

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

NOVEMBER 17, 2009

+ + + + +

The Regular Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:00 a.m., Marc G. Loud, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC G. LOUD, Chairman
SHANE L. DETTMAN, Vice Chair (NCPC)
MERIDITH H. MOLDENHAUER, Board Member

ZONING COMMISSIONER MEMBER PRESENT:

MICHAEL TURNBULL, FAIA, Commissioner
(AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

PAUL GOLDSTEIN
ARTHUR JACKSON
KAREN THOMAS
STEPHEN VARGA

The transcript constitutes the minutes
from the Public Hearing held on November 16,
2009.

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

APPLICATION NO. 17991

Office of Planning, Mr. Varga	14
ANC 5C-04, Mr. Salatti	15
Vote: Four, zero, one to approve	23

APPLICATION NO. 17999

Mr. Harry Spikes/Ms. Patricia Spikes	30
ANC 8C, Ms. Cuthbert	68
Office of Planning, Ms. Thomas	71
Closing Statement, Mr. Harry Spikes	94
Continuance to December 1, 2009	120

APPLICATION NO. 17992

Mr. Paul Howard Broom	134
Office of Planning, Mr. Jackson	138
Closing Statement, Mr. Broom	145
Vote: Four, zero, one to deny	152

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

2 10:14 a.m.

3 CHAIRMAN LOUD: Good morning again,
4 ladies an gentlemen.

5 This hearing will please come to
6 order. This is the November 17th Public
7 Hearing of the Board of Zoning Adjustment of
8 the District of Columbia.

9 My name is Marc Loud, Chairperson.
10 And joining me today are Vice Chair Shane
11 Dettman representing the National Capitol
12 Planning Commission; Mr. Michael Turnbull
13 representing the Zoning Commission; Mrs.
14 Meridith Moldenhauer, Mayoral Appointee, Board
15 of Zoning Adjustment; Mr. Clifford Moy stepped
16 out for one second; he's the Secretary of BZA;
17 Mary Nagelhout, Office of the Attorney
18 General; and on the far left, Beverly Bailey
19 who's a Zoning Specialist here in the Office
20 of Zoning.

21 Copies of today's hearing agenda

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1 are available to you and are located to my
2 left in the wall bin near the door.

3 Please be advised that this
4 proceeding is being recorded by a court
5 reporter, and is also webcast live.
6 Accordingly, we must ask you to refrain from
7 any disruptive noises or actions in the
8 hearing room.

9 When presenting information to the
10 Board, please turn on and speak into the
11 microphone, first stating your name and home
12 address. When you are finished speaking,
13 please turn your microphone off so that your
14 microphone so that your microphone is no
15 longer picking up sound or background noise.

16 All persons planning to testify
17 either in favor or in opposition are to fill
18 our two witness cards. These cards are
19 located to my left on the table near the door
20 and on the witness tables. Upon coming
21 forward to speak to the Board, please give
22 both cards to the reporter sitting to my

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1 right.

The order of procedure for special exceptions and variances is as follows: first, statement and witnesses of the applicant; secondly, government reports including the Office of Planning, the Department of Public Works, et cetera; the report of the Advisory Neighborhood Commission; parties or persons in support; parties or persons in opposition; and finally, closing remarks by the applicant only.

12 Pursuant to Sections 3117.4 and
13 3117.5, the following time constraints will be
14 maintained: the applicant, appellant, person
15 and parties except an ANC in support including
16 witnesses, 60 minutes collectively; appellees,
17 persons and parties except an ANC in
18 opposition including witnesses also 60 minutes
19 collectively; and finally, individuals, three
20 minutes; organizations are allotted five
21 minutes.

22 These time restraints do not

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1 include cross examination or questions from
2 the Board. Cross examination of witnesses is
3 permitted by the applicant or parties only.
4 The ANC within which the property is located
5 is automatically a party in a special
6 exception of variance case. Nothing prohibits
7 the Board from placing reasonable restrictions
8 even on cross examination, including time
9 limits and limitations on the scope of cross.

10 The record will be closed at the
11 conclusion of each case except for any
12 material specifically requested by the Board.

13 Let me repeat again that the record will be
14 closed at the conclusion of each case except
15 for any material specifically requested by the
16 Board. The Board and the staff will specify
17 at the end of the hearing exactly what
18 additional information is needed, if any, and
19 the date when the persons must submit the
20 evidence to the Office of Zoning.

21 After the record is closed, no
22 other information will be accepted by the

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1 Board or admitted into the record. Again,
2 after the record is closed, no additional
3 information will be accepted by the Board or
4 admitted into the record.

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 the members of the Board in
10 conversation.

11 Please turn off all beepers and
12 cell phones at this time so as not to disrupt
13 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 of the
20 hearing has been 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 and
6 Members of the Board, to everyone, good
7 morning.

8 Staff does not, Mr. Chairman.

9 CHAIRMAN LOUD: Thank you, Ms.
10 Bailey.

11 I think what we'd like to do then,
12 Ms. Bailey, is have the witnesses sworn in who
13 are going to be testifying today. And if you
14 are planning to testify in one of the cases
15 for this morning's hearing calendar, could you
16 please stand and raise your right hand for Ms.
17 Bailey to administer the oath.

18 (Whereupon, the witnesses were sworn.)

19 CHAIRMAN LOUD: Ms. Bailey, I think
20 what we'd like to do is juggle the order just
21 a little for this morning's hearing calendar
22 and call Case No. 17991 first. And then we

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1 can call the other two cases in the scheduled
2 order.

3 MS. BAILEY: Thank you, Mr.
4 Chairman.

5 As you indicated, this is
6 Application No. 17991 of Robert A. Spelke, and
7 it's pursuant to 11 DCMR, Section 3103.2, for
8 a variance from the minimum 900 square feet of
9 land area per dwelling unit requirements under
10 subsection 401.3, to allow the conversion of
11 an existing building into a three-unit
12 apartment house. The property is zoned R-4.
13 It's located at 2034 North Capitol Street,
14 N.W., Square 3117, Lot 74.

15 CHAIRMAN LOUD: Thank you, Ms.
16 Bailey.

17 And why don't we then turn to
18 persons who are at the table?

19 Is the ANC here this morning?

20 MR. SALATTI: Yes, sir.

21 CHAIRMAN LOUD: Okay. Good morning
22 to you. How are you?

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1 And I see the ANC submitted a
2 report -- our Exhibit 30 -- that is in support
3 of the application?

4 MR. SALATTI: Yes, sir.

5 CHAIRMAN LOUD: And that would be
6 the nature of your testimony here today?

7 MR. SALATTI: Yes.

8 CHAIRMAN LOUD: Okay. Then why
9 don't we have everyone who's at the front
10 table introduce yourselves? And then if you
11 don't mind, give the mic back to me. I've got
12 an opening sort of statement I want to make,
13 and then we can go back to you as necessary.

14 MR. DePUY: Good morning, Mr.
15 Chair, Members of the Board.

16 For the record, I'm Jacques DePuy,
17 attorney with Greenstein, Delorem & Luchs
18 representing the Applicant.

19 To my left is Robert Spelke, the
20 Applicant, owner of the subject property. To
21 my right is Tom Raithel who's an architect who
22 is requested to perform services for the owner

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1 with respect to the particular property.

2 MR. SALATTI: And my name is John
3 Salatti. I am the Advisory Neighborhood
4 Commissioner in ANC 5C-04 where the property
5 2034 North Capitol Street is located.

6 CHAIRMAN LOUD: And how do you
7 spell your name, Mr. Salatti?

8 MR. SALATTI: Salatti. S as in
9 Sam, A-L-A-T-T-I.

10 CHAIRMAN LOUD: Thank you, Mr.
11 Salatti. Thank you, counsel.

12 Let me just say at the outset that
13 we have reviewed your file in this case. We
14 have reviewed all the submissions, the ANC
15 report, the Office of Planning report. And
16 based on the entire file, it's an excellent
17 presentation, and a compelling case has been
18 made for relief.

19 In accordance with the units that
20 you'd like to obtain relief for, we're
21 prepared to go directly into decision on this
22 matter. However, if counsel has something

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1 that you feel would be compelling to share and
2 place on the record, we'll also give you that
3 opportunity. But again, we don't think based
4 on the record before us that that would be
5 necessary.

6 MR. DePUY: Thank you, Mr. Chair.

7 In view of your statement, we're
8 prepared to respond to questions, and we will
9 simply do so -- respond to any questions the
10 Board might have. Thank you.

11 CHAIRMAN LOUD: Okay. Why don't we
12 do that then? Why don't we see if there are
13 Board Members that have questions for the
14 Applicant, or if the ANC has any questions for
15 the Applicant? And then we can proceed
16 forward to deliberation.

17 And there do not appear to be any
18 questions, again reflecting the excellent
19 manner in which the record has been pulled
20 together.

21 Let me now turn to the Office of
22 Planning. You did submit a report, Ms.

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1 Jackson and Mr. -- is it Mr. Varga?

2 MR. VARGA: That's right. Mr.
3 Varga.

4 CHAIRMAN LOUD: Mr. Varga, an
5 excellent report. That's our Exhibit 29 dated
6 November 10th. And the report does recommend
7 approval of the application.

8 Is there anything that you'd like
9 to highlight in your report? Is the position
10 of the Office of Planning still as represented
11 in the report?

12 MR. VARGA: Yes. The Office of
13 Planning stands on the record unless you'd
14 like me to take any questions or explain our
15 justification.

16 CHAIRMAN LOUD: Okay. And again,
17 we'll just see if Board Members have questions
18 or if the ANC has any questions for you.

19 All right. Seeing none, we now
20 turn to the ANC. You submitted your report
21 which was dated November 17 -- ANC-5C?

22 MR. SALATTI: Yes.

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1 CHAIRMAN LOUD: Okay. And it's our
2 Exhibit 30 and your report was in favor --

3 MR. SALATTI: Yes, it is.

4 CHAIRMAN LOUD: -- of the
5 application. So is there anything you'd like
6 to add to that?

7 MR. SALATTI: No. I've worked with
8 Mr. Spelke and his attorney and have seen --
9 been on the property and through the property
10 and know the property from having lived in the
11 neighborhood and represented it. And this
12 seems to be a very good direction for this
13 property to go in.

14 So we stand on that and say I am in
15 favor of this. The neighbors have been
16 supportive of this. And the ANC itself from
17 the documents that we've sent in is supportive
18 of this application.

19 CHAIRMAN LOUD: Thank you very
20 much.

21 Now, are here any parties or
22 persons who are in the audience who are in

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1 support of this application? Now would be the
2 time to step forward?

3 And seeing none, are there persons
4 in the audience who are in opposition to this
5 application? Now would be the time to step
6 forward.

7 And again, seeing none, let me
8 commend the Applicant on its application as
9 well as the Office of Planning.

10 I'm sorry, Ms. Jackson, did you
11 have something that you wanted to say?

12 MR. VARGA: Mr. Chairman, I believe
13 one lady in the audience -- is she indicating?

14 CHAIRMAN LOUD: I'm sorry.

15 MR. VARGA: Yes.

16 CHAIRMAN LOUD: Good morning. If
17 you could kindly step forward and join us
18 officially by taking a seat at the table.
19 You're going to have to speak into the
20 microphone so that the court reporter can pick
21 up what you'd like to say.

22 Are you testifying in favor or in

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1 opposition to the project?

2 Well, why don't you come up fully
3 to the microphone, and then make sure that the
4 light is turned on? And you can speak
5 directly into the mic.

6 Start by identifying yourself.

7 MS. KELLEY: Again, my name is
8 Annette Kelley. Good morning. And I live on
9 V Street. And my question is to that building
10 that they're talking about changing over or
11 whatever it is that they're going to do is
12 that we have a problem in the neighborhood as
13 far as parking. And sometimes you cannot find
14 a parking space because of the tenants that
15 are in that building. They -- you know --
16 have to park. And there are neighbors that
17 sometimes have to park on North Capitol, and
18 if they don't move their car by 7:00 o'clock
19 in the morning, they will get a ticket or
20 their car is towed.

21 So my question is is where are
22 these tenants going to park if they decide to

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1 rent this building out? I mean, where are the
2 neighbors going to park if they decide to rent
3 this building out and where are the tenants
4 going to park? Are they going to park on our
5 neighborhood? Or are they going to have a
6 private parking space? Because that is --

7 CHAIRMAN LOUD: Thank you. Let me
8 respond to you very briefly, Ms. Kelley.

9 First, thank you for your testimony
10 this morning. Thank you for your patience
11 waiting for us to call this case. And we did
12 call it first to sort of truncate the wait.

13 However, as a witness, you're
14 allowed three minutes to either testify in
15 favor or against the project, and not to pose
16 questions for the Applicant or for the Office
17 of Planning, et cetera. That's reserved for
18 persons that are parties to the case. But I
19 think we can answer your question. I just
20 wanted to let you know that the more
21 appropriate context is as a witness that would
22 be offering testimony suggesting that there

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1 are concerns in the community about the lack
2 of parking and how that will impact the
3 community and so on and so forth.

4 MS. KELLEY: Okay.

5 CHAIRMAN LOUD: But I think we get
6 the gist of your concern.

7 MS. KELLEY: Thank you.

8 CHAIRMAN LOUD: This request for
9 relief before us this morning does not include
10 a requirement that they seek relief from us
11 for parking. So there is no issue under our
12 jurisdiction in this case regarding parking.

13 MS. KELLEY: Okay.

14 CHAIRMAN LOUD: Okay?

15 MS. KELLEY: All right.

16 CHAIRMAN LOUD: All right.

17 MS. KELLEY: Thank you.

18 CHAIRMAN LOUD: Thank you for your
19 time.

20 And I do encourage you to have
21 dialogue with the ANC and have dialogue with
22 the Applicant regarding any parking concerns

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1 that you might have.

2 And with that, then what I'd like
3 to do is suggest to colleagues here that we
4 deliberate the case this morning. I'd be
5 happy to lead us off. I think that as
6 indicated, the record is very fully this
7 morning. And I intend to vote in support of
8 the application.

9 It is essentially a three-unit
10 property that was purchased in '02 by the
11 Applicant without knowledge that it had been
12 converted without proper zoning. And the
13 Applicant now seeks a variance from the
14 minimum lot area requirements of Section 401.3
15 to convert the existing building into a three-
16 unit apartment.

17 Section 401.3 requires a lot area
18 of at 900 square feet for each proposed unit.

19 I believe that the lot area here is 2001
20 square feet. And 2700 square feet would be
21 the minimum necessary to comply with the rule.

22 The Applicant is about 699 square feet short.

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1 As indicated, the Office of
2 Planning recommends approval. The ANC
3 supports relief. The Office of Planning has
4 done an excellent job in its report of walking
5 through the variance test and establishing
6 that the three-prong test has been met.

7 I'm not going to repeat everything
8 said there. I'll just incorporate that by
9 referencing to these comments.

10 One witness did testify this
11 morning -- Ms. Kelley -- concerned about
12 parking. But the property does not include a
13 requirement for parking relief. And so that's
14 not an issue in terms of there being a parking
15 requirement. That's not being met in this
16 application that's under our consideration
17 here today.

18 And with that, I'll open it up for
19 colleagues to see if you have any additional
20 comments.

21 (No audible response.)

22 CHAIRMAN LOUD: There do not appear

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1 to be any additional comments.

2 So then, what I'd like to do is
3 move approval of Application No. 18027 for
4 variance relief from Section 401.3 of our
5 regulations. And is there a second?

6 MEMBER TURNBULL: Second.

7 CHAIRMAN LOUD: The motion's been
8 made and seconded.

9 Is there further deliberation?

10 (No audible response.)

11 CHAIRMAN LOUD: Hearing none, all
12 those in favor say aye.

13 (A CHORUS OF AYES.)

14 CHAIRMAN LOUD: All those who
15 oppose?

16 (No audible response.)

17 CHAIRMAN LOUD: Are there any
18 abstentions?

19 (No audible response.)

20 CHAIRMAN LOUD: Then Ms. Bailey,
21 can you read back the vote, please?

22 MS. BAILEY: Mr. Chairman, the vote

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1 is recorded as four, zero, one to grant the
2 application.

3 Chairman Loud made the motion;
4 Commissioner Turnbull seconded; Board Members
5 Moldenhauer and Dettman support the motion;
6 and the third Mayoral Appointee is not sitting
7 on the Board at this time.

8 CHAIRMAN LOUD: Thank you, Ms.
9 Bailey.

10 Thank you to the Applicants. Thank
11 you to Mr. Salatti. Thank you to Ms. Kelley
12 as well.

13 And is there anything further in
14 this case?

15 MS. BAILEY: Issuance of a summary
16 order, Mr. Chairman?

17 CHAIRMAN LOUD: Yes, ma'am. That
18 would be great.

19 MS. BAILEY: Thank you.

20 CHAIRMAN LOUD: All right. Thank
21 you.

22 And Ms. Bailey, when you're ready,

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1 you can call the next case.

2 MS. BAILEY: The next case is
3 Application 17999. This is the application of
4 the Newcomb Child Development Center. And
5 it's pursuant to 11 DCMR Section 3104.1, for a
6 special exception to continue a child
7 development center that's for 70 children and
8 14 staff. It was last approved by BZA Order
9 No. 17280, dated March 4, 2005. The
10 Application is under Section 205 of the
11 regulations. It is zoned R-5-A. And it's
12 located at 541 Newcomb Street, S.E., Square
13 5985, Lot 818.

14 Mr. Chairman, we did not receive
15 the affidavit of posting for this property.

16 CHAIRMAN LOUD: Thank you, Ms.
17 Bailey. Why don't we treat that as a
18 preliminary issue?

19 And why don't we have everyone at
20 the table introduce yourself? And we'll go
21 into the preliminary issue that Ms. Bailey
22 just mentioned.

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1 MR. SPIKES: I'm Harry Spikes for
2 Newcomb Day Care, the attorney -- the Newcomb
3 Day Care.

4 Attorney for Newcomb Day Care,
5 Harry Spikes.

6 CHAIRMAN LOUD: Good morning, Mr.
7 Spikes.

8 MS. CANNON: Andrea Cannon.

9 CHAIRMAN LOUD: And Ms. Cannon,
10 could you --

11 MS. CANNON: Executive Director.

12 CHAIRMAN LOUD: Okay.

13 CHAIRMAN LOUD: I don't think your
14 microphone is on, Ms. Spikes.

15 MS. SPIKES: Patricia Spikes. I'm
16 the director at Newcomb Day Care Center on
17 Newcomb Street, S.E.

18 CHAIRMAN LOUD: Thank you very
19 much.

20 And just for my clarification,
21 what's the difference between the director and
22 the executive director?

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1 MR. SPIKES: The owner is the
2 executive director.

3 CHAIRMAN LOUD: I got you. Okay.
4 Thank you.

5 And I believe we have one more
6 person at the table. Good morning.

7 MS. CUTHERBERT: Good morning. I'm
8 Mary Cuthbert. I'm the Chair for Advisory
9 Neighborhood Commission 8C.

10 CHAIRMAN LOUD: Good morning,
11 Commissioner Cuthbert.

12 As indicated, Ms. Bailey has
13 reviewed the record, and there's a requirement
14 that there be a posting of the case. I think
15 the affidavit of posting has to be submitted
16 indicating that it was posted 14 days before
17 the hearing, Ms. Bailey?

18 MS. BAILEY: Fifteen days.

19 CHAIRMAN LOUD: Fifteen days before
20 the hearing. I stand corrected.

21 And in this case, we do not have
22 the affidavit that it was posted at least 15

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1 days before the hearing. Counsel?

2 MR. SPIKES: It was an oversight,
3 Your Honor, but we did prepare an affidavit
4 today if it could be accepted. And we are
5 here to assure you that the posting was
6 properly posted and timely posted.

7 CHAIRMAN LOUD: So the posting
8 happened, but the affidavit just was not
9 filed?

10 MR. SPIKES: That's correct.

11 CHAIRMAN LOUD: Okay. Do you have
12 copies for Commissioner Cuthbert of the
13 affidavit?

14 MR. SPIKES: Well, what we did
15 today was just to write out an affidavit. We
16 can make a copy for her.

17 CHAIRMAN LOUD: I see. Okay.

18 MR. SPIKES: But I think Ms.
19 Cuthbert most likely came by the day care and
20 she did in fact see the posting.

21 CHAIRMAN LOUD: Okay. And I think
22 there may be something in the record from the

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1 ANC -- our Exhibit 23 -- indicating that they
2 had some knowledge of the proceeding. They
3 had a meeting, a notice and a quorum.

4 Ms. Moldenhauer, do you have
5 something you want to also weigh in on? You
6 sure? Okay.

7 MS. BAILEY: Mr. Chairman?

8 CHAIRMAN LOUD: Yes.

9 MS. BAILEY: Excuse me. Just
10 writing at this point is not sufficient
11 because it does need to be notarized. The
12 affidavit does need to be notarized.

13 CHAIRMAN LOUD: Ms. Bailey does
14 raise a good point in terms of it not being an
15 affidavit if it's not sworn and notarized by a
16 notary.

17 But I do think under Section
18 3100.5, we are allowed to waive the
19 requirement for the posting altogether, aren't
20 we?

21 MS. BAILEY: It's at the Board's
22 discretion, Mr. Chairman, if you determine

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1 that adequate notice had been given to the
2 community by other means such as the notices
3 going out to persons within a 200-foot radius
4 and that the ANC had been notified, et cetera.

5 If the Board determines that that is
6 sufficient, then that requirement could be
7 waived.

8 CHAIRMAN LOUD: Thank you, Ms.
9 Bailey. I agree with you unless I hear
10 something different. I think that's one of
11 the ones that we can waive. And in this case,
12 it sounds like the community had notice of it.

13 I believe the ANC had two meetings on this
14 matter, notice and a quorum. And there were
15 the Office of -- I'm just going to call them
16 OSSE -- they were aware of it as well. They
17 submitted a report. And so I don't think
18 there's a question here about the community
19 not knowing about it.

20 Also, Mr. Nural sent out out-of-
21 station letters to persons that lived within
22 200 feet of the property.

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1 So Board Members, unless there's a
2 different direction you want to move in, I'd
3 like to suggest that we waive the requirement
4 for the affidavit of posting and proceed to
5 the merits of the case. And I think the Board
6 is in agreement with me.

7 So what we'll do now then is turn
8 back to you, counsel, and you can begin the
9 presentation of your case.

10 MR. SPIKES: Thank you to the
11 Board.

12 We were approved the last time we
13 were here for 70 kids, and we have the space
14 to accommodate 70 kids. And we're here now to
15 obtain a certificate of occupancy that would
16 be infinitum if possible and at least for the
17 next ten years if there's objection to the
18 infinitum.

19 We feel we have met all the
20 requirements to merit our request. And we
21 asked the Board to consider our request.

22 CHAIRMAN LOUD: Thank you, counsel.

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1 That's your opening statement?

2 MR. SPIKES: Yes.

3 CHAIRMAN LOUD: Are you going to
4 put on witnesses this morning?

5 MR. SPIKES: I don't think we need
6 witnesses, Your Honor. But if we need to, we
7 have the director who would testify relative
8 to any questions you may have that I may not
9 be able to answer because I'm not there on a
10 daily basis.

11 CHAIRMAN LOUD: I'll tell what I
12 think would be helpful for me -- and we'll see
13 what the other Board Members think -- is
14 there's a section of our regs -- Section 205
15 -- that lays out the criteria for granting the
16 special exception relief. And there are a
17 number of specific elements like 205.1, 205.2,
18 and so on and so forth. And if you could
19 provide evidence as to each of these criteria
20 so that we can make that a part of our record
21 as we move to deliberate the case.

22 MR. SPIKES: I don't see that

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1 section. I don't have it available to me.

2 CHAIRMAN LOUD: Are you generally
3 familiar with the special exception
4 requirements for child development centers?

5 MR. SPIKES: I understand that we
6 need to have sufficient parking. And we have
7 acquired an exception to the parking. There's
8 on-street parking -- sufficient.

9 I understand also that we need to
10 ensure that the tranquility of the community
11 is not disturbed as to noise and things of
12 that nature. And we have satisfied that
13 requirement.

14 I understand also too that we have
15 a requirement that the community, it has a
16 need for the daycare and the services that we
17 are providing. And we have satisfied that
18 requirement.

19 We have the capacity to accommodate
20 the 70 kids that we requested and was approved
21 for previously. And we have the measurements
22 of the daycare that would justify the request

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1 based on the availability of the space and the
2 child ratio that is necessary for the daycare
3 to operate and to provide proper care for the
4 kids.

7 CHAIRMAN LOUD: Well, Mrs.
8 Moldenhauer, did you want to weigh in?

9 MEMBER MOLDENHAUER: I just have a
10 question.

11 You have a copy of the OP report
12 and the letter from OSSE?

13 MR. SPIKES: Yes, I do.

14 MEMBER MOLDENHAUER: I would like
15 you to respond to those because I believe that
16 there are some important statements and
17 allegations made in both of those reports that
18 go against granting this application. And I
19 think it would do your client justice to
20 actually respond to those different issues.

21 MR. SPIKES: I think the issues
22 that were raised may have been raised by Ms.

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1 Cuthbert. And I think the director could
2 better explain those issues. Respond to
3 those.

4 MS. SPIKES: Ms. Cuthbert addressed
5 a letter to Mr. Weinbaum. It was dated
6 October 29th. And I won't read her letter,
7 but one of the statements she made that the
8 facility had decayed inside and out, that the
9 toilets were dirty, the place was dingy, that
10 it was very depressing. I did do a response
11 to the Board.

12 I attended the September 8th
13 meeting that the ANC Commission had. Prior to
14 that, Ms. Cuthbert visited Newcomb Street
15 Daycare facility. I personally escorted her
16 throughout the facility. At no time did we
17 enter any of the restrooms. One of her
18 concerns in her letter was that I only had a
19 little desk as a work area.

20 In 2004 I believe, an addition was
21 added to the facility on Newcomb Street. The
22 addition had a second first floor and second

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1 floor. The second floor of the addition is my
2 office. So I do have more space than just a
3 desk.

4 Ms. Cuthbert's letter also stated
5 that the front yard had wood chips and a big
6 -- a jumbo gym. Well, we don't have wood
7 chips in the front yard. We have rubber chips
8 that are used on playgrounds now. And the
9 jumbo gym has not been at Newcomb Street.
10 It's been over three years since we had a gym
11 in the front yard.

12 She also stated in her letter that
13 the carpet was not installed correctly on the
14 stairs, and that there were dingy curtains at
15 the top of the stairs. Well, get visits from
16 the Office of OSSE and Licensing. And I'm
17 sure if the carpet was improperly installed,
18 we would have received a deficiency report.

19 MEMBER MOLDENHAUER: Well, I guess
20 that's my question. I wasn't really even
21 referencing Ms. Cuthbert's letter. I was
22 referencing the letter from OSSE by Valerie

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1 Ware which specifically says that they do not
2 recommend approval, and that the facility has
3 continuously been noncompliant with District
4 regulations. That was the specific question I
5 was asking about.

6 MS. SPIKES: Well --

7 MEMBER MOLDENHAUER: So you can ask
8 OSSE what potential regulations that you have
9 not been compliant with.

10 MS. SPIKES: Since Ms. Ware did not
11 list those issues, I'm not certain as to what
12 regulations she's referring to.

13 Now we -- monitors from her office
14 -- her monitor does come out. Also the
15 monitor from OSSE, they come out to visit the
16 center. And if there's any deficiency, they
17 will tell us what it is. And we will -- you
18 know -- they give you a certain amount of time
19 to do it. And we comply with that.

20 So --

21 MEMBER MOLDENHAUER: How many
22 different types of warnings to that effect

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1 have you received and then potentially cured?

2 MS. SPIKES: It would depend.
3 Sometimes they will go through a child's
4 record -- the medical records. And you have
5 shots that are upcoming that are due. And
6 then we're required to get letters from
7 physicians that say we're going to do this at
8 a certain point.

9 Other times, it may be the
10 arrangement of a room or it may be if the
11 monitor comes and one of the staff members may
12 have something sitting on the shelf that
13 shouldn't be on the shelf. We may have sat a
14 pack of Pampers or something we're supposed to
15 have.

16 They're not major discrepancies.
17 They're normally minor discrepancies as far as
18 the day-to-day operation of the center.

19 We're in ratio. We are not -- it's
20 nothing major on the day-to-day operation.

21 If they see -- it could be -- like
22 once the monitor came in and we had some bags

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1 and we were written up for the bags because we
2 shouldn't have the bags sitting on the shelf.

3 If they think the carpeting as you come in
4 the door needs to be shampooed, they'll write
5 you up for things like that. And so, we have
6 gotten those in the past.

7 And so, we correct those. They
8 give us so many days. And we do that. And
9 then they come back out and they abate
10 whatever discrepancy that they wrote.

11 So those are some of the things
12 that they look at.

13 MEMBER MOLDENHAUER: Okay. I have
14 no further questions.

15 CHAIRMAN LOUD: Thank you, Ms.
16 Moldenhauer.

17 Let me just follow up on the line
18 of question.

19 The report from the Office of the
20 State Superintendent of Education suggests to
21 one that reads it and partially that they are
22 major concerns. One of our sections under

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1 205, counsel and Applicants, is that the
2 facility be capable of meeting all applicable
3 code and licensing requirements. That's in
4 Section 205.2, and then again in Section
5 205.10 where when we make a referral to
6 request advice as to whether the proposed
7 center can meet our licensing requirements.
8 Well, this Exhibit 22, and it has in bold all
9 caps, "The OSSE does not recommend that the
10 Applicant be granted special exception."

11 And then in the next paragraph, it
12 says, "This facility has continuously been
13 noncompliant." And they use the word
14 "compliant." And we're looking for a facility
15 that can be licensed and comply with the
16 regulations.

17 So it would suggest that at least
18 in their perspective, these are major
19 concerns.

20 Were you aware of this Exhibit 22
21 before today's hearing?

22 MS. SPIKES: I was.

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1 CHAIRMAN LOUD: And the last
2 paragraph says, "If you have any questions
3 about this, you can contact" -- and there's a
4 person's name who's mentioned. And you can
5 follow up whatever questions you may have.

6 Do you know if you or anyone on
7 your team had an opportunity to follow up and
8 ask Ms. Ware -- I think Ms. Moldenhauer asked
9 this question -- what their concerns were?
10 And this between October 27 and this morning.

11 Have you had an opportunity to follow up with
12 them?

13 MR. SPIKES: If --

14 MS. SPIKES: --

15 MR. SPIKES: I'm sorry. If I may.

16 What we have done is taken those
17 concerns into consideration and taken all the
18 measures that we felt were necessary and
19 proper to make the correction that would meet
20 their satisfaction.

21 I will say to you that we have had
22 various inspectors to come out. And one

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1 inspector would say one thing, another
2 inspector would say another thing. And so we
3 come to believe to some degree the discrepancy
4 is stylistic rather than a hazard to the
5 safety of the kids.

6 But notwithstanding how we may view
7 that, we have the obligation to maintain the
8 daycare center to their satisfaction so that
9 we would be worthy of maintaining the kids
10 that we are licensed to have in our care. And
11 so we have done that.

12 We are waiting for another
13 inspection to show that we have met all these
14 requirements. And so those are the measures
15 that we have taken.

16 Now I will --

17 CHAIRMAN LOUD: Just if you don't
18 mind to ask one quick question.

19 You said that another inspection is
20 pending.

21 MR. SPIKES: Well, we were asking
22 for another inspection, yes.

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1 CHAIRMAN LOUD: And is that
2 inspection tied to the letter that Ms. Ware
3 sent you October 27th?

4 MS. SPIKES: Yes.

5 MR. SPIKES: It would be an
6 inspection that should have preceded this
7 particular hearing, but it has not.

8 CHAIRMAN LOUD: But again, the
9 thought with the inspection that's pending
10 that once you got word from OSSE that their
11 affirmative approval of whatever they
12 inspected would have some bearing on the
13 position that they've taken in this case?

14 MR. SPIKES: I would hope so. I
15 can't speak for them. I would sincerely hope
16 so. I would hope that the restriction is
17 based on an inspection.

18 CHAIRMAN LOUD: And when do you
19 expect to hear something back from that
20 office?

21 MR. SPIKES: Well, we will contact

22 --

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1 CHAIRMAN LOUD: Have you been
2 informed at all?

3 MR. SPIKES: We will contact the
4 office today and request that they follow up
5 on our request for an inspection.

6 CHAIRMAN LOUD: Okay. And just
7 backtracking a few steps. Between October 27
8 and today's hearing, what did this office --
9 OSSE -- notify you specifically that was not
10 compliant that you're working now on the
11 inspection part of this? Exactly what is it?

12 MR. SPIKES: It was a -- Patricia
13 can better explain that.

14 MS. SPIKES: In August, our monitor
15 came out and did her normal review. And she
16 was scheduled to come back. She has not
17 returned.

18 When I received this letter, I
19 contacted our monitor. And she was scheduled
20 to come out again. And she did not come out.

21 So I don't know the reason. But
22 she did schedule to come out. But she hasn't

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1 made it out before the hearing today.

2 So she did come out in August. Was
3 scheduled to come back twice. And as of
4 today's date, she has not returned. So --

5 CHAIRMAN LOUD: And again, I ask my
6 question. What were the findings that she or
7 the office would be coming back to inspect to
8 then I guess either green light your facility
9 or supplement this October 27 report?

10 MS. SPIKES: Well, we had -- one of
11 the deficiencies was we had a cabinet in the
12 kitchen that she wanted us to replace because
13 it didn't have a lock on it. So we ordered a
14 new cabinet. That was one of the
15 deficiencies.

16 She wanted me to put all of the
17 authorizations for children's activities in
18 the children's files. I had the
19 authorizations but I kept them in a separate
20 file. And I guess under the new regulations,
21 we are to keep like authorizations to travel
22 in each child's file. We are to keep a letter

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1 showing where the parents had read the
2 center's handbook in the file which I had in a
3 separate file. So those were some of the
4 deficiencies that she wanted me to take care
5 of, which I did.

6 In one of the bathrooms, she wanted
7 us to do the door. It's a half door. And she
8 wanted us to either make it a complete door or
9 put trim around the door. That was one of the
10 other deficiencies.

11 I had --

12 CHAIRMAN LOUD: Was this a
13 children's bathroom?

14 MS. SPIKES: It's a bathroom --
15 children's bathroom in the infant area. And
16 the infants really don't go to the bathroom.
17 But we take the toddlers so when we're trying
18 to train them. So we have a half door in that
19 particular bathroom for the toddlers. And she
20 wanted us to put trim around the door.

21 And we had a storage shelf in the
22 bathroom where we kept the toilet tissue and

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1 paper towels. And she wanted me to remove
2 those, to find another storage area for those
3 instead of having them on the shelf in that
4 particular bathroom.

5 And she wanted us to get more toys
6 for the infant toddlers, which we did.

7 And I'm trying -- yes, in that
8 particular bathroom, that's what she wanted.

9 Those were some of the deficiencies
10 that she wanted us to do. And she gave -- she
11 gave us like 30 days I think it was to do
12 them. And we did those.

13 And our cabinet is -- we ordered -
14 - you know -- got the new cabinet and
15 everything for the kitchen.

16 And she wanted us to get a new
17 dishwasher. She did, which we did. We
18 purchased a new dishwasher for the -- in the
19 kitchen.

20 And then she was going to come back
21 to verify that we in fact had made those --
22 met those changes.

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1 CHAIRMAN LOUD: Were there any
2 other deficiencies that you noted?

3 MS. SPIKES: I'm trying to remember
4 everything she wrote. It was -- it was
5 basically dealing with that.

6 And was not -- nothing with the
7 front yard. We went all out backyard.
8 Nothing with that.

9 The classrooms were fine. She made
10 -- wanted to make sure our creative curriculum
11 which we did.

12 And that was basically it. It
13 wasn't like a long list of things to do or
14 major things to do. It wasn't anything like
15 that.

16 CHAIRMAN LOUD: And those are the
17 only deficiencies that you're aware of as you
18 testify this morning?

19 MS. SPIKES: At that particular
20 time in August. At that particular time.

21 CHAIRMAN LOUD: Were there some
22 additional ones subsequent to August?

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1 MS. SPIKES: No, sir.

2 CHAIRMAN LOUD: Okay.

3 MS. SPIKES: She hasn't come back
4 out yet.

5 CHAIRMAN LOUD: All right. So let
6 me zip through these and see the status now.

7 So the cabinet without the lock has
8 been resolved?

9 MS. SPIKES: Yes, sir.

10 CHAIRMAN LOUD: The authorizations
11 for the children that were not in the files,
12 that's --

13 MS. SPIKES: In the files.

14 CHAIRMAN LOUD: -- that's been
15 resolved?

16 The half door in the children's
17 bathroom?

18 MS. SPIKES: It's been resolved.

19 CHAIRMAN LOUD: Okay. The trim
20 around the door?

21 MS. SPIKES: Yes, sir. We -- that
22 was the door -- the half door that she wanted

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1 done.

2 CHAIRMAN LOUD: Okay. It's been
3 resolved.

4 You mentioned something about
5 locating a separate storage for --

6 MS. SPIKES: Yes, sir.

7 CHAIRMAN LOUD: And what was the
8 separate storage for?

9 MS. SPIKES: The -- to put the
10 toilet tissue and the paper towels.

11 CHAIRMAN LOUD: Okay. And so
12 that's been resolved?

13 MS. SPIKES: Yes, sir.

14 CHAIRMAN LOUD: More toys for the
15 infant toddlers?

16 MS. SPIKES: And that.

17 CHAIRMAN LOUD: And a new
18 dishwasher?

19 MS. SPIKES: Yes, sir.

20 CHAIRMAN LOUD: And it's your
21 testimony this morning that those were the
22 only six deficiencies?

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1 MS. SPIKES: Well, those were the
2 only ones that I can recall right now.

3 CHAIRMAN LOUD: Okay. Okay.

4 MS. SPIKES: I didn't -- I wasn't
5 thinking. I could have brought it with me.

6 But it wasn't a lot of -- but those
7 were the major things that we had to do.

8 CHAIRMAN LOUD: Okay.

9 MS. SPIKES: And we did those.

10 CHAIRMAN LOUD: And you're simply
11 waiting for her to come back out now --

12 MS. SPIKES: Yes. Come back out.

13 CHAIRMAN LOUD: -- and validate
14 that these have all been done.

15 MS. SPIKES: Yes, sir.

16 CHAIRMAN LOUD: And you don't have
17 a date for that as you testified this morning?

18 MS. SPIKES: No.

19 CHAIRMAN LOUD: Okay.

20 MS. SPIKES: No.

21 CHAIRMAN LOUD: Okay. But you
22 still have that deficiency notice?

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1 MS. SPIKES: Yes, sir. I do.

2 CHAIRMAN LOUD: You just didn't
3 bring it today.

4 Okay. I don't have any additional
5 questions at this time.

6 VICE CHAIRMAN DETTMAN: Good
7 morning, Ms. Spikes.

8 I noticed that there's a two-year
9 gap between the previous BZA decision in 2005
10 and the certificate of occupancy authorizing
11 70 children in 2007. I was wondering why that
12 it.

13 MS. SPIKES: i think I may be able
14 to answer that.

15 There was some confusion. If you
16 look at the certificate, it doesn't
17 necessarily have an expiration date.

18 VICE CHAIRMAN DETTMAN: You said it
19 does or it doesn't?

20 MR. SPIKES: It does not.

21 If you look at the other
22 certificates, they have a specific date for

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1 expiration. And when we discovered that, we
2 quickly came down and we spoke to Certificates
3 at Zoning. And they gave us directions to
4 secure a new certificate of occupancy pending
5 the Board hearing. So we did that, and we now
6 have a new certificate of occupancy that
7 carried us through this year.

8 VICE CHAIRMAN DETTMAN: And that's
9 the CFO that we have before us today that's
10 stamped February 9, 2007?

11 MR. SPIKES: Yes.

12 VICE CHAIRMAN DETTMAN: And it does
13 expiration date none. But under description
14 of use, it does say expiration date March 3,
15 2008, per BZA Order 17280, which is the 2005.

16 MS. SPIKES: Right. And that's
17 where the confusion came in.

18 VICE CHAIRMAN DETTMAN: Okay.

19 MR. SPIKES: I'm not making an
20 excuse for what we did. I'm just saying to
21 you that it was in no way intentional.

22 VICE CHAIRMAN DETTMAN: Okay.

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1 MR. SPIKES: Because we knew it was
2 a simple process of getting it done, and we
3 would have done it if we had known.

4 VICE CHAIRMAN DETTMAN: Were you
5 involved in the 2005 proceedings?

6 MR. SPIKES: Yes, I was.

7 VICE CHAIRMAN DETTMAN: We have a
8 provision in our regs that says that a BZA
9 Order is only valid for a period of six months
10 unless the use is established. And here it
11 looks like it took two years to establish that
12 use pursuant to that Order.

13 Were you aware of that?

14 MR. SPIKES: I was aware of the
15 fact that we had a certain period of time in
16 which it would expire. I thought we had
17 satisfied the use requirement.

18 VICE CHAIRMAN DETTMAN: Okay.

19 What is your current enrollment?

20 MR. SPIKES: The current --
21 Patricia?

22 MS. SPIKES: We're currently

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1 licensed for 39 children. And we do have 39
2 children.

3 VICE CHAIRMAN DETTMAN: Thirty-
4 nine.

5 Now that you have the C of O
6 stamped 2007 authorizing 70 and the BZA
7 authorized 70 in 2005, is there a reason why
8 you haven't pursued a license for 70 or
9 haven't been able to acquire it?

10 MS. SPIKES: We -- we did pursue.
11 And they came out and measured. In fact they
12 measured twice.

13 The first time, the monitor
14 approved us for 51 children. The second time
15 they came out and measured, they gave us a
16 number of 63.

17 So it's just a matter of -- you
18 know -- our waiting when we -- when our
19 license is up for them to come back out and I
20 guess they'll measure again, and then decide
21 if they will give us the additional children.

22 They did come out twice.

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1 VICE CHAIRMAN DETTMAN: Okay. But
2 you currently hold a valid license for 39?

3 MS. SPIKES: Yes. Yes, sir.

4 VICE CHAIRMAN DETTMAN: And do you
5 remember when you acquired that license and
6 when it expires when you have to renew?

7 MS. SPIKES: Our renewal is in
8 March I believe for the new license. It
9 expires in March.

10 VICE CHAIRMAN DETTMAN: Okay. And
11 you anticipate that the measurements that were
12 done previously -- the 51 and the 63 --

13 MS. SPIKES: Yes, sir.

14 VICE CHAIRMAN DETTMAN: -- those
15 measurements will be used --

16 MS. SPIKES: Yes, sir.

17 VICE CHAIRMAN DETTMAN: -- for your
18 March renewal?

19 MS. SPIKES: Yes.

20 VICE CHAIRMAN DETTMAN: Okay.
21 Thank you.

22 CHAIRMAN LOUD: Thank you, Mr.

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1 Dettman.

2 Are there additional questions?

3 Okay. Mr. Turnbull?

4 MEMBER TURNBULL: Thank you, Mr.
5 Chair.

6 Ms. Spikes, I wanted to get back to
7 the same Exhibit 22 of the one from OSSE --

8 MS. SPIKES: Yes, sir.

9 MEMBER TURNBULL: -- by Valerie
10 Ware.

11 There's a couple of things that
12 come into play. You've got your license. But
13 if I read this memorandum from OSSE, it
14 basically is telling us that ever since you've
15 had the operation you've been continuously
16 having violations and to do corrective work to
17 maintain your license on this. And when you
18 read further, they're basically saying you can
19 handle what you've got but you've got a
20 problem with it. And they're not recommending
21 to go any higher than what -- they're simply
22 saying you can't handle it. So I'm just a

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1 little bit concerned when I look at this and
2 knowing that someone comes out and measures
3 and says you can do that, that you have the
4 capability to expand.

5 MS. SPIKES: Yes, sir.

6 MEMBER TURNBULL: But OSSE is
7 saying we don't think you have the technical
8 capability to go beyond that. They don't say
9 that per se. But they're basically saying
10 you've had violations continuously in your
11 operation and that to go higher than they
12 don't recommend it.

13 How do you answer that?

14 MS. SPIKES: Well, I'm confused
15 also because the monitor is from OSSE that
16 comes out. And when they measured before --
17 when they did the two measurements and then
18 when she came out again in August, and when I
19 saw this letter, I was surprised myself. And
20 that's why I contacted her.

21 So --

22 MEMBER TURNBULL: But you contacted

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1 the monitor --

2 MS. SPIKES: Yes, sir.

3 MEMBER TURNBULL: -- and not
4 Valerie Ware.

5 MS. SPIKES: Well, Ms. McCoy is my
6 monitor's supervisor. So since she was
7 scheduled to come out, I felt that -- you know
8 -- she was the one that I should contact and
9 talk to as to why they were now saying this.

10 MEMBER TURNBULL: Okay. And --

11 MS. SPIKES: She told me she would
12 be coming -- you know -- she was due to come
13 out, and she would be coming out.

14 So I just left it at that that she
15 would come out. She was aware of our hearing
16 date. And I also assumed she would be out
17 before we had the hearing. Because the only
18 paperwork I received from them was the
19 paperwork she gave me in August as to what she
20 wanted me to do.

21 So other -- other than that, I
22 really can't answer. We have the staff that

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1 they say we should have. Our staff receives
2 the training that we're supposed to receive
3 every year -- actually above and beyond. We
4 have some people that are attending school.

5 So I -- I really don't know.

6 MEMBER TURNBULL: I guess the other
7 thing is do you talk much with the ANC?
8 You've seen the letter --

9 MS. SPIKES: I -- I attended the
10 meeting in September. I talked with Ms. --
11 Ms. Cuthbert. Yes, I do.

12 MEMBER TURNBULL: It sounds like
13 she's got a different view on how your
14 facility looks and runs.

15 MS. SPIKES: She does. And I was
16 very surprised.

17 Also at the September 8th meeting,
18 I invited all in attendance, which were --
19 they had three ANC Commissioners there, and
20 they had people from the community. I invited
21 all of them to come visit the center at any
22 time. My only restriction was that they come

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1 after 12:00 o'clock because the children would
2 be down for nap.

3 Not any -- no one came. One -- one
4 commissioner said he would come to see the
5 center. But no one ever came to see the
6 center.

7 So I did what I thought I should do
8 so they could get first-hand knowledge for
9 themselves to see the center. And as of
10 today's date, they have not come.

11 MS. CUTHBERT: I attended the
12 center. I did physically go there.

13 MS. SPIKES: Yes, you did.

14 MS. CUTHBERT: Okay. I walked
15 through.

16 MS. SPIKES: You did, Ms. Cuthbert.
17 But I don't know if it's proper for me to
18 respond or not.

19 MEMBER TURNBULL: Well, we can get
20 into that when we talk to Ms. Cuthbert then.

21 MS. SPIKES: Okay.

22 MEMBER TURNBULL: But thank you.

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1 MS. SPIKES: Okay.

2 MEMBER MOLDENHAUER: I guess a new
3 issue for the Board, I just was handed from
4 Ms. Beverly an Exhibit 25 which is a brand new
5 exhibit. It was just submitted now. And I
6 just want to kind of read to everybody since
7 not everybody has a copy of this and so that
8 the parties can also hear this.

9 It's a fax that came in. And it
10 says, "To Whom It May Concern, This letter is
11 in reference to the Newcomb Daycare Center."
12 And it provides the address. It says, "The
13 daycare is not suitable for children to begin
14 with. And they are 1) out of ratio with too
15 many children and not enough staff; 2) rats as
16 big as cats running around upstairs and
17 downstairs; 3) not enough food to feed the
18 children; 4) windows screens nailed to the
19 window frames, big holes in the closets and
20 walls, glue traps for rats that shoot up
21 around the walls, rat droppings everywhere,
22 rats in the stove in the kitchen, food with

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1 rat holes in them, children's diapers eaten up
2 by rats and carpet, a fire alarm goes off all
3 the time." I'm just kind of skipping around
4 here now. More issues of rats. They go on
5 and on. Concerns about caring for the staff
6 and the children, concerns of staff being
7 around or not being around. And then they
8 continue to say there's no hot water that
9 works, that there's strange odors coming from
10 the sewer, and that a lot of the children are
11 developing asthma who are in attendance.

12 One, I know that this a late
13 document, but I feel like --

14 MS. CUTHBERT: It's important.

15 MEMBER MOLDENHAUER: -- raises a
16 lot of concerns. And I 1) like to ask the
17 Applicant to respond to some of these, whether
18 they are grounded in fact or whether they're
19 not, and any responses to that.

20 MR. SPIKES: Yes, I can respond to
21 that.

22 First of all, if I may --

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1 MEMBER MOLDENHAUER: There's no
2 reference in the letter as to who it came
3 from. So it appears to be an anonymous letter
4 with some insider facts about the facility,
5 staffing. The way that it's written, to me,
6 it's seems as though some anonymous
7 information potentially from somebody, either
8 a staff or a parent.

9 But please, I want to provide you
10 with an opportunity to respond.

11 MS. SPIKES: The only response I
12 can give you is you yourself, come out and
13 take a look and see whether this is confirmed.

14 It's hard to respond to a phantom
15 letter that by personally -- personally, if
16 there's a dissenter, I couldn't confirm
17 anything in that particular letter.

18 I will say to you that we have the
19 place over there off of 295 which is a sewer
20 treatment plant. And from time to time, the
21 entire neighborhood has an odor. I can say
22 that. But very seldom do I smell that odor at

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1 Newcomb Street, if anytime I smell an odor
2 inside of the building.

3 We have employees who are
4 disgruntled. We have employees who we demand
5 that they adhere to the regulations and the
6 requirements of maintaining a daycare. And
7 some of those employees may be disenchanted to
8 the extent that they are destructive. But I
9 will assure that there's no validity to that
10 letter.

11 CHAIRMAN LOUD: I think at this
12 point in time, let me query Board Members to
13 see if perhaps there's additional questioning
14 for your presentation of the case, or if we're
15 ready to move on to the Office of Planning.

16 VICE CHAIRMAN DETTMAN: I just have
17 one very quick question, Mr. Chair.

18 CHAIRMAN LOUD: Yes, sir. Go right
19 ahead.

20 VICE CHAIRMAN DETTMAN: I just
21 wanted to ask Ms. Spikes. The current license
22 that you hold for 39 children, when did you

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1 acquire that?

2 MS. SPIKES: Gee. We got it this
3 year. We've had -- every year they -- you
4 know -- they come out, they do their review.
5 And then they issue you a new license. And so
6 we've had the 39 -- license for 39 children
7 for several years now.

8 And it's just -- this year, they
9 gave us the new license which will expire in
10 March of 2010.

11 VICE CHAIRMAN DETTMAN: Okay. So
12 you're required to renew the license every
13 year?

14 MS. SPIKES: Yes. We're required
15 to renew every year.

16 VICE CHAIRMAN DETTMAN: Do you
17 remember if you had a license for 39 children
18 back in 2005 when you were last before the
19 Board?

20 MS. SPIKES: Yes.

21 VICE CHAIRMAN DETTMAN: And do you
22 remember whether or not OSSE supported your

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1 request for 70 children in that proceeding?

2 MS. SPIKES: I don't even think
3 they submitted a letter.

4 VICE CHAIRMAN DETTMAN: Okay.

5 MS. SPIKES: I don't recall their
6 submitting a letter.

7 VICE CHAIRMAN DETTMAN: And
8 presumably since 2005, they've renewed every
9 single year.

10 MS. SPIKES: Yes, sir.

11 VICE CHAIRMAN DETTMAN: So these
12 problems that they're referring to their
13 letter -- our Exhibit No. 22 -- have occurred
14 within the last year?

15 MS. SPIKES: I'm -- I'm -- I don't
16 know because I really don't know which
17 deficiencies they're referring to. I don't
18 know.

19 I do know when they come out if
20 they find a deficiency, something we should be
21 doing, they give you an opportunity to correct
22 it. And then they come back out and abate

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1 whatever the deficiency may be. And then they
2 issue you a new license. And this is a
3 practice that's been going on since I've been
4 there. So that's usually how it's done.

5 VICE CHAIRMAN DETTMAN: If the
6 problem's not remedied, they --

7 MS. SPIKES: If the problem's not
8 remedied, then they can fine you. Or -- you
9 know -- that's one of the -- we -- we haven't
10 been -- they haven't fined us that I'm aware
11 of since I've been there.

12 VICE CHAIRMAN DETTMAN: And at any
13 point in time, have you been either
14 potentially or actually had your license
15 revoked?

16 MS. SPIKES: Not that I'm aware of
17 -- have it revoked -- revoked. No.

18 We've always -- I mean, since I've
19 been there, we've gotten a license.

20 CHAIRMAN LOUD: Thank you, Mr.
21 Dettman.

22 Are we ready to move to the Office

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1 of Planning? Okay.

2 Before we do that, I think that the
3 ANC as a party would have the opportunity to
4 ask any questions of any of the witnesses that
5 testified -- not counsel -- but the witnesses,
6 Commissioner -- if you have any questions.

7 MS. CUTHBERT: Mrs. Spikes?

8 MS. SPIKES: Yes, ma'am.

9 MS. CUTHERBERT: Was that jumbo gym
10 outside when I visited your facility?

11 CHAIRMAN LOUD: Commissioner
12 Cuthbert?

13 MS. CUTHBERT: That's a question.

14 CHAIRMAN LOUD: Commissioner
15 Cuthbert?

16 MS. CUTHBERT: Yes.

17 CHAIRMAN LOUD: Let me repeat what
18 I said at the beginning of the set up for the
19 hearings today.

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1 testify about things that are within your own
2 personal knowledge and things that you want to
3 get on the record and make sure that the Board
4 knows about.

5 But in terms of the cross
6 examination of either Ms. Spikes or of the
7 owner of the CDC, it's based specifically on
8 what they testified to.

9 MS. CUTHBERT: That was the
10 question that she testified to.

11 CHAIRMAN LOUD: Okay. I'm sorry.
12 I missed that.

13 MS. CUTHBERT: I wanted
14 clarification. She did say there was -- and I
15 wanted clarification.

16 CHAIRMAN LOUD: I apologize to you
17 then.

18 MS. CUTHBERT: Okay. It wasn't
19 nothing out of the way.

20 CHAIRMAN LOUD: Proceed.

21 MS. SPIKES: Okay. No, there was
22 no jumbo gym in the yard.

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1 MS. CUTHBERT: Not the jumbo --
2 it's not called a jumbo. That's what I
3 calling it.

4 MS. SPIKES: There was no gym.

5 MS. CUTHBERT: It was a play where
6 the kids climb up on it.

7 I'm calling it a jumbo gym --

8 MS. SPIKES: No.

9 MS. CUTHBERT: -- because I'm a
10 little outdated with kids things -- sitting
11 out in that front yard.

12 MS. SPIKES: Not when you visited.

13 It hasn't been there in over three years.
14 Ms. Cannon removed it because she had plans to
15 re-do the front yard. So it was removed. She
16 had workers come in, physically unscrew it and
17 had it removed. And that was three -- almost
18 three years ago.

19 MS. CUTHBERT: And there's no wood
20 chips with the green grass --

21 MS. SPIKES: There's not -- they're
22 not --

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1 MS. CUTHBERT: They're not wood
2 chips in the front yard?

3 MS. SPIKES: They are -- they are
4 rubber chips that they use on playgrounds in
5 the front yard. They're not wood chips.

6 MS. CUTHBERT: Thank you.

7 CHAIRMAN LOUD: Thank you,
8 Commissioner.

9 We'd now like to turn to you, Ms.
10 Thomas, for the report of the Office of
11 Planning. Good morning.

12 MS. THOMAS: Good morning, Mr.
13 Chairman, Members of the Board.

14 The Office of Planing is not
15 recommending that the day care center increase
16 its number of children to 70 children. And
17 this based on the report by OSSE and in
18 conversations with Mrs. Ware at OSSE. We
19 asked the Applicant then to revise its
20 application for consideration of the 39
21 children with 14 staff so that it could
22 possibly address any issues that they have

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1 with OSSE.

2 So at this time, we're not
3 recommending any approval of increase beyond
4 what their license capacity is.

5 I would be happy to take any
6 questions. Thank you.

7 CHAIRMAN LOUD: Thank you, Ms.
8 Thomas.

9 Why don't we turn to counsel and
10 see if there are any questions for the Office
11 of Planning? And then Commissioner, we'll go
12 to you and the Board Members last.

13 MR. SPIKES: I feel based on the
14 code sections here cited in the November 10,
15 2009 letter, we meet those requirements. And
16 I think that we deserve to have --

17 CHAIRMAN LOUD: No, no. Just if
18 you have any questions for the Office of
19 Planning based on their report. You'll get an
20 opportunity for a closing statement a little
21 later in the proceedings.

22 MR. SPIKES: I have no questions.

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1 CHAIRMAN LOUD: Thank you, sir.

2 And Commissioner, did you have any
3 questions for the Office of Planning?

4 MS. CUTHBERT: No, sir.

5 CHAIRMAN LOUD: Okay. Board
6 members?

7 MEMBER TURNBULL: Thank you, Mr.
8 Chair.

9 Mr. Thomas, I'm just curious. Your
10 recommendation for 39 is based upon the
11 current count, and you're saying that's it?

12 MS. THOMAS: Well, it's based on
13 what their licensed for. I had a conversation
14 with Mrs. Ware. And I asked her whether she
15 thinks that they could accommodate an
16 increase, and she doesn't think so.

17 MEMBER TURNBULL: So it's your
18 conversation with Ms. Ware, and she said that
19 she didn't think they had the capability to go
20 beyond 39?

21 MS. THOMAS: That's correct.

22 MEMBER TURNBULL: Did you get into

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1 what the violations were at all? Or can you
2 confirm anything for us?

3 MS. THOMAS: Well, what I could
4 confirm is that she did say that there was a
5 large file that they had on them. And she was
6 adamant that anybody can come and look at the
7 file. As to what the violations were, she
8 didn't want to get into it with me over the
9 phone.

10 MEMBER TURNBULL: Okay. No, I
11 understand.

12 MS. THOMAS: But just based on her
13 conversation and her insistence on what she
14 was saying that we did go with her
15 recommendation. When you look at the tests,
16 it's the first question. It's the first test
17 that's supposed to be met. Could they be
18 licensed for what they're requesting? And
19 it's in the opinion of the licensing body.
20 And everything else should probably follow
21 from that.

22 So based on that, if they didn't

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1 meet that first part of the test in Section
2 205, I don't think that they should be --

3 MEMBER TURNBULL: Okay. Thank you.

4 MR. SPIKES: I may have a question
5 if I could based on your question.

6 Is it your opinion that the
7 restriction on the number of kids is based on
8 past violations or present violations?

9 MS. THOMAS: I have no idea about
10 past or present violations. I just responded
11 to what I was told by the director.

12 MR. SPIKES: So she didn't show you
13 any past violations?

14 MS. THOMAS: No, she did not want
15 to get into that with me.

16 MR. SPIKES: She made reference to
17 a file?

18 MS. THOMAS: Yes.

19 MR. SPIKES: And if there were past
20 violations, then we have appeal -- and one on
21 appeal, you wouldn't know anything about that,
22 would you?

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1 MS. THOMAS: No, no, no, I don't.

2 MR. SPIKES: So if you had to make
3 your opinion on the present status of Newcomb
4 Daycare and not any past violations, what
5 would be your recommendation?

6 MS. THOMAS: Well, first I'm not
7 making my opinion based on any violations
8 because that's not what we are charged to do
9 under the zoning regulations. I'm basing my
10 opinion on the capacity which is the question
11 to be answered under Section 205.

12 MR. SPIKES: I understand. And --

13 MS. THOMAS: Yes. But I can't
14 answer any questions regarding violations.

15 MR. SPIKES: So the capacity would
16 largely depend on the availability of space
17 and the availability of staff. Am I correct?

18 MS. THOMAS: The capacity -- the
19 way we understand it is probably based on
20 OSSE's regulations which is governed by a
21 different Title -- Title 29, Chapter 3. We do
22 not get into that. That is the jurisdiction

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1 of another agency. We are not experts on
2 that.

3 MR. SPIKES: So in essence, another
4 agency formulated the opinion and gives it to
5 you. And it's more an imposition upon you to
6 follow their recommendation. Am I correct?

7 MS. THOMAS: It's based on the
8 requirements of their regulations. We take
9 advice based on the requirements of their
10 regulations -- what is required. It's a
11 licensing issue at this point in terms of
12 capacity. And that's what we're charged to go
13 under. That's the question that's before us
14 -- that the center shall be capable of meeting
15 all applicable code and licensing
16 requirements.

17 So if in the opinion of the
18 licensing agency that you're not able to meet
19 that capacity under their code, we can't or we
20 shouldn't go against it.

21 MR. SPIKES: Okay. I have no
22 further questions.

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1 CHAIRMAN LOUD: Thank you. Just a
2 quick follow-up question regarding the OSSE
3 report and then your subsequent conversations
4 with Ms. Ware.

5 First, I'm presuming your
6 conversations were after October 27, which is
7 the date of her report.

8 MS. THOMAS: Yes.

9 CHAIRMAN LOUD: Okay.

10 MS. THOMAS: No, no. Prior to --

11 CHAIRMAN LOUD: Your conversations
12 with Ms. Ware were prior to October 27?

13 MS. THOMAS: Well, yes, because I
14 requested that -- I asked if a report was
15 being written for this case. So she did say
16 that she did write a report. But I don't know
17 if she had submitted it. And I informed Mr.
18 Nural. Mr. Nural informed her as well that
19 she needs to put her response in writing and
20 address it to the Office of Zoning. So we had
21 that conversation prior to the date of her
22 later.

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1 CHAIRMAN LOUD: What I was trying
2 to establish is it seems to me like on October
3 27th, Mrs. Ware submitted something into the
4 record saying she does not recommend that the
5 Applicant be granted special exception.

6 Now this Applicant currently does
7 not have a special exception for any number of
8 students because the previous one expired.

9 MS. THOMAS: That's correct.

10 CHAIRMAN LOUD: So the way I
11 interpret this Exhibit 22 is that she -- Mrs.
12 Ware -- is not recommending approval for any
13 number, not the 34, not the 70.

14 MS. THOMAS: Right. I did go back
15 afterwards based on what she said in the
16 letter. I said so would you recommend them
17 for any amount? She says well, just what
18 their licensed for. And she made it clear to
19 me that's the basis of my report for the 39.

20 CHAIRMAN LOUD: Okay. So that was
21 a conversation after October 27th?

22 MS. THOMAS: Right. Yes.

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1 CHAIRMAN LOUD: All right. Okay.

2 And --

3 MS. THOMAS: Because I had a
4 question as to whether in the past about what
5 Mr. Dettman was talking about whether in the
6 past BZA Order that recommended up to 70, why
7 they never got to that 70 figure, and why they
8 were still being licensed at 39. I had a
9 question about that because they continually
10 were licensed at 39 thereafter.

11 CHAIRMAN LOUD: And in your
12 conversations with her, did she express any
13 knowledge or awareness that the previous BZA
14 Order had expired and/or that there was not a
15 current C of O?

16 MS. THOMAS: She asked that, yes.
17 She did ask me. And I responded that there
18 was not. But she didn't say what was going to
19 happen at that point.

20 CHAIRMAN LOUD: Can you share the
21 context in which she asked you about that?

22 MS. THOMAS: Yes. In the same

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1 context that I was asking about well, in terms
2 of the number of children that was approved
3 through the BZA Order in 2005, and the time
4 limit was for three years -- 2005-2008. Then
5 she asked, so they're not in compliance with
6 the BZA Order? And I said well, it seems not
7 because they're now coming before the Board in
8 2009.

9 CHAIRMAN LOUD: Thank you. I don't
10 have any additional questions at this time.
11 If I do, I'll get back to you.

12 It doesn't like Ms. Moldenhauer has
13 any -- yes?

14 MEMBER TURNBULL: I just had one
15 more question, Mr. Chair.

16 The approval period for three
17 years, is she okay with the approval for three
18 years?

19 MS. THOMAS: We didn't discuss
20 that.

21 MEMBER TURNBULL: Okay.

22 MS. THOMAS: But I kept it at three

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1 because in consideration of the situation now.

2 MEMBER TURNBULL: Basically she was
3 okay for 39?

4 MS. THOMAS: Yes.

5 MEMBER TURNBULL: Okay. Thank you.

6 VICE CHAIRMAN DETTMAN: I just have
7 one more question for Ms. Spikes.

8 When you renew your license
9 annually, and it sounds like March is your
10 month -- you said March of 2010 you'll renew?

11 MS. SPIKES: Well, it expires.
12 Yes.

13 VICE CHAIRMAN DETTMAN: Okay. So
14 March of this year -- March of '09, you had to
15 do the same procedure?

16 MS. SPIKES: We had to -- depending
17 on when they come out. Sometimes your -- you
18 know -- your license could expire in November
19 or another month. It just depends on when
20 they come out, do their review.

21 We have to submit our paperwork for
22 license renewal three months in advance. So

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1 I'll be submitting the paperwork probably
2 December for the renewal. And then they will
3 come out for a visit. And then whatever --
4 whatever they want you to do, you do, if they
5 want to do anything. Sometimes they don't.
6 And then they'll issue you your new license.

7 VICE CHAIRMAN DETTMAN: When did
8 you renew your current license? So that would
9 be --

10 MS. SPIKES: It was the earlier
11 part of this year. I don't -- I don't have
12 the exact date.

13 VICE CHAIRMAN DETTMAN: Okay. The
14 documentation that you have to submit, does it
15 require you to demonstrate a valid C of O?

16 MS. SPIKES: Yes, sir. It does.
17 It does.

18 VICE CHAIRMAN DETTMAN: Okay. And
19 this Certificate of Occupancy that we have
20 dated February 2007, is that the one that you
21 provided them?

22 MS. SPIKES: Yes, sir.

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1 VICE CHAIRMAN DETTMAN: Okay. Was
2 there any conversation about the validity of
3 the C of O since it's stamped "expires March
4 3, 2008?"

5 MS. SPIKES: No. Because actually
6 I missed that. I didn't -- the writing on the
7 bottom. And it's my understanding that most
8 daycare centers -- my understanding from the
9 Office of Licensing -- most daycare centers do
10 not have a expire -- expiration date for their
11 occupancy permit.

12 And so I missed it. The monitor
13 missed it. Mrs. Ware missed it. We all
14 missed the -- the writing and the way -- you
15 know -- because it's posted. Our occupancy
16 permit is posted when they come into the --
17 when you come into the center. And we all
18 missed the writing because under expiration,
19 it said, "None."

20 And so -- and once we discovered it
21 and once I made her aware, that's when I was
22 told that this is a rarity for them because

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1 the daycare centers don't have an expiration
2 date for their certificate -- certificate of
3 occupancy.

4 VICE CHAIRMAN DETTMAN: Okay.

5 Thank you.

6 CHAIRMAN LOUD: Thank you, Mr.
7 Dettman.

8 If there are no further questions
9 for the Office of Planning, thank you, Ms.
10 Thomas, for your report.

11 We will turn to the Commissioner
12 Cuthbert for the ANC's report. Good morning
13 again.

14 MS. CUTHBERT: Good morning,
15 Chairman Loud and Members of the Board.

16 I'm Mary Cuthbert, the Chair for
17 Advisory Neighborhood Commission 8C.

18 According to 11 DCMR Section 3115.1
19 guidelines, Advisory Neighborhood Commission
20 8C held two meetings regarding this
21 application. The meetings -- the meetings was
22 held on September 8, 2009 and October 7, 2009.

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1 Notification, distribution by court services
2 and offenders supervise agency, clients gave
3 them out door to door. Fliers are attached.

4 There are five Commissioners.
5 Three Commissioners constitute a quorum. The
6 September 9, 2009 meeting, there were four
7 Commissioners present: Commissioner Cuthbert,
8 Commissioner Shelton, Commissioner Jordan,
9 Commissioner Ellis and Commissioner Lockridge
10 was absent.

11 Mrs. Cannon-Jackson sent the
12 manager Mrs. Spikes to the September --
13 September meeting, and the Commissioners
14 requested Mrs. Cannon to attend the October
15 meeting. And the reason why we request that,
16 we've never met Ms. Cannon. You got to
17 remember, I've been a Commissioner since 1985.

18 So in 2005 when they went up before BZA, I
19 was their Commissioner then for that area.

20 CHAIRMAN LOUD: Commissioner
21 Cuthbert, I just wanted to say -- I won't
22 interrupt you very long.

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1 MS. CUTHBERT: Okay.

2 CHAIRMAN LOUD: I'm following you
3 as you're reading through your report. And if
4 you choose not to read it -- I mean, we've
5 already read it. If you choose just to
6 highlight the things that you want to
7 highlight --

8 MS. CUTHBERT: I prefer
9 highlighting it rather than reading the whole
10 thing for time's sake.

11 CHAIRMAN LOUD: All right. Why
12 don't we do that then?

13 MS. CUTHBERT: Okay. The vote to
14 oppose the request for additional children and
15 staff, the vote was unanimous four to zero.
16 No one from the Newcomb Daycare Center showed
17 up. That was at our October 7th meeting.

18 Commissioner Cuthbert visited the
19 daycare in August of 2009. I'm going to tell
20 you, I was really disappointed because 2005, I
21 went there, there was some -- I had some
22 concerns, and the community had some concerns.

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1 But I felt that if you approve it, give her
2 time to clear up your concerns -- you know --
3 the issues that bothered you the most. And
4 going back there in 2009, it was in worse
5 condition.

6 I'm not a grandmother. I'm a
7 mother. I'm very particular about our
8 children. The children need to be in a safe,
9 healthy bright environment. It was so
10 depressing. And I told Ms. Spikes when she
11 walked me out I was really, really
12 disappointed that that place did not improve.
13 It did not improve.

14 They had wood chips under the jumbo
15 gym. And I called it wood chips because they
16 had the grass stuff -- what do you call that -
17 - fake grass that you put on your steps. That
18 was under the wood chips. And here I'm on the
19 canes so I paid close attention because I had
20 just had two toes amputated when I went there
21 to visit.

22 The upstairs were the older

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1 children. There was no real office space.
2 It's a big open space. And as you walk back
3 where the addition is, there was her desk.
4 And the children were just on the side.

5 And Mrs. Cannon, I did see the
6 bathroom. You might not -- I didn't have to
7 physically go in there. But I did see the
8 bathroom. It just disturbed me that our
9 children have to leave some homes -- some of
10 their homes might be that type of environment
11 -- to come stay in that type of environment
12 for eight hours while their parents trying to
13 get an education, trying to work and they have
14 to go to that type environment because of the
15 assistance that Tana give them.

16 And what all I want her to do -- I
17 don't want her to go out of business. Improve
18 your quality of delivery of service and the
19 environment that our children are in.

20 The little play area in the front,
21 we have a park. It's Sheperd Park across the
22 street. If she was to buy a buggy and put the

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1 little kids in that little buggy, she can go
2 over in that park and the kids can run around
3 and exercise. Every child needs to be outside
4 for at least a half an hour everyday and
5 exercise.

6 They have swings. They have
7 sliding boards. She didn't have to put one in
8 the front. Just buy a buggy. I think that's
9 what you call it. I don't know.

10 But those are some things that
11 really concerned me about the welfare that's
12 being -- that the kids in that environment.
13 It's a disgrace.

14 And I told Ms. Spikes I was really
15 upset that the owner has done nothing in four
16 years. Now I know she's part ownership. I
17 didn't know until today. They have done
18 nothing.

19 So I'm asking you not to approve
20 any additional kids. I have not gone to
21 whoever approve the daycare. I don't know. I
22 haven't even gotten in contact with me. But I

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1 need to find out more requirements.

2 We have a lot of day cares in our
3 area. And most of them are well kept. I
4 mean, it's -- this is just unbelievable. And
5 if I left it up completely to what the
6 community wanted, they said we don't need a
7 daycare there. But I feel we do -- you can --
8 you know -- give people choices. We have one
9 right around the corner on Malcolm X. We have
10 one on Lebaum. There's so many daycare in
11 that environment.

12 But I don't want to put her out of
13 business. She needs to move up to the
14 requirement to have a daycare if she wants to
15 run a business. That's all I want to say to
16 Ms. Spikes and Ms. Cannon who has -- this is
17 my first time ever seeing her.

18 CHAIRMAN LOUD: Thank you,
19 Commissioner. Why don't we see if the Board
20 Members have -- thank you for your testimony.

21 MS. CUTHERBERT: Thank you

22 CHAIRMAN LOUD: Let's see if the

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1 Board Members have any questions for you.

2 There don't appear to be any.

3 Let's turn now and see if counsel
4 has any questions for the witness.

5 MR. SPIKES: I have a question,
6 Chairperson, but it'd be more in the form of
7 comments. And I think I might want to reserve
8 that if -- but if it's permissible, you can
9 tell me after I say it.

10 I advise you, Ms. Cuthbert, to come
11 to the center today and take a look and see
12 whether you have any objection to where the
13 center is today.

14 And my reservation is that I honor
15 Ms. Cuthbert's testimony and her credibility
16 and her concerns for the kids. And I feel
17 that my questioning her would make her feel
18 that I doubt what she's saying. And I don't
19 want her to feel that way.

20 I will say to her that her
21 perception differs from mine. And her
22 perception in the past may defer -- for her --

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1 from her perception today --

2 CHAIRMAN LOUD: Mr. Banks, again it
3 would be the opportunity to ask a question.
4 It doesn't have to be a hostile question.

5 The comments regarding differences
6 in perception, you get an opportunity to close
7 and you can put those on the record at that
8 time.

9 MR. SPIKES: I have a reservation
10 about saying what I said. But thank you.

11 CHAIRMAN LOUD: Thank you.

12 And if there are no questions, what
13 I'd like to do is see if there are any parties
14 or persons in the audience who are in support
15 of this application. Now would be the time to
16 come up.

17 Seeing none, and there are also no
18 persons in opposition.

19 Before we turn back to you, Mr.
20 Banks for closing, I just wanted to see if the
21 Board Members had any questions at all for any
22 of the witnesses or for the Office of

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1 Planning.

2 (No audible response.)

3 CHAIRMAN LOUD: Okay. Then let's
4 turn back to you, Mr. Banks, for closing
5 remarks.

6 MR. SPIKES: It's Spikes. But
7 thank you.

8 CHAIRMAN LOUD: I'm sorry. Mister?

9 MR. SPIKES: Spikes.

10 CHAIRMAN LOUD: Spikes? Wow.
11 First I heard jumbo jet up here and then I
12 heard -- all right. Thank you.

13 MR. SPIKES: I would -- I would
14 humbly request that the Board allow us the
15 opportunity to entertain 70 kids. And
16 Licensing will have the privilege -- I -- I --

17 CHAIRMAN LOUD: I apologize.

18 MR. SPIKES: I would request that
19 the Board allow us the opportunity to have 70
20 kids in the facility and -- because the space
21 is there. And I -- the reason I ask that is
22 that if we are restricted to 39 kids, and

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1 Licensing come out and approve -- they say 60
2 kids -- we -- we would be in a position, if
3 I'm not mistaken, of having to come back
4 before Zoning for Zoning to give us approval
5 for the increase.

6 So therefore, the decision of
7 Zoning today would handcuff Licensing as far
8 as the increase is concerned and as for the
9 increase taking effect immediately. However,
10 what Zoning may do today as far as giving us
11 an opportunity to increase would give
12 Licensing the option to increase without our
13 having to come back to Zoning.

14 As far as the Certificate of
15 Occupancy is concerned, if Zoning -- if
16 Licensing comes out and is of the opinion that
17 the daycare center is not worthy of
18 maintaining the facility as a daycare center,
19 it can revoke the Certificate of Occupancy.
20 And they would do that on periodic -- that
21 would be their consideration on periodic
22 examinations of the center for compliance.

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1 Therefore, if we have an occupancy
2 permit that would allow us to maintain that
3 occupancy permit for ten years, then that
4 would put no restriction on Zoning. But you
5 limit us to three years would put restrictions
6 on us.

7 So there's absolutely no prejudice
8 aspect to Licensing relative to Zoning
9 extending the certificate for ten years and
10 also having us to have the ability to take on
11 70 kids.

12 As you can very well see, you gave
13 us permission for 70 kids in 2005, and we have
14 not met that only because of Licensing. So
15 therefore, Zoning would not be doing anything
16 that would restrict Licensing.

17 As far as the anonymous letter is
18 concerned, I would ask the Board to strike the
19 letter and not to even have that letter have
20 any bearing on your consideration here today.

21 Anyone can write an anonymous letter. And I
22 feel if the person really felt that interested

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1 in protecting the kids they would be here to
2 testify to that effect. And anonymous letters
3 are a way that someone could seek revenge,
4 bring about harm against someone who doesn't
5 deserve that harm.

6 When we first started and before we
7 came up here to testify, I heard the
8 Chairperson -- I call you Your Honor, but
9 Chairperson -- who stated that the record
10 would be closed except for exception by the
11 Chairperson after the hearing. We want to
12 assure you that all of us here, including Ms.
13 Cuthbert especially, have the same interests.

14 We're dedicated to the care of the kids. And
15 we want to make sure that you are satisfied
16 that we are.

17 So if there's anything that you
18 prefer to do or anything that you would like
19 for us to do to assure you of that, including
20 your coming out and taking a look for yourself
21 -- and I know this may be an extraordinary
22 request -- we beg you to do so.

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1 And if we fail to meet your
2 requirements, then you're justified in
3 whatever you may want to do in reference to
4 either ceasing the existence of the daycare,
5 decreasing the number or increasing the
6 number, giving us some of your expertise as to
7 what you think we should do.

8 But we serve a very invaluable
9 service to that community. There's a lot of
10 kids, a lot of mothers who need help. And we
11 have done the best we could to get them that
12 help. We are not perfect. But we have tried
13 to do the best we could. And if the best we
14 have done is not enough, we're going to do
15 better. But we deserve to have a good chance
16 here, and to serve the community.

17 CHAIRMAN LOUD: Thank you, Mr.
18 Spikes. I do believe the Board has a full
19 record before us, a full morning of testimony
20 as well. And I think that we're prepared to
21 deliberate this case today.

22 But let me turn to colleagues and

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1 get a sense of where everyone else is.

2 VICE CHAIRMAN DETTMAN: Mr.
3 Chairman, I thought I was ready to decide
4 this. But hearing the testimony today --
5 well, let me first start off by saying I think
6 that there's enough information in the record
7 for me to reach a decision on this case if the
8 Board decides that they're ready to go
9 forward.

10 However, there were a couple
11 comments made -- one by Ms. Cuthbert -- that
12 she doesn't want to see them go out of
13 business. She's recommending that the Board
14 deny the expansion to 70 children.

15 I think what we have here though is
16 we're really establishing a new CDC -- child
17 development center -- for all intents and
18 purposes. The C of O has expired. So really,
19 we're establishing a child development center
20 at 70 children.

21 And so if the Board was to decide
22 this today and deny it, there's no 39

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1 children, there's no 56 children, there's no
2 children. And I would suppose that the
3 follow-up to that would be that DCRA would
4 revoke a C of O that was issued off of a
5 invalid BZA Order. And OSSE would revoke a
6 license that was based off of an invalid C of
7 O. The system kind of didn't work perfectly.

8 However, again, the ANC doesn't
9 want to see them go out of business. And I
10 believe that they do provide an amenity to the
11 community.

12 I would be open to putting this off
13 for a decision specifically to have OSSE
14 clarify their letter. Do they recommend that
15 given the history of the violations or
16 whatever you want to call them that they
17 recommend that this thing not be approved at
18 all, or if they're saying that they're
19 comfortable with 39 and that they can meet the
20 applicable licensing and code requirements for
21 39 children?

22 The Applicant said that they move

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1 to strike that anonymous letter. I'm not in
2 favor of striking it from the record.
3 However, if we were to put this off, the
4 Applicant should use it as a way to
5 demonstrate to the Board that that is not the
6 case through clear pictures. We don't really
7 have any clear pictures in the record of what
8 the situation is in the front and the back and
9 inside this building. So we would need that.

10 And those pictures should be dated so that we
11 know that they're current.

12 The Office of Planning is not
13 recommending approval of 70, but they said
14 that they're comfortable with 39. So they're
15 not necessarily completely against it. I
16 think where the application falls short mainly
17 is the OSSE -- our 205.2 code and licensing
18 requirements.

19 So I think that it's worthy of
20 having a child development center in this
21 neighborhood. They've existed for some time.

22 The Board in 2005 found it appropriate to

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1 approve 70 children.

2 So I guess that's kind of my
3 position right now.

4 CHAIRMAN LOUD: Thank you, Mr.
5 Dettman.

6 Ms. Moldenhauer?

7 MEMBER MOLDENHAUER: Well, I guess
8 I'm more concerned about the statements that
9 have been made to date, those allegations in
10 the anonymous letter, the references to
11 continuous violations and noncompliance -- not
12 violations for noncompliance in the OSSE
13 letter, the contradictory statements between
14 Ms. Cuthbert and Ms. Spikes that we've heard
15 today.

16 And considering that the C of O is
17 expired, and it really would be going to the
18 entire analysis as to whether or not we'd be
19 granting not even for the 70, but even just to
20 permit the 39 children, whether or not we'd be
21 willing to find that they've satisfied all the
22 terms under 205.

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1 I look at 205.8, and it says, "The
2 Board may approve" -- I'm just kind of
3 summarizing here -- "child development center
4 only when the Board finds that the cumulative
5 effects of these facilities will not have an
6 adverse impact on the neighborhood due to
7 traffic, noise, operations or other similar
8 factors." And I think the key here is
9 operations. I know there's some more factors.

10 I think that what we're hearing is
11 that there are some potential concerns about
12 whether the operations of this facility would
13 have a negative impact on the neighborhood, on
14 the children that are being served there. And
15 I find that potentially if we were to postpone
16 this, maybe the Applicant could present us
17 with more information.

18 I think you make a very good point,
19 Mr. Dettman, about the Applicant's submission.

20 Thus far the pictures are very hard to see.
21 They don't really specifically provide us with
22 an ample understanding of what type of

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1 facility is there. Even in the pictures that
2 are provided in Exhibit A, it looks like the
3 side door is -- I can't see exactly what's
4 going on -- but there does seem to be some
5 sort of confusion. I see different types of
6 equipment in the front yard. I don't know
7 what's underneath those. There's a picture
8 that's a little bit blurry so I don't know
9 what I'm looking at.

10 Maybe it would provide the
11 Applicant more time to respond to these things
12 adequately. But at the same time, I think we
13 have a situation where we could go forward
14 today if the rest of the Board agreed with me.

15 MR. SPIKES: If I may, Mr.
16 Chairman?

17 CHAIRMAN LOUD: No, I'm sorry.
18 We're in deliberation now. And I think it was
19 very full record. So if we feel like there's
20 something additional that we'll need, we'll
21 come out of deliberation and ask for some
22 additional information.

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1 Mr. Turnbull?

2 MEMBER TURNBULL: Thank you, Mr.
3 Chair.

4 I think picking up from Mr.
5 Dettman's comments, I think there is enough in
6 the record here to make a decision. But it
7 would be a very negative decision on my part.

I mean, even DDOT doesn't recommend going beyond five years. So ten years is not even anything to think about. None of the other agencies -- OP is basically concurring with OSSE and basically saying three years, I believe. And at 39, which is the current count.

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1 information. I definitely would like to see
2 some more information from OSSE regarding the
3 rather minimal letter which they sent
4 basically saying don't approve it.

5 I don't know whether that's going
6 to change anything or not. But right now, the
7 record to me is a very negative record. I've
8 heard nothing from the Applicant regarding
9 pictures or drawings or anything else that
10 would show me that they are prepared to go
11 ahead, other than we have the previous BZA
12 determination that they could go to 70.

13 Now whether conditions were
14 different at that time, I don't know. But I
15 think we're in an awkward position of dealing
16 with what we have. And what we have does not
17 convince me that they're in a position to go
18 ahead.

19 But I would be willing to postpone
20 this to supplement the record with more
21 information by the Applicant and getting a
22 better report from OSSE.

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1 CHAIRMAN LOUD: Thank you, Mr.
2 Turnbull.

3 I think I came into the hearing in
4 total agreement with Ms. Moldenhauer. I
5 thought the record was very full, and I wanted
6 to hear evidence at the hearing before
7 reaching a final conclusion. And like Mr.
8 Turnbull, it was not going to be a supportive
9 vote.

10 I think what I heard here today,
11 Ms. Moldenhauer, that changed me around the
12 way I think for Mr. Dettman was the ANC
13 testimony about not closing it down.

14 The one thing I heard that gives me
15 some pause to not move very quickly on this is
16 the testimony from the Office of Planning
17 regarding Mrs. Ware essentially reversing this
18 verbally and saying that she believes that it
19 should be approved for at least the 39 is as I
20 understand the Office of Planning's testimony.

21 Apart from that one bit of
22 testimony, I would have been prepared to vote

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1 against this today because I don't think it
2 meets the requirements of 205.9, 205.10, and
3 more importantly if the young people are at
4 risk, I think all of us have a responsibility
5 to bite the bullet and make the best decision
6 we can under the governing regs.

7 So as I said though what has
8 changed it for me is this potential reversal
9 of opinion by the Office of the State
10 Superintendent of Education. And I find Ms.
11 Thomas to be credible in making the
12 representations that she did.

13 But nonetheless, I think for me,
14 putting something in black and white and
15 putting your signature to it is really final.

16 And until I see something from Ms. Ware, I
17 wouldn't be inclined to totally credit Ms.
18 Thomas' testimony. I'd like to leave the
19 record open for Ms. Ware if she's going to do
20 that to supplement the record, rescind this or
21 just supplement it with something different
22 that says exactly what is at issue here today.

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1 This statement is this facility has
2 continuously been noncompliant with District
3 regulations. Well, for me it doesn't matter
4 if it's 70 or 39. I don't see why it would be
5 acceptable for 39 if they've been continuously
6 noncompliant. And that's what we're talking
7 about -- going forward with the 39.

8 So I would like to see the
9 Applicant who has the burden of proof with
10 respect to 205 -- and I suppose I guess OP
11 works on this issue as well -- to get
12 something in this record regarding what is
13 currently on the record in 22 about the
14 facility not being compliant.

15 And I don't think that we ought to
16 give a whole lot of time for that. I mean,
17 the hearing was set for today. You have the
18 burden of proof. We asked this morning is
19 there any reason why this should be continued.

20 No one stepped forward and said well, let's
21 get an opportunity for another opinion from
22 the Office of the State Superintendent. And

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1 meanwhile, the young people, if these
2 allegations are true, hang in the balance.

3 I don't give a whole lot of credit
4 to an anonymous submission. But if there's
5 enough without that anonymous submission for
6 me to really be concerned about the young
7 people that are hanging in the balance -- and
8 that's not to say that the operators of the
9 facility are not passionate about young people
10 or not committed to it. It's to say that we
11 have to make a decision based exclusively on
12 the record under 3127.2. And this record to
13 me does not currently support an affirmative
14 vote today.

15 So I'd be willing for truncating
16 the time for these photos and this
17 supplemental report to come in from the OSSE,
18 and then making a decision perhaps a couple of
19 weeks out. I would suggest a couple of weeks
20 out at the most but open to a longer period if
21 the Board Members think that's appropriate.

22 VICE CHAIRMAN DETTMAN: Mr.

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1 Chairman, I think that's perfectly
2 appropriate, and agree with everything that
3 you just said.

4 I think that we receive bits and
5 pieces of the information that the Board needs
6 to make a decision. But again, it's just bits
7 and pieces.

8 The OSSE letter is a little bit
9 weak. The Applicant's case in terms of
10 demonstrating compliance with 205 was a little
11 bit weak. So I think two weeks is adequate.

12 And just so I'm clear, we're now
13 talking about going forward with 39 children,
14 and not the requested 70?

15 CHAIRMAN LOUD: Well, it's my
16 understanding that the Applicant was still
17 pushing for 70. The Office of Planning
18 recommended 39. So I think before us unless
19 the Applicant withdraws, we still have the
20 request for 70.

21 VICE CHAIRMAN DETTMAN: Okay.

22 CHAIRMAN LOUD: That's my

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1 understanding of it, unless we were to hear
2 something differently from the Applicant.

3 Now, in OP's report, I do think OP
4 makes a representation that the Applicant had
5 reconciled itself to 39. But there was a
6 different representation made here today by
7 the Applicant.

8 Is that what you heard?

9 VICE CHAIRMAN DETTMAN: I think
10 going forward with 70, that's the request. So
11 I think that's appropriate.

12 I think it would be ideal that if
13 the Office of Planning works with OSSE or the
14 Applicant works with OSSE during that two-week
15 period that as the experts they could tell us
16 if these deficiencies have been remedied and
17 they're comfortable with some sort of
18 approval, what they see as the appropriate
19 number of children given the history, given
20 their measurements and what not. I think that
21 works to our advantage so that we can tie the
22 BZA approval to the same approval number as

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1 OSSE will ultimately issue a license for.

2 MEMBER MOLDENHAUER: And I would
3 also say that considering what's on the record
4 right now, it seems as though unless things
5 change that OSSE is definitely not
6 recommending approval of 70, that with any
7 potential clarification it might be 39.

8 And when we go out of the decision
9 section, Mr. Chairman, I would assume that
10 maybe we would recommend potentially that the
11 Applicant potentially withdraw or revise their
12 application. That way when we come back after
13 potential submissions or supplemental
14 submissions, we don't have to make the
15 decision that I think we all were saying if we
16 had to make the decision today, that we would
17 be denying the application for 70 but rather
18 that maybe there's something else on the table
19 where we could approve it for 39, and based on
20 some additional information and supplemental
21 documentation.

22 CHAIRMAN LOUD: Yes, sir, Mr.

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1 Dettman? And then Mr. Turnbull.

2 VICE CHAIRMAN DETTMAN: One other
3 thing in terms of the information that we get
4 from OSSE, it might be helpful -- and if this
5 isn't appropriate as a Board request, you can
6 let me know, Mr. Chairman -- it might be
7 helpful that if there are certain things about
8 this property that need to be fixed in order
9 to ensure the safety of the children that in
10 their response to us, in addition to letting
11 us know how many children they're comfortable
12 with approving, maybe some things that need to
13 be fixed, we might be able to find a way to
14 work those into the order as a condition.

15 And in terms of the Applicant's
16 request for a permanent approval, in my mind
17 that's something that I'm not comfortable with
18 right now. I think given what we have in the
19 record, I'm willing to entertain some sort of
20 approval at a certain number of children. But
21 would feel most comfortable if the Board
22 termed it so that we can come back and make

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1 sure that the necessary changes have been
2 made.

3 CHAIRMAN LOUD: Thank you, Mr.
4 Dettman. Thank you, Ms. Moldenhauer.

5 I think Mr. Turnbull, you may have
6 the last word before we --

7 MEMBER TURNBULL: Thank you, Mr.
8 Chair.

9 Yes, I just wanted to go back. I
10 think we've all touched on it that OP's
11 recommendation for 39 is really based upon
12 conversations that Ms. Thomas had with Valerie
13 Ware at OSSE. So it's not them making the
14 determination. It's basically the information
15 they got from OSSE.

16 And so I think you're right. And
17 we've all made comments that OSSE needs to put
18 that in writing -- what the appropriate levels
19 should be.

20 And my only comment is then if we
21 go on with the recommendation based at 70,
22 does something need to be put there for in the

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1 alternative for 39 if that is the case? Or
2 can we make that determination? Does that
3 mean the Applicant's special exception is for
4 70? Does that need to be written such that or
5 in the alternative? Can we make that decision
6 as a body then -- what the number is -- 39, if
7 or whatever?

8 CHAIRMAN LOUD: First, let me say
9 that I think once we come out of
10 deliberations, we're going to revisit the
11 issue with the Applicant's counsel because I
12 think Ms. Moldenhauer wanted to do that.

13 But also I wanted to ask the Office
14 of Attorney General because we've had this
15 issue before about whether you can vote it up
16 or down or you can make modifications on the
17 exact number. Is there a formal opinion that
18 you'd like to share with us on this?

19 MS. NAGELHOUT: Well, the
20 application is for 70. And they're sticking
21 with their request for 70. So I think my
22 preference would be vote it up or down.

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1 If you did approve it for 39, it's
2 an effected denial because you're not
3 approving what they asked for. Beyond that, I
4 don't think I'm prepared to say anything right
5 now.

6 CHAIRMAN LOUD: Have we not had
7 cases where a certain number has been proposed
8 and then we made adjustments to that number?

9 MS. NAGELHOUT: I can't think of
10 any offhand where the Applicant was adamant
11 about a higher number and the Board approved a
12 lower number. Offhand, I don't know that
13 that's happened.

14 CHAIRMAN LOUD: Okay. And for this
15 Applicant to suggest to us that they would
16 accept less than 70 or accept 39, is there any
17 special magic to that? I know in previous
18 opportunities right at the hearing I think
19 applicants have revised their number.

20 MS. NAGELHOUT: Right. The
21 Applicant could request to amend the
22 application in effect.

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1 CHAIRMAN LOUD: Okay.

2 MS. NAGELHOUT: But so far, it
3 doesn't sound like they've done that.

4 CHAIRMAN LOUD: Okay. Thank you
5 very much.

6 Ms. Moldenhauer, did you have
7 something to add? Okay.

8 Then this what I -- I'm sorry. Mr.
9 Dettman?

10 VICE CHAIRMAN DETTMAN: Just in
11 terms of the number of children, we had a
12 recent case -- it was Babyland -- where the
13 Board grappled with what was requested and
14 what we were most comfortable with given
15 previous approvals and what not.

16 And I think Ms. Nagelhout is
17 correct. I think the request is for 70.
18 However, if we were to get something from OSSE
19 that said they are able to meet the applicable
20 code and licensing requirements for 39
21 children, that could serve as a basis for the
22 Board to say well, the request is 70, but

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1 we're told that you can only demonstrate that
2 you can meet the regulations for 39.

3 I think that if the Board
4 entertains a lower number, we need to have
5 some sort of basis that that number sits on.

6 CHAIRMAN LOUD: And your point is
7 that the basis can be the OSSE report? It
8 doesn't have to only be the specified number
9 of the Applicant?

10 VICE CHAIRMAN DETTMAN: Yes. Yes,
11 I guess my point that if we diverge from
12 what's already being requested by the
13 Applicant that it needs to be backed up by
14 some kind of rational that's tied to 205.

15 CHAIRMAN LOUD: I kind of recall
16 there being some conversations sort of ending
17 up along the lines of what you just suggested
18 with OAG as well. It wasn't Ms. Nagelhout,
19 but it was another attorney in the office.

20 So all of that I think is sort of
21 opportunity to reflect on whether or not you
22 choose to go forward with the number 70 or a

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1 number that's supported by the Office of the
2 State Superintendent. You have the
3 flexibility to adjust your number here today
4 if you'd like to do that or subsequent to
5 today as well with the supplemental filing.

6 So with that in mind, this is what
7 I recommend that we do. I'd like to see if we
8 can schedule this for a decision two weeks
9 out, which would basically be the week
10 following Thanksgiving, I think. And if we
11 could do it in the afternoon, I think that
12 would be good too because that would give us a
13 little time to review stuff just in case
14 anything came in at the absolute last minute.

15 Then -- okay, Ms. Cuthbert, we'll
16 get to you in one second.

17 Then as indicated by my colleagues
18 here, we would like to see some clear photos
19 of the interior and the exterior of the
20 facility that gives us a general picture of
21 the conditions both on the inside and the
22 outside.

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1 We would also like to see the
2 Office of the State Superintendent of
3 Education submit a supplemental report, and in
4 that supplemental report to identify the
5 levels -- the number, the population -- that
6 they are recommending -- if they're
7 recommending approval -- that they're
8 recommending approval for, along with -- and I
9 hope I'm wording this correctly, Mr. Dettman -
10 - along with the report highlighting any
11 conditions that the Office feels impact the
12 ability of the Applicant to get licensing
13 because those are conditions that we would
14 look to under 205.9 and .10 in terms of moving
15 forward. So if they literally, specifically
16 spell those out in the supplemental report,
17 that would be request of us.

18 And I believe that's all that we
19 have sought to have submitted to the record.

20 And then in terms of the timing on
21 it because we're dealing with Thanksgiving to
22 be candid, so I'm wondering if we could get

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1 those in by the day before the hearing. If we
2 got that in by -- I think the hearing is
3 December 1st. So it was November 30. So if
4 we got that in by November 30, we'd do
5 everything in our power to try to make a
6 decision -- render a decision the following
7 day on December 1st.

8 And the OSSE report is something
9 that would come to the Board of Zoning and
10 would be available in the file, right? The
11 OSSE report's not served on the parties,
12 right?

13 MS. THOMAS: No, sir. I can issue
14 a copy to them.

15 CHAIRMAN LOUD: Okay. It'd be
16 good.

17 I think they're probably hopefully
18 going to be working with you to really move
19 this forward. But I was concerned about
20 Commissioner Cuthbert getting a copy as a
21 party.

22 MS. THOMAS: Well, I can send you a

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1 copy.

2 CHAIRMAN LOUD: Yes. That would be
3 good.

4 MS. THOMAS: But I'd just like to
5 stress that the Applicants should send in
6 their information to the Office of Zoning and
7 not to the Office of Planning.

8 CHAIRMAN LOUD: Okay.

9 MS. THOMAS: They should submit it
10 to this Office to meet that deadline.

11 CHAIRMAN LOUD: That's correct.

12 MS. THOMAS: Not to us.

13 CHAIRMAN LOUD: We had that issue
14 in a separate case a couple of weeks ago.

15 All right. Any final thoughts?

16 MS. BAILEY: Mr. Chairman, if I
17 could just clarify, please, I would appreciate
18 it.

19 CHAIRMAN LOUD: Okay.

20 MS. BAILEY: The Applicant's
21 submission is due November 30th?

22 CHAIRMAN LOUD: Thirtieth, yes.

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1 MS. BAILEY: Okay. And OSSE and
2 OP, do they have a deadline?

3 CHAIRMAN LOUD: OP does not have a
4 deadline. They're not submitting anything
5 supplemental.

6 Yes. OSSE has a deadline of
7 November 30 as well.

8 MS. BAILEY: Okay. And the ANC if
9 they wanted to respond, that would be November
10 30th -- if they choose to?

11 CHAIRMAN LOUD: We're essentially
12 talking about photos. That's a good question.

13 MS. CUTHBERT: That's a good
14 question. And that's why I was raising my
15 hand.

16 Can I go and take photos? It might
17 be at a different time to -- and make them
18 when you get ready to make your decision?

19 CHAIRMAN LOUD: Well, I don't want
20 to leave the record open for that. I don't
21 know how Board Members feel. I think we've
22 gotten a tremendous amount of information on

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1 the record about the alleged conditions that
2 are not favorable to the Applicant.

3 MS. CUTHERBERT: I want something
4 favorable.

5 CHAIRMAN LOUD: Well, I think
6 that's what the Applicant --

7 MS. CUTHERBERT: In my community, I
8 want things to be favorable. That's the way I
9 try to work with the -- you know --
10 constituents -- any business people.

11 CHAIRMAN LOUD: Well, would you be
12 able to work with the Applicant? Because I
13 think the Applicant would only be intending to
14 submit something favorable as well --

15 MS. CUTHERBERT: Okay.

16 CHAIRMAN LOUD: -- in terms of
17 photos.

18 MS. CUTHERBERT: I have no problem in
19 working with them. If I see something wrong,
20 tell them that it has to be corrected.

21 I've worked with them for -- you
22 know -- the last four years, and I still

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1 haven't seen any improvement.

2 CHAIRMAN LOUD: Well, but in terms
3 of just leaving the record open --

4 MS. CUTHBERT: Yes.

5 CHAIRMAN LOUD: -- for photos, are
6 you comfortable with November 30 remaining the
7 deadline?

8 MS. CUTHBERT: No problem.

9 CHAIRMAN LOUD: And the photos
10 being submitted by the Applicant, and you're
11 working directly with the Applicant if you
12 want to submit jointly photos?

13 MS. CUTHBERT: I agree.

14 CHAIRMAN LOUD: Okay.

15 MS. CUTHBERT: That seems
16 reasonable for the Board Members.

17 CHAIRMAN LOUD: Okay. Thank you,
18 Commissioner Cuthbert.

19 I'm sorry. You were finished going
20 through your list?

21 MS. BAILEY: Yes, Mr. Chairman. It
22 seems as if everything is due November 30th

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1 and the Board is going to decide it on
2 December the 1st.

3 CHAIRMAN LOUD: That's correct.

4 Is there anything further?

5 MS. SPIKES: Yes, sir.

6 CHAIRMAN LOUD: Yes, ma'am?

7 MS. SPIKES: My concern is we're
8 required to follow the regulations of OSSE.
9 And Ms. Cuthbert made the statement if she
10 sees anything that she thinks. So I guess I
11 need clarification on this because we are
12 required to follow regulations from OSSE. So

13 --

14 CHAIRMAN LOUD: Well, we're only
15 leaving our record open for the purposes of
16 our decision for the photos, for the
17 supplemental report from the OSSE --

18 MS. SPIKES: Okay.

19 CHAIRMAN LOUD: -- and the things
20 that I just listed.

21 MS. SPIKES: Yes, sir.

22 CHAIRMAN LOUD: At the end of the

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1 day, Commissioner Cuthbert may still agree
2 with it or may disagree with it. But we'll
3 have enough to make our decisions and we'll
4 make our decision based on our regs.

5 MS. SPIKES: Okay.

6 CHAIRMAN LOUD: And any issues that
7 she'd have whether they'd be land use or other
8 issues, they're in the record. We'll make a
9 decision based on what's in the record.

10 MS. SPIKES: Okay.

11 CHAIRMAN LOUD: I don't know if
12 that answers your question.

13 MS. SPIKES: Well, it does in a
14 way. But as -- as it reference the pictures,
15 I mean I don't object to her coming to take
16 pictures. But my concern is her concerns may
17 not be what OSSE concerns are. That -- that's
18 -- I guess that's where I'm at a disadvantage.

19 CHAIRMAN LOUD: Don't consider
20 yourself at a disadvantage. And I don't think
21 we need to belabor the point. I think the
22 Board will be able to sift through and sort

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1 out --

2 MS. SPIKES: Okay.

3 CHAIRMAN LOUD: -- all of the
4 evidence, including the pictures that are
5 favorable or unfavorable. I think there's a
6 balance of information in the record that
7 we're looking for.

8 MS. SPIKES: All right.

9 CHAIRMAN LOUD: That's why we're
10 holding the record open.

11 MS. SPIKES: Okay. Thank you.

12 CHAIRMAN LOUD: Anything further?

13 (No audible response.)

14 CHAIRMAN LOUD: Okay. Thank all of
15 you. Appreciate your time.

16 I'd like to suggest if there's
17 nothing further in this case that we take
18 maybe a five-minute break and then see if we
19 can make it through the Bloom case.

20 Are you here for the Bloom case,
21 sir.

22 MR. SPIKES: No, no, sir.

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1 CHAIRMAN LOUD: No. I was talking
2 to the gentleman behind you.

3 So we're going to come back in five
4 minutes. And we'll either at that point
5 decide to take a quick break and perhaps you
6 can get some lunch, or we'll see if we can
7 work through the lunch hour. And we'll let
8 you know.

9 Thank you.

10 (Whereupon, at 12:12 p.m., off the
11 record until 12:22 p.m.)

12 CHAIRMAN LOUD: We are now back in
13 session. This is the November 17th hearing
14 calendar of the BZA. I believe we had taken a
15 five-minute break and we were going to call
16 our last case of the morning calendar.

17 Ms. Bailey, can you call the final
18 case?

19 MS. BAILEY: Certainly, Mr.
20 Chairman.

21 Application 17992, Application of
22 Paul Howard Bloom of Casa Degli Angeli, LLC.

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1 And it's pursuant to 11 DCMR Section 3104.1
2 for a special exception to establish a bed and
3 breakfast facility. The application initially
4 asked for six rooms, but I think that number
5 was amended to seven.

6 The Applicant is requesting relief
7 under Subsection 203.8. The property is zoned
8 R-5-B, and it's located at 1026 3rd Street,
9 S.E., Square 799, Lot 805.

10 Would you please have a seat at the
11 table, sir?

12 CHAIRMAN LOUD: Good morning. And
13 thank you for your patience this morning.

14 If you can state your name for the
15 record?

16 MR. BROOM: My name is Paul Howard
17 Broom. Is this on?

18 CHAIRMAN LOUD: Yes.

19 MR. BROOM: Which is actually B-R-
20 O-O-M. There's a slight misspelling there.

21 CHAIRMAN LOUD: Thank you for the
22 correction.

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1 MR. BROOM: I'm also known as
2 Captain Apollo for many, many years now.

3 CHAIRMAN LOUD: Okay. Good
4 morning, Mr. Broom.

5 You are before us for a use
6 variance request as regards your relief for a
7 seven-room bed and breakfast. And the
8 standard for use variance I think you're
9 familiar with, but I'll just articulate it
10 very briefly and then turn it back to you for
11 the case you want to make as to how you meet
12 that standard.

13 The first is that there has to be a
14 unique or exceptional situation regarding the
15 property or circumstances surrounding the
16 property or in some cases zoning history.

17 Secondly that there's an undue
18 hardship, which is a standard slightly higher
19 than a practical difficulty.

20 Thirdly that there's no substantial
21 detriment to the public good.

22 And finally that there is no

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1 substantial impairment to the zone plan.

2 And we will now turn to you for --
3 once you're sworn in -- we'll turn to you for
4 your case.

5 Ms. Bailey, I don't believe that
6 Mr. Broom has been sworn in.

7 Were you sworn in, sir?

8 MR. BROOM: I didn't think it
9 applied to me. I wasn't sure.

10 CHAIRMAN LOUD: Okay. No, it does.

11 (Whereupon, the witness was sworn.)

12 MR. BROOM: Thank you, Mr. Chairman
13 and Members of the Board.

14 You questioned initially a unique
15 application here. One thing I've become aware
16 of with this property and its exact location
17 is that it's in a neighborhood that has
18 undergone tremendous transformation over the
19 last five or more years. And a lot of changes
20 are in process right now and years to come.

21 The facility and the way that I
22 have intended to use it has come up with

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1 support from all members of the community and
2 the business associated with that area. I was
3 encouraged with this support to further my
4 endeavors to be able to run it as a bed and
5 breakfast and submitted my application.

6 Since I have been made more aware
7 of these issues that have been displayed
8 mostly thanks to Mr. Jackson from the Office
9 of Planning, I realized that there were some
10 very important issues that weren't being taken
11 care of with my application.

12 My intention was to use not only
13 the two floors that are presently and the C of
14 O is a four-unit residential, but also to
15 occupy the two spaces that are down on the
16 ground floor or basement. I'm not sure which
17 way it is termed. So I wanted to be able to
18 provide five rooms on the upper level -- five
19 sleeping rooms that is -- and an additional
20 two sleeping rooms in the lower basement area.

21 How I have filled in the
22 application to be able to get that permission

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1 is probably incorrect. I know that as a bed
2 and breakfast, the primary use of a building
3 should be a residence, and bed and breakfast
4 is a secondary type of home occupation. I
5 have not met that.

6 One thing that I have discovered
7 through this preparation is that I am more
8 likely to be suited to the description of an
9 inn. And that is exactly what I was intending
10 was virtually an inn where I would be
11 resident.

12 I am the owner of the corporation
13 Casa Degli Angeli, LLC. And as such, I wanted
14 to manage the operation as a resident in the
15 building.

16 I do have a notarized document from
17 the owner allowing me to do these applications
18 with the necessary adjustments that need to be
19 made. However, the owner is not resident in
20 the building.

21 I hope this is enough to start
22 with. And please ask any further information

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1 if you need it.

2 CHAIRMAN LOUD: Thank you, Mr.
3 Broom. Let me see if the Board Members have
4 any questions for you.

5 (No audible response.)

6 CHAIRMAN LOUD: There don't appear
7 to be any. We'll turn to the Office of
8 Planning.

9 I'm sorry. Mr. Turnbull?

10 Okay. We'll turn to the Office of
11 Planning.

12 I have one question on the number
13 of customers that you're seeking. I think the
14 record reflected somewhere that you seek a cap
15 of 18. Is that still the case?

16 MR. BROOM: We have five rooms that
17 could be occupied by couples which would
18 increase that to ten.

19 CHAIRMAN LOUD: Okay.

20 MR. BROOM: And then in the lower
21 section, I was turning it in -- I'm making it
22 very nautical like a battleship or a similar

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1 vessel where the crew would be in the basement
2 in bunk beds which a lot of hopeful customers
3 are very familiar with having been in the Navy
4 or the Marines or our local neighborhood have
5 these types of experience. So that would be
6 eight more people.

7 So at a maximum it could be 18.
8 However, I doubt if it's very likely to -- I
9 hope it is full definitely. But under most
10 conditions, it's probably going to be singles
11 and -- you know -- maybe 13 at the most.

12 CHAIRMAN LOUD: Thank you, Mr.
13 Broom.

14 Good morning, Mr. Jackson.

15 MR. JACKSON: Good morning, Mr.
16 Chairman, Members of the Board.

17 For the record, my name's Arthur
18 Jackson. I'm a development use specialist in
19 the District of Columbia Office of Planning.
20 I did the report on this application which you
21 have before you. And I'll briefly summarize
22 the information in the report.

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1 I met with the Applicant on site
2 and we talked about the proposal. And I
3 outlined that there was some issues that this
4 raised, starting off with the fact that it's
5 an apartment building as opposed to a single-
6 family dwelling.

7 The Applicant had made this
8 omission and I responded with some information
9 about the particular standards that are
10 applicable for this proposed use. And in his
11 response, he did seem to think that what he'd
12 like to create would be an inn on the
13 property.

14 In any case, we pursued the
15 analysis of this proposal as a special
16 exception requesting relief from at least four
17 provisions. Based on the presentation made
18 here today, it's really six provisions of the
19 regulations having to do with the dwelling
20 unit being a multi-family. That's not
21 consistent with 203.4.

22 We had talked about whether or not

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1 the kitchen area in the captain's quarters
2 would be inconsistent with 203.8 which doesn't
3 allow any kitchen facilities in the bedrooms
4 -- I guess that depends on how the Board sees
5 that arrangement -- increasing the allowable
6 number of bedrooms under 203.8 and C1 and 2
7 from two to seven which is more than can be
8 allowed by a special exception.

9 We do see the on site parking
10 requirement to zero since there's no
11 additional parking that can be placed on site,
12 and increasing the max number of customers in
13 any one hour period under 203.4 from eight to
14 18, but today it sounds like it might be more
15 like 15 on site.

16 And then the last one of course is
17 that the use would not be occupied by a
18 resident owner. It would be a resident tenant
19 that would be managing the use.

20 We found that at least with regard
21 to a use variance to allow for this proposed
22 special exception that we don't think the

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1 proposal meets the standard for approval as a
2 use variance because there's no unique
3 characteristic to the site. The property is
4 not unique. It's rectangular with an
5 apartment building. There's doesn't appear to
6 be any undue hardship involved with the
7 proposal. It's currently a functioning
8 apartment building with four units that have
9 already been renovated for the nautical theme,
10 all which are rented and they appear to be
11 functioning normally.

12 Although an accessory bed and
13 breakfast use would not be out of character
14 with the community, this is not an accessory
15 use by any stretch of the imagination. This
16 would be a principal use. And as the
17 Applicant said, it's more like a small inn
18 which is not allowable use in this district.
19 And we think this proposal would be contrary
20 to the intent of the zoning regulations, which
21 really anticipates an accessory use in a
22 residential district in a single-family

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1 dwelling.

2 Therefore, we think granting the
3 variance would significantly alter the
4 referenced home occupation conditions and
5 standard and would impair the intent, purpose
6 and integrity of the zone plan.

7 Now with the Applicant's
8 reiteration that they want to do an inn on the
9 site, I think that proposal too would fall
10 short of meeting the standards for a use
11 variance on the subject property for
12 essentially the same conditions.

13 DDOT comments were solicited on
14 this proposal. But none were received.

15 The community did discuss this at
16 an advertised meeting. And they voted
17 unanimously to approve it. And the Applicant
18 did have letters of support in the file.

19 So that's a brief summary of the
20 Office of Planning's overview of the proposal.
21 And we're available to answer questions.

22 MEMBER TURNBULL: Mr. Jackson, how

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1 many standards did you say we have to -- under
2 the old condition, I think you said six?

3 MR. JACKSON: Well, yes. I was
4 looking at the -- if they essentially wanted
5 to continue it as an apartment building with
6 the function as a bed and breakfast use, that
7 would be the fifth one. And then if the
8 kitchen in the master bedroom suite was
9 considered to be part of the bedroom per se,
10 then that would be the sixth one. So they'll
11 be two in addition to the four that are
12 outlined in the report.

13 MEMBER TURNBULL: And would this be
14 similar then to an inn?

15 MR. JACKSON: This sounds like an
16 inn.

17 MEMBER TURNBULL: The same thing.

18 MR. JACKSON: Yes.

19 MEMBER TURNBULL: And normally we
20 only would approve something that would have
21 two standards that we'd have to worry about?

22 MR. JACKSON: Well, the accessory

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1 bed and breakfast use is allowed as a special
2 exception --

3 MEMBER TURNBULL: Right.

4 MR. JACKSON: -- for a single-
5 family dwelling. And you're allowed to waive
6 or to modify two conditions under the special
7 exception standard. If you go beyond the two
8 conditions, then it becomes a use variance.

9 MEMBER TURNBULL: Use variance.

10 MR. JACKSON: Yes.

11 MEMBER TURNBULL: Okay.

12 MR. JACKSON: And that's where the
13 higher standard comes in. It's no longer a
14 special exception. It becomes a variance.

15 MEMBER TURNBULL: Yes. Okay.

16 Thank you.

17 CHAIRMAN LOUD: Thank you, Mr.
18 Jackson.

19 Are there any additional questions
20 for the Office of Planning from Board Members
21 and from yourself, Mr. Broom. Do you have any
22 questions for Mr. Jackson regarding his

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1 report?

2 MR. BROOM: No, sir.

3 CHAIRMAN LOUD: Okay. Then I'll
4 just mention for the record that there is an
5 ANC report in the case. It's our Exhibit No.
6 23, ANC 6-B dated October 19, '09. And in
7 their report which I believe has the
8 appropriate notice and quorum, the ANC
9 recommends approval of the application. And
10 so we will give their report the appropriate
11 great weight.

12 And with that, I think that we are
13 going to turn it back to you for any closing
14 statement that you might wish to make. We
15 pause here and let witnesses testify who are
16 in support or against it. But there are none
17 in the audience. So we turn back to you now.

18 MR. BROOM: Thank you. And thank
19 you for your time.

20 I believe that the application was
21 incorrectly -- well, I used the incorrect
22 application. And this is what's developed

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1 into a problem.

2 However, if it's possible to review
3 it or to give me some indication as to how I
4 might proceed to obtain what I'm trying to do,
5 I'd appreciate it. Thank you.

6 CHAIRMAN LOUD: Thank you, Mr.
7 Broom. And again, thank you for your patience
8 this morning for your case to be called.

9 I think we're ready to deliberate
10 the case today. I think we have a full
11 record. And I'd be happy to start us off.

12 Let me first just respond to your
13 question about giving you some guidance in
14 terms of the best way to proceed.

15 Our rules specifically don't allow
16 us to give advice to applicants regarding how
17 to frame relief and so on. But I do think --
18 I'm not certain -- I do think you can work
19 with the Office of Planning on -- not
20 necessarily in this particular -- well, you've
21 worked with them up to this point in this
22 matter. But I think as a general rule, they

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1 have the expertise available and are
2 authorized to do that.

3 With respect to the specific
4 request before us, it is a use variance
5 regarding a requested effort to convert a
6 four-unit apartment building into a seven-room
7 bed and breakfast. You testified that I
8 believe there would be five rooms on the upper
9 levels and two in the basement.

10 It's in the R-5-B. And in the R-5-
11 B, the bed and breakfast would be allowed as a
12 special exception accessory use if the
13 requirements of Section 203 are met. In your
14 case, you've testified as I indicated that
15 you'd be seeking seven rooms. Under the
16 Section 203, only two rooms would be allowed
17 for a bed and breakfast in an existing home.

18 There's also information on the
19 record that there would be no parking spaces
20 provided. I think under Section 203.3, on
21 site parking spaces would be necessary.

22 You've testified that the rooms

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1 would be for up to 18 customers -- ten on the
2 upper floors and I think eight in the two
3 lower-level rooms. The regulations cap the
4 number of customers at eight for an allowable
5 accessory use bed and breakfast on site at any
6 one time.

7 And you've testified that you're a
8 tenant who has the authority of the owner. I
9 think you mentioned that there's written
10 authority. But the regulations require that
11 the operation of the bed and breakfast be by
12 the property owner.

13 In light of the fact that more than
14 two of these requirements are not being met,
15 in order for us to grant relief we would have
16 to find that you've made out a case for a use
17 variance. And with respect to the use
18 variance case, the uniqueness that you
19 testified to that there's been a substantial
20 change in the neighborhood over the last five
21 years. The Office of Planning on the other
22 hand testified that there's nothing unique

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1 about the character of the site or the shape
2 of the site. It's a rectangular shape.

3 With respect to undue hardship, the
4 Office of Planning testified that it's a
5 functioning four-unit apartment currently, and
6 that it did not see an undue hardship.

7 With respect to substantial
8 detriment to the public good, you testified
9 that you've been encouraged by the ANC I
10 believe and others to run the property as a
11 bed and breakfast and submitted your
12 application partly on those grounds. The
13 Office of Planning testified that the
14 operation of the bed and breakfast as you
15 propose would be a principal use and not an
16 accessory use, and therefore it would be
17 harmful to the zone plan which intends this as
18 an accessory use only in a residential
19 district.

20 In light of the evidence on the
21 record and the testimony from the Office of
22 Planning and its report, colleagues, I'm

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1 inclined to vote against granting the relief
2 proposed before us. I think that the
3 Applicant is a very compelling witness. But I
4 think that we have a set of rules that we are
5 obligated to follow when reviewing these types
6 of requests. And in this particular case, the
7 evidence doesn't support granting the relief.

8 And with that, I'll turn it over to
9 the other Board Members.

10 VICE CHAIRMAN DETTMAN: Mr.
11 Chairman, I'm in agreement with you. It's
12 unfortunate given the proximity of this site
13 to the Navy Yard and the nautical theme and as
14 I said, the relationship to its surroundings,
15 I think it's an appropriate use. However, as
16 you stated, the very strict test that we have
17 to apply to every variance request gets me to
18 the same location that you ended up in your
19 analysis.

20 CHAIRMAN LOUD: Thank you, Mr.
21 Dettman.

22 Are there others?

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1 MEMBER TURNBULL: Mr. Chairman, I
2 would concur with your excellent summary of
3 the regulations and where we are. And like
4 Mr. Dettman also, I would be voting against
5 this.

6 MEMBER MOLDENHAUER: I agree that
7 unfortunately in this situation, the Applicant
8 has not met the burden under the test that we
9 have to apply here. As you said earlier, we
10 cannot provide guidance to the Applicant. But
11 I think that there would be potential to
12 satisfy different elements if they were able
13 to come back with a more full application at
14 another time.

15 CHAIRMAN LOUD: Thank you, Ms.
16 Moldenhauer.

17 In light of that then, what I'd
18 like to do is move for denial of Application
19 No. 17992 of Mr. Broom for Special Exception
20 and Use Variance Relief.

21 Is there a second?

22 VICE CHAIRMAN DETTMAN: Second.

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1 CHAIRMAN LOUD: The motion's been
2 made and seconded.

3 Is there further deliberation?

4 (No audible response.)

5 CHAIRMAN LOUD: Hearing none, all
6 those in favor, say aye.

7 (A CHORUS OF AYES.)

8 CHAIRMAN LOUD: All those who
9 oppose?

10 (No audible response.)

11 CHAIRMAN LOUD: Are there any
12 abstentions?

13 (No audible response.)

14 CHAIRMAN LOUD: And Ms. Bailey, can
15 you read back the vote?

16 MS. BAILEY: Mr. Chairman, just a
17 quick question.

18 Mr. Dettman, you seconded the
19 motion? Thank you.

20 Mr. Chairman, the vote is recorded
21 as four, zero, one to deny the application.
22 The motion was made by Mr. Loud, seconded by

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1 Mr. Dettman. Ms. Moldenhauer and Mr. Turnbull
2 support the motion. And the third Mayoral
3 Appointee is not sitting at this time.

4 CHAIRMAN LOUD: Thank you, Ms.
5 Bailey.

6 Mr. Broom, I just want to say to
7 you that it sounds like you couldn't get four
8 people who were more supportive of this going
9 forward but for the fact that we have to apply
10 the regulations as we find them. So good luck
11 as you work through the issues of trying to
12 honor your vision for a nautical facility near
13 the Barracks Row. I think hopefully there's
14 some way that zoning regulations will support
15 some re-vamped vision of your effort.

16 MR. BROOM: Thank you very much.

17 CHAIRMAN LOUD: Thank you.

18 Ms. Bailey, is there any further
19 for the morning calendar?

20 MS. BAILEY: Not for the morning,
21 Mr. Chairman.

22 CHAIRMAN LOUD: Okay. So the

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1 morning calendar is adjourned.

2 (Whereupon, at 12:46 p.m., the
3 hearing was adjourned, to reconvene at 2:13
4 p.m.)

5

6

7

NEAL R. GROSS

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