in
8 the location of any of the bank of 126 parking
9 spaces that are part of this application.

10 Thirdly, that the child development
11 center, as well as the private school itself,
12 would not offer any conferences, training
13 sessions, other large programs for outside
14 groups, except for programs currently in
15 existence as of today's date.

16 We talked about the 126 parking
17 spaces that the applicant will be providing.
18 The ANC also suggested that any changes in the
19 location be approved by the Zoning
20 Administrator after consulting with ANC-3C.

21 I have said with respect to the
22 section 206 relief that I didn't support that.

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1 I understand the reason for it. I think a
2 less restrictive means of doing it, of getting
3 them the information that they need to monitor
4 and calibrate how these parking spaces are
5 being used from place to place on the Close
6 would be for the applicant to provide them
7 annually with information with updated parking
8 plans for the child development center and the
9 private school, so that they can see for
10 themselves what is going on. And then take
11 appropriate enforcement action, if that would
12 be necessary.

13 And then the fifth condition,
14 again, is something that would be illegal
15 anyway, but the applicant has agreed to that
16 they shall not allow parking in fire lanes.

17 I think I may have hit most of it,
18 but certainly, Board Members, if there is
19 anything additional, please, add to it.

20 VICE CHAIRMAN DETTMAN: Mr.
21 Chairman, just to make sure that the order
22 reflects what we really want, with respect to

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1 the one condition that talks about the
2 allocation of parking, I think on an annual
3 basis the applicant is going to provide the
4 ANC with a parking plan of the entire Close
5 that shows the different types of uses, the
6 different schools and the allocation to make
7 sure that everyone has their parking spaces
8 that they need.

9 I think you had mentioned the CDC
10 and the private school only.

11 CHAIRMAN LOUD: Okay.

12 VICE CHAIRMAN DETTMAN: Okay.

13 CHAIRMAN LOUD: Okay.

14 VICE CHAIRMAN DETTMAN: And just my
15 second comment, this doesn't at all change my
16 support for the application, but with respect
17 to Condition No. 2, which has the reporting
18 requirement of the CDC and the relationship to
19 Beauvoir students, as well as the fire lanes,
20 I question the utility of those two
21 conditions.

22 One, with respect to the fire

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1 lanes, you can't do it anyway. I don't see it
2 going directly to a zoning issue. And there
3 is a different way -- if that was happening,
4 in order to enforce it, it wouldn't be through
5 any kind of zoning mechanism.

6 And with respect to the list of
7 names, I just don't see the purpose in that.
8 I think that if the ANC had a hunch or had
9 knowledge that the applicant wasn't doing what
10 they proffered, that would trigger some kind
11 of enforcement action.

12 But I just see on an annual basis
13 the applicant providing the ANC with a list of
14 total number of students and then a breakout
15 of the number of students. Those numbers are
16 going to add up. They are not going to
17 willingly say that they are out of compliance.

18 So that being said, I'm in support
19 of the application.

20 MEMBER MOLDENHAUER: Though I agree
21 with Shane's comments on the other two issues,
22 I think the only other clarification I wanted

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1 to make to your fabulous summation of all the
2 different conditions is that under Condition
3 No. 1, you just referenced that there was
4 supposed to be the siblings of students. And
5 I just wanted to make sure that it is
6 specifically clear that the condition is
7 supposed to be siblings of matriculating
8 Beauvoir students.

9 That way there has been testimony
10 that they are not going to be siblings of
11 other students that are on the Close.

12 CHAIRMAN LOUD: All right. Okay.
13 Understood. So we are making it very, very
14 clear that we are not talking -- well, I'm not
15 sure what the point is that you just
16 clarified.

17 MEMBER MOLDENHAUER: Well, I mean,
18 it was testified that they are not siblings of
19 NCS students or they are not siblings of St.
20 Albans students, but that they are
21 specifically siblings of currently enrolled
22 Beauvoir students and that's what the

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1 applicant confirmed, that's what the ANC said
2 that they confirmed and that was in their,
3 actually specifically stated, Exhibit, what is
4 this number, 28.

5 So I was just trying to clarify
6 that.

7 CHAIRMAN LOUD: I got it this time.

8 I agree with you. So the language of the
9 condition should read something along the
10 lines of only siblings of currently enrolled
11 Beauvoir students. And by definition, we are
12 automatically excluding St. Albans and some of
13 the other places.

14 MEMBER MOLDENHAUER: Yes.

15 CHAIRMAN LOUD: So I agree with
16 that. Mr. Dettman, I agree with your comment
17 regarding the fire lanes. I mean, I'm not
18 wedded to that being a condition in the order
19 at all.

20 However, I think on the issue of
21 the supplying the information, the applicant
22 supplying the information to the ANC regarding

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1 the connection of the enrolled CDC children to
2 currently enrolled children is a reasonable
3 request. It seems like they have negotiated
4 in good faith with one another to get to that
5 point.

6 There is also some testimony that
7 this is a potentially large revenue driver for
8 the applicant. And while I don't think that
9 the applicant would come here and testify and
10 say that they would limit it to siblings and
11 then leave here and do something different
12 than that, I just think that this is a good
13 way to keep some integrity in the relationship
14 without placing a burden on the applicant.

15 And I think if it were a burden on
16 the applicant, the application would not have
17 agreed to it at this point and perhaps would
18 have said so during the hearing. So I would
19 be for our leaving that as a part of the
20 relief that we grant.

21 Is there anything further? Okay.
22 Because I don't want to repeat anything that I

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1 said on this. All right.

2 Then I would like to move for
3 approval of Application No. 17996A for section
4 205 relief, special exception for the
5 establishment of a child development center as
6 a principal use under this application. Is
7 there a second?

8 MEMBER MOLDENHAUER: I second.

9 CHAIRMAN LOUD: Okay. The motion
10 has been made and seconded. Is there further
11 deliberation?

12 Hearing none, all those in favor
13 say aye.

14 ALL: Aye.

15 CHAIRMAN LOUD: All those who
16 oppose? Ms. Bailey, can you read back the
17 vote, please?

18 MS. BAILEY: Mr. Chairman, the
19 Board voted 4-0-1 to establish as a principal
20 use a child development center at the site.
21 The motion was made by Board Member Loud,
22 Board Member Moldenhauer seconded the motion,

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1 Mr. Dettman and Mr. Hood support the motion.

2 CHAIRMAN LOUD: Thank you, Ms.
3 Bailey.

4 MS. BAILEY: With conditions.

5 CHAIRMAN LOUD: With conditions.
6 Thank you, Ms. Bailey. Is there anything
7 further on this case?

8 MS. BAILEY: Summary orders?

9 CHAIRMAN LOUD: Well, a summary
10 order, but one that would have the conditions
11 identified in it.

12 MS. BAILEY: Yes, sir.

13 CHAIRMAN LOUD: Yes. So, yes,
14 let's do that.

15 MS. BROWN: Thank you very much,
16 Mr. Chairman.

17 CHAIRMAN LOUD: Thank you. Thank
18 you and have a nice Thanksgiving.

19 And I believe we have one case
20 remaining for the day.

21 MS. BAILEY: Ms. Brown?

22 CHAIRMAN LOUD: I think we're going

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1 to take a 5 minute break and come back at
2 4:00.

3 (Whereupon, at 3:56 p.m. a recess
4 until 4:13 p.m.)

5 CHAIRMAN LOUD: Good afternoon. We
6 are back in order for the afternoon session.
7 And I believe, Ms. Bailey, we had one final
8 case on the calendar this afternoon.

9 MS. BAILEY: Yes, Mr. Chairman.
10 It's Application 17956 of Hamid Reza Ossareh
11 and it's pursuant to 11 DCMR § 3104.1, for a
12 special exception to allow a two story rear
13 addition to an existing one-family detached
14 dwelling under section 223, not meeting the
15 lot occupancy, that's section 403, and side
16 yard, section 405, requirements. The property
17 is located at 4355 Fessenden Street, N.W. It
18 is Zoned R-2. It is located in Square 1655 on
19 Lot 803.

20 Mr. Chairman, I know that this
21 application was advertised previously and so
22 forth. We don't, just for the record, have

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1 the Affidavit of Posting. Based on the
2 record, the ANC is aware of it and, obviously,
3 the next door neighbors are, but we don't have
4 an Affidavit of Posting on this property, just
5 for the record.

6 CHAIRMAN LOUD: Thank you, Ms.
7 Bailey. And it looks like the parties are at
8 the table. I think with respect to the
9 posting issue, Mr. Nero did send out the
10 attestation letter, our Exhibit 20, on June 8.

11 Both Ms. Rosenhouse, Mr. Graham, I believe,
12 the ANC rep was here on September 8th when we
13 had the initial hearing.

14 So I'm inclined to support a waiver
15 of the requirement for the posting. It
16 appears as though this is a case that was
17 well-noticed in the community. I think the
18 parties that need to be here have had ample
19 opportunity to know about the case.

20 In fact, the ANC had a meeting on
21 this and ANC submitted a report and we have
22 continued this now from September 8 to the

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1 present.

2 So I think why don't we ask the
3 parties to introduce themselves and we can
4 start with the hearing.

5 MR. GRAHAM: Mr. Chairman, excuse
6 me?

7 CHAIRMAN LOUD: Yes, sir?

8 MR. GRAHAM: I believe the
9 applicant and his architect arrived late. I'm
10 not sure they have been sworn in.

11 CHAIRMAN LOUD: Thank you.
12 Appreciate that. You will need to be sworn in
13 if you are going to give testimony this
14 afternoon. And Ms. Bailey can swear you in.
15 So if you would rise?

16 (Whereupon, the witnesses were
17 sworn.)

18 MS. BAILEY: Thank you.

19 CHAIRMAN LOUD: And your client is
20 not going to give testimony this afternoon?
21 Okay. Thank you. Very good. So why don't
22 you introduce yourselves for our record? We

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1 can start on my far right.

2 MR. GRAHAM: Thank you, sir. My
3 name is Richard Graham. I'm the owner of the
4 property at 5003 44th Street, which abuts up
5 against the property in question on the north
6 side.

7 CHAIRMAN LOUD: Good afternoon.

8 MS. ROSENHOUSE: Hello. My name is
9 Sandra Rosenhouse. I live at 4351 Fessenden
10 Street, which is directly to the east of the
11 applicant's property.

12 CHAIRMAN LOUD: Good afternoon.

13 MR. SABOURI: Faramarz Sabouri,
14 agent for owner.

15 CHAIRMAN LOUD: Okay. Good
16 afternoon to you.

17 VICE CHAIRMAN DETTMAN: Mr.
18 Chairman?

19 CHAIRMAN LOUD: Yes?

20 VICE CHAIRMAN DETTMAN: I don't
21 think the microphone was on and I don't think
22 the Court Reporter picked up.

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1 MR. SABOURI: Okay. My name is
2 Faramarz Sabouri. I'm architect also the
3 agent for the owner.

4 CHAIRMAN LOUD: Thank you. And
5 then sitting with you at the table is?

6 MR. OSSAREH: My name is Hamid
7 Ossareh. I'm the owner of the property.

8 CHAIRMAN LOUD: Good afternoon to
9 you as well.

10 Before we get started, I just
11 wanted to get a sense of, from both of you,
12 the applicant as well as the party opponents,
13 how long, how much time, rather, you will need
14 for the presentation of your cases this
15 afternoon. And let's start with the
16 applicant, since you're going to go first.

17 MR. SABOURI: 30 minutes.

18 CHAIRMAN LOUD: About 30 minutes?
19 Okay. Those are your exhibits?

20 MR. SABOURI: Shorter, 20 to 30
21 minutes.

22 CHAIRMAN LOUD: Okay. All right.

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1 And for the party opponents, do you have a
2 sense?

3 MR. GRAHAM: We have a sworn
4 statement to read and a couple of exhibits to
5 show you.

6 CHAIRMAN LOUD: Okay.

7 MR. GRAHAM: 10 minutes.

8 CHAIRMAN LOUD: Okay. Are you
9 going to combine your presentation?

10 MR. GRAHAM: Yes.

11 CHAIRMAN LOUD: Okay.

12 MR. GRAHAM: That was the plan.

13 CHAIRMAN LOUD: All right. And you
14 know as parties, you have an opportunity to
15 ask the applicant questions if there is
16 testimony from the applicant, you have an
17 opportunity to ask question.

18 Are you going to combine efforts in
19 terms of asking questions as well, because you
20 certainly have that privilege and opportunity.
21 Okay.

22 MS. ROSENHOUSE: We have discussed

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1 this very closely together, so, yes, we will.

2 Well, we will take turns, but it's the same
3 point of view.

4 CHAIRMAN LOUD: Okay. And to the
5 extent they are the same questions, obviously,
6 we wouldn't want to have you both cover the
7 same ground. So you can see opportunities to
8 combine efforts in that regard as well.

9 MS. ROSENHOUSE: Yes, sir.

10 CHAIRMAN LOUD: Thank you very
11 much. Why don't we turn to the applicant for
12 your case?

13 MR. SABOURI: I will go, Your
14 Honor.

15 CHAIRMAN LOUD: You're just going
16 to need a microphone.

17 MR. SABOURI: First of all, before
18 I start talk about the project, I bring the
19 issue of the D.C. process of permit and BZA.
20 We have submitted this permit in November 17
21 to Permit Office. We have the preliminary
22 review with the Zoning Office and couple of

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1 other people. It submitted twice.

2 And from that time through almost
3 January and February 2009, all the reviews
4 completed. Then they told us you need to go
5 to BZ Office, get the special exception for
6 the lot occupancy. And since then, with all
7 the application, with all this complication,
8 we gave it to the BZ Office and they gave us
9 September.

10 This promise date was very long.
11 They said definitely September. From
12 September it moved to October. Contrary to
13 all our memo and all our objection during the
14 last meeting, it was postponed again to
15 November.

16 And this is a big burden for the
17 owner, because he had the plan to do that one
18 early this year, the end of this year.

19 This is one of the things I don't
20 know what is the problem in D.C. BZA process
21 that makes these things that long? Because
22 for such a small thing relative to other

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1 applications, why you should wait such a long
2 time?

3 Is there another way to make this
4 one shorter or otherwise, because it seems
5 it's not very rationale for such a case to do
6 that on or to have some kind of preliminary
7 review of our case to find out whether the
8 neighbors if they have objection, their
9 objection is reasonable enough to postpone the
10 review of our case to November.

11 Unfortunately, none of them was
12 done. Our letters came and nobody respond to
13 us until we came here. We got from the BZ
14 Office that the decision was made to make it
15 November. That was first for us, which was
16 very -- not very common.

17 The project that we have now back
18 to this project. It's relatively small house
19 in Northwest on Fessenden Avenue. The
20 footprint of building is about 720 square feet
21 and two story. The owner renovated that one.

22 He wants to make this --

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1 CHAIRMAN LOUD: Mister, is it
2 Faramarz?

3 MR. SABOURI: Yes.

4 CHAIRMAN LOUD: Do you mind holding
5 the microphone up closer to your
6 mouth --

7 MR. SABOURI: Oh, sorry.

8 CHAIRMAN LOUD: -- as you speak?
9 Thank you. Yes.

10 MR. SABOURI: The whole idea of
11 design --

12 MR. OSSAREH: Hold it so we can see
13 it.

14 CHAIRMAN LOUD: Are you talking
15 about the exhibit?

16 MR. OSSAREH: Yes.

17 CHAIRMAN LOUD: You can probably
18 get up, because you don't need to be attached
19 to a microphone, you can probably just get up
20 and walk over there.

21 MR. SABOURI: The addition to this
22 house provides some ample family room to the

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1 first floor, which is really small. It's 17
2 by 27. And the upper floor provide additional
3 bedroom, which in -- on the second floor, they
4 have three very small bedroom without closets,
5 which is very hard to live.

6 Therefore, basically, the intention
7 was to provide some kind of house with the
8 standard of nowadays and provide some extra
9 space that can make this house for a family,
10 because at this stage, this house is very
11 small. Total about 1,300 or 1,400 square
12 feet. Considering that the garage off of the
13 house is very old, 8 feet wide, therefore, it
14 was not even practical for using that one as a
15 garage.

16 Therefore, considering all the
17 zoning and possibilities, the decision was to
18 make this addition at the rear of the building
19 and in two story with some minor modification
20 to connect to the existing building.

21 You can see the existing site
22 condition. This is the property line. This

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1 is existing building. This is existing
2 garage, which for this addition, we will
3 remove it and we make this addition to this
4 extent.

5 Everything is within Zoning
6 Regulation in case of setback, in case of
7 height, even we are way below that.
8 Therefore, the only problem that the zoning
9 reviewer told us that lot occupancy is about
10 40 percent. You need to get exception, a
11 special exception that it will let you to have
12 this lot occupancy up to 50 percent.

13 And the way they explain to us they
14 said it's a very simple process. And by
15 applying that one, if you go two to three
16 months and you will have this one approved.
17 Therefore, contrary to our initial design that
18 we wanted to make that 40 percent by some
19 modification in front of the building removing
20 the covered porch, we could do this one with
21 no need to go BZ Office.

22 And if we had done that one, by now

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1 we had the permit in hand.

2 But per recommendation from the
3 zoning reviewer and the way that he explained
4 that this is easy, we followed that. We came
5 to this one and consequently we apply for BZ
6 review. And resulting from that one, we
7 specifically mentioned about lot occupancy,
8 lot width. Then later they told us since this
9 is the proper -- this is the old subdivision,
10 you don't need to go through the lot width
11 variance or other things. They said only lot
12 occupancy is the issue you should get BZ
13 approval.

14 Then during that time, they send
15 letters to neighbors and following our meeting
16 with the neighbors, they had several comments
17 about the new addition that we make,
18 specifically about the shadows that this
19 addition will cast.

20 CHAIRMAN LOUD: Do you know a way,
21 Ms. Bailey, Mr. Moy, to stop the -- is that
22 something we are doing up here or is it based

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1 on -- I'm sorry to interrupt you there is some
2 static.

3 MR. SABOURI: It's the whole issue
4 up there, process that time now we went
5 through.

6 CHAIRMAN LOUD: No, I understand.
7 There is some feedback that we are getting up
8 here. I don't know if you are hearing it.
9 And I'm just wondering.

10 MR. SABOURI: It's okay now.

11 CHAIRMAN LOUD: Okay. I'm sorry.

12 MR. SABOURI: No, I just explain--

13 CHAIRMAN LOUD: Okay.

14 MR. SABOURI: -- what we are
15 presenting if they have any issues. This one
16 shows the addition and the impact of that one
17 to the adjacent properties to the north and
18 also to the south. And shows the shadow
19 diagram in different time of the day and pick-
20 up the summertime, which will have the maximum
21 shadow extension to the properties.

22 And the rest of that is the

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1 addition as you can see in this elevation. We
2 try to make this one as much as possible in
3 the same height and proportion of existing
4 building. And material we use some kind of
5 combination of the stucco and maybe siding.
6 Therefore, there is no different material that
7 we have there.

8 That's all.

9 CHAIRMAN LOUD: Thank you, Mr.
10 Faramarz. Let's see if Board Members have any
11 questions for you regarding the project.
12 We're going to turn to the parties shortly for
13 any questions you may have. I just wanted to
14 see again if Board Members had questions.

15 All right. We'll turn to the
16 parties and if Board Members have questions,
17 we can come back to the Board.

18 CROSS EXAMINATION

19 MR. GRAHAM: We didn't quite
20 understand the footprint, the surface area of
21 the footprint. Can you tell us that again?
22 The footprint of the existing building.

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1 MS. ROSENHOUSE: You said 1,720
2 square feet?

3 MR. SABOURI: 720.

4 MR. GRAHAM: 720.

5 MS. ROSENHOUSE: 720. Of the
6 current?

7 MR. SABOURI: Yes, existing
8 building without garage.

9 MS. ROSENHOUSE: That's --

10 MR. SABOURI: So that's we live in.

11 MR. GRAHAM: Yes, okay. No, we
12 just --

13 CHAIRMAN LOUD: You wanted
14 clarification. Okay.

15 MR. GRAHAM: We misunderstood.

16 CHAIRMAN LOUD: Okay. Any
17 additional questions for the applicant? Do
18 you have questions for the applicant, Ms.
19 Rosenhouse?

20 MS. ROSENHOUSE: Well, just
21 regarding the footprint -- I mean, records
22 from -- that you can get from real estate

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1 agents say that the footprint is really 1,400
2 feet.

3 CHAIRMAN LOUD: Okay. Well, this
4 is the appropriate time for questions for him,
5 not so much -- I mean, you can challenge his
6 answer to your questions through another
7 question, but --

8 MR. GRAHAM: It is one story.

9 CHAIRMAN LOUD: -- you'll get an
10 opportunity later to --

11 MS. ROSENHOUSE: Okay.

12 CHAIRMAN LOUD: -- put on the
13 record your information. This is more for
14 questions.

15 MS. ROSENHOUSE: Well, one question
16 is we had understood that the applicants would
17 be preparing new plans given that some of the
18 -- in the earlier meetings with the ANC, a
19 number of misrepresentations were found in
20 their plans.

21 And so I had been told by the
22 Office of Zoning that they were expecting some

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1 new plans, but we haven't seen any.

2 CHAIRMAN LOUD: Okay. Let's ask
3 the applicant. Mr. Faramarz, did you have any
4 plans apart from your latest submission, I
5 think, was August the 4th?

6 MR. SABOURI: It was only one
7 typewriting mistake, that was only thing.

8 CHAIRMAN LOUD: No, the question is
9 do you have any additional plans apart from
10 what I think is our Exhibit 21?

11 MR. SABOURI: No.

12 CHAIRMAN LOUD: Your August 4th.

13 MR. SABOURI: No.

14 CHAIRMAN LOUD: Okay. So the
15 answer is no, that there are no additional
16 plans that are in the file.

17 MS. ROSENHOUSE: So we will have
18 our chance to comment later?

19 CHAIRMAN LOUD: That's correct.
20 But if you have some questions about that for
21 the applicant, you can ask him now, if you
22 believe that there are inaccuracies in the

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1 plan. And then we can come back to you, but
2 right now this is the opportunity for Ms.
3 Rosenhouse and Mr. Graham to ask questions.

4 MR. GRAHAM: I think we see no
5 substantial difference in the plans we have
6 seen previously, so we have no questions.

7 CHAIRMAN LOUD: Okay. All right.
8 And it appears as though the applicant -- did
9 you want to offer some testimony? Sure.
10 We're still in your case, but you are going to
11 have to be sworn in in order to provide
12 testimony.

13 MS. BAILEY: Please, raise your
14 right hand.

15 (Whereupon, the witness was sworn.)

16 MS. BAILEY: Thank you.

17 CHAIRMAN LOUD: Do you need a
18 microphone to walk over to the exhibit?

19 MS. BAILEY: It's on the table
20 right there.

21 MR. OSSAREH: Yes, I add only 76
22 square foot to this extra. I mean, that's

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1 where it is 76 square foot add. So I can do
2 this in the third floor without BZA or I can
3 do it in seven first floor, 76 square foot,
4 3.5 by 17 feet. I ask only 3 foot 6 inch by
5 17 feet.

6 I can add this on third floor. I
7 think it's worse for my clients. They don't
8 get the shade. It is worse for both
9 neighbors, so that's nicer that I stay only 76
10 square foot after one year raking 3.7 square
11 foot I add to extra. That's all I am asking.

12 I think it's much better for both
13 of us. The only reason that I don't want to
14 go to three story and add is because I can go
15 up to 40 feet. I go only 200 feet. I can go
16 up to 8 foot to my neighbors. I go 10 foot 6
17 inch from my neighbors.

18 She asked me don't put any window.

19 I said okay. I don't put any window in
20 there. Other neighbor told me change your
21 roof on this side of us. Okay, I'll do that.

22 But none of them -- you know, those are for

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1 my neighbors, both neighbors, I'm in the
2 middle.

3 D.C. tell me you can go up to 20
4 feet from backyard. I am doing this. I am
5 not going to go far. Code tell me I can go 8
6 foot to my neighbors, but I go only 10 foot 6,
7 even less.

8 So I don't know -- I mean, I don't
9 have an objection. My wife told me I want a
10 bigger house, so I have to add this square
11 foot or to third floor or first floor two
12 story.

13 So anyone they would like if they
14 have objection about this, tomorrow I have to
15 go change my plan and get another permit.

16 CHAIRMAN LOUD: Okay. I think the
17 gist of your testimony has been placed on the
18 record --

19 MR. OSSAREH: Thanks.

20 CHAIRMAN LOUD: -- regarding other
21 options that, in your perspective, may have
22 been -- had more adverse impact.

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1 Are there any questions for Mr.
2 Ossareh?

3 MR. GRAHAM: Yes, sir.

4 CROSS EXAMINATION

5 MR. GRAHAM: Mr. Ossareh has built
6 a number of houses in Montgomery County and he
7 is a contractor of sorts. I just would like
8 clarification.

9 CHAIRMAN LOUD: You can address it
10 to him.

11 MR. GRAHAM: Yes, the clarification
12 is that I heard you say in with respect to the
13 third floor possibility that that would not be
14 good for your clients. Did I understand that
15 properly? Because my understanding is that
16 this is a single-family house for you and your
17 wife. Would you clarify that, please?

18 MR. OSSAREH: Yes, I can build
19 another loft. I can go up to 30 feet with one
20 loft in the top, right?

21 MR. GRAHAM: Right. But that's not
22 my question. My question is who are the

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1 clients you are referring to, if I understood
2 that properly?

3 MR. OSSAREH: Who is the client? I
4 don't understand.

5 MR. GRAHAM: Well, in regards to
6 your wife.

7 MR. OSSAREH: Oh.

8 MR. GRAHAM: Your wife asked you?

9 MR. OSSAREH: Yes, my wife want
10 more square footage, so she wants me to -- I
11 want it bigger, so if I cannot use it in the
12 first floor, so I have to use the square
13 footage in the upper floor. It means I have
14 to change the plan, which I don't want to do
15 that. It's too late. One year I'm waiting.

16 CHAIRMAN LOUD: Okay. I think --

17 MR. GRAHAM: Is your microphone on,
18 Mr. Ossareh?

19 CHAIRMAN LOUD: I think his only
20 question was where you were referring to a
21 client for whom you are upgrading the
22 property? You did use the word client when

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1 you were standing by the exhibit. I don't
2 know if you misspoke.

3 MR. OSSAREH: I said my -- instead
4 of calling them neighbors.

5 CHAIRMAN LOUD: Instead of, yes.

6 MR. OSSAREH: I call client
7 neighbor.

8 CHAIRMAN LOUD: Okay. It appears
9 as though perhaps he misspoke.

10 MR. GRAHAM: Thank you very much.

11 MR. OSSAREH: Neighbor, sorry.

12 CHAIRMAN LOUD: Okay. Thank you.
13 Are there any additional questions from the
14 Board for the applicant? If not, we will turn
15 to the Office of Planning. Okay. So why
16 don't we turn to the Office of Planning? Good
17 afternoon.

18 MR. VARGA: Good afternoon, Mr.
19 Chairman and Members of the Board. Stephen
20 Varga, Office of Planning. The Office of
21 Planning is recommending approval of the
22 special exception request pursuant to section

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1 223 to construct a two story addition along
2 the north side of an existing one-family
3 detached dwelling at 4355 Fessenden Street,
4 N.W.

5 Special exception criteria have
6 been accounted for regarding light, air,
7 privacy, visual and design considerations.
8 I'm happy to answer any questions.

9 And just as a point of
10 clarification in the report, I did catch this,
11 instead of Lot 22, it should, in fact, read
12 Lot 803, for the record.

13 And also, I would like to add that
14 the lot occupancy on site, according to our
15 calculations, is 1,109 square feet, at least
16 from the Zoning Regulatory standpoint.

17 And I'm happy to answer any
18 questions, as I mentioned before.

19 CHAIRMAN LOUD: Thank you,
20 appreciate your report. This was a well-
21 written report. Let's see if Board Members
22 have any questions for you and then we will

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1 turn to the applicant and then to the party
2 opponents.

3 I have a few questions for you
4 regarding some of the evidence in the record.

5 And just to have you elaborate a little bit
6 on your conclusion that there are no light and
7 air impacts or privacy impacts.

8 The ANC's report draws a different
9 conclusion that there would be some impact to
10 the afternoon sunlight of Ms. Rosenhouse in
11 its sunroom and that there would be a
12 restriction of air flow to the other neighbors
13 that are more easterly, but apparently who
14 have benefit from this sort of wide open area
15 as part of the existing conditions.

16 Can you respond to that?

17 MR. VARGA: Yes. Office of
18 Planning received the shadow study, I believe
19 it was just passed around as well, from the
20 applicant that demonstrates that --

21 MR. GRAHAM: That's not the
22 applicant's. Sorry.

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1 MR. VARGA: I'm sorry? This is
2 your shadow study? That the applicant's
3 proposed addition will meet the setback or I'm
4 sorry, the side yard setback requirements and
5 in that way won't impact the air flow to the
6 neighbor. And I would like to ask the
7 applicant, did you submit a shadow study?

8 MR. SABOURI: Yes. We submit as
9 well.

10 MR. VARGA: I'm sorry?

11 MR. SABOURI: We submitted not with
12 the original one, but later we send the shadow
13 study in to this time of the year.
14 Specifically for summertime. Because in
15 winter it's totally different.

16 MR. VARGA: I'm sorry for the
17 clarification point, but I picked up the one
18 that was submitted by the neighbors instead of
19 the applicant, but the applicant had submitted
20 a shadow study that the Office of Planning
21 reviewed. And based on that information, the
22 Office of Planning recommended -- or I'm

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1 sorry, the Office of Planning felt that the
2 air and light criteria were satisfied.

3 CHAIRMAN LOUD: So your conclusion
4 is based on first the setback and the setback
5 being, I think it is, more than 10 feet?

6 MR. VARGA: I believe it is 8 feet.

7 CHAIRMAN LOUD: No, 8. Okay. And
8 I think there may be some additional on --

9 MR. VARGA: Yes.

10 CHAIRMAN LOUD: -- their own
11 property.

12 MR. VARGA: And the existing is
13 9.4. And actually, the addition itself will
14 be 10.4, so it won't intrude any on the
15 existing side yard setback.

16 CHAIRMAN LOUD: All right. And in
17 addition to the ANC's concerns, Mrs.
18 Rosenhouse raised a concern about the light
19 impacts in the summer, the yard would be
20 shadowed by 4:00 p.m. instead of the usual
21 6:30. And that a kitchen window would be
22 blocked. Can you respond to that concern and

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1 stamp on the conclusion that you have reached?

2 MR. VARGA: Yes. I haven't
3 reviewed the differentiation between the
4 findings of the sun and shadow studies
5 submitted by the neighbors versus the one
6 submitted by the applicants.

7 Unfortunately, the review time that
8 we had to meet didn't allow for that
9 particular aspect of the review.

10 CHAIRMAN LOUD: Okay. And then
11 finally, Mr. Graham, as part of our file, he
12 has indicated that reducing the rear yard by
13 17 feet will increase the shadow on his home.

14 Can you respond to that concern in light of
15 your conclusion?

16 MR. VARGA: No. Again, that's
17 information unfortunately that wasn't reviewed
18 by the Office of Planning in their
19 determination.

20 CHAIRMAN LOUD: Okay. Did you have
21 -- you had these party status applications
22 available to you to review? The Office of

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1 Planning had the information available to
2 review and just didn't have the opportunity to
3 review it?

4 MR. VARGA: I'm not entirely sure
5 when this sun and shadow study was submitted
6 by the applicant.

7 CHAIRMAN LOUD: Well, this wouldn't
8 be the shadow study so much as the party
9 status applicant, Mr. Graham, in Exhibit 24
10 which was filed July 30, '09, mentioned a
11 number of, what he alleged to be, potential
12 impacts. And that included the fact that the
13 rear yard was being reduced by 17 feet. And
14 that that was going to create some shadow
15 impacts for him. I believe he is in the rear
16 of the applicant's property.

17 MR. VARGA: Again, as mentioned
18 before, not unlike the side yard setback, the
19 rear yard minimum setback will be fulfilled
20 and, yes, it will be reduced from 37 feet to
21 20 feet minimum. Based on that information, I
22 can say that the rear yard minimum setback

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1 will be fulfilled.

2 CHAIRMAN LOUD: So that the 20 feet
3 that still remain are, if I understand your
4 testimony, sufficient to --

5 MR. VARGA: That's right. The air
6 and light impacts would not be affected based
7 on that information.

8 CHAIRMAN LOUD: Okay.

9 MR. VARGA: To the rear yard
10 neighbor, to the properties to the north.

11 CHAIRMAN LOUD: Okay. And are you
12 still recommending some frosting with respect
13 to some of the windows to --

14 MR. VARGA: That's right. I
15 believe the upstairs room being proposed that
16 faces eastward is proposed to be a bathroom,
17 based on the plans submitted. So the Office
18 of Planning would recommend that the windows
19 be frosted glass.

20 CHAIRMAN LOUD: Okay.

21 MR. VARGA: For that window to
22 account for any privacy impacts.

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1 MR. SABOURI: I have one -- sorry,
2 I have one question, because I was wondering
3 we heard this issue of frosting the windows
4 from the neighbors, but we don't know this is
5 who against who. We are giving privacy to
6 person in the bathroom or we giving privacy to
7 rest of the neighborhood. Because it still
8 for us doesn't make sense, but we agreed to
9 whatever, you know, satisfaction. We said
10 okay, we can make it frosted or we can raise
11 the window.

12 But still we don't know the logic
13 behind this issue. And whether the --

14 CHAIRMAN LOUD: If you would like
15 to, you can --

16 MR. SABOURI: -- neighbors are --

17 CHAIRMAN LOUD: -- ask the Office
18 of Planning the question, since they made the
19 recommendation. And this would be a good time
20 to ask questions. So you are free to ask the
21 Office of Planning the question.

22 MR. SABOURI: That's why we -- our

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1 concern was we are protecting who against
2 what?

3 MR. VARGA: I believe that works
4 both ways. And it's just a common practice.

5 MR. SABOURI: Okay. We have no
6 objection. But we just wanted to know what's
7 the reason behind that. Because we heard from
8 the neighbors this issue, but we could not
9 find the logic behind that. They don't want
10 to see a person in the bathroom or they don't
11 want that person to see them? This is total
12 different things.

13 CHAIRMAN LOUD: I think he has
14 answered the question. And his opinion is
15 that it works both ways. Everybody gets
16 protected.

17 COMMISSIONER HOOD: Mr. Chairman,
18 actually I think the applicant answered the
19 question also.

20 CHAIRMAN LOUD: Okay. All right.
21 So before we turn to the party status
22 opponents to see if you have questions for the

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1 Office of Planning, let me double check back
2 with the Board Members and see if there are
3 any questions.

4 And there are not appearing to be
5 any.

6 MS. ROSENHOUSE: Well, just a
7 clarification. Two months ago when we were
8 here in August, we gave you a copy of that
9 shade study, the very same one. So you had
10 two months to look at it.

11 MR. GRAHAM: I have an impression
12 it wasn't taken into consideration, but
13 correct me if I'm wrong.

14 CHAIRMAN LOUD: I think in all
15 fairness to the witness if only one of you
16 would ask a question at a time and give him a
17 chance to answer that question.

18 I think one of the questions is did
19 you have an opportunity to review the study?

20 MR. VARGA: No, the Office of
21 Planning didn't get a chance to, as I
22 mentioned before, review or differentiate

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1 between the two shadow studies to determine
2 what the difference in the impacts based on,
3 again, the methodology used in the sun and
4 shadow study was.

5 MR. SABOURI: Excuse me, we provide
6 this shadows. Basically, I provided all kind
7 of variation of this shadow in summertime for
8 Mrs. Rosenhouse. Because I understand what
9 she said if it's 3:00 or 4:30, I made it 4:30,
10 make it 6:30.

11 CHAIRMAN LOUD: You can't be heard
12 right now on the transcript, so you've got to
13 speak directly into the mike, so that we have
14 a record preserving everything you're saying.

15 MR. SABOURI: We provide the
16 extreme case of shadow diagram in the worst
17 time of the summer, which is the concern for
18 the neighbor. You provide that for me.

19 CHAIRMAN LOUD: Let me just cut you
20 off for just one second just to say this. The
21 Office of Planning has written a report that
22 is in support of your application. So did you

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1 -- if you have some questions for the Office
2 of Planning, you can certainly ask them now.

3 We will come back to you later for
4 a closing statement if you have a closing
5 statement, but this would not be the time to
6 go on the record with any sort of
7 argumentation and statements. But if you have
8 questions for the Office of Planning,
9 certainly, about the shadow study or anything
10 in their report.

11 MR. SABOURI: No in support of what
12 you were saying. I said we brought this
13 specific case, which was the concern for the
14 neighbors.

15 CHAIRMAN LOUD: Okay. You can
16 weave that into your closing statement. Do
17 you have any questions for the Office?

18 MR. SABOURI: No.

19 CHAIRMAN LOUD: Okay.

20 MEMBER MOLDENHAUER: I just have a
21 quick recommendation for the Office of
22 Planning. Is there an opportunity maybe for

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1 us to take a quick, and I don't know if the
2 other Board Members would agree with this,
3 five minute break for you just to look at the
4 opposing party's shadow studies and that way
5 at least then you can incorporate that into
6 your current opinion and at least determine
7 whether or not that is going to change your
8 opinion, whether it is not going to change
9 your opinion and then just provide us with a
10 brief analysis?

11 MR. VARGA: Again, I could look at
12 the information. I have them both here in
13 front of me. Unfortunately, it looks like
14 unless there are -- again, if there were a
15 methodology behind -- provided behind the
16 information received in the shadow study,
17 without that information, unfortunately, to
18 determine that the maximum -- you know, let's
19 say the worst case scenario of the sun angle
20 hitting the proposed addition, what kind of
21 impacts it would have on the neighboring
22 property.

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1 Unless some of that methodology
2 were provided with the sun and shadow study,
3 I, unfortunately, wouldn't be able to make
4 that determination. It would be more or less
5 a, you know, one perspective versus another.

6 MEMBER MOLDENHAUER: I need to
7 maybe clarify. Maybe this will actually be
8 better than even my prior recommendation or
9 request. It's your testimony that whether the
10 shadows -- you had the methodology in the
11 shadow study or not, whether you over the last
12 month or so reviewed it, you know, in depth,
13 your opinion is still that the side yard and
14 the distance between the homes and the setback
15 is sufficient, so that there would not be any
16 adverse impact on the enjoyment and use of
17 neighbors?

18 MR. VARGA: That's exactly correct.

19 MEMBER MOLDENHAUER: Thank you.

20 MR. VARGA: Yes.

21 CHAIRMAN LOUD: In light of that
22 then, it doesn't seem like we garner a lot out

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1 of taking a recess. So why don't we move
2 forward?

3 This would be the point in time at
4 which the ANC would give it's report. The ANC
5 is not here. They did submit a report,
6 Exhibit 22, dated August 6, '09. In the
7 report, they recommendation against approval
8 of the application.

9 I have raised most of the concerns
10 that were in the report with the Office of
11 Planning and they have shared their response
12 to it. So we will just take note of the fact
13 that the report was submitted timely. It is
14 entitled to great weight. And that it does
15 recommend against approval.

16 Now, if there are persons in
17 support of the application, and there aren't
18 any in the audience, this would be the time
19 that they would come forward.

20 And seeing none, we move to parties
21 who are in opposition. This is the time of
22 the proceeding now that you would present your

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1 case that you would give your statements and
2 offer your perspectives.

3 MR. GRAHAM: Mr. Chairman, Mr.
4 Bender the Chairman of the ANC for our
5 neighborhood was here and he unfortunately had
6 to leave.

7 CHAIRMAN LOUD: Okay.

8 MR. GRAHAM: He wanted to affirm
9 that the recommendation of the report he
10 submitted is still valid and feels that unless
11 there is some compromise reached, the Board --
12 the ANC will continue to oppose the
13 application.

14 CHAIRMAN LOUD: Thank you, Mr.
15 Graham.

16 MR. GRAHAM: On behalf of Ms.
17 Rosenhouse and myself, I would like to read a
18 statement.

19 We understand Mr. Ossareh's desire
20 to improve his property at 4355 Fessenden
21 Street. The house on his property, like most
22 of the homes in the neighborhood, is small and

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1 he would like to expand it. In fact, Mr.
2 Graham has renovated and expanded two nearby
3 houses himself. And so we are not opposed in
4 principal to his plans to improve the
5 property, however we would not be here today
6 if there were not rules and regulations
7 governing how these improvements can be
8 implemented.

9 There are two primary concerns.
10 Loss of light and that the resulting structure
11 that the applicant proposes to build is simply
12 out of proportion with the other structures in
13 the neighborhood. This concern is echoed by
14 virtually all of the property owners within
15 the 200 foot radius of 4355 Fessenden Street.
16 The ANC has attested to this group's concern.

17 Regarding the regulations governing
18 lot occupancy, we ask this question, perhaps
19 naively, if a conforming lot in our
20 neighborhood means that it must measure at
21 least 400 square feet -- 4,000 square feet and
22 the lot in question measures only 2,800 square

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1 feet, why should the owner be permitted to
2 increase his lot occupancy from 40 percent to
3 50 percent on a lot that is already too small?

4 We hope that the Commissioners will
5 consider the following:

6 Firstly, this Square No. 1655 is
7 special in the sense that there are no back
8 alleys anywhere and, thus, there are no public
9 spaces between our properties that act as
10 buffers to mitigate overcrowding.

11 Secondly, the property in question
12 is the smallest lot on the square.

13 And thirdly, the property is on a
14 corner. In most cases, the addition to the
15 rear of the structure has little visual impact
16 from the street. In this case, the proposed
17 extension to the rear of the property is
18 clearly visible from the 44th Street. And as
19 the ANC has pointed out, the addition "will
20 materially affect the visual aspect of the
21 home in the context of the neighborhood of
22 predominately older modestly renovated single-

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1 family homes."

2 Concerning Mr. Graham's property at
3 5003 44th Street, which is adjacent to the rear
4 yard of the lot at 4355 Fessenden, there is
5 little question that a massive 17 by 26 foot
6 extension wall protruding from the existing
7 structure toward his property would block a
8 significant part of the open space between the
9 existing structures and have a negative impact
10 on air flow.

11 Secondly, there would be an
12 increased shadow on his property, particularly
13 during winter months and there would be a
14 major increase of shadow on Ms. Rosenhouse's
15 property to the east.

16 Thirdly, considering the proposed
17 facade facing Mr. Graham's property designed
18 with two new double windows on the second
19 floor and two double windows and a glass door
20 on the first floor, there is no question that
21 this will negatively impact the privacy of the
22 occupants facing -- of the facing property.

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1 Thus, we believe that this
2 extension would no doubt reduce the value of
3 Mr. Graham's property.

4 With respect to Ms. Rosenhouse's
5 property, the most affected of the proposed
6 construction. If the current plan is
7 approved, she will face considerably reduced
8 sunlight and privacy.

9 In summer, which is the time of the
10 year when most of the sunlight in the backyard
11 and on the deck and the kitchen -- most is on
12 the deck, the kitchen windows would be
13 shadowed -- be in shadow by 5:00 p.m. in June
14 and half of the backyard would be in shadow by
15 5:00 p.m. in September.

16 The extension also will block
17 sunlight coming through into the large kitchen
18 window which faces the proposed addition.
19 Normally, she enjoys sunlight in her kitchen
20 until 6:30 p.m. daily.

21 Furthermore, given that the planned
22 extension is within 10 feet of the property

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1 line and overlooking the deck and the large
2 kitchen window, Ms. Rosenhouse's privacy will,
3 obviously, be affected.

4 Ms. Rosenhouse will, essentially,
5 be boxed in. And regrettably, the very large
6 old tree that dominates her view from the
7 window will likely be -- have to be cut down.

8 The planned extension will surely reduce the
9 value of her property.

10 In addition, we cite three further
11 issues. First, over the years there has been
12 a drainage problem resulting from rain water
13 on the rear yard of 4355 Fessenden flooding
14 into the adjacent properties.

15 Ms. Rosenhouse has suffered
16 dampness in her basement since Mr. Ossareh
17 removed the rain gutters and downspouts from
18 his house. He said he would deal with this
19 drainage issue, but since our last meeting has
20 done nothing.

21 Moreover, we have not seen a plan
22 that addresses this problem.

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1 Secondly, there is a 7 foot fence
2 in the rear of the property in question which
3 was built by the previous owner without a
4 permit, we believe, which poses a substantial
5 safety issue. Automobiles exiting the
6 driveway at 5003 44th Street cannot see
7 pedestrians passing on the sidewalk.

8 And thirdly, the latest plan that
9 we have seen indicates that a driveway in the
10 rear -- is in the rear of the property, which
11 will require a curb cut and the removal of the
12 existing tree mentioned earlier and perhaps an
13 electric pole as well.

14 We have not seen any plans that
15 address this issue.

16 We have met privately with Mr.
17 Ossareh in hopes of persuading him to modify
18 his planned extension. We asked that he
19 consider recessing the second floor of the
20 addition, so that neither Mr. Graham's
21 property nor Mrs. Rosenhouse's property would
22 face a massive wall.

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1 Mr. Fruman of the ANC has also
2 proposed that he build the addition several
3 feet further away from Mrs. Rosenhouse's
4 property.

5 Mr. Ossareh rejected these efforts
6 at finding a compromise and threatened as if
7 he did not -- that if he did not get his way,
8 he would simply build three stories instead of
9 two, which he claims he has the right to do.

10 Based on the above concerns, we
11 respectfully request that the Board deny the
12 application of a special exception for the
13 property at 4355 Fessenden Street.

14 Submitted by Sandra Rosenhouse and
15 Richard Graham.

16 CHAIRMAN LOUD: Thank you, Mr.
17 Graham. Mrs. Rosenhouse?

18 MS. ROSENHOUSE: Yes. I just
19 wanted to add that we shared those shadow
20 plans with you two months ago. If there was--
21 if you needed to know something about the
22 methodology, it would have been good for you

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1 to tell us, so that we could have come
2 prepared.

3 I also brought some pictures to
4 show, because the exhibit that the applicants
5 showed, the ones we saw these -- I don't know
6 if these are the same ones, they took the
7 picture was from the wintertime and it was
8 clear, because my grass was brown. I have the
9 soja-type grass that changes colors with the
10 seasons.

11 The other thing is we don't know
12 what methodology was used with their's. And I
13 can show you these pictures that shows this is
14 in August. You can see the shadow. It shows
15 the view from my kitchen window. The big tree
16 that is going to have to be torn down, because
17 that's where they plan to put their driveway.

18 And just the obstruction that is
19 going to be. Already you can see in the
20 picture the shadow that just the fence is
21 causing at 5:00 p.m. Having a large wall
22 there is going to, basically, just overshadow

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1 at least half of my yard.

2 So we don't have many copies. I
3 just have these two pictures, but if I can
4 bring them up?

5 CHAIRMAN LOUD: Why don't you show
6 them to Mr. Faramarz and his client as well on
7 your way to bring them and then from there,
8 take it over to Ms. Bailey. Let me just say
9 as that is happening that the 7 foot fence and
10 the safety issue would not be a zoning issue.

11 It wouldn't be any issue of compliance with
12 any Zoning Regulations.

13 The driveway issue and whether
14 there is a public space permit for it and
15 whether the curb cut has been approved by the
16 appropriate authorities, etcetera, would also
17 not be a land use zoning issue for us.

18 There may be a difference of
19 opinion up here as to whether the drainage
20 issue is a land use issue. Speaking from my
21 perspective, I don't necessarily see that as a
22 zoning issue, something that would have a

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1 relationship to the zoning, especially since
2 it exists now and the property is already in
3 compliance with the zone.

4 It just sounds like it might be a
5 construction issue or an issue of the gutters
6 being attached properly.

7 MR. GRAHAM: Well, yes, I
8 understand that. And our hope was to get
9 those issues on the table, so that the
10 applicant, if he ends up the plan is approved,
11 we will take those under consideration.

12 CHAIRMAN LOUD: Okay.

13 MR. GRAHAM: May I return to the
14 sun study, sun/shadow study just briefly? My
15 impression after seeing the study done by the
16 applicant is that he has cherrypicked a couple
17 of times during a single day, during a single
18 part of the year. And he hasn't taken into
19 consideration the fact that the sun does
20 change as the year goes by. And that was our
21 hope in presenting the study, which I think
22 you got a copy of.

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1 And if you look at the last page, I
2 think that is certainly our sense that there
3 is a major problem at that particular time of
4 the year among other times. So we are -- I'm
5 very disappointed that the planning office did
6 not take this into consideration. And so I
7 hope the Board Members will look at it.

8 CHAIRMAN LOUD: Thank you, Mr.
9 Graham. Let's see if Board Members have
10 questions for either you or Ms. Rosenhouse.
11 Yes?

12 VICE CHAIRMAN DETTMAN: Mr. Graham,
13 could you just quickly describe how the study
14 was conducted? Did you create it?

15 MR. GRAHAM: This?

16 VICE CHAIRMAN DETTMAN: And also
17 I'll just ask maybe like three questions and
18 then maybe you can -- so kind of the
19 methodology.

20 MR. GRAHAM: Right.

21 VICE CHAIRMAN DETTMAN: That was
22 used. Two, I know that you gave us on the

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1 last page September at 5:00 and it shows the
2 before and after, but could you kind of tell
3 us overall throughout the year what would be
4 the impact, the cumulative impact of the
5 addition? And then finally, what is the
6 impact specifically to your property?

7 MR. GRAHAM: Well, the last
8 question, because I mentioned in my statement,
9 it said there is some shadow on my property,
10 but it is insignificant compared to what Ms.
11 Rosenhouse is going to face.

12 (Whereupon, at 5:00 p.m. the Public
13 Hearing continued into the evening session.)
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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:00 p.m.

3 MR. GRAHAM: The study was done by
4 my son, who is an architect in New York. I
5 took the plans that were submitted by the
6 applicant and I sent it to him for the
7 appropriate measurements. He put it into a
8 software program, I presume, and shipped it
9 back.

10 I asked him specifically to do the
11 study throughout the year at different times.

12 You see March, you see June, September,
13 December. Because I think in the wintertime
14 when the sun is lowest in the horizon is where
15 you're going to see the greatest shadow
16 effect, unlike what our applicant has said
17 that he has picked a couple of times during
18 the summer when the sun is highest in the sky
19 and presumably the shadows are minimum at that
20 time. So that's basically the study.

21 Now, I don't have the plans and
22 figures in front of me nor the particular

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1 software program that he used, but I'm sure
2 that information could be available.

3 VICE CHAIRMAN DETTMAN: In terms of
4 the provisions that we are reviewing this
5 project under, 223, that the provision says
6 that "The addition cannot have a substantial
7 impact on neighboring properties." And
8 looking -- based on your interpretation of the
9 sun study over the course of the year, would
10 you --

11 MR. GRAHAM: Right. Well,
12 certainly. I think the last page is the one
13 that is most -- one of the most dramatic. You
14 can see that in September at 5:00, her
15 backyard and part of her porch and the entire
16 deck of her property is in shadow. And you
17 can see that that was not the case when there
18 was no addition.

19 If you look in December at, let's
20 see, where you can see at 3:00 p.m. in
21 December that the shadow does hit my property
22 and also --

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1 VICE CHAIRMAN DETTMAN: Mr. Graham,
2 we actually don't have December.

3 MR. GRAHAM: You don't? I have
4 December.

5 VICE CHAIRMAN DETTMAN: September,
6 June and March.

7 MR. GRAHAM: Well, here is another
8 copy of it.

9 COMMISSIONER HOOD: Mr. Chairman,
10 can I just ask Ms. Rosenhouse?

11 CHAIRMAN LOUD: Please, go right
12 ahead.

13 COMMISSIONER HOOD: Just explain
14 them to us. Can you do it from there? Okay.
15 Can you explain this one again what the
16 intent was when you passed this out?

17 MS. ROSENHOUSE: Okay. That's the
18 view, it's right outside. It's facing their
19 property on the -- looking west. It looks
20 over my deck. It looks at their fence. And
21 it's sort of the sunlight I get by 5:00 p.m.
22 in August.

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1 That is going to be gone once they
2 build the extension. And also the whole --
3 the other picture is taken the same day, same
4 time showing you where the shadow of the
5 fence, if there is a huge two story two and a
6 half story wall next to it, well, obviously,
7 that's all going to be shaded.

8 COMMISSIONER HOOD: So will you be
9 able to see, let's just take this picture, any
10 part of that tree?

11 MS. ROSENHOUSE: No, that tree is
12 going to have to be gone, because that's where
13 they plan to put the driveway.

14 COMMISSIONER HOOD: Okay. So
15 that's right --

16 MS. ROSENHOUSE: Yes.

17 COMMISSIONER HOOD: -- there on the
18 other side. Okay. It's not at a distance.
19 Okay. Thank you. Thank you, Mr. Chair.

20 MS. ROSENHOUSE: Can I just add one
21 --

22 CHAIRMAN LOUD: Yes, please, go

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1 ahead.

2 MS. ROSENHOUSE: So it's not just
3 the loss of light. It's that their house will
4 end up 20 feet from the fence. But then they
5 have to add the driveway and it looks, -- and
6 this is one of the things that wasn't
7 clarified before, that they are going to put a
8 deck there, because they have two doors
9 opening towards the yard.

10 So it's going to be, basically, all
11 crowded space, very little of the yard left.
12 And I think that was one of the issues that
13 was in the questions, some of the anomalies
14 that the ANC noted on their letter. So we
15 were hoping to see a redone -- something, a
16 plan that addressed those issues, but we
17 haven't received anything.

18 MR. GRAHAM: Did you find the
19 December page now?

20 VICE CHAIRMAN DETTMAN: I did.
21 Thank you.

22 MR. GRAHAM: Okay. And I think

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1 there are a number of places where you can see
2 that the shadow, particularly late in the
3 afternoon, is clearly on her property.

4 May I call your attention to this,
5 which I think I handed out upstairs, this was
6 simply an effort to show what the profile of
7 the new construction would be like if you
8 looked at it from 44th Street. And you can see
9 that the existing house with the garage and
10 the porch and then the addition as proposed.

11 And then if you look over on the
12 second page, No. 3, this was an effort to find
13 a compromise. We asked the owner to consider
14 moving his second floor back or recessing the
15 second floor. Now, I'm not an architect, but
16 I have renovated at least four houses over --
17 in my time. I think he can achieve his goal
18 of increasing his bedrooms up in the second
19 floor, having an extra bath and -- without a
20 massive family room or bedroom that he plans
21 under the current plan.

22 We had hoped he would consider

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1 that, but apparently that's not been
2 appreciated.

3 And one last item. I think it
4 might be useful if I could pass this. This is
5 a model that we did, based on his plans, which
6 I think gives you a sense of the volume that
7 is involved.

8 CHAIRMAN LOUD: You would need to
9 show that to the applicant first. Give him an
10 opportunity to look it over and then you
11 could --

12 MR. GRAHAM: I believe he has seen
13 it before.

14 CHAIRMAN LOUD: Once he is through,
15 you can give it to Ms. Bailey and she will
16 pass it out to us.

17 MR. OSSAREH: It is wrong. It is
18 wrong. That's what it is. Actually, I have
19 set that wall back here at 1 foot back.

20 CHAIRMAN LOUD: Mr. Ossareh, we're
21 still with Mr. Graham. You will have an
22 opportunity or your representative to ask him

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1 questions later or to point out flaws in it.

2 MR. GRAHAM: He is right. It's not
3 exactly right. There is a setback. The
4 orange part is set back a foot on either side,
5 which is not indicated on the model.

6 CHAIRMAN LOUD: Okay. Okay. You
7 can proceed, Mr. Graham.

8 MR. GRAHAM: Well, I would like to
9 have the Commissioners look at that if you
10 can.

11 CHAIRMAN LOUD: Okay.

12 MR. GRAHAM: Yes. This model is
13 related to our concern that the building is
14 out of proportion to the neighborhood,
15 particularly given that it is a corner lot and
16 this is the view you're going to see from 44th
17 Street.

18 MEMBER MOLDENHAUER: Actually, I
19 have a question for the applicant in response
20 to some of your presentations and using this
21 little diagram actually.

22 One thing, you haven't explained,

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1 based on I guess some testimony that we just
2 had, if this is the front portion of your
3 house and you can use maybe one of your
4 diagrams, are you going to be putting in a
5 side -- your driveway is going to be here?
6 And are you planning on putting a porch?

7 I guess if you could just answer
8 the questions that were posed, if the answer
9 is no, then, you know, we will move forward
10 with the --

11 MR. SABOURI: You can see in this
12 site plan, of course, we show the shadows,
13 actual shadows, not based on the speculation.

14 But anyway, I go back to this issue of the
15 parking, because after we submit these
16 drawings, they told us that we need to have a
17 one parking space within the lot.

18 Therefore, we had the choice to
19 have a driveway from this site and accommodate
20 that one parking space on this site or that
21 site. We find that to do that one, we need to
22 remove two trees to be able to make this

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1 driveway to have that parking space.

2 Considering all these two options
3 that we have, we chose this option. Although,
4 this is more diagrammatic and there is a tree
5 in this very corner. But we did that one for
6 the purpose of just responding to issue of the
7 Zoning Office. They want to have this parking
8 space.

9 MEMBER MOLDENHAUER: Yes. I mean,
10 you have parking requirement.

11 MR. SABOURI: Yes.

12 MEMBER MOLDENHAUER: So the parking
13 is in the rear of the property.

14 MR. SABOURI: Yes, rear of the
15 property.

16 MEMBER MOLDENHAUER: And are there
17 going to be any patios?

18 MR. SABOURI: No, no.

19 MEMBER MOLDENHAUER: Around the
20 outside of the house?

21 MR. SABOURI: No. There is no
22 patios.

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1 MEMBER MOLDENHAUER: I'm just
2 asking the question. I just need an answer.
3 Okay. Thank you. Then thank you very much.
4 Then back to the applicant for you to finish
5 your presentation.

6 MS. ROSENHOUSE: We can talk now?

7 MR. GRAHAM: Yes.

8 MS. ROSENHOUSE: Maybe we would
9 like to hear what methodology was used to
10 calculate the shadow on this other thing,
11 because it just doesn't match reality. The
12 very day last time when we were here, I went
13 out to look at the yard. I took a series of
14 pictures. And it didn't seem like their
15 calculation was very accurate.

16 MR. SABOURI: So you want a
17 response?

18 CHAIRMAN LOUD: I think we had
19 passed the point in the proceedings where they
20 were crossed. We had given you a full
21 opportunity to ask them questions and cross
22 and then we went to OP. And then we came to

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1 you for the presentation of your case.

2 So I'm hopeful that we can sort of
3 wrap this up now. I don't want to abort any
4 part of your case. I want you to still be
5 able to say everything you want to say, but we
6 had passed the point where you were across --
7 crossing them on their case.

8 Did you have anything further you
9 wanted to add? Okay. Again, before we move
10 on, let me just see if Board Members have any
11 follow-up questions based on the exhibits you
12 just passed around. It looks like Mr. Dettman
13 and Commission Hood are still examining it.

14 Why don't we give them a few
15 minutes, because next we would turn to the
16 applicant for closing statements and I don't
17 want to do that until we are really sure that
18 there are no questions from anyone.

19 No questions? Nothing? Okay.
20 Then let's turn back to the applicant. Mrs.
21 Moldenhauer, no questions?

22 MEMBER MOLDENHAUER: No questions.

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1 CHAIRMAN LOUD: Okay. Let's turn
2 back to the applicant and this would be the
3 time to give closing statements.

4 MR. SABOURI: I go to the drawings,
5 because some of the answers. During the
6 meeting we had with ANC about three months
7 ago, I think it was August, they raised the
8 same issues which today they brought this one
9 has issues which was not responded.

10 Contrary to that, we respond that
11 one and explain almost all of that, the
12 exception of the shadow issue casting on the
13 neighbors. Regarding the surface water, they
14 said, as a person in that committee, about
15 there is a map 100 or 120 years back, there
16 was a stream in this area and you need to
17 investigate the soil below your house if you
18 want to make this addition.

19 They said this is something in a
20 very general was that area and it's not apply
21 to us, which we are doing about 400 square
22 feet addition. I don't think it will have

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1 impact.

2 Regarding to rain water, they said
3 all the rain water will be connected to the
4 public as per D.C. Code.

5 As per the fence along the street,
6 we said of course, whenever we have this
7 addition and all these things, that fence most
8 probably will be removed. Because, first of
9 all, this is very ugly. Second, it's not
10 safe.

11 Third, the issue of the height came
12 and the neighbor to the north contrary to the
13 claims and the speculation, he thought that we
14 are going to have a 40 feet high building,
15 because he read somewhere in the zoning that
16 the height limit is 40 feet.

17 And he raised the issue that we
18 want to build a 40 feet in front of us. There
19 we showed that we have the height of the
20 building at the side that it is going to is
21 only 20 feet. So that was another
22 misunderstanding.

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1 Third one, they talk about the
2 shadow, casting shadow in the afternoon. We
3 provide this shadows based on these diagrams
4 that they have. Of course, this is a little
5 bit simplified. But the main issue for them
6 was late afternoon, somewhere around 6:00,
7 7:00 in the afternoon or maybe close to that
8 in the summer, because in winter, as you see,
9 the casting -- the angle of the sun is much
10 more deeper, therefore, eventually, after 4:00
11 or 5:00, you have almost 90 percent of
12 building cast in shadow on the other building.

13 Therefore, this one cannot be an
14 issue in an urban area for rejecting any
15 addition or construction.

16 Then the issue came about, as I
17 said, the issue of this fence along there.
18 The picture that the lady showed, shows that
19 most of the shadows come from this 8 feet high
20 fence, that they have along that one. I am
21 not aware whether it was built by previous
22 owner or by her, but this one create a huge

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1 shadow along her property, which late
2 afternoon casts deeper and makes problem for
3 vegetation and all those things.

4 And as you see in this map, in this
5 drawing, I show the existing building casting
6 shadow next to this building and then the new
7 addition the shadow, which, as you see, most
8 of the shadows that she feel that she has or
9 projecting her house is coming from existing
10 building. Regardless of this addition, she
11 will have this one at the same time of the
12 year.

13 This is the reality of living in a
14 city, which the proximity of the distance
15 between the buildings are normally about 20,
16 25 feet. You cannot avoid that one. Of
17 course, from the rear of the building, we have
18 20 feet. And as you see here, there is
19 another 15 feet, 35 to 40 feet distance
20 between these two buildings.

21 Therefore, there is no reason or
22 there is no logical reason to think that this

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1 building will cast shadow unless you go very
2 late afternoon or very early morning.

3 Therefore, that one also was
4 responded to them. And for the lady that she
5 was concerned about maybe about 5:00 or 6:00
6 in the afternoon, this is for summertime.
7 This is more in the spring and fall. But this
8 is in summertime that the sun goes all the way
9 to this, this is the path of the sun in
10 summer.

11 And it shows the sun whenever cast
12 shadow it has gone to this point. There will
13 be very limited time, maybe one or two months
14 of the year, a very specific time, that some
15 shadows will cast in her corner porch. And
16 this issue cannot be justification for
17 rejecting the whole addition, because of that
18 one.

19 Second, she was preparing to
20 destroying the view to her house considering
21 that tree there. The main tree that she is
22 showing in her picture, contrary to her claim,

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1 is here. This corner. And this one will
2 remain.

3 The one that she is referring is
4 way back along the street. And that one even
5 we didn't contact the Public Space whether we
6 can have this one or we should have some kind
7 of angle. That only can be resolved by
8 discussing with Public Space.

9 And we don't want also to scratch
10 that tree, but we are left with no option,
11 either destroy two trees here or one tree.
12 And this is a must by zoning that we need to
13 provide the public -- that parking space
14 within the lot. It's not the choice for us.

15 But if they have any other way to
16 solve that one, we are pleased to have -- to
17 listen to that one. But we couldn't find any
18 other way.

19 And I find the casting shadows they
20 make, it was somewhere between plan and
21 elevation that I couldn't understand and I
22 didn't see that one. Briefly last time I saw,

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1 but I couldn't figure out what is that. But
2 this is actual shadows that I have.

3 Of course, there are evaluation of
4 that on maybe 100 different ways that you can
5 provide, but you need to get the -- maybe six
6 months study to prove that the -- maybe one
7 month a year you have some casting shadow on
8 your roof.

9 Yes, it's very nice. Thank you.

10 CHAIRMAN LOUD: Thank you, Mr.
11 Faramarz. And thank you to Mrs. Rosenhouse
12 and Mr. Graham as well. I believe the record
13 is full. I have one question I wanted to ask
14 the applicant regarding their plans from
15 August 4th, but depending on the answer to
16 that, I think the record is full and would
17 probably recommend to colleagues that we
18 deliberate today one way or the other, if
19 colleagues are ready.

20 But with respect to the plans that
21 you have submitted, you have submitted plans
22 on August 4th. And this was after your meeting

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1 with the ANC and you said you changed the
2 driveway around. Now are these the final
3 plans for the project that you would like the
4 Board to vote on? Have there been any changes
5 to them since then?

6 MR. SABOURI: We send some
7 additional regarding the public -- parking
8 space, only addition to that. I don't know if
9 it is attached to that one.

10 CHAIRMAN LOUD: I believe this --

11 MR. SABOURI: We were contacted by
12 Planning Office. They said you need to
13 provide the parking space within the lot. We
14 send the 8.5 by 11. I don't know if it has
15 been attached to that.

16 CHAIRMAN LOUD: So this plan here
17 has the final page has something labeled A1
18 and then on the, what is it, there is not a
19 name for it, but the third diagram on it has
20 relocated driveway. It would suggest to me
21 that you have already relocated the driveway?

22 MR. SABOURI: Yes.

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1 CHAIRMAN LOUD: So was there a
2 change after that or this is the final change?

3 MR. SABOURI: That is the final
4 one.

5 CHAIRMAN LOUD: Okay.

6 MR. SABOURI: But as I said, it is
7 addition to the original submittal that we
8 submitted to the BZ Office.

9 CHAIRMAN LOUD: Very well. I think
10 the original -- definitely. I understand now.
11 This was not the original one. The original
12 one you submitted back in maybe April, but --
13 is that April 4? August 4. I'm sorry. This
14 should be the one that I have. And applicant
15 shows that they relocated the driveway here.

16 Okay. All right. I just wanted to
17 make sure that we had the final plans before
18 us.

19 Before I get started, let me get a
20 sense from Board Members if you feel like we
21 are ready, we have all the information we need
22 to deliberate.

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1 All right. Well, let me just say
2 that once we go into deliberation, we are in
3 deliberation and we don't entertain comments
4 from the applicant or the party opponents. It
5 is really for us to discuss with one another
6 where we think the record is.

7 So I'm happy to start us off. But
8 before I start us off, I just wanted to say
9 that a lot was placed on the record regarding
10 the performance of the Office of Zoning and
11 the Board of Zoning Adjustment regarding
12 delays in this case.

13 And I wanted to note for the record
14 that this body and the Office of Zoning made a
15 hearing date available of September 8, 2009.
16 We set aside an opportunity for the case to be
17 fully briefed.

18 And as I recall, the applicant did
19 not want to move forward on that date. And
20 the applicant submitted something in writing
21 to us dated August 4, 2009 requesting that
22 that date, which we had set aside for the

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1 applicant, which we had provided in our
2 schedules for a full hearing of the case, the
3 applicant requested that we not go forward on
4 that date.

5 That was Exhibit 21, dated August
6 4th of '09. So I think when one looks at
7 delays and postponements and continuances, one
8 can look on both sides of the equation to find
9 out that sometimes there are reasons why
10 extensions are necessary and certainly, in
11 this case, the applicant was one of those who
12 had requested an extension along the way to
13 this final hearing on November 24th.

14 With respect to the merits of the
15 case, I think that this is a section 223
16 special exception and the standard for special
17 exception, which has been identified in the
18 Office of Planning's report, is really a
19 standard that requires that there be some
20 substantial showing of adversity on the part
21 of adjoining property owners.

22 And I'm going to read the exact

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1 language, because this is what we are dealing
2 with. We have to apply the law faithfully as
3 we find the law. And this is only one Board
4 Member's perspective.

5 But section 223.2 says "The
6 addition or accessory structure shall not have
7 a substantially adverse affect on the use or
8 enjoyment of any abutting or adjacent dwelling
9 or property, in particular," and then it goes
10 on to list a number of ways in which the
11 addition cannot have a substantially adverse
12 impact on adjacent properties.

13 The first of which is "The light
14 and air available to neighboring properties
15 shall not be unduly affected."

16 The second is that "The privacy of
17 use and enjoyment of the neighboring property
18 shall not be unduly compromised."

19 The third is that "The addition or
20 accessory structure together with the original
21 building is viewed from the street, alley and
22 other public way shall not substantially

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1 visually intrude upon the character, scale and
2 pattern of houses along the subject street
3 frontage."

4 The fourth is that "In
5 demonstrating compliance with A, B and C
6 above," which I just mentioned, "the applicant
7 shall use graphical representations such as
8 plans, photographs or elevation and section
9 drawings sufficient to represent the
10 relationship of the proposed addition to
11 adjacent buildings."

12 The fifth is that "The lot
13 occupancy together with the addition shall not
14 exceed 50 percent in the R-1."

15 And the sixth is that "The Board
16 may require special treatment in the way of
17 design, screening, lighting, building
18 materials, etcetera."

19 And the final section relates to
20 something not applicable here, which is that
21 "The special exception provision cannot be
22 used to introduce or expand a nonconforming

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1 use in this zone," and that's not the case
2 here.

3 In light of section 223 and its
4 provisions, I'm inclined to support the
5 application for relief. I think what turns it
6 for me is real simple. It's the testimony
7 from the Office of Planning that because of
8 the setbacks to the side yard, because of the
9 setbacks to the rear yard, I think it is 20
10 feet to the rear yard, which would affect Mr.
11 Graham's property, it is less with respect to
12 the side yard.

13 I think it is -- certainly the 8
14 feet requirement is met and then there is some
15 additional footage on Mrs. Rosenhouse's
16 property, that the shadows that would be cast
17 and there is no doubt in my mind that there
18 are some shadows that would be cast, but the
19 shadows would not be cast more than 10 feet.

20 And there is, you know, 10 feet
21 between the footprint of the addition and the
22 adjoining properties. We had that testimony

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1 today from the Office of Planning. We did
2 have some shadow studies that suggested that
3 that would not be the case, but in weighing
4 and evaluating the testimony, the Office of
5 Planning was here. They were available to
6 answer questions about how they arrived at
7 that conclusion, what they thought about the
8 shadow studies, why that conclusion was
9 supported over the shadow studies. And in
10 responding to those questions, they were
11 persuasive.

12 I guess the organizers of the
13 shadow studies were not here and I was hearing
14 secondhand as to the software program, the
15 data that went into it, the times of year. It
16 looked like a well thought out executed shadow
17 plan on the part of the party opponent, but
18 again, when you have -- for me, when I have
19 this evidence that is in direct conflict with
20 each other, I tend to look for the evidence
21 that holds up after questioning, the evidence
22 that is still supported by its proponent after

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1 digging deep into it and that's the way I have
2 resolved that conflict.

3 So I think the whole case bordered
4 on the question of light and air impacts to
5 Mrs. Rosenhouse and Mr. Graham. And based on
6 the evidence of the Office of Planning, I
7 would be inclined to support the application.

8 However, I would like to hear what
9 my colleagues say.

10 MEMBER MOLDENHAUER: Well, I am
11 going to jump in here, because I feel like I'm
12 getting similar eyes from other Board Members.

13 I'm not really quite sure where I am just
14 yet.

15 I see where you are, Chairman Loud,
16 in regards to approval, but, at the same time,
17 I feel as though the opponent has submitted
18 some strong arguments. And there is some
19 questioning about, you know, the light studies
20 saying they do present, you know, if you look
21 at them, you know, both equally, you know,
22 they do present some questions of shadowing.

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1 And to be honest, as I was just
2 trying to make a decision, I opened up my OP--
3 the second page of my OP report and, you know,
4 this area of D.C. we had a case earlier this
5 morning about Capitol Hill and how, you know,
6 light and enjoyment is different, obviously,
7 there where you have townhouse structures or
8 houses are really close together.

9 In this area, if you even look all
10 the way down Fessenden Street, you know, as to
11 the community and that's one of the elements
12 of, you know, 223 is about, you know, how was
13 the structure going to affect the view of the
14 street and everything to that effect?

15 You can look right down the street.
16 The shadow that is being created on the
17 second house on the street on this picture and
18 then each shadow that goes through and the
19 depth or the distance between the applicant's
20 property and Ms. Rosenhouse's property is much
21 more narrow than in comparison to other
22 parcels on that lot and in this area.

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1 And considering that and
2 considering the fact that we do have some, you
3 know, shadow studies, which are going to show
4 an impact, again, I'm on the fence. But I'm
5 just pointing these things out to you as the
6 reasons as to why, you know, my opinion would
7 lean more towards potentially a denial of the
8 application.

9 You know in addition to that, I was
10 slightly disheartened by the applicant's
11 response at times to some of the questions
12 about, you know, well, respond to some of
13 these issues of light and air, respond to them
14 as to -- and most of the responses were well,
15 I could build up as a matter-of-right, that
16 doesn't provide me with any additional
17 evidence or support as to whether this is
18 actually duly burdensome, unduly burdensome,
19 just minor, insignificant.

20 You know, in fact, it's really not
21 going to affect at all. They did present a
22 very good summation, and this is again where I

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1 am conflicted, of the shadow studies. And I
2 feel that they do show in their shadow study
3 that the main massing of the building is what
4 creates the shadow on the opposing party and
5 that the new addition really would not add any
6 additional burden to the light and air and
7 enjoyment.

8 So that's again where I am now
9 going back towards potentially approving the
10 application. Now that I have added nothing
11 other than just additional elements of
12 confusion, I'm going to throw it back out
13 there and maybe somebody can help me with this
14 conflict that I'm having.

15 VICE CHAIRMAN DETTMAN: Like you,
16 Ms. Moldenhauer, I'm on the fence. I think
17 that the party in opposition presented some
18 compelling arguments, presented a shadow study
19 that has spanned the entire range of the year,
20 which they used to make their argument.

21 However, I think it was very
22 helpful for us, particularly for sure me, to

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1 get a sense of what is the impact of this
2 addition throughout the entire year?

3 To your comment about the
4 applicant's statements about being able to
5 build up or being able to build something
6 without BZA approval, I agree with you, that
7 wasn't very helpful. And you definitely can't
8 build out. You are at almost 40 percent,
9 unless you can figure out how to do an
10 addition and you have about 11 square feet of
11 available matter-of-right.

12 And you might be a nonconforming
13 detached house, so any addition to this
14 property is going to require BZA. But that's
15 neither here nor there.

16 I think that your last statement
17 about that the main volume of the house
18 creates most of the shadow and that the
19 extension of the building, albeit in my
20 opinion, a little bit large, it is essentially
21 doubling the size of the house.

22 In terms of the additional shadow

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1 that that places on Mr. Graham's and Mrs.
2 Rosenhouse's property, I think the shadow
3 study that was submitted helps me get to a
4 conclusion that additional shadow doesn't rise
5 to the level of substantial impact or undue
6 impact.

7 In particular, I think that there
8 is going to be impact to both Mr. Graham's and
9 Ms. Rosenhouse's properties in December. I do
10 agree with that. But other than December and
11 maybe a little bit of January, maybe a little
12 bit of November, I don't think Mr. Graham's
13 property with respect to shadow is going to be
14 substantially impacted.

15 With respect to the availability of
16 air, the flow of air, that sense of openness
17 in a neighborhood that is in an, you know, R-2
18 neighborhood, I think that the availability of
19 adequate air, I don't think, is substantially
20 impacted by the presence of this addition.

21 But certainly that sense of
22 openness that is characteristic of a lower

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1 density residential neighborhood is going to
2 be changed for Ms. Rosenhouse. Ms.
3 Moldenhauer pointed to that photo that is on
4 page 2 of the DCOP report, you know, and
5 especially the properties that are located to
6 the west of 44th Street that have a little bit
7 more volume, that have a little bit more depth
8 than the applicant's property.

9 And I think that if the Board were
10 inclined to grant this application and the
11 addition was built, that volume that you see
12 on the west side of 44th is going to kind of,
13 you know, appear at the applicant's property.

14 And just trying to mentally draw
15 that into this picture, I don't think again
16 going back to that substantial burden that
17 needs to be met, I don't see that that is
18 happening. So I'm very sympathetic to the
19 party in opposition's position on this.

20 Certainly, if you have enjoyed --
21 if you have lived in the property for several
22 years and you have enjoyed unimpeded sunlight

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1 into your backyard, any kind of reduction is
2 going to be a little bit jarring, but I think,
3 in this case, given the fact that 50 percent
4 lot occupancy is allowed by special exception
5 and that the burden that -- or the standard
6 states substantial and it says undue, I would
7 be inclined to agree with Mr. Chairman in
8 terms of his support for this application.

9 COMMISSIONER HOOD: Well, you know,
10 I'm kind of like Mrs. Moldenhauer, Board
11 Member Moldenhauer. You know, you kind of go
12 in and out and phase in and out. And I was
13 trying to follow her when she was talking
14 about the distances, the character of the
15 other homes in that area.

16 But when I look at this and I know
17 there is precedent about views and as Board
18 Member Dettman has already mentioned, you may
19 have enjoyed those views and that openness.
20 And I don't know if it rises to the level of
21 being a problem with the light and air.

22 But I will tell you that I know

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1 that there is precedent and I know that there
2 is case law. I can't cite it. I'm not going
3 to touch it. But I will tell you that I guess
4 you don't own a view, especially when you are
5 dealing with property lines. And I think
6 that's kind of where I'm falling down.

7 But I do think that there are some
8 mitigation methods to try to offset some of
9 the impacts that the neighbors would feel. I
10 think Office of Planning recommended frosted
11 glass. I don't know if we can make that a
12 requirement.

13 And I know we talked -- I see where
14 they are using stucco to help offset and keep
15 the character, what is already existing in the
16 area. But for me, and I don't know if BZA
17 requires this, but for me what would have been
18 very helpful for me and the closest we got to
19 that, to that model, was to have some type of
20 perspective, so I can really see, I see the
21 drawings, I see the pictures, but see the
22 relationship of exactly the addition.

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1 And I guess this is where the
2 applicant would fall in, to see the
3 relationship exactly of what the neighbors are
4 actually going to be seeing, that perspective
5 some time is a deciding factor. But
6 unfortunately we don't have it and as the
7 Chairman has already said, the record is
8 complete.

9 Unfortunately, what we have
10 enjoyed, I know again there is case law out
11 there that dictates otherwise. But I just
12 don't see where it falls to the point for me
13 for denial. Thank you, Mr. Chairman.

14 MEMBER MOLDENHAUER: Well, since I
15 was the one that had not yet decided and I
16 thank the rest of my Board Members for
17 providing additional information and their
18 perspectives have helped me. And I think that
19 I do agree with the other Board Members.

20 I think that while this is
21 definitely a border line case, one of the
22 things Chairman Hood just mentioned and I was

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1 thinking back on the record, I don't know if I
2 agree with his opinion on the view. I think
3 there might be case law, but maybe I could
4 always find the distinction in that.

5 But I think that the issue here is
6 that the extension, the addition is made on
7 the rear of the property and the relationship
8 and the openness that Board Member Dettman
9 mentioned is really between these two parcels,
10 between opposing Mrs. Rosenhouse and the
11 applicant.

12 And since the applicant testified
13 under oath and, you know, his plans show that
14 there is no, you know, driveway on that side
15 in between the two houses, that there is no
16 fence or patio that is going to be created, it
17 at least creates a little bit of a --
18 maintaining a little bit of an openness
19 between the two parcels.

20 And that, you know, 223 does permit
21 these types of additions as, you know, special
22 exceptions. And there, you know, he does, you

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1 know, satisfy them. I think OP outlines that
2 very well. I won't go through the different
3 elements.

4 So I think I have crossed over into
5 the opinion of approving the application.

6 CHAIRMAN LOUD: Is there any
7 further discussion? Okay. I would like to
8 suggest then before a motion is made that by
9 way of conditions, we adopt the Office of
10 Planning's recommendation for the frosting of
11 the windows on the upper floors and have some
12 discussion about that.

13 Also, I would like to suggest under
14 the authority of section 223.4 "The Board may
15 require a special treatment in the way of
16 design, screening, exterior, interior,
17 lighting, building materials or" and this is
18 the prong of the language I'm hanging my hat
19 on "other features for the protection of
20 adjacent and nearby properties."

21 We did hear some testimony about a
22 longstanding water drainage issue with respect

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1 to this site and just as relates to the
2 addition and the potential for drainage
3 problems from the addition to spill over onto
4 Mrs. Rosenhouse's property, that we impose a
5 requirement for directing the gutters away
6 from that property on the new addition.

7 I'm hopeful that the applicant will
8 not only, if the Board supports it, do what is
9 required by 223.4 as to the new addition, but
10 consider directing water away from her
11 property with respect to the existing
12 structure as well, which is not part of this
13 application, but it would certainly make
14 sense.

15 So those are the two conditions I
16 want to toss out for Board Member
17 consideration.

18 VICE CHAIRMAN DETTMAN: Mr.
19 Chairman, I'm in agreement with you with
20 respect to the resolving of the water problem.

21 With respect to the frosting of the
22 window, I don't really see that being

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1 necessary. I think that that's one way of
2 resolving a privacy issue.

3 CHAIRMAN LOUD: Yes.

4 VICE CHAIRMAN DETTMAN: Another way
5 could be hanging a blind in the window. To
6 the applicant's question early on about what
7 is the rationale, is it them not seeing us or
8 us not seeing them? I can understand that. I
9 don't think anyone wants to have anyone see
10 them go to the bathroom.

11 So they are going to make the
12 necessary precautions to make sure that that
13 doesn't happen. So it's kind of -- I just
14 don't see the need for that.

15 CHAIRMAN LOUD: I appreciate your
16 candor. Are there other thoughts and
17 reflections on the frosted window?

18 COMMISSIONER HOOD: I think it's
19 fine actually, Mr. Chairman. But any kind of
20 mitigation or method they can put in place to
21 help privacy on both ends, I think that's
22 exactly where OP was trying to go. So if

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1 frosted windows does it or blinds does it,
2 that's fine.

3 But as they said, I think that that
4 will be done anyway. And if we want to put
5 the frosted windows, I don't see anything
6 wrong with it.

7 CHAIRMAN LOUD: Okay.

8 MEMBER MOLDENHAUER: I would
9 recommend not mandating frosted windows. It
10 might be an architectural or a personal
11 preference to or to not have that. While I
12 understand OP's recommendation, I would just
13 simply go along with Chairman Hood's
14 recommendation to have some sort of privacy
15 mitigation, if we want to add it as a
16 condition.

17 CHAIRMAN LOUD: Well, I guess I'm
18 of a mind that unless we can spell it out
19 clearly and be specific, it's going to be
20 difficult to enforce.

21 MEMBER MOLDENHAUER: Frosting
22 windows, shades or other coverings

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1 methodology.

2 CHAIRMAN LOUD: You want to give a
3 menu of options.

4 MEMBER MOLDENHAUER: Yes.

5 CHAIRMAN LOUD: I think we all are
6 inclined to want to offer as much protection
7 for privacy as we can. It just sounds like we
8 are not in agreement what that is. I'm
9 partial to the frosting, because, you know,
10 it's not like a blind where you can do it when
11 you want to do it and not do it when you don't
12 want to do it.

13 And that's not to suggest that
14 anybody here would have any motives to look at
15 anybody else here. It's just the security of
16 being in your home and continuing to enjoy a
17 certain level of privacy.

18 So I think if there is support for
19 the gutter, if there is support for the
20 frosting, I'm going to go ahead and move as a
21 condition that we approve Application No.
22 17956 for special exception relief, as

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1 conditioned, with the requirement for the
2 applicant to direct all gutters away from the
3 Rosenhouse property in a responsible manner
4 and to also frost the, I believe it is the,
5 upper floor windows between his property, the
6 proposed addition and Mrs. Rosenhouse's
7 property.

8 VICE CHAIRMAN DETTMAN: Second.

9 CHAIRMAN LOUD: The motion has been
10 made and seconded. Is there further
11 discussion?

12 Hearing none, all those in favor of
13 the motion say aye.

14 COMMISSIONER HOOD: Aye.

15 CHAIRMAN LOUD: Aye.

16 VICE CHAIRMAN DETTMAN: Aye.

17 CHAIRMAN LOUD: All those who
18 oppose? Let me just check with the Attorney
19 General to make sure, because honestly I don't
20 know the answer to the question.

21 MS. GLAZER: I'm not sure what just
22 transpired. Ms. Moldenhauer, you said that

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1 you --

2 MEMBER MOLDENHAUER: I approve the
3 entire application. I just don't like one of
4 the conditions. I'll -- I'm out voted anyway.

5 MS. GLAZER: Well, I believe the
6 motion included the condition.

7 MEMBER MOLDENHAUER: It did.

8 MS. GLAZER: So that would be a
9 vote against approval.

10 MR. MOY: She could abstain.

11 MS. GLAZER: Or she could abstain
12 as Mr. Moy just pointed out.

13 MEMBER MOLDENHAUER: I would
14 abstain then.

15 CHAIRMAN LOUD: Okay. So then, Ms.
16 Bailey, can you read back the vote or do we
17 need to do that again?

18 MS. BAILEY: No, Mr. Chairman, I
19 think I have it.

20 COMMISSIONER HOOD: Mr. Chairman,
21 I'm sorry.

22 CHAIRMAN LOUD: That's okay.

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1 COMMISSIONER HOOD: You know, we
2 could do --

3 CHAIRMAN LOUD: Perhaps hold on a
4 second, Ms. Bailey.

5 COMMISSIONER HOOD: We could do a
6 reconsideration and we could vote on the
7 conditions and then we can vote on the
8 application.

9 CHAIRMAN LOUD: Okay.

10 COMMISSIONER HOOD: I would just
11 think that would be a way to do that, because
12 that has been done in the past.

13 CHAIRMAN LOUD: Okay.

14 COMMISSIONER HOOD: As long as we
15 don't do like the Zoning Commission and talk
16 an hour and a half about fences.

17 CHAIRMAN LOUD: No, let's follow
18 the leadership of Chairman Hood. I think
19 that's a great idea. So let's start with the
20 conditions then.

21 And, Chairman Hood, perhaps you can
22 make the motion. I'm not certain of the

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1 protocol behind it.

2 COMMISSIONER HOOD: I think you
3 moved approval.

4 CHAIRMAN LOUD: Yes.

5 COMMISSIONER HOOD: But first, what
6 we could do is vote on the conditions. And I
7 think one was the frosting of the -- you can
8 just -- it's only two conditions, right?

9 CHAIRMAN LOUD: That's correct.

10 COMMISSIONER HOOD: We can vote on
11 both of those conditions individually and then
12 we can vote on the whole application.

13 CHAIRMAN LOUD: Okay.

14 COMMISSIONER HOOD: That way in the
15 order it will show, I believe, Ms. Glazer,
16 that Ms. Moldenhauer was against Condition No.
17 1, which would be the -- and that way she
18 doesn't have to abstain, if she doesn't mind.

19 CHAIRMAN LOUD: Okay. All right.
20 So then let me rescind the previous motion and
21 let me start over again.

22 What I would like to do now is move

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1 approval of Application No. 17956 with the
2 condition that the applicant install on the
3 addition and direct away from Mrs.
4 Rosenhouse's property gutters in a responsible
5 manner. Is there a second?

6 VICE CHAIRMAN DETTMAN: Second.

7 CHAIRMAN LOUD: The motion has been
8 made and seconded. Further discussion?

9 Hearing none, all those in favor
10 say aye.

11 ALL: Aye.

12 CHAIRMAN LOUD: All those who
13 oppose? Ms. Bailey, can you read back the
14 vote?

15 MS. BAILEY: Mr. Chairman, the vote
16 is recorded as 4-0-1. Mr. Loud made the
17 motion, Mr. Dettman seconded, Mrs. Moldenhauer
18 and Mr. Hood support the motion.

19 CHAIRMAN LOUD: Thank you. Now, I
20 would like to move that we add a condition to
21 what was just approved as follows: And the
22 condition would be that the applicant be

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1 required to frost its upper floor windows for
2 the part of the addition facing the property
3 of Mrs. Rosenhouse.

4 COMMISSIONER HOOD: Second.

5 CHAIRMAN LOUD: The motion has been
6 made and seconded. Is there further
7 discussion?

8 Hearing none, all those in favor
9 say aye.

10 COMMISSIONER HOOD: Aye.

11 CHAIRMAN LOUD: Aye.

12 VICE CHAIRMAN DETTMAN: Aye.

13 CHAIRMAN LOUD: All those who
14 oppose?

15 MEMBER MOLDENHAUER: Aye.

16 CHAIRMAN LOUD: And, Ms. Bailey,
17 can you read back the vote on that?

18 MS. BAILEY: Mr. Chairman, that
19 vote is 3-0-2 regarding the Board's
20 requirement that the applicant frost the upper
21 windows. The motion was made by Mr. Loud,
22 seconded by Board Member Dettman, Commissioner

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1 Hood supports the motion. Board Member
2 Moldenhauer is opposed.

3 CHAIRMAN LOUD: You said 3-0-2?
4 You said 3-0-2, correct?

5 MS. BAILEY: Yes, sir.

6 CHAIRMAN LOUD: Is it 3-1-1?

7 MS. GLAZER: Mr. Chair, I think it
8 is -- yes, I believe it should be 3-1-1.
9 Three in favor.

10 MS. BAILEY: I'm sorry. Exactly,
11 exactly. It's 3-1-1.

12 CHAIRMAN LOUD: Okay.

13 MS. BAILEY: Mrs. Moldenhauer is
14 opposed.

15 MR. MOY: That's with the Chairman
16 making the motion, seconded by Mr. Hood, I
17 believe.

18 CHAIRMAN LOUD: Yes. Okay. Thank
19 you. Thank you, applicant. Thank you, party
20 status opponents. Thank you for your patience
21 today. And I hope that everyone has an
22 enjoyable Thanksgiving.

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1 Ms. Bailey, is there anything
2 further for today's calendar?

3 MS. BAILEY: Not for the calendar,
4 but a Happy Thanksgiving.

5 CHAIRMAN LOUD: Happy Thanksgiving
6 back to you.

7 MR. GRAHAM: Ladies and gentlemen,
8 thank you very much. We're obviously
9 disappointed, but we appreciate you letting us
10 present our case.

11 CHAIRMAN LOUD: Thank you, Mr.
12 Graham, for your patience and the
13 professionalism with which you handled both
14 the filings and the presentation today. And
15 thank you, Mrs. Rosenhouse. Thank you, Mr.
16 Faramarz and Mr. Ossareh as well.

17 MR. SABOURI: Thank you.

18 (Whereupon, the Public Hearing was
19 concluded at 5:53 p.m.)
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