

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

NOVEMBER 3, 2009

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHANE L. DETTMAN	Acting Chairman
MEREDITH MOLDENHAUER	Board Member

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL TURNBULL	Commissioner
KONRAD SCHLATER	Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

LAINÉ CIDLOWSKI
ARTHUR JACKSON
DAN EMERINE
MAXINE BROWN-ROBERTS

This transcript constitutes the
minutes from the Public Hearing held on
November 3, 2009.

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

2 9:57 a.m.

3 ACTING CHAIR DETTMAN: This hearing
4 will, please, come to order. Good morning,
5 ladies and gentlemen. This is the November 3,
6 2009 Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Shane Dettman, Vice
9 Chairperson. Joining me today is Mr. Michael
10 Turnbull representing the D.C. Zoning
11 Commission, Ms. Meredith Moldenhauer, Mayoral
12 Appointee, Board Member, Mr. Clifford Moy with
13 the Office of Zoning and to my far left, Ms.
14 Beverley Bailey, also with the Office of
15 Zoning.

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

19 Please, be advised that the
20 proceeding is being recorded by a Court
21 Reporter and is also webcast live.
22 Accordingly, we must ask you to refrain from

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1 any disruptive noises or actions in the
2 hearing room.

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

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

18 The order of procedure for special
19 exceptions and variances is as such: (1)
20 Statement and witnesses of the applicant; (2)
21 Government reports, including Office of
22 Planning, Department of Public Works and

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1 others; (3) Reports of the Advisory
2 Neighborhood Commission; (4) Parties or
3 persons in support; (5) Parties or persons in
4 opposition; and finally, (6) Closing remarks
5 of the applicant.

6 Pursuant to sections 3117.4 and
7 3117.5, the following time constraints will be
8 maintained: The applicant, appellant, persons
9 and parties, except an ANC, in support,
10 including witnesses 60 minutes collectively.
11 Appellees, persons and parties, except an ANC,
12 in opposition, including witnesses 60 minutes
13 collectively. And individuals 3 minutes.

14 These time constraints do not
15 include cross examination and/or questions
16 from the Board. Cross examination of
17 witnesses is permitted by applicants and
18 parties.

19 The ANC within which the property
20 is located is automatically a party in a
21 special exception or variance case. Nothing
22 prohibits the Board from placing reasonable

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

4 The record will be closed at the
5 conclusion of each case, except for any
6 material specifically requested by the Board.

7 The Board and the staff will specifically, at
8 the end of the hearing -- will specify at the
9 end of the hearing exactly what is expected
10 and the date when the persons must submit the
11 evidence to the Office of Zoning.

12 After the record is closed, no
13 other information will be accepted by the
14 Board.

15 The Sunshine Act requires the
16 Public Hearing on each case to be held in the
17 open before the public. The Board may,
18 consistent with its Rules of Procedure and the
19 Sunshine Act, enter Executive Session during
20 or after the Public Hearing on a case for
21 purposes of reviewing the record or
22 deliberating on a case.

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1 The decision of the Board in these
2 contested cases must be based exclusively on
3 the public record. To avoid any appearance to
4 the contrary, the Board requests that persons
5 present not engage the Members of the Board in
6 conversation.

7 Please, turn off all beepers and
8 cell phones, at this time, so not to disrupt
9 these proceedings.

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

17 If you are not prepared to go
18 forward with a case today or if you believe
19 the Board should not proceed, now is the time
20 to raise such a matter.

21 Does the staff have any preliminary
22 matters?

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1 MS. BAILEY: Mr. Vice Chairman and
2 Members of the Board, good morning. Staff
3 does not, Mr. Chairman, Mr. Vice Chairman.

4 ACTING CHAIR DETTMAN: Thank you,
5 Ms. Bailey. With no preliminary matters, I
6 think we can proceed with the morning hearing
7 agenda. And, Mr. Moy, did you want to call
8 the first case?

9 MR. MOY: I'll leave that to Ms.
10 Bailey, Mr. Chairman.

11 ACTING CHAIR DETTMAN: Oh, I'm
12 sorry.

13 MS. BAILEY: Chairman Dettman, is
14 it an appropriate time to swear the witnesses
15 in before I call the case?

16 ACTING CHAIR DETTMAN: Yes, thank
17 you.

18 MS. BAILEY: Thank you, sir. All
19 those wishing to testify, would you, please,
20 stand to take the oath? And would you,
21 please, raise your right hand?

22 (Whereupon, the witnesses were

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1 sworn.)

2 MS. BAILEY: Thank you. The first
3 case of the morning is Application 17979.
4 It's the Application of St. John's Episcopal
5 Church and it is pursuant to 11 DCMR section
6 3104.1, for a special exception for a child
7 development center under section 205, to
8 increase the number of staff from 9 to 13. The
9 number of children would not be increased.
10 There is 45 children in attendance at the
11 center. The property is located at premises
12 3240 O Street, N.W. It is also known as
13 Square 1231, Lot 144, and it is Zoned R-3.

14 Is there anyone from St. John's
15 Episcopal Church here this morning?

16 Mr. Vice Chairman, they have not
17 arrived as yet.

18 ACTING CHAIR DETTMAN: Thank you,
19 Ms. Bailey. Then I think we can call the
20 second case in the morning and proceed
21 accordingly.

22 MS. BAILEY: Okay. Are all the

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1 parties here for that case? Thank you.
2 Application 17985 of the National Indian
3 Gaming Association and it's pursuant to 11
4 DCMR section 3104.1 and section 3103.2 and
5 1202, for a variance from the lot occupancy
6 requirements under subsection 403.2, a
7 variance from the rear yard requirements under
8 section 404, a variance from the nonconforming
9 structure requirements under subsection
10 2001.3, a variance from the driveway width
11 requirements under subsection 2117.8(c)(2),
12 and a special exception to allow the expansion
13 of a building devoted to a non-profit
14 organization use under section 217. The
15 property is located at 224 2nd Street, S.E. It
16 is also known as Square 762, Lot 7. It is in
17 the CAP/R-4 District.

18 ACTING CHAIR DETTMAN: Thank you,
19 Ms. Bailey. Good morning, Mr. Collins.

20 MR. COLLINS: Good morning.

21 ACTING CHAIR DETTMAN: Just a
22 couple of things before we get to

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1 introductions. Is the ANC here? A
2 representative from the ANC-6B? No? Okay.
3 Well, we have our report, that is our Exhibit
4 No. 25.

5 And secondly, is the applicant in
6 receipt of the DDOT report, which is our
7 Exhibit No. 31?

8 MR. COLLINS: Yes, we are.

9 ACTING CHAIR DETTMAN: Okay. The
10 Board just got that just before coming out
11 here this morning, so if you wouldn't mind, we
12 would like to take a couple minutes just to
13 quickly review the report.

14 MR. COLLINS: Right.

15 ACTING CHAIR DETTMAN: And then we
16 can get to introductions. Thank you. Okay.
17 Mr. Moy, before we proceed, we received this,
18 the Office of Zoning received this on October
19 29th. Does it require an action by the Board
20 in order to waive our rules to allow it into
21 the record?

22 MR. MOY: There should be -- I

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1 don't have the regulations in front of me, but
2 I believe Mary Nagelhout is checking for me.
3 There should be a time line for that. I
4 believe it is 7 days, but I wanted to double
5 check.

6 MS. BAILEY: It is 7 days, 7 days
7 prior to the hearing. And it came in on the
8 29th of October, Mr. Chairman. It is a little
9 late.

10 ACTING CHAIR DETTMAN: Thank you,
11 Ms. Bailey. Yes, that's 3114.2, the Board is
12 empowered to waive that particular provision
13 of the regs, I believe, pursuant to 3100.5.
14 To the applicant, do you have any concerns
15 with the Board waiving that particular rule
16 and allowing that into the record?

17 MR. COLLINS: No, sir, but we would
18 like the opportunity to respond to it at the
19 appropriate time.

20 ACTING CHAIR DETTMAN: Certainly.
21 Colleagues? Okay. Mr. Moy, is that something
22 that the Board needs to vote on? Can we do

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1 that by consensus?

2 MR. MOY: You can do that by
3 consensus, Mr. Chairman.

4 ACTING CHAIR DETTMAN: It appears
5 we have a consensus. We will allow the DDOT
6 report, which is again our Exhibit No. 31,
7 into the record.

8 Okay. That being said, I think we
9 can proceed. Good morning, again.

10 MR. COLLINS: Good morning. I'm
11 Christopher Collins with the Law Firm of
12 Holland and Knight. Seated to my left is Mr.
13 Kyrus Freeman from my office, to my right is
14 Mr. Mark Van Norman, Executive Director of the
15 National Indian Gaming Association, to my far
16 right is Mr. Rich Markus from Rich Markus
17 Architects, the architect for the project, and
18 to my far left is Steven Sher, an urban
19 planner with the Law Firm of Holland and
20 Knight.

21 ACTING CHAIR DETTMAN: Okay. Good
22 morning, everyone. Mr. Collins, will you be

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1 proffering any of your witnesses as experts
2 this morning?

3 MR. COLLINS: Mr. Sher.

4 ACTING CHAIR DETTMAN: Mr. Sher.

5 MR. COLLINS: Who is up here before
6 an expert -- before this Board as an expert
7 and the Commission on many occasions.

8 ACTING CHAIR DETTMAN: Once or
9 twice.

10 MR. COLLINS: Once or twice.

11 ACTING CHAIR DETTMAN: We have his
12 resume, just for the record, right?

13 MR. COLLINS: I believe you have it
14 on file.

15 ACTING CHAIR DETTMAN: Okay.
16 Colleagues, no problems? Okay. Mr. Sher will
17 be acknowledged by the Board as an expert in
18 many areas, one being planning and zoning.

19 I think that we can move forward
20 with your case, Mr. Collins.

21 MR. COLLINS: Great. Thank you.
22 This is an application for zoning approval for

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1 additions to the National Indian Gaming
2 Association's Headquarters Building and the
3 National Indian Gaming Association goes by
4 NIGA, so we may refer to NIGA as we proceed.

5 The purpose of the addition is to
6 allow NIGA to more efficiently carry out its
7 mission and serve the needs of its Members
8 around the country, as you will hear more from
9 Mr. Van Norman.

10 This site was approved by the Board
11 for non-profit organization purposes in 1981.

12 The special exception is required, at this
13 time, because we are proposing to add to the
14 existing building. And under section 217, it
15 says "The Board must approve additions to the
16 building."

17 Variances are required in this
18 case, because the property is a historic
19 landmark and the design considerations that
20 are necessary to respond to the Historic
21 Preservation concerns don't exactly conform to
22 the Zoning Regulations.

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1 And finally, we need a special
2 exception under section 1202, because the
3 property is within the Capitol Overlay
4 District.

5 Our prehearing statement explains
6 how the application meets all the
7 requirements. I have three witnesses this
8 morning who will each explain in detail how
9 the applicant meets the regulations, so unless
10 there is any questions, I would like to go to
11 the first witness.

12 ACTING CHAIR DETTMAN: Board
13 Members, any questions? Questions?

14 MR. COLLINS: Okay. The first
15 witness is Mr. Mark Van Norman, Executive
16 Director of NIGA.

17 MR. VAN NORMAN: Thank you, Mr.
18 Chairman and Member of the Commission. I'm
19 Mark Van Norman with the Cheyenne River Sioux
20 Tribe from South Dakota and I'm the Executive
21 Director for the National Indian Gaming
22 Association. With me today is Angelica

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1 Molina, our business manager. She is from the
2 Navajo Nation.

3 And our mission at our organization
4 is, one, promoting Indian sovereignty and
5 treatment of tribes as governments and
6 protection of Indian Gaming as a means of
7 generating tribal government revenue.

8 Historically, the United States
9 used to come out to Indian country to meet
10 with Indian tribes and ask for land and ask
11 for treaties. Now, we find ourself in a
12 situation where we have to come to Washington
13 to protect those treaties.

14 So we have policy meetings on a
15 quarterly basis with our member tribes and we
16 need to build out a space at our facility to
17 host those meetings. We generally draw about
18 150 people. We have smaller meetings
19 throughout the year.

20 Our -- we have been at the site for
21 about 10 years and it has really served our
22 purpose very well, because we are there to

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1 interact with Members of Congress and protect
2 the tribe's treaty rights and governmental
3 rights from legislation that would infringe on
4 those or to seek clarification of legislation
5 to promote treatment of tribes as governments.

6 We are in close proximity to the
7 House side and when you are in close proximity
8 to the House Office, Members can come over to
9 your facility and listen to the concerns of
10 tribal leaders. If we were to move further
11 away from Capitol Hill, basically, Members
12 don't have time to take a lot of travel time
13 out of their day, so that's why it's important
14 for us to be right there.

15 In the past, we have utilized off-
16 site facilities. We had one of our member
17 tribes that had 101 Constitution Northwest and
18 they had a beautiful facility up there. They
19 moved to Midtown, so we no longer have access
20 to those facilities. We have tried to use
21 hotel facilities and found out that they are
22 really not as useful to us.

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1 So to promote our mission, we feel
2 that it is important to build out this meeting
3 space. We have a high regard for the
4 building. The building is roughly 200 years-
5 old. We feel like this expansion would
6 improve the property and we want to make sure
7 that if we are going to build, that we are
8 going to do it in a comprehensive fashion that
9 respects the property and also improves the
10 physical integrity of the structure.

11 We are going to reinforce the back
12 wall and make sure that we are there for
13 another long period of time to come. We have
14 employed -- Rich Markus is our architect,
15 because he has expertise on Capitol Hill. And
16 as you know from your Commission and the
17 different Boards, there is a lot of board
18 meetings that you have to have to move forward
19 with the project and Rich has a lot of
20 background in that.

21 So that's our situation. And we
22 appreciate your consideration.

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1 MR. COLLINS: And, Mr. Van Norman,
2 you are familiar with the prehearing statement
3 document that has been filed in this case?

4 MR. VAN NORMAN: Yes.

5 MR. COLLINS: And do you adopt the
6 background information in that document as
7 your testimony as well?

8 MR. VAN NORMAN: Yes.

9 MR. COLLINS: Thank you, thank you.
10 Unless there is any questions --

11 ACTING CHAIR DETTMAN: Let me just
12 ask my colleagues here. Do we want to wait
13 for questions until -- you had three
14 witnesses?

15 MR. COLLINS: Three witnesses.

16 ACTING CHAIR DETTMAN: Do we want
17 to ask questions after each witness? At the
18 end? Okay. Certainly, we can proceed.

19 MR. COLLINS: Thank you. The next
20 is Mr. Rich Markus.

21 MR. MARKUS: My name is Rich
22 Markus. I'm the architect. My office is in

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1 Georgetown, 2601 P Street. And I'll give you
2 a little background on the building and the
3 site. I'm going to refer to these drawings
4 behind us.

5 Here is the site. This is
6 Pennsylvania Avenue going to Independence, the
7 Capitol, U.S. Capitol is right here, so we are
8 2 blocks from the Capitol. This is the main
9 building of the Library of Congress. And this
10 is the Madison Building.

11 MR. COLLINS: Rich, would you point
12 the direction of north?

13 MR. MARKUS: Oh, sure. North is
14 actually that direction.

15 MR. COLLINS: That direction being
16 to the left?

17 MR. MARKUS: To the left.

18 MR. COLLINS: Okay. Thank you.

19 MR. MARKUS: Correct. So this is
20 the -- this is 2nd Street. Here is our
21 property here. This is the existing NIGA, the
22 existing buildings are in orange and it's the

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1 whole lot is shaded. Pennsylvania is a
2 commercial build -- this is all commercial
3 right there. We are in the Capitol Hill
4 Overlay.

5 This is commercial along
6 Pennsylvania, all along Pennsylvania, but once
7 you get down this street, it's actually R-4,
8 so it's a Residential Zone. You can see it's
9 right across the street from the Madison
10 Building, a very large Government Building.
11 And there is a series of very large Government
12 buildings.

13 It's kind of a transition zone
14 where you have commercial, you have the large
15 Government buildings and you also have
16 sprinkled through here are larger buildings,
17 apartments, actually right next to our -- a
18 pretty good size apartment building right next
19 to our property, another apartment building,
20 church, so there are sprinkled through here
21 kind of larger buildings.

22 There is an alley back through

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1 here. It kind of winds back through here.
2 There is a series of carriage houses and other
3 structures here. All the commercial buildings
4 on this side back up to that alley and it
5 leads out to C Street over here.

6 The building itself, this is a
7 photograph that we found at the Library of
8 Congress, dated about 1910. And I'll talk
9 just a little bit about it. We are in the
10 Capitol Hill Historic District, but we are
11 also -- this building is designated as an
12 individual landmark.

13 And the building itself was built
14 around 1806 as a two-story building here at
15 this side. You can see over here there is a
16 berm that leads down the street. At this
17 point, you can see the way it exists today and
18 you can see it in this photograph. This was
19 dug out to expose the basement. And this
20 photograph is at least 100 years-old, so we
21 can see that it was dug out.

22 All the Historic Boards that we met

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1 with, everyone assumed that there was a berm
2 going through and that would come up into the
3 basement area and this would have been a two-
4 story building when it was built.

5 In 1875, this side addition was put
6 on to the one-story piece here. Around 1906,
7 about 100 years after it was built, the third-
8 story was added. And on the back side there
9 was a little addition on the back that
10 included bathrooms.

11 And then also at that time, one
12 side of the -- there is two buildings in the
13 back that were originally built as stables.
14 This was built as stables originally. This
15 was built in about 1906, a two-story building
16 here. And then all of this was built about
17 the same time in the 1920s, these were one-
18 story garage buildings.

19 That just gives a little bit of
20 history. Everyone is assuming -- we had
21 discussions about putting the berm back and
22 different issues about that, but with this

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1 photographic evidence and the fact that this
2 stair actually still exists, all the historic
3 discussions that we had was to keep the front
4 as it is. Keep it -- restore the stair and
5 that actually creates one of the zoning
6 issues.

7 Because of the grade is down here,
8 this is actually a four-story building,
9 because the basement is exposed as a basement,
10 so that automatically creates a nonconforming
11 condition.

12 To describe a little bit about what
13 we are doing, what is in gray is the existing
14 buildings, so this is the main building up
15 front and these are the rear buildings in the
16 back that are existing. And we are putting in
17 this addition in the back.

18 What Mark described, the existing
19 building, they use it for office. And it's
20 small. They can have small meetings in there,
21 but very small. They need a meeting space, a
22 large meeting area and more office space.

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1 So what the addition is providing
2 is office space up on the second and third
3 floor. And on the main floor is the larger
4 meeting space. And we are basically kind of
5 extruding the massing of the building here,
6 kind of pulling the first floor back. This is
7 a one-story piece, this larger meeting area.
8 And then on the upper floors, we are pulling
9 this back, too.

10 You can see this is the second
11 floor. On the first floor, this bumps out as
12 a larger piece. And on the second floor, this
13 is the existing building here. We're kind of
14 pulling this zone back and actually pulling it
15 back from this face of the building, so that's
16 the second story. This is the third story.

17 On the rear building, we are
18 actually renovating that. It's a garage on
19 the lower floor. I'll talk about that in a
20 second. And then we are adding a one-story
21 addition on the second floor above the one-
22 story piece of the garage that is existing out

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1 here.

2 The -- go back to the site plan
3 just for a second. What they have now as far
4 as parking, this is the public alley in the
5 back. There are four garage spaces accessed
6 directly off the alley and we are going to
7 retain those. And then now, this is not here,
8 so this is some brick paving and they actually
9 park some cars in the middle in between these
10 two buildings.

11 And to get to that, they actually
12 drive through this center bay and access the
13 parking there.

14 So when we put our addition here,
15 it's twofold. One to enhance the idea of this
16 garden space, but also what do we do about the
17 parking? Well, the idea is to put the parking
18 below, so we're going to dig out the area in
19 between the two buildings and have parking in
20 that zone. In order to get to that, it's
21 actually the same exactly way, they come from
22 the alley through the center, but instead of

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1 going straight, you will ramp down into the
2 parking on this level. That's a brief
3 overview.

4 I'll explain a little bit how we
5 got to this location. This is an individual
6 landmark. And there is a lot of pressures
7 from different Historic Boards about how this
8 site works and how it fits within the overall
9 Capitol Hill Historic District.

10 We have played with a lot of
11 different ways to kind of make this work,
12 including putting some -- filling in the whole
13 street and putting an addition right here, but
14 it was determined with the Historic
15 Preservation Office and the Commission of Fine
16 Arts that the -- what's important about this
17 building is the side yard.

18 There is really not many, if any,
19 building that retain, historic buildings, the
20 side yard on Capitol Hill. And recognizing
21 the importance of that, then you can't fill in
22 this area, we actually decided to enhance that

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1 whole idea of this garden going back.

2 And everything that we do wants to
3 be set back and create the primary focus on
4 the main building. So we -- from the street,
5 we always want the main house to have the
6 primary focus. So everything that we have
7 done is kind of tucked behind the main house.

8 So that kind of forces all of the additions
9 back behind here.

10 We are going to restore some of
11 this building, trying to keep as much in tact
12 as possible. There is some structural issues,
13 but at the same time we are constructing this,
14 we'll be able to reinforce the rear and fix
15 that up to maintain the building itself. A
16 little bit of work on this back building also.

17 But to address a couple of the
18 zoning issues directly, we are asking for one
19 special exception and four variances. I'll go
20 over the variances just quickly, because they
21 are a little bit more technical in nature.

22 One is the lot occupancy. And the

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1 building itself already, as it exists, because
2 it is an R-4 Zone and it is a commercial use,
3 the commercial use as a non-profit was
4 actually approved back in 1981 when it was
5 owned by CATO. NIGA has been there since 1995
6 and been using it as the same use. So that
7 has been in place for quite a while. So we're
8 actually not changing the use.

9 The -- what I was going to show is
10 the existing building, because it is a non-
11 profit, because it's commercial use and it's
12 an R-4 Zone, the lot occupancy is actually
13 required to be 40 percent, but it's already as
14 it exists 51.2 percent, so you are already
15 exceeding that lot occupancy. And any
16 addition that you do is going to have to
17 exceed that by maintaining the historic nature
18 of the existing buildings.

19 So what we are putting on here is
20 actually bringing us up to 65 percent on the
21 main floor. Once we get up above on the
22 second floor, it brings us down to about 57

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1 percent.

2 But as I was explaining previously,
3 the fact that it is an individual landmark and
4 we're trying to keep these buildings in tact
5 as they are is actually putting a lot of
6 pressure in focusing the addition in a way
7 that would have to exceed the -- the lot
8 occupancy was already exceeded.

9 A couple of the other issues, one
10 is the variance from the height. It's a
11 nonconforming building because it is already a
12 four-story building and that kind of explains
13 that the berm most likely was there when it
14 was built, but it's not there now. So it's a
15 four-story building.

16 We are actually just extending that
17 roof back. Gray is the existing building.
18 And we are just pulling that straight back.
19 So we're actually even keeping it a little bit
20 lower than the existing building.

21 So as the grade -- the berm goes up
22 and the grade is higher in the back, it

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1 actually reads as a three-story building, but
2 we are actually not changing the height of the
3 building itself, so that's the issue about the
4 height.

5 The -- also, the lot coverage we
6 already talked about. The driveway width is
7 another issue. It is existing and it does not
8 meet the code for what is required for
9 driveway width. It is existing out a drive
10 through that space and they park in here.
11 We're not actually changing that at all, so
12 the relationship to the alley, the building to
13 the alley is actually exactly the same.

14 One other issue about the alley
15 itself, the rear yard setback right now is 87
16 feet 7 inches from the building itself all the
17 way back to the lot line. And that's because
18 this is an accessory building, because it's
19 not connected with this.

20 What we are doing is actually
21 connecting it. We're putting this addition on
22 and connecting the two buildings, so then it

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1 becomes part of the main building. The
2 relationship to the alley has not changed, but
3 the rear yard setback is now only 1 foot,
4 because this building is a foot from the
5 property line.

6 So the relationship hasn't changed.

7 It's similar to the front condition where the
8 relationship to the street hasn't changed. We
9 are actually extending the nonconformity here.

10 We created the 1 foot rear yard setback,
11 because we are actually attaching these.

12 I think that's it.

13 MR. COLLINS: Actually, I have a
14 couple of questions of you, if I may. On lot
15 occupancy, you mentioned that the existing lot
16 occupancy is 51 percent, that you are going to
17 65. And at the second floor level, above the
18 meeting space, it would only be 57. If you
19 were to -- required to comply with the 40
20 percent lot occupancy, what would have to
21 happen?

22 MR. MARKUS: Well, if we wanted to

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1 comply, well, actually it's a difficult
2 question for this whole property, because the
3 existing buildings already exceed the lot
4 occupancy from the beginning. So we would
5 actually have to destroy or demolish some of
6 that building and pile everything on top of
7 this in order to comply with the 40 percent.

8 MR. COLLINS: And if you were to
9 comply with the 51 percent, the same issue?
10 You would have to -- the additions, would you
11 be able to do any additions if you had to stay
12 at 51 percent?

13 MR. MARKUS: No, we would have to
14 go on top of the existing buildings.

15 MR. COLLINS: On top of the
16 carriage house and on -- as well as the one-
17 story addition on the main building?

18 MR. MARKUS: Correct. We would
19 have to go on top of the one-story addition
20 here, which is creating a lot occupancy. We
21 could add addition on top of that and we could
22 also put additions on top of this. These were

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1 all issues that we have discussed at length
2 with the historic issues, with the different
3 historic bodies that we met with and the
4 consensus was to maintain this building
5 because of its unique nature on the street as
6 much as possible, fix it up.

7 There is a little bit of
8 refurbishing we have to do to the building
9 itself, but fix it up as much as possible.
10 Enhance the garden on the side. You actually
11 enter the rear by walking up the garden on the
12 side, so what was important about this
13 building is that garden area. We are actually
14 enhancing that by creating the path from the
15 street around the building and the entry to
16 the back is on the side.

17 MR. COLLINS: You mentioned the
18 driveway width as being a nonconforming,
19 existing condition. If you were to be
20 required to comply with the driveway width,
21 what would have to happen?

22 MR. MARKUS: The only way to access

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1 the driveway is actually off the alley. If we
2 wanted to comply to that, we would actually
3 have to demolish again part of this rear
4 building and create it wider in order to get
5 down to the new parking level. That would
6 actually lose one of the parking spaces up
7 here and it would actually substantially alter
8 one of the historic buildings in the back.

9 MR. COLLINS: Is that building the
10 back part of the landmark?

11 MR. MARKUS: Yes.

12 MR. COLLINS: And then finally, the
13 rear yard. To comply with the rear yard
14 requirements, what would have to happen?

15 MR. MARKUS: Well, again, because
16 we are connecting the two buildings, we would
17 have to demolish part of that building up to
18 20 feet. The rear yard setback is actually 20
19 feet, so most of this entire building would
20 have to go.

21 MR. COLLINS: Would you have
22 another option to leave a space, a required

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1 space between the rear buildings and the rear
2 of the main building?

3 MR. MARKUS: That would be another
4 option. Part of the issue that we are trying
5 to do is create a connection with the office
6 back here. This is new refurbished office
7 space and the parking to the building itself,
8 that's why there is the connection here.

9 MR. COLLINS: And in order to get
10 the space that is critical to the needs of
11 NIGA, what would -- how would the building
12 have to be reconfigured?

13 MR. MARKUS: Well, again --

14 MR. COLLINS: To meet the rear yard
15 requirements.

16 MR. MARKUS: Yeah, again, that
17 would have to get kind of smaller back here
18 and it would start to push out into the-- past
19 the historic -- the reason it is back this far
20 is because it is always subservient to the
21 primary nature of this building as you look
22 from the street.

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1 So anything we do here, if it
2 starts to push out there, then it starts to
3 relate -- you start to see it from the street
4 and we were trying to do everything we can to
5 keep it back.

6 MR. COLLINS: So in essence, what
7 you are really saying is that you essentially
8 have to pivot the building 90 degrees?

9 MR. MARKUS: Sure, yes.

10 MR. COLLINS: And that would -- you
11 would then see it from the street and would
12 adversely impact the --

13 MR. MARKUS: Right. The mass of
14 this would start to turn and it would start to
15 fill in more of this backyard, so you would
16 start to see it from the street.

17 MR. COLLINS: Okay. Can you just
18 review briefly the number of discussions you
19 have had or just review about the issues in
20 your discussions with the Historic
21 Preservation? First, I'll ask you the
22 Historic Preservation Agencies you went to and

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1 what the main issues were there. And then
2 we'll talk about the community afterwards, but
3 can you start with the Historic Preservation?

4 MR. MARKUS: Sure. We met with --
5 it's part of the Commission of Fine Arts.
6 First, we met with the Commission of Fine Arts
7 staff several times and then we went to the
8 Commission and got their concept approval. We
9 also met with preservation, Historic
10 Preservation staff several times and then went
11 to the HPRB and got their concept approval.

12 Prior to that, we also met with
13 Capitol Hill Restoration Society several
14 times. They gave excellent feedback and we
15 worked -- every time we worked with these --
16 the staff and the boards to make adjustments
17 and come back with the next month with
18 different changes and it was a very nice
19 feedback actually.

20 We also met with the ANC several
21 times. So we have gone through all these
22 boards several times and got concept approval

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1 from the Commission of Fine Arts and the
2 Historic Preservation Review Board.

3 MR. COLLINS: The total number of
4 ANC meetings that included the Zoning Historic
5 Preservation Committee as well as the full
6 ANC?

7 MR. MARKUS: Correct.

8 MR. COLLINS: And do you recall how
9 many meetings that was?

10 MR. MARKUS: There was a lot.
11 Probably about 5 or 6.

12 MR. COLLINS: Does 6 sound right?

13 MR. MARKUS: Yeah, that's it, about
14 6.

15 MR. COLLINS: Thank you. I have no
16 further questions.

17 MR. MARKUS: Thank you.

18 MR. VAN NORMAN: Could I point out
19 one thing?

20 MR. COLLINS: Yes, please.

21 MR. VAN NORMAN: I just wanted to
22 clarify one thing about the neighborhood.

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1 MR. COLLINS: Rich, give him the
2 microphone, Rich.

3 MR. VAN NORMAN: Okay. Rich, you
4 did an excellent job. The only thing is this
5 building here and this building here is
6 actually Capitol Hill Suites Hotel.

7 MR. COLLINS: Mr. Van Norman, while
8 you are on that score about the neighborhood,
9 can you talk about the outreach in the
10 immediate neighborhood that you and your
11 colleagues have done?

12 MR. VAN NORMAN: Well, we contacted
13 our neighbors and the folks in the residential
14 buildings just south of us were supportive in
15 sending a letter of support. And we talked to
16 the owner of the apartment building next door
17 and was favorable.

18 We talked to some of the merchant
19 folks around the area and they were
20 supportive. And the hotel was supportive.
21 And we have an existing contact and
22 relationship with them, you know, where our

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1 folks utilize their hotel.

2 So we received positive support.
3 We didn't receive any objection. I would just
4 say across the way, right now we have an
5 existing project going on that was kind of
6 interesting just right across the alley.

7 MR. COLLINS: Microphone.

8 MR. VAN NORMAN: Oh, I'm sorry.
9 Just right across the alley in one of these
10 buildings right here, the Heritage Foundation
11 bought it and it had suffered some fire
12 damage, so they are rebuilding that and they
13 dug out a basement and built the -- I think a
14 conference room downstairs.

15 And they went down 14 feet, several
16 feet deeper than we are going to go and it has
17 been kind of an interesting project to see
18 them over the period of about the past 7
19 months they have put that in place. And they
20 have managed to do the building without a real
21 problem in the alley.

22 MR. COLLINS: Mr. Sher, would you,

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1 please, proceed with your testimony?

2 MR. SHER: Mr. Vice Chairman,
3 Members of the Board, for the record, my name
4 is Steven E. Sher, the Director of Zoning and
5 Land Use Services with the Law Firm of Holland
6 and Knight. I have been asked to focus
7 specifically on the planning standards or
8 planning aspects of these applications, which,
9 as has been noted before, included both
10 special exception and variances and, in
11 particular, whether the extensions of the
12 building would have any adverse effect upon
13 the present character or future development of
14 the neighborhood, number one.

15 Number two, whether this is
16 consistent with the Capitol Master Plan. And
17 number three, that the variance can be granted
18 without substantial detriment to the public
19 good and without substantially impairing the
20 intent, purpose and integrity of the Zone
21 Plan.

22 In undertaking that analysis, I

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1 looked, first, at the character of the area
2 and the square in particular. And at the back
3 of the outline, which I think you have before
4 you, is an aerial photograph, which gets a
5 little fuzzy as it gets near the Madison
6 Building, because of security concerns over
7 people taking aerial photographs these days.

8 But if you look at the square and
9 even if Rich would put back up the site plan
10 that shows the frontage along 2nd Street, you
11 will see that this particular square is
12 actually denser than what you would typically
13 expect to find in an R-4 row house
14 neighborhood.

15 And you can see that by, as
16 mentioned earlier, the Capitol Hill Suites,
17 which is the building at the corner, which is
18 a pretty big mass on that lot, the building
19 right next door this is the Watterston House,
20 which is the subject of the application here.

21 The building right next door, which is a much
22 denser and bigger platform, on the lot on

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1 which it is located. Then, of course, the
2 Madison Building, which is across the street
3 on the west side of 2nd, which just takes up
4 the whole block.

5 So what you have then and then the
6 commercial buildings along Pennsylvania
7 Avenue, you have a much denser character in
8 this square, including the alley buildings in
9 the middle and so forth than one would expect
10 in a typical R-4 development.

11 The second point to note is as our
12 architect has described is that the addition
13 is being built behind the existing building.
14 And again, you can see that on the site plan
15 here. The addition essentially lies behind
16 the existing Watterston House, so the view of
17 that is basically constrained from the street,
18 so you do not see the appearance of additional
19 bulk on the lot, even though it is back there.

20 And as noted, the addition is
21 slightly lower than the top of the existing
22 building. So the perception of density on the

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1 site will remain essentially the same as the
2 present condition. We took a look at the
3 Capitol Master Plan, my somewhat faded covered
4 copy of the plan, which George White sent to
5 me back in 1981, and this particular site is
6 not included within the Capitol grounds.

7 It is obviously not a property
8 owned by the United States. It is identified
9 as part of the periphery and Historic District
10 Transition Area and as Exhibit J to the
11 applicant's prehearing statement, we included
12 excerpts from the Capitol Master Plan which
13 talks about, among other things, preserving
14 structures of historic interest and the
15 continuous preservation of the present
16 vernacular character of Capitol Hill.

17 Rich has gone to great lengths to
18 explain how his design is respectful of the
19 existing building and why the location of the
20 additions in that courtyard behind the
21 existing building is the most appropriate one,
22 even though it winds up requiring relief from

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1 the Zoning Regulations as has been described.

2 Mr. Turnbull can speak for himself,
3 but there is a letter in the record from the
4 Architect of the Capitol or a memo I guess it
5 is that says "The proposed addition and
6 expansion is not inconsistent with the CAP/R-4
7 District and would not adversely affect the
8 operations of the legislative branch." I
9 defer to his judgment on that.

10 The site has been used for non-
11 profit office use since 1981 without visible
12 adverse effect. The lack of attendance in the
13 room is probably as much an attestation of
14 that as anything else.

15 Some portions of the relief, as
16 have already been described, are basically
17 existing conditions and relief is required
18 because we are preserving those existing
19 conditions.

20 The rear yard situation where the
21 accessory buildings already come to within 1
22 foot of the alley, but because they are not

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1 physically connected to the main building, you
2 measure the rear yard from the back of the
3 main building. As seen from the alley, there
4 will be no difference. I mean, there will be
5 an addition on the part of the top, but the
6 setback from the alley remains the same.

7 The driveway width is an existing
8 condition and again, the relief is required
9 because of the 4th story, again as shown on the
10 photograph on the far left. At the front,
11 which is where you count the number of
12 stories, this building is four, but at the
13 back where you actually look at the addition,
14 it's actually only three. So all of those are
15 existing situations that contribute here.

16 And as has been noted already, the
17 additions have been approved in concept by
18 both Commission of Fine Arts, which is Exhibit
19 G in the applicant's prehearing statement, and
20 the Historic Preservation Review Board, which
21 is Exhibit F of the prehearing statement. So
22 all of those documents are in the record and,

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1 I believe, support the conclusion that the
2 addition will have no adverse effect upon the
3 present character or future development of the
4 neighborhood.

5 That construction is not
6 inconsistent with the Capitol Master Plan,
7 that the relief can be granted without
8 substantial detriment and that the application
9 should be approved.

10 MR. COLLINS: That concludes our
11 testimony. We are available for questions.

12 ACTING CHAIR DETTMAN: Thank you,
13 Mr. Collins. Board Members, any questions?
14 Mr. Turnbull?

15 COMMISSIONER TURNBULL: Yes, thank
16 you, Mr. Chair. I have three or four
17 questions. In the list of owners of property,
18 I just have one question. You have down for
19 101 Independence Avenue, S.E., and you have
20 GSA. Is that in the record? Did you find
21 that?

22 MR. COLLINS: We rely upon the

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1 Office of Tax and Revenue's records. We got
2 that list directly from Office of Tax and
3 Revenue.

4 COMMISSIONER TURNBULL: Well,
5 that's curious, because when you send it to
6 GSA, you're not going to get an answer. They
7 are an Executive Branch Agency and it's
8 Legislative Branch property, so it's a fine
9 point, but it's -- other than being covered by
10 the special exception for the Capitol Interest
11 Overlay, the Architect of the Capitol was
12 copied.

13 But if we weren't, the Library of
14 Congress, I don't think, would ever be copied.

15 So it's just a fine point that it is covered
16 that you have the Interest Overlay, so that we
17 could look at it. So I was just curious by
18 that. I'll have to deal with General Counsel
19 and find out how that relates.

20 One of the things I had asked for,
21 which you did send, was the Roof Plan. And I
22 think I just want to go, for the record, and

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1 show that what is on the roof is not
2 protruding to the point that it can be seen
3 from the front of the property line.

4 MR. MARKUS: I can address that.
5 This is the Roof Plan that we provided in the
6 set. So here is the existing building. There
7 is some existing mechanical up there that you
8 can't see from the street. This is the
9 addition at the third floor, so that's the
10 roof.

11 There is a reasonable hydraulic
12 elevator, so it does bump up a little bit
13 through the roof, but it's going to be less
14 than 4 feet. And this is actually a fairly
15 small building. There's not that much square
16 footage, so there will be some other
17 mechanical units, but all these are going to
18 be mounted less than 4 feet. And back on this
19 existing building back here is one more. So
20 does that answer the question?

21 COMMISSIONER TURNBULL: Yeah.

22 MR. MARKUS: Okay.

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1 COMMISSIONER TURNBULL: I just
2 wanted to have that in the record. The other
3 question I have and we talked about, and I
4 think you have done an excellent job of
5 landscaping and trying to keep the historic
6 character of it, maybe you could talk a bit
7 about the neighbor to the south and how you
8 are trying to protect their -- you have a
9 balcony on top of the first floor. And I'm
10 worried about the privacy concerns of that
11 neighbor.

12 You have got a fence there. You
13 have done some landscaping. Maybe just for
14 the record you could expound upon how you are
15 trying to at least preserve their property?

16 MR. MARKUS: And I think maybe Mark
17 could say a couple of words about it, because
18 he has met with the neighbor a couple of
19 times.

20 MR. VAN NORMAN: Yeah, well, I can
21 say, you know, I met with the neighbor and she
22 was very happy with the project.

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1 COMMISSIONER TURNBULL: And you are
2 putting up a new brick wall on that side, I
3 believe.

4 MR. VAN NORMAN: But we are leaving
5 an opening there, so it's kind of--

6 MR. MARKUS: Can I ask? You said
7 the south side is here. Were you talking
8 about the north side?

9 COMMISSIONER TURNBULL: No, the
10 other side, the south side.

11 MR. MARKUS: The south side? Okay.
12 Oh, they --

13 COMMISSIONER TURNBULL: That.

14 MR. MARKUS: Where we are putting
15 here?

16 COMMISSIONER TURNBULL: Right.

17 MR. MARKUS: Yeah.

18 COMMISSIONER TURNBULL: Isn't that
19 a new brick wall?

20 MR. MARKUS: It is. It's a masonry
21 wall.

22 COMMISSIONER TURNBULL: What is

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1 there now?

2 MR. MARKUS: It's --

3 MR. VAN NORMAN: Chain link fence.

4 MR. MARKUS: -- a chain link fence.

5 COMMISSIONER TURNBULL: Chain link
6 fence?

7 MR. MARKUS: Yeah.

8 COMMISSIONER TURNBULL: Okay.

9 MR. MARKUS: We have been working
10 with her to create a surface. We've been
11 talking to her about this wall and once we get
12 into the more details, we would talk with him
13 more about this wall. But the intention is
14 it's not that high and it would be -- we will
15 do a nice job. We are even talking to her
16 about there is a couple of trees on this side,
17 fairly small trees that once we dig out here,
18 they are going to get affected, so we would be
19 replanting those on her side and doing
20 whatever we need to work with them.

21 COMMISSIONER TURNBULL: So she is
22 fine?

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1 MR. VAN NORMAN: She was fine. She
2 just wanted us to coordinate the landscaping
3 when we did the landscaping. We said that we
4 were more than happy to do that.

5 COMMISSIONER TURNBULL: But she
6 hasn't provided a letter of support in the
7 file?

8 MR. VAN NORMAN: I thought she did
9 at one point.

10 MR. MARKUS: She does, yeah.

11 COMMISSIONER TURNBULL: Did she?

12 MR. VAN NORMAN: Okay. You know
13 better than I do, but, okay.

14 MR. MARKUS: It's Strategic Health
15 Care.

16 MR. VAN NORMAN: Yeah, it's Lisa
17 Spoden.

18 COMMISSIONER TURNBULL: Okay.
19 Okay.

20 MR. VAN NORMAN: Yeah.

21 COMMISSIONER TURNBULL: Yeah, I saw
22 that.

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1 MR. VAN NORMAN: Yeah.

2 COMMISSIONER TURNBULL: I didn't
3 realize, okay.

4 MR. VAN NORMAN: And, you know, she
5 was pleased with the project and just asked us
6 to coordinate with her when we do the
7 landscaping.

8 MR. MARKUS: And she actually owns
9 the next two buildings. She owns this one and
10 that one.

11 COMMISSIONER TURNBULL: And the
12 next one?

13 MR. VAN NORMAN: Yeah.

14 MR. MARKUS: Yeah.

15 COMMISSIONER TURNBULL: Now, just
16 from a design, you are putting a large meeting
17 room on the ground floor, the first floor.
18 All washrooms are up on the second floor
19 though?

20 MR. MARKUS: That's correct.

21 COMMISSIONER TURNBULL: And the
22 food preparation is in the basement?

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1 MR. MARKUS: Right.

2 MR. VAN NORMAN: And we are going
3 to put a washroom in the basement also. Does
4 it reflect that or no?

5 MR. MARKUS: Yeah, there's a
6 bathroom in the basement.

7 COMMISSIONER TURNBULL: Yeah, it
8 looks like you have to come out of the
9 kitchen, through the garage to take food up
10 the elevator?

11 MR. MARKUS: That is correct right
12 now. We are still kind of working with this.
13 We're not even exactly sure what --
14 everything that needs to be in this kitchen.
15 They mostly have stuff catered in.

16 COMMISSIONER TURNBULL: Oh, okay.

17 MR. MARKUS: And then this would be
18 like local prep area. The garage is just--
19 it's small. It's just for the people here.
20 It not -- when functions are happening,
21 everybody comes from -- they get driven there
22 or they walk.

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1 COMMISSIONER TURNBULL: Well, you
2 mentioned the catering. When the catering
3 truck comes, where would that drop-off all the
4 -- would the catering food go down?

5 MR. VAN NORMAN: Yeah, they would
6 drive underneath.

7 MR. MARKUS: It's vans. It's small
8 vans.

9 MR. MARKUS: It's vans.

10 COMMISSIONER TURNBULL: Small van,
11 okay.

12 MR. MARKUS: Yeah, so it would
13 actually drive in.

14 MR. VAN NORMAN: And I think we
15 might take your suggestion about the entryway
16 for the kitchen and, you know, make sure there
17 is an entryway.

18 COMMISSIONER TURNBULL: Well, I was
19 just curious. I just saw that as a --

20 MR. MARKUS: Yeah, it hasn't been
21 worked out past a certain level.

22 COMMISSIONER TURNBULL: Yeah.

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1 MR. MARKUS: It's -- we threw this
2 bathroom in. Also there is structural
3 considerations that we haven't worked out.

4 COMMISSIONER TURNBULL: Yeah.

5 MR. MARKUS: So it's all going to
6 get worked out. But it's -- we have
7 considered that and it's -- I think it is
8 essential that the kitchen should just connect
9 right through, that way we don't have to go
10 out into here.

11 COMMISSIONER TURNBULL: Yeah, I
12 just happened to see that as an operational
13 issue. I mean, that's your concern not our's.

14 MR. MARKUS: Thank you.

15 COMMISSIONER TURNBULL: Do you feel
16 with the additional cars -- now, I know you
17 are looking at four major events per year.
18 Most of the people will be coming by taxi or--

19 MR. VAN NORMAN: Or Metro or
20 walking.

21 COMMISSIONER TURNBULL: -- Metro or
22 walking.

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1 MR. VAN NORMAN: Yeah.

2 COMMISSIONER TURNBULL: That's why
3 I think -- although we have got an entrance to
4 the -- there is an entrance to the Library of
5 Congress garage on that side, I didn't really
6 see an issue as long as it is taxis. And in
7 the parking there, it's limited anyways. You
8 really can't do much. So from that
9 standpoint, we didn't see an impact.

10 But do you feel that coming through
11 the garage -- the alley, you can handle the
12 additional cars? Do you see that as an issue
13 or no?

14 MR. VAN NORMAN: No.

15 COMMISSIONER TURNBULL: The turning
16 radius?

17 MR. MARKUS: No, it's what they do
18 now. The -- I don't think we have a good
19 representation of all the buildings on here,
20 but it's actually kind of open this way. You
21 can go through, it's a two-way alley, so you
22 kind of wind through here.

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1 COMMISSIONER TURNBULL: Okay.

2 MR. MARKUS: They do come now and
3 they park in the existing garage. We are
4 actually not changing the relationship.

5 COMMISSIONER TURNBULL: Okay.

6 MR. VAN NORMAN: And our plan on
7 the underground parking is that that's really
8 staff parking.

9 COMMISSIONER TURNBULL: Staff.

10 MR. VAN NORMAN: And really our
11 visitors are coming from out of town, in
12 general, or, you know, if they are federal
13 people, then they would -- you know, members
14 would walk up from the House Buildings or get
15 dropped off. So we have never really utilized
16 parking on the street, on 2nd Street, because I
17 don't know how that happens, but just like
18 every time a spot opens, it is full.

19 COMMISSIONER TURNBULL: Yeah.

20 MR. VAN NORMAN: Yeah.

21 COMMISSIONER TURNBULL: Okay. Mr.
22 Chair, I think that's the end of my questions

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1 for now.

2 MEMBER MOLDENHAUER: Mr. Van
3 Norman, you have mentioned, at one point, that
4 in trying to determine how to expand the
5 current facility, that hotel facilities were
6 not useful to your needs. Can you expand upon
7 that?

8 MR. VAN NORMAN: Well, you know,
9 sometimes we have policy issues that will come
10 up and we need to schedule meetings on, you
11 know, a couple weeks notice or something like
12 that. And what you find is that the hotels
13 around D.C. are really booked up.

14 And then what we found after we
15 were no longer able to work with our -- one of
16 our member tribes at 101 Constitution was we
17 ended up going down and being in a ballroom
18 maybe at the Hyatt Regency and what happens is
19 that different ballrooms are leased out to
20 different organizations.

21 And it just doesn't create the kind
22 of, you know, business atmosphere that you

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1 would like. And it is also harder for members
2 to access that and you have a hard time
3 getting members to come over there. So those
4 are, you know, some of the difficulties that
5 we found. And we just decided that it would
6 be a better investment for us in the long term
7 to build out our property.

8 And I guess maybe it's worth
9 mentioning that we had had a suggestion by the
10 Art Commission to build more or less a similar
11 townhouse structure next door, but then they
12 changed their mind and they told us that the
13 first floor addition was part of the historic
14 landmark and couldn't be changed. And I think
15 that would have impacted some of the lot
16 occupancy issues also.

17 MR. MARKUS: And could I just add
18 just one issue on that, on your question? The
19 -- what was unique about this whole project
20 for me is actually the culture references and
21 the importance of NIGA on Capitol Hill. It is
22 in there -- it is their direct interest, the

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1 interaction with Congress has to do with the
2 livelihood of the tribes and the gaming
3 facilities and the tribes, so it's imperative
4 that they have presence on Capitol Hill and to
5 have these meetings.

6 There is also -- it is Native
7 Americans and there is a spiritual component
8 to the meetings. They start off with prayers.

9 And to be able to -- part of this design is
10 the sequence to the meeting room. People will
11 get dropped off at the street and they wind up
12 through the path through the side yard garden
13 and back here.

14 And we want to infuse that
15 experience with some Native American ideas as
16 you wind back, so it's -- what is unique about
17 being able to have the meetings on-site is
18 that you can control that and you have more --
19 it adds more energy and power to the meetings
20 themselves.

21 MR. COLLINS: May I just ask a
22 question, at this point, for clarification?

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1 Mr. Van Norman, when you were talking about
2 the inefficiency of using hotels, such as the
3 Hyatt Regency, which is, of course, a very
4 nice hotel, but inefficient for your purposes,
5 and you mentioned that the members wouldn't
6 come. You meant Members of Congress, that's
7 correct?

8 MR. VAN NORMAN: Yeah. I mean
9 Members of Congress. And also, the, you know,
10 meeting room layout and whatnot was not, you
11 know, really conducive to our meetings and we
12 had, you know, scheduling difficulties and
13 various issues with that.

14 ACTING CHAIR DETTMAN: I actually
15 just have two questions. One you kind of
16 answered already and it had to go to the -- it
17 goes to the parking. You said that they are
18 already using that area back there already. I
19 think four cars can fit inside the two
20 accessory buildings.

21 Did I see in the record that you
22 actually used the courtyard for parking as

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1 well?

2 MR. VAN NORMAN: The courtyard is
3 bricked over and we use it for parking.

4 ACTING CHAIR DETTMAN: Okay. So I
5 think you are proposing a total of 12 parking
6 spaces? You have -- you already have the
7 capacity to accommodate 12 cars on-site
8 already, so --

9 MR. VAN NORMAN: Yeah.

10 ACTING CHAIR DETTMAN: -- in terms
11 of the change, I mean, you're not really
12 changing anything?

13 MR. VAN NORMAN: Basically, staying
14 equal.

15 ACTING CHAIR DETTMAN: Okay. My
16 second question goes to the neighbor to the
17 north. What kind of interaction have you had
18 with the property owner to the north?

19 MR. VAN NORMAN: Well, we went over
20 and met with the representative and Mr.
21 Calomiris.

22 MR. MARKUS: Mr. Calomiris, George

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1 Calomiris.

2 MR. VAN NORMAN: Yeah. And we had
3 a nice dialogue with him. He was generally
4 favorable and wanted to talk to us about, you
5 know, when we get to actual building, since he
6 is an architect, he had insight into how we
7 ought to proceed on building.

8 ACTING CHAIR DETTMAN: That's an
9 apartment building to the north? Is that
10 right?

11 MR. MARKUS: Yes, it is owned by a
12 family.

13 ACTING CHAIR DETTMAN: Okay. And
14 your interaction was actually with the
15 property owner?

16 MR. VAN NORMAN: With Mr.
17 Calomiris, who represents a portion of the
18 ownership. A significant portion. It's in
19 two families.

20 ACTING CHAIR DETTMAN: Um-hum.

21 MR. VAN NORMAN: Calomiris family
22 and Mr. Calomiris' partner, both of whom are

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1 deceased, so there -- the descendants, the
2 children own the building and Mr. Calomiris'
3 wife owns the building.

4 ACTING CHAIR DETTMAN: Okay. Board
5 Members, any other questions?

6 MEMBER MOLDENHAUER: Mr. Collins,
7 are you going to address the different
8 conditions of the DDOT report?

9 MR. COLLINS: Yeah. At the time we
10 --

11 MEMBER MOLDENHAUER: Okay, perfect.

12 MR. COLLINS: -- turn to that.

13 MEMBER MOLDENHAUER: Thank you.

14 MR. COLLINS: Thank you.

15 ACTING CHAIR DETTMAN: Right. We
16 will take that up momentarily. Mr. Collins,
17 anything before we move on to the Office of
18 Planning?

19 MR. COLLINS: Nothing. Thank you.

20 ACTING CHAIR DETTMAN: Okay.

21 Then --

22 COMMISSIONER TURNBULL: Mr. Chair,

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1 I just have one question. You were talking
2 about the property to the north. The new
3 building will impact them a little bit, but
4 from sunlight, any concerns on that? Have
5 they expressed anything?

6 MR. MARKUS: Well, when we met with
7 -- it was a favorable meeting. I was at the
8 meeting, Chris and Mark, we were all at the
9 meeting with Mr. Calomiris. And he
10 understands. He is an architect, he
11 understands how developments go. And what we
12 -- he was curious about what this wall would
13 be and we just said once we get to more
14 detail, we would talk to him about what that
15 wall is and how it -- what you are going to
16 see from that side.

17 But he does development all the
18 time, so he understood that this would have
19 impact on his property.

20 COMMISSIONER TURNBULL: Okay.
21 Thank you.

22 ACTING CHAIR DETTMAN: The plans

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1 that you had when you met with the ANC, CFA,
2 the neighbors that are adjacent, are these the
3 same exact plans that you had when you met
4 with them?

5 MR. MARKUS: These -- well, because
6 we had several meetings, it evolved over time,
7 but this was the -- this is the exact plan
8 that got the final conceptual approval from
9 HPRB and Commission of Fine Arts.

10 ACTING CHAIR DETTMAN: Okay. And
11 in terms of the overall building envelope,
12 nothing has really changed from when you met
13 with the adjacent owners until today?

14 MR. MARKUS: Correct.

15 ACTING CHAIR DETTMAN: Okay.
16 Great.

17 MR. MARKUS: It has evolved over
18 time, but as the -- the envelope is really
19 just kind of tweaked here and there.

20 ACTING CHAIR DETTMAN: Okay.

21 MR. COLLINS: And certainly the
22 HPRB, you know, their final approval of final

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1 concept is reflected in these plans. And the
2 final meeting with the ANC was after we filed
3 the application.

4 ACTING CHAIR DETTMAN: Okay.

5 MR. COLLINS: So what they see is
6 what we have here.

7 ACTING CHAIR DETTMAN: Great.

8 COMMISSIONER TURNBULL: Okay.

9 ACTING CHAIR DETTMAN: Why don't we
10 move to the Office of Planning? That's --
11 OP's report is our Exhibit 30 in the record.
12 And I think we have Mr. Emerine with us this
13 morning. Good morning.

14 MR. EMERINE: Good morning, Mr.
15 Vice Chair. Thank you. Again, for the
16 record, my name is Dan Emerine. I'm with the
17 Office of Planning.

18 The Office of Planning recommends
19 approval of all required relief on this
20 application. I'll follow the outline of my
21 report and briefly summarize the special
22 exception relief and then move on to the

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1 variance relief.

2 We recommend approval of the
3 special exception relief under section 217 to
4 allow the expansion of this building devoted
5 to an existing non-profit use. We recommend
6 five conditions along with that approval,
7 which we understand that the applicant has
8 already voluntarily agreed to carry out these
9 conditions, subsequent to meeting with the
10 Office of Planning and with the Department of
11 Transportation.

12 In brief, the applicant meets the
13 requirements of section 2117 along with the
14 additional criteria of section 1202, which go
15 to the requirements for a special exception in
16 the Capitol Interest Overlay.

17 Generally, the proposal is
18 compatible with the present and proposed
19 development of the neighborhood. It's not
20 likely to have adverse impact and meets all of
21 the other criteria. I do note that one of the
22 criteria in section 217.1 is that the gross

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1 floor area of the building must be 10,000
2 square feet or greater. This property has
3 already received variance relief in a prior
4 BZA case from that requirement, so that
5 requirement no longer applies.

6 With respect to the variance
7 relief, again, in that previous BZA case, the
8 Board already identified that this property is
9 subject to unique and exceptional conditions,
10 all of those unique and exceptional conditions
11 still apply. Compliance with -- strict
12 compliance with the Zoning Regulations in the
13 matter of those areas where the relief has
14 been requested would create peculiar
15 difficulties for the applicant.

16 In essence, the relief that is
17 necessary in the variance application arises
18 from the maintenance or the extension of
19 existing nonconforming conditions. And any
20 strict conformity to the Zoning Regulations
21 would either result in peculiar difficulties
22 in the applicant being able to use the

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1 property for its intended purposes or
2 potentially harm the integrity of the historic
3 landmark.

4 So the Office of Planning believes
5 that the proposal put forward by the applicant
6 is the -- represents a solution to dealing
7 with those peculiar circumstances that is in
8 conformity with the intent of the Zoning
9 Regulations and is unlikely to have any undue
10 adverse impact.

11 I will note again with regard to
12 the variance application, the Office of
13 Planning has also recommended that the
14 applicant receive variance relief for section
15 400 from the most extension of the existing
16 nonconforming fourth story.

17 That is simply, I guess, a
18 technical addition to our analysis that arises
19 from the relief from 2001.3 for extension of
20 that nonconformity. And in the event that the
21 Board agrees, we have provided analysis of
22 that relief.

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1 So in summary, we, the Office of
2 Planning, recommends approval of all the
3 required relief. And I am happy to answer any
4 questions that the Board may have.

5 ACTING CHAIR DETTMAN: Thank you,
6 Mr. Emerine. And thank you for a great
7 report. It was very thorough and well-
8 prepared. I don't have any questions.
9 Colleagues? Okay. Mr. Collins, any
10 questions?

11 MR. COLLINS: No, sir.

12 ACTING CHAIR DETTMAN: Okay. Do we
13 have a representative from DDOT here? It
14 doesn't look like it. Maybe one question for
15 DCOP. Mr. Emerine, have you had a chance to
16 review DDOT's report?

17 MR. EMERINE: I did.

18 ACTING CHAIR DETTMAN: Prior to the
19 issuance of their report, to what extent did
20 you coordinate with DDOT on this? Because it
21 looks like simply by reading your report, it
22 looks like you coordinated with them fairly

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1 thoroughly. But some of the conditions that
2 show up in their report dated October 29th
3 don't really kind of gel with what shows up in
4 your report. So I was just wondering if you
5 had anything on that?

6 MR. EMERINE: I guess I would say,
7 and I'm sorry, I don't have a copy of the DDOT
8 report in front of me, but from my
9 recollection, the -- thank you. The
10 conditions that DDOT described in their report
11 do arise from the discussions that OP and DDOT
12 had with the applicant regarding the -- my
13 understanding of the DDOT report is that,
14 essentially, they understand that the
15 applicant will have a special events planning
16 firm to assist with the large gatherings, that
17 they have no intention of subleasing the
18 private parking spaces and that they provide
19 Metro SmartBenefits to their employees.

20 It is my understanding that the
21 applicant, unless I have missed something, I
22 believe, has addressed these issues in their

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1 submissions to the Board. So we did not
2 include them as -- those as separate
3 conditions, just based on the understanding
4 that the applicant has agreed to do these
5 things and there is -- there wasn't a need to
6 formalize those parts of that agreement.

7 ACTING CHAIR DETTMAN: Mr. Collins,
8 you had an opportunity to review the DDOT
9 report and I think that you wanted to respond?

10 MR. COLLINS: I did. Thank you.
11 Specifically on the second page of the DDOT
12 report under the third -- the final paragraph
13 under that heading "DDOT Analysis," a little
14 more than halfway down to the bottom of that
15 paragraph are the conditions that DDOT
16 requested.

17 The requested that the applicant
18 provide written verification and commitment to
19 the events planner, SmartBenefits for the
20 employees and no parking space leasing to
21 outside parties. And then it goes on to say
22 upon condition of written verification of and

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1 commitment to these conditions, DDOT will
2 support the applicant. And then DDOT also
3 believes that the applicant shall report
4 annually to the ANC.

5 So I would like to just, with the
6 dialogue with Mr. Van Norman, get into these a
7 little bit.

8 Mr. Van Norman, do you have an
9 events planner on your staff already?

10 MR. VAN NORMAN: We have a full-
11 time events planner on our staff already.

12 MR. COLLINS: Thank you. Um, do
13 you provide Metro SmartBenefits to employees
14 who do not drive?

15 MR. VAN NORMAN: Yes.

16 MR. COLLINS: Okay. Have you
17 agreed that you will not lease your parking
18 spaces to people who are unaffiliated, not
19 affiliated with NIGA?

20 MR. VAN NORMAN: Yes.

21 MR. COLLINS: Okay. And do you
22 recall the ANC asked for an annual report to

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1 address community concerns?

2 MR. VAN NORMAN: No, they didn't.
3 Actually, they were very happy with the
4 development and gave us their support at the
5 meeting.

6 MR. COLLINS: Do you have on your
7 website a schedule of events that occur at
8 NIGA's headquarters?

9 MR. VAN NORMAN: Yes, we generally
10 put that on our website.

11 MR. COLLINS: Thank you. No
12 further questions.

13 ACTING CHAIR DETTMAN: Thank you,
14 Mr. Collins. Just a couple questions. In
15 looking at the first paragraph under "DDOT
16 Analysis," and there are a couple of things
17 that are itemized in there, too. And I just
18 want to -- you probably -- number one, I think
19 you already covered hiring a special event
20 planning firm.

21 Applying to DDOT for exclusive
22 parking arrangements associated with each of

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1 the gatherings and providing a neighborhood
2 parking survey, that should explain where the
3 applicant will park vehicles associated with
4 large attendance gatherings.

5 Do you have any response to those
6 two items?

7 MR. COLLINS: Yes, that -- I think
8 this DDOT analysis goes in sequence. These on
9 this first full paragraph here that you
10 described are what they asked of the
11 applicant. And then at the meeting that we
12 had with OP and DDOT, we explained the
13 operations of NIGA. And then DDOT
14 subsequently came up with these final
15 conditions at the bottom of that last full
16 paragraph.

17 ACTING CHAIR DETTMAN: Okay.

18 MR. EMERINE: And, Mr. Vice Chair,
19 I can confirm that. That's essentially what
20 happened.

21 ACTING CHAIR DETTMAN: So -- I'm
22 sorry, go ahead.

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1 COMMISSIONER TURNBULL: Mr.
2 Collins, are you -- then is the applicant
3 going to write a letter back to -- are you
4 going to respond to these comments?

5 MR. COLLINS: By way of just
6 affirmative statements, rather than the back
7 and forth, yes. We can state that we believe
8 that we do not need to hire a planning events
9 organization, because one is already in-house,
10 that NIGA gives SmartBenefits and Metro passes
11 to those employees who do not drive. Not to
12 all employees, but those who do not drive.

13 And NIGA will commit, and as stated
14 so in the prehearing statement, that they will
15 not lease out spaces to outside parties. And
16 NIGA also believes. the applicant believes,
17 that we do not need to report annually to the
18 ANC, because they did not ask for that. And
19 NIGA's actions are -- their activities are
20 located on the website.

21 And certainly, if I may, if the ANC
22 ever called NIGA, when they asked questions,

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1 has the ANC ever called you to discuss
2 something?

3 MR. VAN NORMAN: We, you know,
4 would be more than happy to meet with the ANC
5 if they had any concern.

6 MR. COLLINS: Thank you.

7 COMMISSIONER TURNBULL: No, I think
8 that's fine. I was just concerned that going
9 down the road it sounds like they are waiting
10 for something back from you, basically,
11 talking about all these points, so that they
12 can give their approval.

13 MR. COLLINS: Yeah.

14 COMMISSIONER TURNBULL: Okay.

15 MR. COLLINS: Thank you.

16 ACTING CHAIR DETTMAN: Mr. Emerine,
17 I'm looking on page 1 of your report and it is
18 the fourth condition regarding the use of
19 hotels for a block of rooms and then requiring
20 a shuttle service.

21 I didn't see much in the -- in your
22 report or in the record, for that matter, that

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1 would go to even a potential for adverse
2 impacts to traffic.

3 MR. EMERINE: Um-hum.

4 ACTING CHAIR DETTMAN: So I guess
5 I'm curious where that came from and what is
6 it attempting to mitigate?

7 MR. EMERINE: Um-hum. Well, that
8 actually came from a statement that the
9 applicant volunteered to do essentially that.

10 And I think that if I recall correctly, that
11 actually came up in the course of our
12 conversation with -- between DDOT, OP and the
13 applicant where we were talking about various
14 scenarios.

15 You know, could there ever be an
16 instance where the applicant would have a
17 large number of out of town guests that would
18 be using hotels that are outside of the
19 immediate area, not within walking distance?
20 And the applicant basically proffered, at that
21 point, that if such a situation were to arise,
22 that they would have that hotel provide

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1 shuttle service.

2 And I think the impact of that
3 would be intended to alleviate -- would be
4 perhaps the potential of multiple taxis
5 arriving at over -- in a short period of time
6 and creating some temporary congestion.

7 I don't think that it is a -- I
8 think that the likelihood of any adverse
9 impact from such a situation occurring is
10 remote, but the applicant did proffer to
11 provide that and we agreed that it would be a
12 good sort of precautionary measure.

13 ACTING CHAIR DETTMAN: Okay. Thank
14 you.

15 MR. COLLINS: And, Mr. Chairman,
16 that does appear on page 24 of the prehearing
17 statement. The applicant has -- as Mr.
18 Emerine mentioned, this did come out as -- it
19 was the result of the discussions, the back
20 and forth that we had with DDOT.

21 ACTING CHAIR DETTMAN: Okay.

22 MR. COLLINS: And, Mr. Van Norman,

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1 do you have any comments on the -- your -- the
2 rooms that you rented? You mentioned the
3 Capitol Suites right down the street.

4 MR. VAN NORMAN: Well, you know, at
5 time we rent rooms from the Capitol Hill
6 Suites. We have an existing contract with
7 them. And if we rent -- you know, if we get a
8 block of rooms from a hotel that is more
9 distant as part of our meeting space, we are
10 happy to include in the contract that they
11 will provide shuttle service at the beginning
12 and the end of the meeting, so people can
13 easily get back and forth to the hotel and we
14 are happy to do that.

15 ACTING CHAIR DETTMAN: Okay.
16 Great. Moving on then, if there are no other
17 questions, I think --

18 COMMISSIONER TURNBULL: I just had
19 -- in reading the HPRB report, it sounds like
20 you are looking still for some more design
21 review. It says "Aspects of the design which
22 still" -- on page, this is the second page.

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1 "Aspects of the design which still deserve
2 discussion include the cladding material of
3 the addition and the balcony design." Is that
4 still a problem with them?

5 MR. MARKUS: It's -- well, the way
6 we left it in the concept approval is that we
7 would work -- we would continue to work with
8 staff. We -- obviously, we have taken to a
9 certain level and we've got to go through a
10 lot of details and we are going to meet with
11 Anne Brockett once we -- as we move forward
12 and kind of continue to work on these details.

13 COMMISSIONER TURNBULL: Okay.
14 Thank you.

15 MR. COLLINS: There are two reports
16 under Tab F and separated by a yellow piece of
17 paper. The top of the two, the first of the
18 two is actually the final report, if that's
19 what you are reading. I wasn't sure that was
20 what you were reading from just to be sure.

21 MR. EMERINE: But the report dated
22 July 23rd is the same as the report that I have

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1 attached at the end of the OP report.

2 COMMISSIONER TURNBULL: Okay.

3 Thank you.

4 MR. COLLINS: Great. Thanks.

5 ACTING CHAIR DETTMAN: All right.

6 I think moving on then, is -- again, in the
7 beginning of the proceeding I asked if there
8 was a representative from the ANC here. Still
9 none? We did receive a letter, a resolution
10 from ANC-6B, that's our Exhibit No. 25,
11 colleagues, and it is signed by the Chair of
12 the ANC, Mr. David Garrison, stating "At the
13 regularly called and properly noticed meeting
14 on September 8, 2009, with a quorum present,
15 the ANC-6B voted 7-0 to support the above
16 applicant's request as presented."

17 By the looks of it, I think that
18 this resolution meets the Regulation's great
19 weight requirements. And any questions on the
20 ANC? Great.

21 At this time, I think we will go to
22 -- let me ask if there are any parties or

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1 persons and parties in support or opposition
2 in the audience today? Seeing none, Mr.
3 Collins, I think it is time for closing.

4 MR. COLLINS: Thank you. I would
5 simply close by thanking the Board for hearing
6 this application this morning and asking for
7 your approval at the earliest convenience.
8 Thank you.

9 ACTING CHAIR DETTMAN: Great.
10 Colleagues, I think the record is very full
11 here. I think the applicant has done a great
12 job as well as OP and the other District
13 Agencies in providing us with a very full
14 record.

15 I think that I'm comfortable going
16 forward and deliberating today. And I can
17 start us off here. And I think that again,
18 because the record is so full and the
19 applicant did such a great job putting on
20 their case, I think we can do this very
21 quickly.

22 I'm going to actually rely heavily

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1 on the Office of Planning's report. I think
2 it was very, very thorough. With respect to
3 the two special exceptions from section 217,
4 as well as from the special exception
5 provisions of the Capitol Hill Overlay under
6 section 1202, I think that the, as stated in
7 the OP report, provisions under 217 are met.

8 The reason why a special exception
9 is required here is pursuant to 217.5 that
10 requires Board approval by way of special
11 exception to any of the additions. As you
12 will note, the Board has already granted
13 special exception for the use of this property
14 as a non-profit organization some time ago.

15 Again, I think the provisions are
16 met here. And specifically, 217.1(b) that
17 requires 10,000 square feet of gross floor
18 areas. The property has already been granted
19 a variance from that provision, but
20 nonetheless with the completion of the
21 proposed addition, that provision will
22 actually be met.

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1 I think that we heard in the
2 prehearing statement as well as the testimony
3 of Mr. Sher with respect to the impact on the
4 character of the surrounding neighborhood
5 under the Cap Overlay, I think that those
6 provisions are met. We heard in testimony
7 today that the square is actually denser than
8 the typical row house square. It has a
9 variety of uses, many of which are commercial
10 as well as the interior of the square is put
11 to a fairly intense use.

12 The addition is actually going to
13 be built entirely behind the historic
14 structure. It's not going to be visible from
15 the street. It is slightly lower than the
16 existing building. So again, I won't go
17 through all of my notes here, but I think that
18 in terms of its impact on the character, the
19 applicant has done a great job to hide the
20 addition behind the existing historic fabric
21 and then supplement the landscaping in front
22 of the property, that actually does a lot of

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1 good things.

2 With respect to the area variances
3 that are being requested, there is a variance
4 from lot occupancy being requested, a new
5 nonconformance being created by way of a --
6 the rear yard requirements under 404 and an
7 area variance from the nonconforming structure
8 requirements under 2001.3 and the requirement
9 for the driveway width under 2117.8.

10 Just quickly, I'll note that in the
11 OP report, OP suggests that the applicant may
12 need variance relief from section 400 for the
13 height of the building. However, I think that
14 that's acknowledged by the applicant.
15 However, in the prehearing statement, the
16 applicant addresses under 2001.3 for an
17 extension of an existing nonconformity.

18 So nonetheless, I think that I
19 would recommend that we not incorporate relief
20 under 400. However, I think that OP's
21 concerns or OP's technical recommendation will
22 be handled under the variance test under

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1 2001.3.

2 I'm just going to actually address
3 the variance test, the areas of variance
4 relief together. I think the applicant does
5 have some exceptional conditions on this
6 property, mainly the existing historic
7 structure, which is individually landmarked
8 and it's also located inside the Capitol Hill
9 Historic District, as well as the two
10 accessory buildings that are located a foot
11 off of the alley, which are contributing to
12 the historic fabric and the Historic District.

13 I think that this being a not-for-
14 profit as well their unique programmatic
15 requirements and their need to be in relative
16 close proximity to their -- the people that
17 they regularly meet with, that is the
18 Congress, and their need to meet the
19 programmatic as well as the other needs of
20 their membership, I think that that also plays
21 into the first prong of the variance test as
22 well.

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1 And both the historic nature as
2 well as the needs of a not-for-profit have
3 been acknowledged by the Court of Appeals to
4 feed into the first prong of the test.

5 The second prong of the test,
6 whether or not those two exceptional
7 conditions give rise to practical difficulties
8 on the property owner, I think that prong is
9 met as well.

10 In almost every situation in order
11 for the applicant to meet the lot occupancy,
12 the rear yard, the width of the driveway, as
13 well as the existing nonconformance of the
14 property, would require them to demolish a
15 substantial portion of the historic building
16 and that certainly is a practical difficulty.

17 As well as without this addition, they would
18 be unable to carry out, satisfactorily carry
19 out, the mission of this organization.

20 I think the third prong I have sort
21 of already covered underneath my comments
22 about the special exceptions. I think that

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1 this is a very, very well-designed and
2 carefully designed project. And I think that
3 it will not cause any substantial detriment to
4 the public good nor the intent and purpose of
5 the Zone Plan.

6 That's all I have, colleagues. If
7 you want to add to that?

8 COMMISSIONER TURNBULL: Just to
9 concur with you. I thought that was a very
10 excellent presentation there.

11 ACTING CHAIR DETTMAN: Thank you.

12 MEMBER MOLDENHAUER: I also concur.
13 I think that you have summarized all the
14 facts and I think that the applicant has done
15 an exceptional job working with the community,
16 working with the Historic Preservation and
17 working with his neighbors to maintain a
18 historic structure while at the same time
19 trying to meet its programmatic needs.

20 ACTING CHAIR DETTMAN: Great.
21 Thank you, Ms. Moldenhauer. That being said,
22 I'll move for approval of Application No.

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1 17985, pursuant to 11 DCMR 3104.1 and 3103.2
2 and section 1202 for a variance from the lot
3 occupancy requirements under subsection 403.2,
4 a variance from rear yard under section 404,
5 nonconforming structure requirements under
6 2001.3 and a variance from the driveway width
7 requirements under subsection 2117.8(c)(2) as
8 well as a special exception to allow the
9 expansion of a building devoted to a non-
10 profit organization under section 217 located
11 at 224 2nd Street, S.E.

12 Do I have a second?

13 MEMBER MOLDENHAUER: I second.

14 ACTING CHAIR DETTMAN: The motion
15 has been made and seconded.

16 All those in favor say aye.

17 ALL: Aye.

18 ACTING CHAIR DETTMAN: Opposed?
19 Any abstentions? And, Mr. Moy, will you -- or
20 Ms. Bailey, will you call the vote?

21 MS. BAILEY: Mr. Chairman, the vote
22 is recorded as 3-0-2 to grant the application.

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1 Mr. Dettman made the motion, Mrs. Moldenhauer
2 seconded, Mr. Turnbull supported the motion.
3 There are no other Board Members present at
4 this time.

5 ACTING CHAIR DETTMAN: Thank you,
6 Ms. Bailey. And I think that -- I think this
7 can be a summary order.

8 MS. BAILEY: Thank you, sir.

9 ACTING CHAIR DETTMAN: Great.
10 Thank you very much. I think again a great
11 application and a great design.

12 MR. COLLINS: Thank you very much.

13 MR. MARKUS: Thank you.

14 MR. VAN NORMAN: Thank you.

15 MR. COLLINS: Appreciate it.

16 ACTING CHAIR DETTMAN: Before the
17 applicant leaves this case, in my excitement
18 for looking to approve this case, I have
19 neglected to mention the conditions that were
20 proffered in the OP report, as well as the
21 prehearing statement.

22 And I don't have a problem with

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1 those conditions. The one about the shuttles,
2 I actually don't see a need for, but since the
3 applicant proffered it, I don't see a problem
4 with including it. Board Members, do you have
5 any concerns about the five conditions? Mr.
6 Collins?

7 MR. COLLINS: No, we have proffered
8 those four conditions on page 24 of our
9 statement, so we're happy to do that.

10 ACTING CHAIR DETTMAN: Okay. Mr.
11 Moy, does that require that I read that long
12 language again?

13 MR. MOY: Well --

14 ACTING CHAIR DETTMAN: Or can I say
15 the motion as conditioned?

16 MR. MOY: Referencing the page
17 number of the exhibit, I think that would be
18 fine.

19 ACTING CHAIR DETTMAN: Okay.

20 MS. BAILEY: Mr. Chairman, I just
21 need to make sure what conditions. Are these
22 the conditions that are contained in the

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1 applicant's report that we are including in
2 the order?

3 ACTING CHAIR DETTMAN: Why don't we
4 just say the -- because I think they are
5 pretty much word for word, we will say the
6 five conditions contained on page 1 of the OP
7 report.

8 MS. BAILEY: Okay. Thank you.

9 ACTING CHAIR DETTMAN: And we can
10 take a second vote. The motion still stands
11 as conditioned. Do you second it?

12 MEMBER MOLDENHAUER: Yes, I second.

13 ACTING CHAIR DETTMAN: Second?

14 MEMBER MOLDENHAUER: I second
15 again.

16 ACTING CHAIR DETTMAN: All right.

17 All those in favor of the motion as
18 conditioned say aye?

19 ALL: Aye.

20 ACTING CHAIR DETTMAN: Opposed?
21 Abstaining? Very good. I think we are ready
22 for the next case, the last one of the

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1 morning.

2 MS. BAILEY: Mr. Chairman, the
3 applicants were not here when we swore the
4 witnesses in, so this is a good time to swear
5 the witnesses in for St. John's Episcopal
6 Church. Would you, please, stand?

7 ACTING CHAIR DETTMAN: Thank you,
8 Ms. Bailey.

9 MS. BAILEY: And would you, please,
10 raise your right hand?

11 (Whereupon, the witnesses were
12 sworn.)

13 MS. BAILEY: Thank you.

14 ACTING CHAIR DETTMAN: Do you want
15 to go ahead and call the next case?

16 MS. BAILEY: Application 17979, St.
17 John's Episcopal Church, pursuant to 11 DCMR
18 section 3104.1, for a special exception for a
19 child development center under section 205, to
20 increase the number of staff from 9 to 13, the
21 number of children is 45 and would not be
22 increased. The property is located at 3240 O

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1 Street, N.W., Square 1231, Lot 144. The
2 property is Zoned R-3.

3 Please, have a seat at the table.

4 ACTING CHAIR DETTMAN: Good
5 morning. Okay. Well, why don't we start off
6 by just introducing yourself for the record
7 and then I have a comment to make. Would you
8 turn your mike on, please?

9 MS. JOYCE: Is that better? Yes.
10 I'm Marley Joyce. I'm head of St. John's
11 Episcopal Preschool. And this is Martha Webb.

12 MS. WEBB: Martha Webb, Chair of
13 the Board of St. John's Episcopal Preschool.

14 ACTING CHAIR DETTMAN: Great. I
15 wanted to start off just by saying that the
16 Board has reviewed the record and it is a
17 very, very full record. And given that you
18 have been in operation for quite some time, I
19 think you have been to the Board two or three
20 times, maybe twice.

21 MS. JOYCE: Yes.

22 ACTING CHAIR DETTMAN: Again, we

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1 have reviewed the record and I think the Board
2 is well-informed on this case with respect to
3 the relief that is being requested, but I'll
4 give you the opportunity. Again, the record
5 is full. You can opt to rest on the record.

6 If you wanted to, just maybe
7 highlight some of the areas of relief or the
8 provisions of relief that you are seeking
9 relief from, you can do that. If you wanted
10 to speak to some of the conditions that are
11 being proposed and the conditions that are
12 being changed or requested to be changed, you
13 can do that. But again, it's a very, very
14 full record.

15 MS. JOYCE: All right.

16 MEMBER MOLDENHAUER: Mr. Chair,
17 before we begin, there is just a preliminary
18 matter that I wanted to put on the record. I
19 actually was married at St. John's and attend
20 St. John's Church. And so I don't believe
21 that that would -- I believe that I would
22 still be able to fairly and justly review this

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1 case, but I wanted to put that on the record.

2 As long as there is no objections by any
3 parties.

4 ACTING CHAIR DETTMAN: Does the
5 applicant have any objections?

6 MS. JOYCE: I have no objection.

7 ACTING CHAIR DETTMAN: No. Mr.
8 Turnbull? None? Okay. I think we can move
9 forward.

10 MS. JOYCE: All right. Well, as
11 you say, we have been here three times. This
12 is my first time, but the preschool is well-
13 established now. We are into our 12th year.
14 And so we are requesting two things.

15 One is that we have a perpetual --
16 that the special exception would be perpetual.

17 And the second request is we would
18 like to increase our staff from 9 to 13. We
19 feel that we can provide the kind of excellent
20 program that we currently have in place by
21 increasing the number of staff.

22 We have worked things out so that

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1 not all the staff, members of the staff are
2 there at the same time. We have offered a
3 transportation benefit to everyone, so that
4 most people are using public transportation or
5 walking to school to sort of take care of some
6 of the parking problems in the area.

7 But the hours of operation of the
8 school are such that I don't think it has that
9 much of an impact on the -- our neighbors in
10 terms of parking.

11 ACTING CHAIR DETTMAN: There were -
12 - in the record I noticed that there were a
13 couple little differences in the hours of
14 operation.

15 MS. JOYCE: Yes.

16 ACTING CHAIR DETTMAN: Especially
17 in the morning. Can you just clarify what
18 that might be, what your hours of operation
19 are?

20 MS. JOYCE: Yes. For some of us,
21 our hours of operation are 7:30 to 6:30.
22 Other people work part-time. There are 6

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1 members of the staff that are there from 8:30
2 to 2:30. And another person part-time person
3 comes at 11:00 and stays until 3:00. And then
4 two other people come just two days a week,
5 one works for a total of 11 hours and another
6 works for 6 hours. But it's staggered.

7 ACTING CHAIR DETTMAN: Just looking
8 at the conditions that are on page 1 of the OP
9 report, which did you receive a copy of?

10 MS. JOYCE: Yes.

11 ACTING CHAIR DETTMAN: Okay. Do
12 the first condition, if we were to make that
13 7:30 to 6:30?

14 MS. JOYCE: No. 1?

15 ACTING CHAIR DETTMAN: Yes.

16 MS. JOYCE: The child -- yes, that
17 would be better.

18 ACTING CHAIR DETTMAN: Okay. Okay.
19 Colleagues -- does that close our your
20 presentation?

21 MS. JOYCE: Yes. The only other
22 thing that I noticed was No. 6, this is minor,

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1 but trash is not picked up twice a day. It
2 should have been twice a week.

3 ACTING CHAIR DETTMAN: Okay.

4 MS. JOYCE: But everything else is
5 fine.

6 ACTING CHAIR DETTMAN: Board
7 Members, do you have any questions? No?

8 COMMISSIONER TURNBULL: Just trying
9 to clarify, in their letter you are looking to
10 receive permanent approval?

11 MS. JOYCE: Correct.

12 COMMISSIONER TURNBULL: But I
13 noticed that in the ANC's letter, although
14 they are in support of continuing on, they
15 don't really address the permanent nature.
16 It's -- they deal with everything else, but
17 they don't discuss anything in there in their
18 memo to us about making it -- allowing it
19 permanent.

20 MS. JOYCE: You're right, they
21 don't.

22 COMMISSIONER TURNBULL: Have you

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1 had any discussions with them on this?

2 MS. JOYCE: It was part of my
3 presentation that night when I went before the
4 ANC, but you're right, they didn't put it in
5 here.

6 COMMISSIONER TURNBULL: I don't
7 know how to take that, whether it is silence
8 gives consent or they have -- or they really
9 just forgot to mention it in their submission
10 to us.

11 MS. JOYCE: It might be. I mean,
12 they approved the -- my request that night.

13 COMMISSIONER TURNBULL: Yeah. How
14 long --

15 MS. JOYCE: Yes?

16 COMMISSIONER TURNBULL: You have
17 been here three times. This is your third
18 time and it has been extended every -- are we
19 looking at 5 years?

20 MS. JOYCE: When the school was
21 first started in 1997, other people that were
22 involved in the school came before the Board

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1 of Zoning. And that was approved for, I
2 believe, 2 years initially. And then another
3 group came and it was approved for 10 years.

4 COMMISSIONER TURNBULL: 10 years.

5 MS. JOYCE: And so this would be
6 the third time.

7 COMMISSIONER TURNBULL: The third
8 time. Okay.

9 ACTING CHAIR DETTMAN: To you
10 knowledge, while the school has been open and
11 operating, have you had any problems in terms
12 of complaints from neighbors regarding
13 parking, noise?

14 MS. JOYCE: No, we have not. And
15 when I -- that was mentioned at the ANC
16 meeting that no one had complained and I
17 think, you know, we are viewed a good
18 neighbor. We are quite careful about how we
19 do our dismissal and dropping off children in
20 the morning.

21 ACTING CHAIR DETTMAN: Okay. Good.
22 Any other questions? No? To the applicant,

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1 do you have anything before moving on to the
2 Office of Planning's report?

3 MS. JOYCE: No, I don't.

4 ACTING CHAIR DETTMAN: Okay. Let's
5 do that then. Mr. Jackson?

6 MR. JACKSON: Good morning, Mr.
7 Chairman, Members of the Board. My name is
8 Arthur Jackson and I'm a Development Use
9 Specialist with the District Office of
10 Planning.

11 And we submitted a report, you have
12 it before you. We basically will stand on the
13 record and we are available to answer any
14 questions about the report.

15 Essentially, we visited the site
16 and talked to the applicant. The applicant
17 was kind enough to provide additional
18 information that we -- to clarify the
19 application, more to tell us about the
20 staffing and the scheduling, which we included
21 in our report.

22 And the applicant has been in

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1 contact with the ANC representative to confirm
2 various things with regard to their
3 application. So I think they have done a very
4 good job of outreach, getting feedback and
5 this is -- we tried to reflect that in the
6 report.

7 So the conditions that we included
8 are pretty much what was in the previous
9 approval, except for the changes they
10 requested. We also support the perpetual
11 nature of this special exception, in line with
12 other applications that come before the Board
13 for longstanding uses that have not been seen
14 by the community as being divisive or having
15 negative impacts.

16 So with that, we conclude our brief
17 statement and we are available to answer
18 questions.

19 COMMISSIONER TURNBULL: So
20 Condition 9 for you would be permanent nature
21 of the facility?

22 MR. JACKSON: Well, if we didn't

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1 put a time frame on it.

2 COMMISSIONER TURNBULL: Okay.

3 MR. JACKSON: I think effectively
4 it would be perpetual, but I'll defer to the
5 Office of the Attorney General to see if that
6 should be stated any other way.

7 COMMISSIONER TURNBULL: Okay.

8 MR. JACKSON: Okay. I'm getting a
9 confirmation of that.

10 MEMBER MOLDENHAUER: Mr. Jackson,
11 just one question. Condition No. 6, just I
12 want to confirm that that was a typographical
13 error when it said trash pickup twice a day
14 versus twice a week?

15 MR. JACKSON: Well --

16 MEMBER MOLDENHAUER: Or was the
17 prior approval with twice a day?

18 MR. JACKSON: Well, that could have
19 been a typographical error actually in the
20 previous orders. I thought it was a bit much
21 for a church. However, if the church had had
22 a feeding program, where they were feeding the

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1 homeless, that might merit more frequent
2 pickups, because the thought is that the
3 services to the center would not -- would be
4 incorporated with -- would occur at the same
5 time as the services to the church, so
6 everything would be coordinated.

7 So there is no feeding program at
8 the church, at this time, so I would think
9 twice a week is more than reasonable for a
10 facility that is just functioning as a
11 standard church and a child care center, so we
12 have no problem with that change.

13 MEMBER MOLDENHAUER: Thank you very
14 much. And just for the record, I have now in
15 my hand the Zoning Application No. 16430,
16 which was the 1999 approval, which on Item No.
17 7 said trash pickup twice a week, for
18 clarification.

19 MR. JACKSON: That was my error
20 then. Thank you.

21 ACTING CHAIR DETTMAN: Thank you,
22 Ms. Moldenhauer. Mr. Jackson, just looking at

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1 your first condition, you propose 8:30 to
2 6:30. However, today it was determined that
3 7:30 to 6:30 were really the operating hours.

4 Do you have any response to that?

5 MR. JACKSON: We would stipulate
6 that we were -- just wanted to make sure that
7 we were -- encompassed the entire period of
8 time with the center to be operating and we
9 think it's reasonable to have 7:30, even if no
10 students/children are generally there. Staff
11 is there still working. And that gives some
12 flexibility to drop-off and pick-up whenever
13 their clients need to be dropped off and
14 picked up.

15 ACTING CHAIR DETTMAN: Okay. And
16 on page 2, you have a note that says that the
17 last -- at the last approval, Condition No.
18 10, required the applicant to meet with the
19 ANC twice a year to review the increase in use
20 of hours, etcetera. Are you suggesting that--
21 well, is OP taking the position that they
22 don't see that really to be necessary?

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1 MR. JACKSON: Well, we had
2 suggested to the applicant that we clean up
3 the provisions, such that anything that they
4 need to do, that they do. And since that
5 section was put in specifically to address
6 issues of growth in the center and the center
7 is not going to grow, it would seem reasonable
8 to drop that as a condition.

9 The applicant contacted the ANC
10 representative, but we would say that if it's
11 not an issue for them, that it probably would
12 be good to remain just so that it would not be
13 necessary for them to go back to the ANC for
14 additional approval and then come back here
15 for final action, unless there are some other
16 issues that they would want to take back to
17 the ANC for follow-up.

18 So we are not -- we raised it as a
19 possibility, but that's not really critical, I
20 don't think.

21 ACTING CHAIR DETTMAN: Okay. How
22 about the applicant? Was that addressed at

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1 all at the ANC meeting, whether or not they
2 wanted you to continue to come back to them?

3 MS. JOYCE: It was not addressed at
4 the ANC meeting. It was something that was
5 brought up after that, but I have been in
6 touch with the ANC representative and -- to
7 tell him that I would be happy to come to the
8 meeting, which was held last night, and they
9 said they didn't think that was necessary,
10 because there wasn't enough time to publicize
11 that.

12 But I believe that what Mr. Jackson
13 is saying is true. You know, when all this
14 was put together, it was 12 years ago and the
15 school started out with 4 children. And you
16 know, it was a way of monitoring the growth of
17 the school. But we have been established with
18 45 children for the last 10 years and actually
19 I don't even know of anyone that has gone to
20 the ANC to -- until I went to talk about
21 anything that's going on with the school and
22 the neighborhood.

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1 ACTING CHAIR DETTMAN: Okay.

2 MS. JOYCE: So if something were to
3 come up, I would certainly feel more than
4 comfortable about going there.

5 ACTING CHAIR DETTMAN: Okay.
6 Colleagues, anything else for the Office of
7 Planning or the applicant? No? Great.
8 Moving on, we -- I don't see anyone. Well, is
9 anyone in the audience from the ANC, ANC-2E?
10 Seeing none, for the record, I note that we
11 did receive a letter from the ANC-2E, that's
12 our Exhibit No. 24, stating that the ANC does
13 not object to the request of the applicant to
14 increase its staff by a total of 4 people.

15 Moving on, are there anyone -- is
16 there anyone in the audience, people in
17 support or against the application? Seeing
18 none, I think it's back to the applicant for
19 closing.

20 MS. JOYCE: All I can say is thank
21 you very much. I hope that you approve this.

22 ACTING CHAIR DETTMAN: Okay.

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1 MS. JOYCE: And thank you, Mr.
2 Jackson. Oh, I'm so sorry, you can tell I'm
3 brand new at this. We hope that the Bench
4 will favorably look upon what we have asked
5 for.

6 ACTING CHAIR DETTMAN: Okay. Well,
7 thank you and thank you for your patience this
8 morning.

9 MS. JOYCE: You're welcome.

10 ACTING CHAIR DETTMAN: Colleagues,
11 I think the record is fairly full here. And
12 it would be my recommendation to move forward
13 today. And I think Ms. Moldenhauer is going
14 to lead us off here.

15 MEMBER MOLDENHAUER: I think that
16 the record is very full. OP did a great job
17 outlining the different requirements for a
18 special exception under 205 and 320.3. And I
19 will incorporate all of their notes from the
20 different elements of the special exception in
21 my comments.

22 And next, I would move to approve

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1 the application under the additional
2 conditions of -- under special exception
3 requirement 205.2, "The center shall be
4 capable of meeting all applicable code and
5 licensing requirements."

6 Our Exhibit No. 19 includes a
7 letter from the D.C. Office of the State
8 Superintendent of Education stating that they
9 do have a valid Certificate of Occupancy for
10 the child development facility. And that
11 would satisfy our requirements and that's also
12 mentioned and identified, the Certificate of
13 Occupancy is identified in the -- OP's report.

14 In addition to that, we have
15 received an ANC letter in support of the
16 application. The applicant did go and meet
17 with the ANC. There was, however, an absence
18 on the issue of whether or not the ANC
19 supported the perpetual request for the
20 special exception and I would say that since
21 that item was addressed at the meeting and
22 that our great weight would only go to any

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1 additional conditions that are mentioned in
2 the written report, that, in my opinion, would
3 be an approval either by omission or by the
4 fact that it wasn't a condition on the letter.

5 In addition to that, I would
6 consider, you know, the different factors that
7 were stated here in regards to the hours of
8 operation. Initially, the OP's report said
9 that it was supposed to be 8:30 to 6:30 p.m.
10 However, based on testimony, it was stated
11 that there are some staff members that arrive
12 as early as 7:30. OP stated that they did not
13 believe that would be -- that would have any
14 adverse impact on their recommendation to
15 approve the special exception.

16 And in addition to that, there was
17 a modification to the Item No. 6, which is the
18 trash will be picked up at least twice a day
19 to be twice a week and that was in conformity
20 with the initial 1999 Board approval.

21 And I'll open up the -- for any
22 additional comments.

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1 COMMISSIONER TURNBULL: I would
2 agree with you 100 percent. I think the only
3 thing with the time, I guess, you could look
4 at it that 8:30 to 6:00 is still correct in
5 one way that it's operational. If that's when
6 classes begin and staff coming at the earlier
7 time really is a minor issue. I mean, it's a
8 little bit different, but I would agree with
9 you.

10 MEMBER MOLDENHAUER: Okay.

11 ACTING CHAIR DETTMAN: Ms.
12 Moldenhauer, did you have a position on
13 whether or not having a condition is
14 appropriate to require the applicant to go
15 back to the ANC either once or twice a year?

16 MEMBER MOLDENHAUER: I think that
17 considering that the ANC did not specifically
18 request that and this is a very knowledgeable
19 ANC in this location, I think that in addition
20 to that, we heard testimony from Ms. Joyce
21 that they have been stable at a current number
22 of 45 children and that they are not looking

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1 at expanding that, so that that additional
2 conversation or need for communication would,
3 obviously, not be required.

4 You know, the applicant and Ms.
5 Joyce stated that they would be willing to
6 meet with the ANC if any, I guess, further
7 complaints or issues came up. So I would be
8 fine with approving the application without
9 that condition.

10 ACTING CHAIR DETTMAN: Okay. I
11 don't have anything further. Do we have a
12 motion?

13 MEMBER MOLDENHAUER: Yes, I make a
14 motion to approve Application No. 17979 for
15 special exception pursuant to section 205 and
16 320.3 for a continuation of an existing child
17 development center on the subject property, as
18 conditioned that the child development center
19 shall operate from 7:30 a.m. to 6:30 p.m.,
20 Monday through Friday, on a year-around basis.

21 The maximum number of students
22 shall be 45. The age range shall be from --

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1 not to exceed 5 years of age. There shall be
2 a maximum of 13 staff, an increase from the
3 previous maximum of 9. A secure and
4 supervised drop-off and pick-up of the
5 children shall occur on Potomac Street, N.W.
6 A staff person shall be present to receive the
7 children as they are dropped off and
8 discharged.

9 All deliveries shall coincide with
10 the deliveries made by St. John's Episcopal
11 Church. The trash pick-up shall be at least
12 twice a week. Outdoor play shall be in the
13 fenced area of the church reparatory. Efforts
14 shall be made to reduce the demand for parking
15 by encouraging staff to walk and use public
16 transportation.

17 The applicant shall continue to
18 arrange for off-street parking in the
19 Georgetown community, as needed.

20 COMMISSIONER TURNBULL: Second.

21 ACTING CHAIR DETTMAN: Okay. The
22 motion has been made and seconded.

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1 All those in favor say aye.

2 ALL: Aye.

3 ACTING CHAIR DETTMAN: Opposed?
4 Any abstentions? And would you call the vote,
5 please?

6 MS. BAILEY: Mr. Vice Chairman, the
7 vote is recorded as 3-0-2 to grant the
8 application. Mrs. Moldenhauer made the
9 motion, Mr. Turnbull seconded, Mr. Dettman
10 supports the motion. Two other Board Members
11 are not present.

12 ACTING CHAIR DETTMAN: Thank you,
13 Ms. Bailey. And thank you to the applicant
14 for your patience this morning. And I hope
15 everything goes well carrying forward.

16 MS. JOYCE: Great. Thank you very
17 much.

18 MS. BAILEY: And this is a summary
19 order, Mr. Chairman?

20 ACTING CHAIR DETTMAN: Yes, Ms.
21 Bailey. I think that concludes the morning
22 Public Hearing session. Is that right, Mr.

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1 Moy?

2 MR. MOY: That's correct, Mr.
3 Chairman.

4 ACTING CHAIR DETTMAN: Great. So
5 we will stand adjourned until 1:00. Yes,
6 1:00.

7 (Whereupon, the Public Hearing was
8 recessed at 11:50 a.m. to reconvene at 1:15
9 p.m. this same day.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:15 p.m.

3 ACTING CHAIR DETTMAN: The hearing
4 will, please, come to order. Good afternoon,
5 ladies and gentlemen. This is the November 3,
6 2009 Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Shane Dettman, Vice
9 Chairperson. Joining me today to my right is
10 Mr. Konrad Schlater representing the Zoning
11 Commission and Ms. Meredith Moldenhauer,
12 Mayoral Appointee, Board Member. To my far
13 left is Mr. Clifford Moy with the Office of
14 Zoning and Ms. Beverley Bailey also with the
15 Office of Zoning.

16 Copies of today's hearing agenda
17 are available to you and are located to my
18 left in the wall bin near the door. Please,
19 be aware that this proceeding is being
20 recorded by a Court Reporter and is also
21 webcast live. Accordingly, we must ask you to
22 refrain from any disruptive noises or actions

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1 in the hearing room.

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

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

17 The order of procedure for special
18 exceptions and variances is as follows:
19 Statement and witnesses of the applicant;
20 Government reports including the Office of
21 Planning, Department of Public Works and
22 others; Report of the ANC; Parties or persons

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1 in support; Parties and persons in opposition;
2 and closing remarks by the applicant.

3 The order of procedure for appeal
4 applications will be as follows: Statement
5 and witnesses of the applicant; The Zoning
6 Administrator or Government officials' case;
7 Case for the owner, lessee or operator of the
8 property involved, if not the appellant; The
9 ANC within which the property is located;
10 Intervenor's case, if permitted by the Board;
11 and finally, rebuttal and closing statement by
12 the appellant.

13 Pursuant to sections 3117.4 and
14 3117.5, the following time constraints will be
15 maintained: The applicant, appellant, persons
16 and parties, except an ANC, in support,
17 including witnesses 60 minutes collectively.
18 The appellees, persons and parties, except an
19 ANC, in opposition, including witnesses 60
20 minutes collectively. And individuals will be
21 allotted 3 minutes.

22 These time restraints do not

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1 include cross examination and/or questions
2 from the Board.

3 Cross examination of witnesses is
4 permitted by the applicant or parties. The
5 ANC within which the property is located is
6 automatically a party in a special exception
7 or variance case.

8 Nothing prohibits the Board from
9 placing reasonable restrictions on cross
10 examination, including time limits and
11 limitations on the scope of cross examination.

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

15 The Board and the staff will specify at the
16 end of each hearing exactly what is expected
17 and the date when the persons must submit the
18 evidence to the Office of Zoning. After the
19 record is closed, no other information will be
20 accepted by the Board.

21 The Sunshine Act requires that the
22 Public Hearing on each case be held in the

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1 open before the public. The Board may,
2 consistent with its Rules of Procedure and the
3 Sunshine Act, enter Executive Session during
4 or after the Public Hearing on a case for
5 purposes of reviewing the record or
6 deliberating on the case.

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

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

16 The Board will make every effort to
17 conclude the Public Hearing as near as
18 possible to 6:00 p.m. If the afternoon cases
19 are not completed at 6:00 p.m., the Board will
20 assess whether it can complete the pending
21 case or cases remaining on the agenda.

22 At this time, the Board will

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1 consider any preliminary matters. Preliminary
2 matters are those that relate to whether a
3 case will or should be heard today, such as
4 requests for postponement, continuance or
5 withdrawal or whether proper and adequate
6 notice of the hearing has been given.

7 If you are not prepared to go
8 forward with a case today or if you believe
9 that the Board should not proceed, now is the
10 time to raise such a matter.

11 Does the staff have any preliminary
12 matters?

13 MS. BAILEY: Mr. Chairman, good
14 afternoon, Members of the Board and to
15 everyone, good afternoon. Yes, Mr. Chairman.

16 It has to do with Application 17989 of
17 Stephen A.W. McKinney. There is a request for
18 postponement, Mr. Chairman.

19 And I would like to add that there
20 is also a request for party status in this
21 case.

22 ACTING CHAIR DETTMAN: Thank you,

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1 Ms. Bailey. Is the applicant here for this
2 case?

3 MR. SULLIVAN: Yes, good afternoon.

4 My name is Marty Sullivan. I am here on
5 behalf of the applicant. The applicant is not
6 here.

7 ACTING CHAIR DETTMAN: Good
8 afternoon, Mr. Sullivan. The Board has
9 reviewed the record and we did see your
10 request for postponement, which is our Exhibit
11 No. 22 requesting a postponement to no sooner
12 than January 12th. And I believe that was for
13 purposes of working out issues with the
14 neighbors as well as the ANC?

15 MR. SULLIVAN: Yeah, the ANC
16 requested that we request a postponement and
17 we agreed, based on a couple of issues. One,
18 a potential party opponent was not -- he was
19 out of town on the date of the ANC meeting and
20 they wanted to hear from him. And they also
21 asked for us to draft a voluntary agreement,
22 which we agreed to do, and they wanted to give

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1 us time to do that. So we are hoping to get
2 back to the ANC in January and have a hearing
3 some time after that.

4 ACTING CHAIR DETTMAN: Okay. Is
5 the applicant for party status here, Mr. Bruce
6 Lowrey? Do you want to come forward, please?

7 Why don't you have a seat? Thank you. And
8 can you introduce yourself for the record,
9 please?

10 MR. LOWREY: Bruce Lowrey, 4117
11 Brandywine Street, N.W., Washington, D.C.

12 ACTING CHAIR DETTMAN: Thank you.
13 And I see you have submitted an application
14 for party status, which is our Exhibit No. 21.

15 And while we won't be getting into the merits
16 of this case and discussing the reasons why
17 you have submitted your application, do you
18 have any input in terms of the request for
19 postponement? Any responses to the Board
20 potentially putting this off?

21 MR. LOWREY: I'm okay with putting
22 it off until, I believe, February is the next

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1 available date.

2 ACTING CHAIR DETTMAN: Okay.

3 MR. LOWREY: To have a hearing,
4 yes.

5 ACTING CHAIR DETTMAN: Okay. To my
6 colleagues, I know that there have been times
7 the Board has, in these situations, either
8 dealt with the party status applications now
9 and put that matter behind us or we can just
10 take up the issue related to whether or not to
11 grant party status to Mr. Lowrey at the time
12 that we reschedule this. Is there a
13 preference? No preference?

14 Mr. Lowrey, I presume that you will
15 be here at the February date?

16 MR. LOWREY: Yes, sir, I will.

17 ACTING CHAIR DETTMAN: Okay. And
18 you intend on participating in the hearing
19 whether you are a party or not?

20 MR. LOWREY: Yes, sir.

21 ACTING CHAIR DETTMAN: Okay. Well,
22 why don't we do this? For the sake of time,

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1 why don't we just put off dealing with the
2 request for party status at the February
3 hearing and we can deal with that
4 expeditiously and then we can move on with the
5 hearing.

6 MR. LOWREY: Okay.

7 ACTING CHAIR DETTMAN: I think, Ms.
8 Bailey, that you were suggesting February 2nd?

9 MS. BAILEY: Yes, Mr. Chairman. I
10 have spoken with Mr. Nero and it is believed
11 that the best time would be February 2nd and
12 the afternoon would be the most convenient
13 time.

14 ACTING CHAIR DETTMAN: February 2nd
15 and that would be third in the afternoon. Is
16 that correct?

17 MS. BAILEY: Mr. Chairman, that's
18 at the Board's discretion. You can make it
19 first or you could make it last.

20 ACTING CHAIR DETTMAN: Why don't we
21 put it on for third in the afternoon? So that
22 would be February 2nd. Our afternoon session

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1 starts at 1:00. We can't really gauge when we
2 will get to this particular hearing. Right
3 now, we have two cases before that. And
4 depending upon the scope of that, those two
5 cases, it could be fairly quickly or it might
6 take a little while. So I would just suggest
7 being here at 1:00 and being ready to go
8 forward.

9 Does February 2nd in the afternoon
10 work for the applicant as well as Mr. Lowrey?

11 MR. SULLIVAN: Yes, it works for
12 the applicant.

13 ACTING CHAIR DETTMAN: Great.

14 MR. SULLIVAN: Thanks.

15 ACTING CHAIR DETTMAN: Okay. Then
16 we will see you on February 2nd.

17 Okay. I think we are ready to go
18 forward. Ms. Bailey, do you want to call the
19 next case?

20 MS. BAILEY: Yes, Mr. Chairman.
21 The witnesses were sworn in previously for the
22 next case, but there may be others who were

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1 not sworn in. Is there anyone else who needs
2 to be sworn in this afternoon?

3 Okay. The next case, Mr. Chairman,
4 is an appeal. The number is 17971,
5 Outerbridge and Georgiana Horsey and it's
6 pursuant to 11 DCMR section 3100 and 3101,
7 from a determination of the Office of the
8 Zoning Administrator, Department of Consumer
9 and Regulatory Affairs, to allow additions to
10 a one-family dwelling by Building Permit Nos.
11 B0902028 and B0905289. The property is
12 located at 3046 N Street, N.W. It is also
13 known as Square 1209, Lot 854. And it is
14 Zoned R-3.

15 Members of the Board, the Board
16 last took this case up last week, that's on
17 October 27th. It was continued to today. And
18 if I'm not mistaken, the hearing should start
19 with the Administrative Officer's case.

20 ACTING CHAIR DETTMAN: Thank you,
21 Ms. Bailey. Why don't we do this? Why don't
22 we actually swear in all the witnesses for the

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1 afternoon cases and then we can get that
2 behind us.

3 So if there are witnesses here to
4 testify for the appeal case as well as the two
5 or three afternoon cases, why don't you go
6 ahead and stand?

7 MS. BAILEY: Please, raise your
8 right hand.

9 (Whereupon, the witnesses were
10 sworn.)

11 MS. BAILEY: Thank you.

12 MR. HITCHCOCK: Mr. Chairman, may I
13 raise a preliminary matter?

14 ACTING CHAIR DETTMAN: Certainly.

15 MR. HITCHCOCK: When we concluded
16 last time, it was after Mr. Horsey had made
17 the presentation and there were a number of
18 questions. We went back and tried to think a
19 little more about answers to the questions the
20 Board had and have prepared a dec, which I
21 have handed up to Mr. Moy ahead of time.

22 We were wondering, since we only

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1 used 10 minutes of the allotted hour for the
2 presentation, if it might make sense to go
3 through the dec quickly, rather than wait for
4 rebuttal later on? It might be helpful so
5 that the Zoning Administrator can hear the
6 thoughts and for the Board also in framing the
7 issues in their presentation.

8 ACTING CHAIR DETTMAN: Um --

9 MR. HITCHCOCK: It would take
10 probably 5 to 10 minutes.

11 ACTING CHAIR DETTMAN: 5 or 10
12 minutes. And remind me again how long you
13 took during your 60 minutes?

14 MR. HITCHCOCK: Just 10 minutes.

15 ACTING CHAIR DETTMAN: No, last
16 week, how much time you took.

17 MR. HITCHCOCK: 10 minutes.

18 ACTING CHAIR DETTMAN: Oh, it was
19 10 minutes?

20 MR. HITCHCOCK: Yes.

21 ACTING CHAIR DETTMAN: Okay.

22 MS. MADDOX-LEVINE: Chairman

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1 Dettman, if I might? I'm sorry. T. Maddox-
2 Levine for the Department of Consumer and
3 Regulatory Affairs. I apologize. I was not
4 here during the last hearing. However, it is
5 my understanding that the appellant presented
6 their case in chief and rested, at that point.

7 And the purpose for today's reconvening of
8 the matter was so that we could begin our
9 portion of the case.

10 It's also my understanding that the
11 Board asked for some clarity on at least two
12 legal issues and in response, we have prepared
13 a legal memorandum that addressed those two
14 issues.

15 Certainly, if the appellant would
16 like to advance his PowerPoint presentation,
17 which we did just now receive in written form,
18 if the written form of it would be construed
19 by the Board as their, loosely, legal
20 memorandum, certainly, the Board is at leisure
21 to read it at any time.

22 However, to now go back and present

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1 a PowerPoint presentation would be akin to the
2 District now standing up and reading its
3 memorandum in entirety. And so we would
4 oppose that, at this time.

5 MR. HITCHCOCK: If I may, Mr.
6 Chairman? I mean, if a motion is needed, we
7 would move to reopen to present. And I don't
8 think there would be that much in the way of
9 new, but it does put in written form questions
10 the Board had about definitions. It answers a
11 question Ms. Moldenhauer had with a sketch
12 dealing with it.

13 It gets into the issues. I mean,
14 we will wait for rebuttal and show the
15 PowerPoint then if that's what the Zoning
16 Administrator would prefer, but we thought it
17 might be better to give everyone a chance to
18 look at it now, rather than after their case
19 when they would not have a chance to respond
20 and when the discussion would be between the
21 Board and the appellant on those points.

22 ACTING CHAIR DETTMAN: Well, I

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1 think that given that you have taken up only
2 10 minutes of your 60 minutes allotted time
3 and at rebuttal that clock would, essentially,
4 start to move again, and these were -- you had
5 mentioned that these are in direct response to
6 questions that the Board had, and I'll ask my
7 colleagues as well, but unless DCRA feels
8 strongly that they are going to be prejudiced
9 if the Board were to allow an extra 5 minutes,
10 at this point in the proceedings, 5 or 10
11 minutes at this point in the proceedings in
12 order to, you know, kind of supplement some of
13 the answers to the questions that the Board
14 had, I don't see a real issue with doing it
15 now, instead of waiting until rebuttal.

16 But Board Members might want to
17 weigh in?

18 MEMBER MOLDENHAUER: I actually
19 think that it would -- I don't believe it
20 would prejudice DCRA or the District of
21 Columbia to actually provide them with an
22 additional opportunity to kind of outline any

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1 responses to that in their case in chief.

2 In addition to that, I think it
3 would help us, as Board Members, to clarify
4 any issues that we may have in our questioning
5 of the District when they present their case
6 in chief.

7 ACTING CHAIR DETTMAN: Why don't we
8 go ahead and do that then?

9 MR. HITCHCOCK: All right. Mr.
10 Horsey is moving the easel, so it can be more
11 easily seen.

12 ACTING CHAIR DETTMAN: And again,
13 Mr. Hitchcock, you had said 5 to 10 minutes?

14 MR. HITCHCOCK: Yes, sir.

15 ACTING CHAIR DETTMAN: Okay.

16 MR. HITCHCOCK: Okay.

17 ACTING CHAIR DETTMAN: Can we hold
18 you to that?

19 MR. HITCHCOCK: Yes, you may.

20 ACTING CHAIR DETTMAN: Okay.

21 MR. HITCHCOCK: The first issue
22 deals with the deck, whether is it part of the

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1 stairs or part of the landing or whether
2 zoning relief is required.

3 We -- there are no definitions for
4 a number of the key terms. So we start with
5 the regulation which talks about stairs
6 leading to the ground not being allowed. Now,
7 what are stairs? There is nothing in the
8 Zoning Regulations. We went to Webster's.
9 The first definition says it is a "series of
10 steps or flights connected by landings and
11 passing from one level to another."

12 So the regulations say stairs and
13 Webster's distinguishes stairs from landings
14 and that is consistent with the point we made
15 last week that it also carves out railings in
16 2503.4 and it is also consistent with the
17 Building Code.

18 We then went to what's the
19 definition of landing. "A level part of a
20 staircase at the end of a flight of stairs."
21 Now, they are at the end of stairs, but they
22 are not a part of them. But the definition

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1 says it could be part of a staircase, which
2 again is an enclosure for stairs connecting a
3 stairway.

4 What's a stairway? "One or more
5 flights of stairs and usually connecting
6 landings providing passage from one level to
7 another." I'm not going to read the whole
8 thing. The Board has it in front of them.

9 But it does indicate that following
10 the regs there is a difference. I would like
11 Mr. Horsey to speak to the next three slides,
12 which deal with this issue, and the third of
13 which responds to Ms. Moldenhauer's question.

14 MR. HORSEY: These are --
15 Outerbridge Horsey. These are illustrations
16 of two sections of the Residential Building
17 Code, the IRC 2006, which is the local code
18 adopted by the -- by D.C. with some
19 amendments, none of which affect the issues
20 here.

21 And it describes visually what a
22 landing is and the landing only gives a

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1 minimum definition, which is the landing must
2 be as wide as the stair that it is serving and
3 as deep as well.

4 So for this stair, which is 36
5 inches wide, which is the minimum size for a
6 stair, the minimum size for a landing is 36
7 inches by 36 inches.

8 The second one shows, basically, a
9 similar -- a different condition, but the
10 similar information that it talks about if
11 there is a door opening onto the landing, then
12 the landing has to be deeper. That's not the
13 case here, because the doors at the top of the
14 staircase into the house open in, as do most
15 exterior doors.

16 And finally, Ms. Moldenhauer asked
17 last time what would be -- assuming, I guess,
18 you get past the question of addition to
19 nonconforming structure, which this also falls
20 under, what would be a reasonable minimum size
21 for the landing in this specific case?

22 And there we submitted last time on

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1 the boards the original stair, which is a
2 circular stair, and then the original proposal
3 where the landing went all the way across the
4 house and was cut back by a third.

5 And so in response to the minimum
6 size and also actually in response to Chairman
7 Loud's question about might it be appropriate
8 to have a little extra room at the landing to
9 put something down when you got there and
10 wanted to open the door?

11 This was a sketch that I did and
12 gave to the owner of the house when we were
13 discussing this, prior to the filing of this
14 case, and wherein the landing is 36 inches
15 deep, which is -- meets the Building Code and
16 it is about 6 foot 6 wide, thus giving access
17 to the first door panel of the four and
18 thereby limiting the use of the landing really
19 to just the stair and getting in the door,
20 rather than as additional recreational space,
21 which the current scheme can serve. Thank
22 you.

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1 MR. HITCHCOCK: Okay. Thank you,
2 Mr. Horsey. The question then came up how do
3 you distinguish a landing from a deck? And if
4 we look at the prior definitions and the
5 relationship between stairs and landing, we
6 believe that it is a functional test. The
7 language about direction of travel and the
8 like suggests that you need to ask whether a
9 landing is functionally and solely associated
10 with facilitating travel between, in this
11 case, the ground and the door.

12 If yes, it can be a landing, if no,
13 then it's not a landing. Why does this
14 matter? The problem is that if you call a
15 deck a landing, it could undermine the rear
16 yard restrictions and that's a significant
17 problem here with a nonconforming structure in
18 the rear yard.

19 The rules allow stairs to connect
20 with a door in the rear and a landing should
21 be read narrowly to avoid extending the
22 nonconformity. And we think this narrow

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1 reading, which would require zoning relief if
2 something more extensive is requested, is
3 consistent with the policy goals in the regs.

4 We have talked about the prior
5 decisions of the Board. The principal one
6 that the Zoning Administrator cites, the
7 Pastin case, is inconsistent with the prior
8 Beans case that we cited where you had a
9 landing. And the fact there was a landing
10 between a door and stairs was not enough to
11 make it conforming.

12 Moving quickly to the second issue.

13 Is the new deck on the top floor, the third-
14 story, an addition or is it not an addition,
15 because, as the Zoning Administrator says, it
16 doesn't increase the lot occupancy or FAR.

17 Again, we turn to the dictionary,
18 because there is no definition of addition.
19 And the definition is fairly straightforward.

20 There are three of them that deal directly
21 with this type of situation. "The result of
22 adding the act or process of adding," in part,

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1 "added to or joined with a building to
2 increase available space." That is what the
3 top floor deck does here.

4 We have cited various cases about
5 roof decks and roof deck additions. Now, in
6 every single one of them, the parties and the
7 Board seem to assume that a deck and a roof
8 deck addition were, in fact, something that
9 required zoning relief.

10 And that the fact even if they were
11 on the roof or on top of the garage or
12 something and didn't necessarily add to FAR,
13 did not make them some -- a non-addition.

14 The rest of the things just quote
15 the conditions. We have here a rear yard that
16 is not in compliance. This is a substantive
17 change that is going on. It is creating new
18 usable space. The fact that it is open as a
19 deck is irrelevant to whether it is an
20 addition.

21 So we think that a petition for
22 zoning relief would be proper. And that

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1 concludes the deck and 3 minutes to spare.
2 Thank you, Mr. Chairman and Board Members.

3 ACTING CHAIR DETTMAN: Thank you,
4 Mr. Hitchcock. DCRA, do you have any cross on
5 what has been testified to by the appellant
6 right now? Additional cross?

7 MS. MADDOX-LEVINE: Thank you,
8 Chairman Dettman. One point of clarification.
9 Will the District also be allowed to present,
10 basically, it's legal memorandum in summary
11 format to answer the Board's question, at some
12 point?

13 ACTING CHAIR DETTMAN: I don't
14 quite understand your question.

15 MS. MADDOX-LEVINE: Well, I guess
16 what I'm getting to is that I'm not quite sure
17 if the Board allowed the appellant to reopen
18 its case in chief in that portion and then it
19 is asking if we would like to cross on that or
20 was it interpreting its PowerPoint
21 presentation as answers to, I guess, the legal
22 questions that the Board asked? And based on

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1 that is how I will respond.

2 ACTING CHAIR DETTMAN: Well,
3 actually, as I was listening to the discussion
4 just now, I was actually wondering myself what
5 is new testimony and what is a response to a
6 Board question. I -- unless the appellant
7 sees differently, I actually thought I had
8 heard and read some things here that was
9 actually some new argument, not directly in
10 response to a Board question.

11 MR. HITCHCOCK: I thought of it as
12 clarification of points that were made last
13 week. The definitions that we provided, there
14 was a serious question how do you define these
15 terms? So we tried to define them and explain
16 why that reading supports the conclusion that
17 we have.

18 The slides on the cases don't
19 really add anything new. I suppose there is
20 the citation to how our interpretation is
21 consistent with the Zoning Regulations, that
22 is new, but that's one point out of 16 pages.

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1 And I mean, I don't think we would be arguing
2 for anything that was contrary to the Zoning
3 Regulations.

4 I mean, we are here as an
5 appellant. So I mean, Mr. Loud's question
6 about turning radius and so forth was a
7 question. Ms. Moldenhauer's question about
8 how you could design it, those were questions.

9 I mean, we could put it as -- you
10 know, as I said, I could have done this as
11 closing remarks or as rebuttal, but in
12 fairness to the Zoning Administrator, we
13 thought they should have a chance to hear it
14 as soon as possible and let the Board take it
15 up. But I don't think there is anything
16 substantively new.

17 I don't remember having any great
18 inspirations over the last week.

19 MEMBER MOLDENHAUER: My response,
20 Mr. Chairman, would be to allow the District
21 to present their arguments however they see
22 fit, whether that is summarizing their legal

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1 arguments or not. If the appellant wishes to
2 object at any point, they can and we can
3 address it then, but I think that -- I don't
4 think that they would object to an argument,
5 as long as it's, you know, addressing the
6 issues.

7 ACTING CHAIR DETTMAN: Mr.
8 Schlater, anything? No? Well, simply just
9 with respect to what the additional testimony
10 that Mr. Horsey provided, I know that in the
11 prehearing statements and whatnot, I did see
12 some reference to the Building Codes and
13 turning radiuses and whatnot.

14 So I wouldn't say that those
15 particular slides are new information. But I
16 will need maybe a little assistance from my
17 colleagues. I don't remember a question
18 coming up as to what would be -- what would
19 constitute an acceptable alternative.

20 And I see in the handout, that was
21 provided on page 8, a drawing by Mr. Horsey
22 stipulating what could be an alternative. So

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1 to me, when I said that I thought I heard some
2 new information come out on your additional
3 testimony, that is actually what I was
4 referring to.

5 MR. HORSEY: Actually, I believe
6 Ms. Moldenhauer asked a specific question
7 about the first of the four panels and whether
8 it could serve as a door. And so this is just
9 an illustration of that.

10 MEMBER MOLDENHAUER: To my
11 recollection, I believe my question was at
12 what point would a landing become a deck?

13 MR. HORSEY: Right.

14 MEMBER MOLDENHAUER: And thus, I'm
15 taking that to mean that your presentation,
16 your diagram here, I don't know what page,
17 what number it is.

18 MR. HORSEY: Page 8.

19 MEMBER MOLDENHAUER: Number 8 on
20 the handout that was just handed, would be
21 what you would consider to be simply a landing
22 and nothing more?

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1 MR. HORSEY: Correct.

2 MEMBER MOLDENHAUER: All right.

3 MR. HORSEY: And anything beyond
4 that would be a deck.

5 MEMBER MOLDENHAUER: Could be
6 considered a deck.

7 MR. HORSEY: Right. Thank you,
8 yes.

9 ACTING CHAIR DETTMAN: Okay. Well,
10 I think, actually the course that Ms.
11 Moldenhauer suggested is the best way to go
12 here. And if DCRA, you know, heard something
13 in the additional testimony and wants to
14 address that in their case in chief and rebut
15 that in their case in chief, they are free to
16 do so.

17 Okay. So with that, I think that
18 takes us to DCRA's case.

19 MR. RENJEL: The first witness we
20 have is Matthew LeGrant. Matt, can you
21 introduce yourself for the Court, please?

22 ZONING ADMIN. LeGRANT: Yes. I'm

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1 Matthew LeGrant. I'm the Zoning Administrator
2 at DCRA.

3 MR. RENJEL: All right. Can you
4 give us a little bit of information about your
5 educational background?

6 ZONING ADMIN. LeGRANT: Yes. I
7 have two degrees in city planning, a
8 bachelor's of science in city regional
9 planning, California Polytechnic State
10 University at San Luis Obispo in 1978. I have
11 a master's in city planning from UC Berkeley
12 1984.

13 MR. RENJEL: Okay. And what are
14 your duties in the position of Zoning
15 Administrator?

16 ZONING ADMIN. LeGRANT: As a Zoning
17 Administrator, I'm charged with
18 administrating, interpreting and enforcing the
19 Zoning Regulations for the District of
20 Columbia.

21 MR. RENJEL: And what are your
22 duties with regard to applications for various

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1 zoning?

2 ZONING ADMIN. LeGRANT: Right. The
3 main task of my office is to review
4 applications for building permits,
5 Certificates of Occupancy, subdivisions and
6 home occupation permits for consistency with
7 the Zoning Regulations.

8 MR. RENJEL: And what documents do
9 you rely on when you are making your
10 decisions?

11 ZONING ADMIN. LeGRANT: I rely on
12 the DCMR Title 11 of the Zoning Regulations as
13 well as interpretations of those Zoning
14 Regulations.

15 MR. RENJEL: And that also includes
16 plats and plans and any other type of
17 application?

18 ZONING ADMIN. LeGRANT: Oh, for
19 terms of the applications themselves, we
20 review the applications and the attachments
21 which typically include plans, plats,
22 numerical summaries of the information that

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1 depict the proposed development or use.

2 MR. RENJEL: Let me have you first
3 identify Exhibit C and read the description of
4 work on that document.

5 ZONING ADMIN. LeGRANT: Okay. In
6 the packet, Exhibit C, is a building permit
7 application for 3046 N Street, N.W. Its
8 application date is December 11, 2008 for the
9 owner of the property, Michael Rankin. And
10 this is the application that was submitted
11 for, what I'll call, the first building permit
12 in regards to this proposed development.

13 The work that is described in Box
14 12 is as follows: Exterior work on rear
15 building and new landing and stair and then
16 there is a note replace existing stair, new
17 roof deck, doors, windows and wood panels as
18 noted on the set, new material for wood deck--
19 for the roof deck.

20 MR. RENJEL: Okay. Next, let me
21 have you take a look at Exhibit A and identify
22 that document.

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1 ZONING ADMIN. LeGRANT: Yes,
2 Exhibit A is the building permit resulting
3 from that application, it's Building Permit
4 B0902028 for 3046 N Street, N.W.

5 MR. RENJEL: And again, a
6 description of work on that document?

7 ZONING ADMIN. LeGRANT: Yeah, it's
8 -- it states exterior work on rear of building
9 and new landing and stair, new roof, roof
10 deck, doors, windows and wood panels as noted
11 on set.

12 MR. RENJEL: And does it reference
13 the Zone District?

14 ZONING ADMIN. LeGRANT: It does.
15 It is Zoned R-3.

16 MR. RENJEL: And what is the --
17 under the current regulations, what's the
18 current lot occupancy for an R-3, residence in
19 R-3?

20 ZONING ADMIN. LeGRANT: In -- under
21 the Zoning Regulations, the maximum lot
22 occupancy for a row house, a single-family

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1 home is 60 percent maximum lot occupancy.

2 MR. RENJEL: All right. Next, let
3 me have you identify Exhibit B in the
4 appellee's statement.

5 ZONING ADMIN. LeGRANT: Yes.
6 Exhibit B is a plat associated with this
7 building permit. The plat depicts the
8 building in relation to the property lines.
9 This is the plat that was reviewed and
10 approved by my office by one of my staff
11 members. It was approved March 16, 2009.

12 MR. RENJEL: And are there other--
13 any other documents attached to that exhibit?

14 ZONING ADMIN. LeGRANT: Well, the
15 exhibit includes notes that were made by the
16 zoning technician that describe the lot
17 occupancy calculations and describe the yard
18 setbacks and so forth.

19 MR. RENJEL: All right. What is
20 the -- based on your -- the zoning
21 technician's review, what is the lot occupancy
22 calculation?

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1 ZONING ADMIN. LeGRANT: Lot
2 occupancy calculation is 69.8 percent of the
3 existing building.

4 MR. RENJEL: And can you explain
5 the discrepancy between the 69 percent and the
6 60 percent under the current regulation?

7 ZONING ADMIN. LeGRANT: Right. The
8 Zoning Regulations, as we know, are
9 prospective. They were -- if there is a limit
10 as such as here as a 60 percent maximum lot
11 occupancy, then we have a preexisting
12 condition that, in this case, exceeds the lot
13 occupancy, it's a grandfathered or
14 nonconforming structure condition.

15 So as a nonconforming structure, it
16 is permitted to continue that -- at the
17 excessive lot occupancy of 69.8 percent.

18 MR. RENJEL: Okay. And starting
19 with the roof top deck mentioned in the
20 building permit, can you describe what the
21 plats and plans reveal about the plans for the
22 rooftop deck?

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1 ZONING ADMIN. LeGRANT: Yes. The
2 plans, as we go through Exhibit B, I mentioned
3 the plat. And then could you continue on to
4 our photographs and plans depicting the
5 construction and those include floor plans,
6 elevations and a section.

7 The fourth page of that exhibit
8 illustrates nicely this roof deck. And the
9 roof deck is on top of the first floor. There
10 is a level beneath that first floor, which is
11 the cellar, and that is labeled as cellar on
12 the elevation, which is about four pages
13 beyond. But the -- this section illustrates
14 as a cut away or side view of the proposed
15 construction that was authorized by the
16 permit.

17 MR. RENJEL: So based on your
18 review of this, these plats and plans, this is
19 on the second floor of the structure?

20 ZONING ADMIN. LeGRANT: Well, it
21 sits on the roof of the first floor, so it's
22 arguable that it is adjacent to the second

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1 floor.

2 MR. RENJEL: And again, based on
3 your review of the plats and plans, can you
4 explain your decision to approve this rooftop
5 deck?

6 ZONING ADMIN. LeGRANT: Well, the
7 rooftop deck was at -- was put on an existing
8 roof structure. So that roof already existed
9 and the changes included putting the deck
10 surface and a railing on top of the existing
11 roof and then, as is shown in the elevation,
12 there was an opening for a window. That
13 window was -- opening was replaced with a
14 door.

15 MR. RENJEL: Okay. And was it your
16 determination or your zoning technician's
17 determination that the rooftop deck added to
18 the lot occupancy?

19 ZONING ADMIN. LeGRANT: There was
20 no additional lot occupancy created by this
21 rooftop deck. It was on top of an existing
22 building, which already occupied -- it was

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1 deemed as building area, existing building
2 area, so there was that aspect the rooftop
3 deck did not change the lot occupancy. So the
4 answer to the question, it did not add to the
5 lot occupancy of this parcel.

6 MR. RENJEL: Thank you. And did it
7 add to the floor area or add any volume to the
8 property?

9 ZONING ADMIN. LeGRANT: It did not.
10 The deck is not enclosed. There is no roof
11 over it. It created no new floor area. It
12 created no new enclosed space.

13 MR. RENJEL: Okay. And it has been
14 argued by the appellant that this is an
15 addition to the property. Do you agree with
16 that assessment?

17 ZONING ADMIN. LeGRANT: No.

18 MR. RENJEL: And what's the basis
19 for that?

20 ZONING ADMIN. LeGRANT: The -- to
21 look as to whether a change to a structure
22 constitutes an addition, of course, the

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1 addition is not, as the appellant pointed out,
2 defined in the Zoning Regulations. So we do
3 have Webster's to look at.

4 There is several aspects of the New
5 Webster's definition, but I think the one that
6 is most appropriate is labeled No. 5, which is
7 -- states "A part added to or joined with a
8 building to increase available space." So the
9 impression there is -- here is is available --
10 is space created?

11 And the Zoning Regulations, as we
12 know, one of the key purposes is to regulate
13 the bulk density and volume of buildings in
14 the -- that is one of the key aspects of the
15 Zoning Regulations. And of course, in this
16 case, there was no new floor area added.
17 There was no new space enclosed.

18 So consistent with other cases that
19 I looked at of rooftop decks, the question is
20 is there an addition created by simply
21 changing a roof surface to a walking surface
22 and putting up the railing? And I deemed it

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1 in other cases that it does not constitute an
2 addition to the building.

3 MR. RENJEL: And again now, this is
4 based on your review of the plats and plans at
5 the time?

6 ZONING ADMIN. LeGRANT: Yes.

7 MR. RENJEL: That you received?

8 ZONING ADMIN. LeGRANT: Yes.

9 MR. RENJEL: Okay. Next, let's
10 turn to the stairs and landing. Can you
11 describe -- again, read the description of
12 working permits on the permit, Exhibit A?

13 ZONING ADMIN. LeGRANT: Yes.
14 Again, the description states "Exterior work
15 on rear of building, new landing and stair,
16 new roof deck, doors, windows and wood panels
17 as noted on set."

18 MR. RENJEL: Okay. And explain or
19 describe for the Board what you can tell/deem
20 from the plats and plans with regard to the
21 stairs and the landing.

22 ZONING ADMIN. LeGRANT: Well,

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1 Exhibit B depicts the original building
2 perimeter approved for this property and it
3 shows across the entire width of the property,
4 although it is labeled balcony, it's a deck
5 structure that extends from property line to
6 property line at the rear of the building and
7 a stair perpendicular leading to it.

8 MR. RENJEL: Okay. And it is
9 replacing any existing stairs?

10 ZONING ADMIN. LeGRANT: Yes, there
11 was an existing spiral staircase that was in
12 the western portion of the property that this
13 structure replaced.

14 MR. RENJEL: All right. And can
15 you tell from the plats and plans where the
16 stairs lead to and from?

17 ZONING ADMIN. LeGRANT: Yes. The
18 plans including the sections shows that the
19 stairs lead to -- from the ground to what is
20 deemed as the entrance floor or first floor of
21 the building.

22 MR. RENJEL: All right. Next, let

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1 me have you take a look at Exhibits F, G and
2 H.

3 ZONING ADMIN. LeGRANT: Yes.

4 MR. RENJEL: And if you can
5 identify each of these documents for the
6 Board?

7 ZONING ADMIN. LeGRANT: Yes.
8 Exhibit F is a Building Permit 0905289, which
9 was issued on April 30, 2009. The description
10 of work is labeled "Permanent revision to
11 remove part of stair landing at rear of
12 building." And it contains the issued
13 building permit and the application attached
14 thereto.

15 Exhibit G is the plan set
16 associated with that building permit
17 application, which shows again the plans,
18 elevations and section of those -- of the work
19 encompassed for the building permit.

20 Exhibit H is the plat associated
21 with this building permit application.

22 MR. RENJEL: Okay. Turning back to

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1 Exhibit F, the revised building permit. Why
2 was this revised building permit issued?

3 ZONING ADMIN. LeGRANT: When the
4 initial building permit that I referred to
5 earlier was issued and construction commenced,
6 we received the concern from the applicant and
7 the job was stopped.

8 I met with the owner and the
9 architect of the project as I determined that
10 the initial approved building permit was
11 issued in error, in that it allowed a deck
12 structure from across the property line. When
13 I met with the architect and the owner, I
14 explained to them that we have -- that the
15 Zoning Regulations allow a -- stairs and, in
16 my opinion, associated landings to be
17 constructed under section 2503.4, but that a
18 deck would not be allowed.

19 In response, the applicant offered
20 and ultimately applied for this building
21 permit listed in Exhibit F to remove a portion
22 of that deck, so as to become only a landing

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1 serving the stair. Once he did so, the stop
2 work order was lifted and this building permit
3 was approved so to allow this construction to
4 be completed with the revision.

5 MR. RENJEL: Okay. What --
6 regarding the new plats and plans in Exhibits
7 G and H, what do the plats and plans show with
8 regard to the first floor landing that are
9 different from the original plats and plans
10 submitted?

11 ZONING ADMIN. LeGRANT: The
12 difference is pretty straightforward. The --
13 one-third of what -- the former deck was
14 removed and then what was retained was a
15 landing that served the double door that is
16 centered on the back of the first floor which
17 leads then -- there is a couple of steps to a
18 subsidiary landing that then the stairs lead
19 down to the ground.

20 So the change basically is removal
21 one-third of the former deck structure.

22 MR. RENJEL: And again, can you

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1 explain your decision to grant this second
2 permit?

3 ZONING ADMIN. LeGRANT: The second
4 permit issuance was based on the -- again, in
5 the Zoning Regulations allowing stairs to --
6 stairs are, basically, exempted from lot
7 occupancy and yard setback provisions. So --

8 MR. RENJEL: And where are the code
9 -- let me interrupt. Where in the code-- in
10 the regulations or in BZA decisions do you --
11 are you aware of that or do you draw that
12 conclusion from?

13 ZONING ADMIN. LeGRANT: Well, it's
14 the section 2503.4, which I can certainly
15 read.

16 MR. RENJEL: Okay. You can have
17 that -- read that to the Board, please.

18 ZONING ADMIN. LeGRANT: "Stairs
19 leading to the ground from a door located on
20 the story in which the principal entrance of
21 the building is located may occupy any yard
22 required under the provisions of this title.

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1 The stairs shall include any railing provided
2 by the provisions of the D.C. Building Code."

3 MR. RENJEL: And now the landing
4 itself is not mentioned in this section.

5 ZONING ADMIN. LeGRANT: No.

6 MR. RENJEL: Where did you -- how
7 did you determine that a landing was
8 permitted?

9 ZONING ADMIN. LeGRANT: It has been
10 the consistent practice of my office. When I
11 joined the office about 3.5 years ago and the
12 many applications that I have reviewed and I
13 have discussed with my fellow employees in the
14 Office of the Administrator when it -- first
15 when I was Deputy, and then as Zoning
16 Administrator, it has been the standard
17 practice to include landings under this
18 provision.

19 The rationale that has been
20 discussed with me includes that we have many
21 row type dwellings in the District. And
22 sometimes this map has a self -- in the front

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1 of the buildings where there is a building
2 restriction line that no portion of the
3 structure may be built beyond the building
4 restriction line, no portion of the building.

5 But this exemption, as long as it's
6 serving the entrance floor, has customarily in
7 practice included landings and stairs.

8 MR. RENJEL: So landing -- you have
9 interpreted landing to be a component of the
10 stairs?

11 ZONING ADMIN. LeGRANT: Yes,
12 indeed.

13 MR. RENJEL: Okay. And the
14 appellant again has contended this landing and
15 the stairs are an addition. Do you agree with
16 that?

17 ZONING ADMIN. LeGRANT: No.

18 MR. RENJEL: Or no?

19 ZONING ADMIN. LeGRANT: No. We
20 have the specific exemption carved out in the
21 section I just quoted that does not call this
22 -- that exempts this. And as going back to

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1 what I had stated earlier, this is not an
2 enclosed structure. This is an open
3 structure, open to the sky. There is no roof
4 over it.

5 On occasion, applicants do come to
6 me and say well, I would like to put a covered
7 stair or I would like to put a roof over it.
8 No, you cannot do that, that voids the
9 exemption. And if it was an enclosed
10 structure, it would be treated differently.

11 MR. RENJEL: Okay. The appellants
12 also contended that the landing -- the size of
13 the landing is limited. Do you agree with
14 that assessment?

15 ZONING ADMIN. LeGRANT: Well, the
16 landing has to function as a landing. It has
17 to be, in my mind, logically connected to a
18 path of travel that leads to a doorway. I
19 will say I have had some applicants come to me
20 with drawings labeled landings that are like,
21 let's say, 10 by 20 feet and I say no way.

22 You know, there is areas that are

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1 not related to a path of travel that would
2 grow to be a deck structure. And that's not
3 something I can approve. So we have many
4 different situations. We have to look at
5 case-by-case, but what leads me in the review
6 application, such as the case at hand, is is
7 the landing portion related to the adjacency
8 of a doorway and a path of travel?

9 And if that's the case, it, in my
10 opinion, falls within the exemption of this
11 section.

12 MR. RENJEL: And finally, do you
13 believe that the landing or stairway increased
14 lot occupancy in any way?

15 ZONING ADMIN. LeGRANT: Well, there
16 -- they do not as they are not counted as lot
17 occupancy, because of the specific exemption
18 in the -- under the code. So those are
19 excluded as a matter of course from lot
20 occupancy calculations.

21 MR. RENJEL: Okay. That's all I
22 have for Mr. LeGrant.

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1 ZONING ADMIN. LeGRANT: Thank you.

2 ACTING CHAIR DETTMAN: Counsel, is
3 that your only witness?

4 MR. RENJEL: Yes, that's it.

5 ACTING CHAIR DETTMAN: It is?
6 Okay. Board Members, do you want to take
7 questions now or do you want to ask your
8 questions following cross? Following cross?
9 Okay. Why don't we move on to cross?

10 CROSS EXAMINATION

11 MR. HITCHCOCK: Okay. Thank you,
12 Mr. LeGrant. A couple of questions. Let's
13 start with the first floor deck, the lower of
14 the two. How many doors are on that level in
15 the rear?

16 ZONING ADMIN. LeGRANT: You are
17 referring to the landing that leads to the
18 ground?

19 MR. HITCHCOCK: I am referring to
20 the level area at the top of the steps.

21 ZONING ADMIN. LeGRANT: Okay.
22 There is a double door in the middle of the

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1 rear facing elevation. So there is a double
2 door that is present on the drawings.

3 MR. HITCHCOCK: I mean, isn't it
4 correct that it's a door and then a separate
5 door panel?

6 ZONING ADMIN. LeGRANT: Well, let
7 me get the drawings in front of me.

8 MR. HITCHCOCK: There is a
9 photograph behind you, too, if you wanted to
10 consult that.

11 ZONING ADMIN. LeGRANT: What we
12 have here is a series of panels that -- my
13 understanding of the drawings, there is panels
14 of -- some of which are doors and some of
15 which are windows, but they manifest
16 themselves in the elevation. They read very
17 similar, but there is a double door, as I said
18 earlier, in the middle of the rear elevation
19 that leads to the landing.

20 MR. HITCHCOCK: Do you know
21 whether-- well, looking at the photograph,
22 which Mr. Horsey presented last time, you see

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1 three window entrances there, correct?

2 ZONING ADMIN. LeGRANT: Maybe
3 someone could point exactly where?

4 MR. HITCHCOCK: Yes, maybe Mr.
5 Horsey could bring it forward a little closer
6 to the witness?

7 ZONING ADMIN. LeGRANT: Okay.

8 MR. HITCHCOCK: Now, are you
9 familiar with which one of those three are
10 fixed operable doors as opposed to door
11 panels?

12 ZONING ADMIN. LeGRANT: It's -- I
13 understand from the drawings, that the two --
14 there is -- you can see there is four panels
15 there, that the two panels in the middle are
16 openable doors. And I base that on the
17 drawings that have been reviewed.

18 MR. HITCHCOCK: Okay. And if they
19 were not -- I mean, looking at the photograph
20 there, do they appear to be openable doors?

21 ZONING ADMIN. LeGRANT: I cannot
22 tell.

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1 MR. HITCHCOCK: Okay. Would your
2 opinion change if they were not openable
3 doors, if they were simply door panels?

4 ZONING ADMIN. LeGRANT: Well, I
5 guess the -- obviously, the review is based on
6 the drawings. And if it got built
7 differently, then it would be an enforcement
8 issue if it was not built in compliance with
9 the drawings.

10 MR. HITCHCOCK: Okay. So would you
11 -- let me direct your attention, if we could,
12 go back to the slide that I put up earlier,
13 let me pull this up, this is on page 8 of the
14 materials that I handed you and I seem to be
15 having trouble. One second.

16 ZONING ADMIN. LeGRANT: Page 8 on
17 your PowerPoint?

18 MR. HITCHCOCK: Page 8 on the
19 PowerPoint.

20 ZONING ADMIN. LeGRANT: Yeah.

21 MR. HITCHCOCK: Would you agree
22 that if the door panels there were not fixed

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1 openable doors that the -- what you have
2 referred to as the landing would be an
3 inappropriate limitation in terms of the
4 width?

5 ZONING ADMIN. LeGRANT: Could you
6 restate your question?

7 MR. HITCHCOCK: Sure. The -- you
8 see on the -- on page 8 there is the drawing
9 which suggests two -- the two door panels.

10 ZONING ADMIN. LeGRANT: Well, the -
11 - page 8 is the alternative design suggested
12 by Mr. Horsey.

13 MR. HITCHCOCK: Correct.

14 ZONING ADMIN. LeGRANT: Okay.

15 MR. HITCHCOCK: That is correct.
16 And would you agree that if there were only
17 one fixed operable door shown on the left,
18 that the limitation he has depicted would be
19 appropriate --

20 ZONING ADMIN. LeGRANT: Well --

21 MR. HITCHCOCK: -- to make it a
22 landing?

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1 ZONING ADMIN. LeGRANT: -- frankly,
2 I don't design projects for applicants.
3 Applicants bring to me projects of what they
4 propose. So it's not the function of the
5 office to redesign projects for applicants.

6 But in answer to your question, if
7 this depiction showed a single door leading to
8 a landing, that would be appropriate.

9 MR. HITCHCOCK: Okay. All right.
10 Thank you. Let me move on. And that would be
11 consistent with your view that the landing
12 should be logically connected to a path of
13 travel?

14 ZONING ADMIN. LeGRANT: Yes.

15 MR. HITCHCOCK: Okay. Let me --
16 one other question. This is a small point.
17 You said that this was a cellar, not a
18 basement.

19 ZONING ADMIN. LeGRANT: Yes.

20 MR. HITCHCOCK: And could I ask
21 where you were measuring the 4 feet from?

22 ZONING ADMIN. LeGRANT: Well, the

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1 Zoning Regulations specify that the height of
2 the building is measured at the middle of the
3 front of the building, in this particular zone
4 for this type of building. So the cellar is
5 defined as a lowest level of the building,
6 which has a roof. It has no more than 3 foot
7 11 inches from the top -- from the grade to
8 the top of the ceiling at that lowest level,
9 this 3 foot 11 inches or less is deemed a
10 cellar.

11 MR. HITCHCOCK: Okay. And would
12 the -- how -- could you just explain for the
13 record how that distinction affects your
14 analysis here or is that an observation?

15 ZONING ADMIN. LeGRANT: Well, it's
16 -- if a -- the ceiling is 4 feet or more above
17 the adjacent grade, it -- that -- the -- that
18 level is no longer deemed a cellar, but it is
19 deemed a basement.

20 MR. HITCHCOCK: Um-hum.

21 ZONING ADMIN. LeGRANT: And it's
22 relevant in that a basement is counted as a

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1 story where a cellar is not. The -- in this
2 situation, I don't think whether it is a
3 cellar or a basement is germane or relevant.
4 What is critical is whether the stairs lead to
5 the entrance floor, that's the wording of
6 2504.3.

7 MR. HITCHCOCK: Okay. Thank you.
8 I just wanted to clarify that. Let me go back
9 a moment, I believe I misspoke a moment ago
10 when I was talking about the doors. I think I
11 said fixed and operable. I should have said
12 the door is either fixed, like the door panel,
13 or operable. Did I -- did you understand the
14 question?

15 ZONING ADMIN. LeGRANT: No, better
16 restate that or clarify that, please.

17 MR. HITCHCOCK: Okay. Sure. The
18 door panel would be considered fixed. It's
19 not operable, correct?

20 ZONING ADMIN. LeGRANT: Well, the -
21 - I look at a door -- a door is something to
22 me that has to be openable, in which a person

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1 could pass through.

2 MR. HITCHCOCK: Okay. So if
3 openable is an element that you look to in
4 determining what -- the scope of what is a
5 landing, whether it is logically connected?

6 ZONING ADMIN. LeGRANT: Well, in
7 regards to plan review, unless there is
8 conflicting information, applicants that
9 present a drawing that shows a door and there
10 is pretty standard architectural
11 representations of what a door is, then my
12 office would accept that as a door.

13 We don't question applicants as to
14 whether they are going to ever open the door,
15 but again, if it is built differently, if they
16 try to substitute a window for a door, it
17 might be an enforcement issue.

18 MR. HITCHCOCK: Okay. Thank you.
19 Let's move on to the top floor deck. You
20 testified, I believe, that you agreed with
21 what was Definition 5 from Webster's asking
22 does it increase available space, correct?

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1 ZONING ADMIN. LeGRANT: That's
2 correct.

3 MR. HITCHCOCK: Okay. Do you know
4 what was the prior use of the part of the
5 house where the top deck was added?

6 ZONING ADMIN. LeGRANT: It was an
7 open roof area.

8 MR. HITCHCOCK: It was an open
9 roof. And do you know whether there was any
10 access to that roof from inside the house?

11 ZONING ADMIN. LeGRANT: My reading
12 of the drawings was that there was a -- the
13 elevation is a bank of windows and that I did
14 not see -- I don't recall ever seeing a
15 doorway that allowed access, but there was
16 windows that opened out -- opened into that --
17 over that roof area.

18 MR. HITCHCOCK: And is that space
19 usable now?

20 ZONING ADMIN. LeGRANT: Well, the
21 space adds a deck. The question is whether it
22 is a -- it's a deck versus the roof usable?

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1 They are both usable in some regard.

2 MR. HITCHCOCK: How would the roof,
3 the former roof be available -- usable/
4 available space?

5 ZONING ADMIN. LeGRANT: Well, the -
6 - I guess for the purpose, if you are talking
7 about a walking area, certainly the deck makes
8 it a more usable for walking purposes.

9 MR. HITCHCOCK: As well as other
10 things, correct?

11 ZONING ADMIN. LeGRANT: Such as?

12 MR. HITCHCOCK: Parties?

13 ZONING ADMIN. LeGRANT: Well, that
14 I do -- I couldn't speak to that.

15 MR. HITCHCOCK: Conceivably?

16 ZONING ADMIN. LeGRANT:
17 Conceivably.

18 MR. HITCHCOCK: Right. I mean, it
19 could be used for people to stay outside on
20 the deck, have meals on the deck, do things
21 people do on the deck?

22 ZONING ADMIN. LeGRANT: Well, the

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1 same as in the backyard. They can go to the
2 backyard and have a party as well.

3 MR. HITCHCOCK: Right. But they
4 wouldn't need -- they wouldn't normally need a
5 variance or zoning relief to do something in
6 the backyard, correct?

7 ZONING ADMIN. LeGRANT: Nor to a
8 rooftop deck.

9 MR. HITCHCOCK: Okay. You see --
10 you noticed, I take it -- well, you -- I take
11 it you reviewed the prior Board decisions we
12 cited dealing with roof decks? You mentioned
13 prior Board decisions.

14 ZONING ADMIN. LeGRANT: Yes, there
15 are several that we have looked at.

16 MR. HITCHCOCK: And yet in a number
17 of them, parties came and sought variances in
18 order to build a roof deck, correct?

19 ZONING ADMIN. LeGRANT: Well,
20 several of the applications involved a variety
21 of aspects of relief. They were just not roof
22 decks only.

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1 MR. HITCHCOCK: Okay. But they did
2 need relief in some cases from lot occupancy
3 in order to build a roof deck, correct?

4 ZONING ADMIN. LeGRANT: I don't
5 know if I would agree with that conclusion
6 that the decisions were only for -- if the
7 applications were roof decks only. I believe
8 that at least in some of the decisions they
9 involved other aspects of construction to the
10 structure.

11 MR. HITCHCOCK: All right. Well,
12 certainly, we can all read the cases. So
13 let's see, yeah, Mr. LeGrant we are dealing
14 here with a noncomplying structure as it now
15 stands, correct?

16 ZONING ADMIN. LeGRANT: It's -- in
17 terms of lot occupancy, as I have testified
18 previously, it's nonconforming as to lot
19 occupancy.

20 MR. HITCHCOCK: Right. And rear
21 yard nonconformity?

22 ZONING ADMIN. LeGRANT: Right,

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1 right.

2 MR. HITCHCOCK: Okay.

3 ZONING ADMIN. LeGRANT: It's
4 nonconforming rear yard.

5 MR. HITCHCOCK: Yeah. In your
6 capacity as Zoning Administrator in dealing
7 with this type of situation of nonconformity,
8 do you view it as part of the job to try to
9 apply the Zoning Regulations as narrowly as
10 possible in deciding whether to approve or
11 grant -- or whether relief is granted?

12 ZONING ADMIN. LeGRANT: I don't
13 know what you mean as narrowly as possible.

14 MR. HITCHCOCK: Well, to be
15 consistent with the Zoning Regulations.

16 ZONING ADMIN. LeGRANT: Oh,
17 absolutely.

18 MR. HITCHCOCK: And do you take,
19 you know, a generous, you know, view of
20 proposals? Well, strike the question.

21 Um, one moment. Okay. Thank you.

22 We have nothing further.

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1 MR. RENJEL: Mr. LeGrant, let me
2 just ask you a couple more questions here.
3 Was your review of the decision to grant
4 either of these permits made on Mr. Horsey's
5 photos or slides that you see here now?

6 ZONING ADMIN. LeGRANT: No, they
7 were based on the applications that I noted in
8 the exhibits.

9 MR. RENJEL: Along with the plats
10 and plans?

11 ZONING ADMIN. LeGRANT: Plots as
12 well as the applications and their associated
13 plans and plats, yes.

14 MR. RENJEL: We have nothing
15 further.

16 MS. MADDOX-LEVINE: Mr. LeGrant, I
17 just have a couple questions for you.

18 ZONING ADMIN. LeGRANT: Yes.

19 MS. MADDOX-LEVINE: In regards to
20 your use of the definition for addition,
21 increase available space. Am I understanding
22 you correctly saying that you believe that is

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1 available space?

2 Let me give you a hypothetical,
3 such as using it for mechanical equipment or
4 other type of available use for the property
5 as a deck?

6 ZONING ADMIN. LeGRANT: Well,
7 looking at the Webster definition that talks
8 about space and trying to apply that to an
9 application to see if something constitutes an
10 addition, then it's -- as I have stated
11 earlier, is it something that creates a new
12 floor area? Is it something that creates a
13 new enclosed structure that has volume and
14 bulk?

15 That has been my guidance in
16 ascertaining whether an increase in space is,
17 in fact, an addition.

18 MS. MADDOX-LEVINE: But I mean,
19 wouldn't you say that there are types of -- I
20 guess, you are bringing me into a different
21 line of questioning --

22 ZONING ADMIN. LeGRANT: Yeah.

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1 MS. MADDOX-LEVINE: -- than I
2 initially started with. But wouldn't you say
3 that there are types of structures that are
4 built that, based on lot occupancy and floor
5 area, would not add to that calculation?

6 ZONING ADMIN. LeGRANT: Right. In
7 the matter at hand, the landing and stairs
8 arguably is -- that's more materials, more
9 structure being joined to the building, but as
10 to whether it constitutes an addition, it's
11 moot, because it is -- we have a specific
12 exemption.

13 The same on the rooftop. There is
14 -- people may build rooftop equipment. There
15 is specific allowances in the Zoning
16 Regulations that allow mechanical penthouses,
17 for example, to be constructed to not be
18 counted as -- toward floor area to be exempted
19 from certain height limits. If they are a
20 certain size, they themselves are exempted
21 from other provisions of rooftop.

22 So your question is real general,

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1 but there is a variety of exemptions and
2 specifications in the Zoning Regulations that
3 allow changes to buildings that ultimately are
4 not deemed additions.

5 MS. MADDOX-LEVINE: So you are
6 saying that not all changes are additions?

7 ZONING ADMIN. LeGRANT: Correct.

8 MS. MADDOX-LEVINE: And then you
9 are also saying that there are such things
10 that would be changes, but that because they
11 don't add to floor area or lot occupancy, they
12 would not be additions?

13 ZONING ADMIN. LeGRANT: Correct.

14 In fact, if you look at -- going back to
15 Webster's, the addition, there is 1(b) of the
16 Webster's definitions constitutes -- defines
17 additions as "something added that improves or
18 increases value."

19 We have many people who will
20 renovate a building, go to their kitchen and
21 add nice granite countertops, that is going to
22 increase the value of that building, but it's

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1 not an addition.

2 MS. MADDOX-LEVINE: Um-hum. But
3 wouldn't you say that a roof deck area that
4 was once not maybe usable by a human for human
5 occupancy, such as, you know, use of an
6 outdoor patio area, wouldn't that add value to
7 the value of the property?

8 ZONING ADMIN. LeGRANT: Yes, it
9 would.

10 MS. MADDOX-LEVINE: So how would
11 you then not apply that portion of the
12 definition here to addition?

13 ZONING ADMIN. LeGRANT: Well, I
14 guess I should clarify. I have looked at No.
15 5, which we already covered. I'm
16 distinguishing it from 1(b), "Something that
17 is added that improves or increases value," in
18 that you can do things to a building, such as
19 add a granite countertop to a kitchen that,
20 obviously, improves or increases the value,
21 but I would not constitute it as an addition
22 for Zoning Regulation purposes. And I don't

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1 think anybody else would.

2 The test is, as I apply
3 consistently, is it adding space? We're
4 looking at space. Are we adding floor area?
5 Are we adding volume? Are we enclosing more
6 area?

7 MS. MADDOX-LEVINE: Okay. Well,
8 let me just jump onto another point or
9 question. In your testimony, you pointed out
10 the, -- I don't know what exhibit it is, hold
11 on, your Exhibit C, sorry, Exhibit 13(c). You
12 referenced that it is replacing existing
13 stairwell in the description of the proposed
14 work.

15 ZONING ADMIN. LeGRANT: Right.

16 MS. MADDOX-LEVINE: Can you just
17 tell me what the purpose of that reference is?

18 ZONING ADMIN. LeGRANT: Well, there
19 was a spiral staircase preexisting at the rear
20 of this structure. It was removed and
21 replaced by the stair and landing that the
22 DCRA ultimately approved.

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1 MS. MADDOX-LEVINE: And because it
2 was not a new staircase, rather a replacement
3 of an existing staircase, does that have any,
4 I guess, affect or implication into the --
5 your approval?

6 ZONING ADMIN. LeGRANT: Well, I'll
7 put it this way. If something put a --
8 someone put an in kind replacement, replaced a
9 portion of a structure in the same size,
10 location and volume, then there is no other
11 analysis needed. Under 2001.1, you may
12 maintain a nonconforming structure.

13 Then the question is when they
14 remove that and they want to have a different
15 type of arrangement, the alternative of stair
16 and landing, then we have to run it through
17 the test. And the test first was well, does
18 it meet 2504.3? Is it a stair that leads to
19 the entrance floor, which we concluded,
20 obviously, that it did.

21 So that's how I would address that
22 question of whether it is germane. Whether

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1 replacing an existing stair is relevant here
2 or not.

3 MS. MADDOX-LEVINE: I guess I'm
4 just -- I have that question, because even
5 though you are saying that you ran that test
6 at the time of approving the permit on this
7 application, it circles the word repair and
8 then this terminology of repair existing
9 staircase was added.

10 So does that mean that, at that
11 time, maybe you were thinking it was going to
12 be an in kind replacement, that you were
13 categorizing it as an in kind replacement?

14 ZONING ADMIN. LeGRANT: No. Again,
15 this original permit, which we ultimately --

16 MS. MADDOX-LEVINE: Was then
17 replaced. Okay. Revised anyway.

18 ZONING ADMIN. LeGRANT: It was
19 issued in error, because it resulted in a
20 structure beyond a landing that we stopped, we
21 worked with the applicant to correct. He did
22 so and brought into compliance.

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1 MS. MADDOX-LEVINE: Okay. Okay.
2 Thank you.

3 COMMISSIONER SCHLATER: Does it --
4 Mr. LeGrant, does it matter that the landing
5 could have been smaller ultimately?

6 ZONING ADMIN. LeGRANT: Well --

7 COMMISSIONER SCHLATER: And I
8 understand what you said earlier about your
9 not being the architect and saying what the--
10 in designing the smallest possible landing.

11 ZONING ADMIN. LeGRANT: -- I guess
12 if -- let's say the applicant had placed a
13 single door on the far west side and said I
14 need this. Here is my landing and it's 20
15 feet long. You know, I think I would exercise
16 my discretion or interpretation of the
17 regulation and say no, no, you are stretching
18 the rule here.

19 His response was to -- he said we
20 want a double door. He wanted to serve the
21 door. I felt that removal of a portion of the
22 structure that was no longer the path of

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1 travel, took it out of the deck category and
2 made it into landing. I was satisfied that it
3 met the standard.

4 COMMISSIONER SCHLATER: I guess the
5 question is is in terms of the -- it is a
6 question of judgment at that point, correct?

7 ZONING ADMIN. LeGRANT: Yes, it is.

8 COMMISSIONER SCHLATER: I mean,
9 when it comes down to it, it's a question of
10 judgment. Is this a reasonable distance for a
11 landing or does it somehow go beyond the use
12 of the landing and become a deck?

13 ZONING ADMIN. LeGRANT: Right.

14 COMMISSIONER SCHLATER: Okay. No
15 further questions.

16 ZONING ADMIN. LeGRANT: Okay.

17 ACTING CHAIR DETTMAN: Mr. LeGrant,
18 my first question, I guess, goes to both the
19 lower portion of the structure as well as the
20 roof deck. And you know, we have -- with
21 respect to the lower portion, we have referred
22 to it as a landing and we have struggled to

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1 define what a landing is.

2 And then the upper portion has been
3 referred to as a roof deck.

4 ZONING ADMIN. LeGRANT: Yes.

5 ACTING CHAIR DETTMAN: Both of
6 those structures are not found in the
7 regulations. What we do have though is an
8 outside balcony. And in your opinion, what
9 would constitute an outside balcony? And why
10 -- what prevents us from considering these an
11 outside balcony, either of them?

12 ZONING ADMIN. LeGRANT: Well, it's
13 -- in my view, actually, the rooftop deck
14 could arguably be deemed a balcony. In my
15 work with the District, balconies typically
16 are projecting cantilevered structures that go
17 beyond a building wall. It's not something
18 that sits on top of an existing enclosed
19 portion of the building.

20 The question of balcony did not
21 come up in this review. It was, again as we
22 know, the stair and landing at the ground,

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1 that leads to the ground level and then this
2 second level. We could call it a deck. We
3 could call it a balcony. But it's that
4 whether it constituted an addition or not.

5 ACTING CHAIR DETTMAN: Well, but
6 with respect to the upper portion of the
7 building, I think you had mentioned that it
8 doesn't add any lot occupancy and there is no
9 additional floor area.

10 Now, just looking at the definition
11 of gross floor area, it says that "The term
12 GFA shall not include cellars and outside
13 balconies that do not exceed a projection of 6
14 feet beyond the exterior walls of the
15 building."

16 ZONING ADMIN. LeGRANT: Right.

17 ACTING CHAIR DETTMAN: This is, I
18 think, maybe 10 feet beyond that exterior. So
19 if DCRA was to consider this an outside
20 balcony, and by the sounds of it they didn't
21 and that's kind of my question, how come?

22 ZONING ADMIN. LeGRANT: Right.

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1 ACTING CHAIR DETTMAN: It does
2 project beyond 6 feet, which would constitute
3 it as additional GFA.

4 ZONING ADMIN. LeGRANT: Well,
5 again, and this is helpful in that it
6 clarifies that balconies -- the projects that
7 I -- that we have reviewed during my tenure at
8 DCRA that have been deemed balconies are
9 cantilevered projecting elements that go
10 beyond a building face.

11 So it is true that those have a
12 specific exemption, but, to me, it's not an
13 applicable -- it's not applicable to the
14 situation at hand. It's this was an area that
15 was already a roof, unenclosed, continues to
16 be unenclosed that was on top of an existing
17 portion of an enclosed building.

18 ACTING CHAIR DETTMAN: Okay. So is
19 the answer to my question that DCRA's position
20 on what constitutes an outside balcony is that
21 it has to cantilever out?

22 ZONING ADMIN. LeGRANT: Yes.

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1 ACTING CHAIR DETTMAN: And not be
2 located on top of an existing roof, such as
3 this one?

4 ZONING ADMIN. LeGRANT: Yes.

5 ACTING CHAIR DETTMAN: Okay. I
6 wanted to ask you a question about something
7 you said about 2001. And you had stated that
8 kind of in kind replacement or modern repairs
9 and modernizations are allowed under 2001.4,
10 nonconforming structures, and then if it's
11 deemed not to be -- to fall under 2001.2, then
12 you apply the test.

13 And then you went over to 2005, I
14 think, or 2003. But I was wondering, at that
15 point, were you determining that what is being
16 proposed does not fall under 2001.2, why the
17 remaining portion of 2001 isn't applied?

18 ZONING ADMIN. LeGRANT: Well, you
19 are correct that 2001.2 allows the existing
20 nonconforming structure to be maintained. And
21 the exact language is "ordinary repairs,
22 alterations and modernizations, including

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1 structural alterations."

2 So you have a structure that is
3 nonconforming, consistent with what many other
4 jurisdictions say, you can maintain that
5 structure. 2001.3 is a different scenario,
6 "enlargements or additions may be permitted,"
7 but then there is some tests.

8 If you -- if this, as in the case
9 here, was deemed not to be an enlargement or
10 an addition, 2001.3 does not apply.

11 ACTING CHAIR DETTMAN: Okay. Now,
12 but comparing the stair and landing to what
13 was there prior, which was the stair, the
14 spiral stair and maybe a small landing, is it
15 your testimony that DCRA considered -- DCRA
16 compared the two and deemed that we already
17 know what your position is on an addition, but
18 that it wasn't an enlargement?

19 ZONING ADMIN. LeGRANT: Well,
20 consistent with the practice that my office
21 has done, a stair and landing has a specific
22 called out exemption. So arguably, if

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1 something was an enlargement, the question is
2 would it -- that is not otherwise exempted,
3 then it may be subject to special exception
4 review.

5 We have a very carved out specific
6 niche or a defined stairs exemption under
7 2503.4 that regardless it is exempted anyway.

8 ACTING CHAIR DETTMAN: That's all I
9 have. Board Members? Counsel, do you have --
10 you had already said that Mr. LeGrant was your
11 only witness. I just wanted to check in and
12 make sure that that's still the case?

13 MR. RENJEL: Yes. Mr. LeGrant is
14 it.

15 ACTING CHAIR DETTMAN: Okay. I
16 guess, at this point in the proceeding, that
17 would take us to, let's see, the ANC within
18 which the property is located. Is the ANC
19 here? No?

20 MR. HITCHCOCK: The ANC did submit
21 a letter, I believe, which should be in the
22 record.

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1 ACTING CHAIR DETTMAN: They did.
2 Let me just -- yes, we have a letter from ANC-
3 2E signed by the Chair, Ron Lewis, that's our
4 Exhibit No. 15.

5 MR. HITCHCOCK: Okay. Thank you.

6 ACTING CHAIR DETTMAN: Well, then,
7 I guess, at this point, that would take us to
8 rebuttal and closing statement by the
9 appellant.

10 MR. HITCHCOCK: Okay. Thank you,
11 Mr. Chairman. I would like to ask Mr. Horsey
12 a couple of questions looking at the
13 photograph that we introduced as evidence last
14 week. If you could step over there?

15 Mr. Horsey, there has been some
16 question about door versus door panel and I
17 was wondering if you could explain to the
18 Board the difference that you see? Well, the
19 difference you understand as an architect and
20 also which is a door and which is a door panel
21 here?

22 MR. HORSEY: Well, typically, when

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1 one purchases a door, one purchases either a
2 fixed door panel or an operable door panel.
3 So this would be a four panel door with the
4 two middle panels operable. You could have
5 bought it with just this left hand one
6 operable and all the others fixed. You could
7 have bought it with the center ones operable
8 also with the balcony or they could have all
9 been operable and closed off with balconies.

10 MR. HITCHCOCK: Okay. And can you
11 tell from the photograph or how do you know
12 that some are door panels as opposed to a
13 door?

14 MR. HORSEY: Well, the operable
15 panels have hardware, handles, and the fixed
16 panels generally don't. But other than that,
17 they are identical.

18 MR. HITCHCOCK: And is your
19 conclusion based on your observation as a
20 neighbor that there are a door handle on one,
21 but not others?

22 MR. HORSEY: Yes. Right now, there

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1 are only door handles on the two center
2 panels.

3 MR. HITCHCOCK: The only door
4 handles are on the two center panels?

5 MR. HORSEY: Correct.

6 MR. HITCHCOCK: Okay. And the
7 other two, therefore, are not doors?

8 MR. HORSEY: They would be --

9 MR. HITCHCOCK: Are not currently
10 used --

11 MR. HORSEY: -- called fixed --

12 MR. HITCHCOCK: -- as doors?

13 MR. HORSEY: -- door panels, right.

14 MR. HITCHCOCK: They are fixed door
15 panels, but they are not currently operable as
16 doors?

17 MR. HORSEY: Right, right. No, but
18 they could be.

19 MR. HITCHCOCK: Okay. But they
20 could be. Okay. And a question on the points
21 dealing with additions. You -- Mr. LeGrant
22 talked about structural alterations. What is

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1 your understanding of a structural alteration?

2 MR. HORSEY: A structural
3 alteration is really a repair, essentially, of
4 a -- something permanent that is already in
5 place.

6 MR. HITCHCOCK: And in your
7 opinion, does the -- well, does the deck go
8 beyond simply a repair or -- of what was
9 simply in place?

10 MR. HORSEY: Well, a repair is
11 something -- is fixing something that was
12 already there. This is a replacement and the
13 configuration is different as well.

14 MR. HITCHCOCK: Okay.

15 MR. HORSEY: Are you talking about
16 the uppers, the third-story deck?

17 MR. HITCHCOCK: Yes, I'm sorry.
18 Yeah, I should have been clear on the upper.

19 MR. HORSEY: Yeah, okay. Yeah,
20 that's an entirely new structure.

21 MR. HITCHCOCK: Okay. All right.
22 Did you have any additional points?

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1 MR. HORSEY: Well, just with
2 respect to the provision. This is a case
3 where two provisions of the Zoning Regulations
4 sort of conflict and the question is which one
5 has more weight? Because this stair -- the
6 stair is actually only allowed into a required
7 yard.

8 There is no mention of whether a
9 stair -- you can add a stair to a
10 nonconforming building due to lot occupancy.
11 And section 2001.3(a) specifically prohibits
12 additions to buildings that are not conforming
13 due to lot occupancy. So there is an inherent
14 conflict.

15 And to me it just argues the case
16 that no matter what your outcome on that
17 conflict is, that the case has to be decided
18 upon the narrowest basis possible.

19 MR. HITCHCOCK: Okay. Okay. Thank
20 you very much.

21 MR. HORSEY: Thank you.

22 ACTING CHAIR DETTMAN: Mr.

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1 Hitchcock, do you have a closing?

2 MR. HITCHCOCK: Very briefly, Mr.
3 Chairman. I mean, I think last week's session
4 and this one have been very helpful in terms
5 of clarifying and defining the issues between
6 the parties.

7 I think there is some -- let me
8 deal with the second floor deck landing issue
9 first. I think there is a consensus to some
10 extent between the parties in terms of looking
11 at what a landing is.

12 Mr. LeGrant said it must be
13 logically connected to the doorway. We used
14 somewhat different language, but the concept
15 is similar. And that the direction of travel
16 is important as a consideration.

17 I think here what Mr. Horsey just
18 testified to is we have a landing that is not
19 a landing. It goes further than just
20 servicing an existing door. It can operate
21 and be used for other purposes as a balcony
22 for people can have meals, they can eat meals,

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1 they can have parties, they can do other
2 things which could have an adverse effect on
3 the privacy and the quiet enjoyment of
4 neighbors' houses.

5 And as we pointed out with the
6 dictionary definitions, landings are viewed
7 conceptually different from stairs, whatever
8 may have been done before.

9 With respect to the top deck, Mr.
10 LeGrant focused on Definition No. 5, but I
11 think it is important to look at some of the
12 other definitions as well, because there is
13 not a clarification and he could not cite
14 anything in the text of the regulations to
15 suggest that there is a gloss for not adding
16 floor area ratio.

17 But the definitions also say an
18 addition is "the result of adding," anything
19 added, or the second one "the process of
20 adding or joining," I didn't quote it fully,
21 but No. 2, which is in our memorandum talks
22 about adding value.

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1 And certainly turning an unusable
2 roof into a usable deck adds value, increases
3 value of the structure. And so I think that's
4 the real key issue here. This allows the
5 building, Mr. and Mrs. Horsey's next door
6 neighbor's house to be used in a way that it
7 cannot be used now.

8 There is enjoyment of the property
9 outdoors. It -- the property can be enjoyed
10 in a way that was not previously the case and
11 these are the sorts of things that the Zoning
12 Regulations were designed to have exceptions
13 or variances, where the Board can come in and
14 consider particular examples when there is
15 noncompliance and make a broader judgment
16 about whether allowing a specific project to
17 go forward is consistent with the general
18 goals of the regulations and the interests of
19 neighbors.

20 I'm not going to go through the
21 cases. We have cited them. The Board can
22 read the ones we have cited. I'm sure the

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1 Board Members have participated in some of
2 them.

3 There are cases that we have cited.

4 I would just mention one, the Spence case and
5 this is on page 14 of our dec, where the only
6 relief sought was for a deck that -- on top of
7 a garage above air, open space. That was --
8 you know, where it was decided that variance
9 relief was needed.

10 There are others, I won't go
11 through them here. I think we have put all
12 the issues on the table fairly much. But I
13 think that this is a case where we would ask
14 the Board to grant the appeal and let the
15 owner come in for zoning relief as
16 appropriate.

17 Thank you, Mr. Chairman and Members
18 of the Board.

19 ACTING CHAIR DETTMAN: Thank you,
20 Mr. Hitchcock. And thank you to the appellee
21 as well. I think that closes out the case
22 here. And unless my colleagues suggest

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1 otherwise, I think that -- I mean, I think the
2 record is full, given the oral as well as the
3 written record. But I, myself, am not
4 prepared to go forward to deliberate today.
5 And I would recommend putting this off for us
6 to think about a little bit.

7 I also know that Chairman Loud
8 intends to read the record and get caught up
9 on this case, so that he can participate in
10 the vote. Board Members, do you -- yeah?
11 Okay.

12 Before we go ahead and schedule
13 this for decision, I wanted to ask a question
14 about the appellee's submission to the record
15 today. It is the District's Memorandum of Law
16 regarding landings and rooftop decks.

17 Is the information that is in here,
18 is this all in response to questions that were
19 raised by the Board previously?

20 MS. MADDOX-LEVINE: Yes, Chairman
21 Dettman. Specifically, we wanted to try to
22 clarify as the appellant had what exactly is a

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1 landing and then the rooftop deck as well.

2 ACTING CHAIR DETTMAN: Okay.

3 MS. MADDOX-LEVINE: That would be
4 for the variance.

5 ACTING CHAIR DETTMAN: Okay. So we
6 have the questions presented by the Board,
7 your brief answers and then the information
8 that follows is just supplemental information
9 to back up?

10 MS. MADDOX-LEVINE: Yes, it's
11 basically legal argument that is included
12 therein.

13 ACTING CHAIR DETTMAN: All right.

14 MS. MADDOX-LEVINE: If it would be
15 helpful at all, I could certainly give a brief
16 summation of what we have put on paper, if
17 that would be helpful to the Board in any way?

18 ACTING CHAIR DETTMAN: Okay. Board
19 Members and myself were actually discussing
20 whether or not this was information that
21 required or opened up the opportunity to a
22 response by the appellant. However, I think

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1 that the information contained in this
2 document is similar to what was presented by
3 the appellant in terms of their PowerPoint
4 early on. And again, it's information in
5 response to Board questions previously.

6 So I think that we can go ahead and
7 schedule this for a decision and actually
8 close the record and not ask for any
9 additional information.

10 Ms. Bailey, Mr. Moy, do you have a
11 date in mind for this? And I think we may or
12 may not have Mr. Hood catch up on this. I
13 know that Mr. Loud wants to participate. So I
14 think it would be appropriate to put this off
15 until the transcript is ready.

16 MR. MOY: Possibly two dates then,
17 Mr. Chairman. One would be a decision on
18 November 24th or if you want to go to the
19 regular Public Meeting, which would be
20 December the 1st, which would be the following
21 week.

22 ACTING CHAIR DETTMAN: November

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1 24th or December 1st you said?

2 MR. MOY: Yes. We already have a
3 case for decision on December the 1st.

4 ACTING CHAIR DETTMAN: Okay. How
5 about we do this? I think December 1st works
6 best for us and actually similar to what we
7 did last week, since Mr. Schlater is going to
8 be here for the 1:00 session, we could
9 schedule this decision for the 1:00.

10 MR. MOY: Excellent.

11 COMMISSIONER SCHLATER: I'll need
12 the record from the previous session. Thank
13 you.

14 ACTING CHAIR DETTMAN: That works?
15 Great. So December 1st in the afternoon
16 session. And I think that's it. Thank you.

17 Ms. Bailey, I think we are ready
18 for the next case.

19 MS. BAILEY: Is the applicant here
20 for Fat Face Bar-B-Que? Okay. Would you,
21 please -- sir, were you sworn in previously?
22 Were you sworn in previously?

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1 Would you, please, raise your right
2 hand?

3 (Whereupon, the witnesses were
4 sworn.)

5 MS. BAILEY: Thank you.
6 Application 17981 of Fat Face Bar-B-Que,
7 pursuant to 11 DCMR section 3103.2, for a
8 variance from the use provisions for a fast
9 food restaurant under subsection 701.1 at
10 premises 5315 East Capitol Street, S.E.,
11 Square 5284, Lot 113. The property is located
12 in the C-1 District.

13 ACTING CHAIR DETTMAN: Thank you,
14 Ms. Bailey. And good afternoon. Thank you
15 for your patience. Why don't we start off by
16 you just introducing yourself for the record?

17 MR. DeSILVA: George DeSilva.

18 ACTING CHAIR DETTMAN: And, Mr.
19 DeSilva, you are actually -- you are not the
20 official property owner, however, you have
21 been authorized by the property owner to bring
22 this case to the Board?

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1 MR. DeSILVA: That's correct.

2 ACTING CHAIR DETTMAN: Okay. And
3 we have that in the record, that's our Exhibit
4 No. 35, a letter from a Soon Shin.

5 MR. DeSILVA: Correct, Soon J.
6 Shin.

7 ACTING CHAIR DETTMAN: Okay. The
8 Board has -- we have had an opportunity to
9 review the record. It's a fairly complete
10 record. And you are here for a use variance
11 to allow the continuing use of a fast food
12 establishment within the C-1 District at 5315
13 East Capitol Street, S.E.

14 Let me ask first, how familiar are
15 you with these proceedings as well as the test
16 that the Board has to apply in order to decide
17 whether to approve or disapprove?

18 MR. DeSILVA: This is my first
19 time, so --

20 ACTING CHAIR DETTMAN: Okay.

21 MR. DeSILVA: -- I'm just looking
22 at you guys on the webcam and trying to

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1 familiarize myself, but this literally is my
2 first time.

3 ACTING CHAIR DETTMAN: Okay. Well,
4 I'll just briefly describe kind of the
5 standard that has to be met. You are here for
6 a use variance. And so in order for the Board
7 to thoroughly analyze and then make a decision
8 on a use variance case, it's -- we apply a
9 three prong test.

10 And the first prong, basically, we
11 ask the applicant to demonstrate whether or
12 not the property actually has an exceptional
13 condition or situation, either created by the
14 topography or some other exceptional
15 condition. Maybe it's the longstanding prior
16 use of it, of a property and what have you.

17 The next prong that the Board does
18 is they actually have to decide whether or not
19 those exceptional conditions that are specific
20 to this property create, in this case, an
21 undue hardship. So often times it's a
22 financial hardship or what have you.

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1 And then having met those two
2 prongs, the third and final prong that needs
3 to be met is whether or not the Board can
4 grant the requested relief, and in this case,
5 it's a fast food establishment at this
6 location, whether or not that relief can be
7 granted without causing any substantial
8 detriment to the surrounding public good and
9 to the Zone Plan.

10 And so I just wanted to briefly
11 describe that to you, so when you provide
12 testimony to us and describe the property and
13 describe the history and why you are here,
14 maybe that will help you kind of fill in that
15 information.

16 MR. DeSILVA: Thank you.

17 ACTING CHAIR DETTMAN: Okay. So
18 why don't we just go ahead and, again, you
19 have already introduced yourself for the
20 record, so if you wanted to take us through
21 your application and describe the property?

22 MR. DeSILVA: I hope I can do my

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1 best.

2 ACTING CHAIR DETTMAN: Oh, and let
3 me ask quickly, thank you, Ms. Moldenhauer.
4 Were you here when Ms. Bailey administered the
5 oath? Okay.

6 MR. DeSILVA: She just swore me in.

7 ACTING CHAIR DETTMAN: All right.
8 Then we are all set.

9 MR. DeSILVA: I can start now?
10 Okay. I'm seeking a use variance to continue
11 the current fast food establishment in the C-1
12 Zone.

13 The property and building had been
14 occupied and in use as a carry out/fast food
15 establishment since at least 2002. I am not
16 proposing any structural changes or building,
17 therefore, I am not seeking for any structural
18 altercation -- alterations nor expansions for
19 the use of the service.

20 Several Certificates that I have
21 supplied the Board clearly shows the use of
22 the building changed from conforming to

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1 nonconforming use in 2002.

2 In 2002, the change from a hardware
3 store to a carry out deli was issued according
4 to the Certificate of Occupancy for the New
5 York Fried Chicken that previously occupied
6 the same property.

7 In 2004, the business changed
8 management and retained the same carry out
9 use. Fat Face Bar-B-Que LLC has occupied this
10 space since 2007.

11 In 2007, I took over the business
12 operation and management triggering the need
13 for a new Certificate of Occupancy. At that
14 time, I was referred to the Office of Zoning,
15 which eventually provided a statement that was
16 not -- that -- provided me a statement
17 providing that the use was not permitted in
18 the C-1 Zone and referred me to the Board of
19 Zoning Adjustments.

20 Since that time, Fat Face Bar-B-Que
21 has operated using a temporary Certificate of
22 Occupancy while awaiting the Board decision.

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1 The existing retail shop is clearly
2 constructed for commercial use. The
3 application attached Certificates of Occupancy
4 in the case that the subject spaces have been
5 used as a carry out restaurant since 2002.
6 Even though the regulation changed in 1985,
7 the carry out use was granted in 2002.

8 Therefore, it appears in the
9 current use of the space as a carry out
10 establishment is not inconsistent with the
11 permission granted in 2002.

12 The strict application of the
13 Zoning Regulation will result in difficulties
14 and undue hardship upon me and the property
15 owner. A 5 year lease was agreed upon and
16 signed for this location since being occupied.

17 This location has 13 employees of which 9
18 reside and work in the neighborhood.

19 The property history and typical
20 physical layout for this property has no
21 seating inside of the location. And it also
22 was built-out with a commercial -- large

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1 commercial size kitchen.

2 Converting the space to a use
3 permitted by the C-1 District would pose an
4 undue practical and economical hardship upon
5 myself and the property owner. The rear of
6 the building has a private driveway that
7 services all of the commercial lots in the
8 shopping center and it's only used by the
9 business for trash pick-up and deliveries.

10 The property has shared parking for
11 customers of the entire commercial strip along
12 East Capitol Street, which is in front of the
13 building. A 15 foot alley also separates the
14 property from all residential and abiding
15 buildings.

16 Several letters from the ANC
17 Commission was included in my file. The
18 letters indicate support in continuation of
19 the business and thanks me for the civic
20 outreach in the local community. Included in
21 the application are also letters from Council
22 Member Alexander, the Hughes Memorial, United

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1 Methodist Church, Urban Outreach Charitable
2 Organization and several other community
3 members.

4 Included in these letters are
5 descriptions of value of the business to the
6 community and my charitable outreach to our
7 community that we reside in.

8 So I'm not sure if I met all? I
9 also supplied in my application the previous
10 COs that were also there before us. I also
11 supplied you with the CO of the carry out that
12 is directly next door to where we are also
13 located, which is the Szechuan House, a
14 Chinese carry out.

15 ACTING CHAIR DETTMAN: Okay. Thank
16 you, Mr. DeSilva. And I actually think that
17 you hit all three points, so thank you very
18 much for your testimony.

19 Board questions? No questions?
20 Okay. Where's the food? We're all hungry
21 here.

22 MR. DeSILVA: It's at the shop.

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1 ACTING CHAIR DETTMAN: I don't have
2 the exhibit numbers with me right now, but,
3 Board Members, you had a chance to review all
4 the letters in support that were referenced by
5 Mr. DeSilva. So why don't we move ahead if
6 there are no questions by the Board to the
7 Office of Planning. Their report is our
8 Exhibit No. 37.

9 And, Mr. DeSilva, did you receive a
10 copy of the OP report?

11 MR. DeSILVA: I did.

12 ACTING CHAIR DETTMAN: You did.
13 Okay. So why don't we move on to OP? Good
14 afternoon.

15 MS. CIDLOWSKI: Good afternoon,
16 Vice Chairman, Members of the Board. My name
17 is Laine Cidlowski. I'm a Development Review
18 Specialist with the Office of Planning.

19 I wrote the report for Case 17981,
20 5315 East Capitol Street, S.E., recommending
21 approval of the use variance to allow a fast
22 food establishment in the C-1 District.

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1 After examining the property during
2 a site visit and looking through the history
3 of the property and its change at some point
4 in 2002, I wasn't able to determine how that
5 change occurred exactly just by looking back
6 through the history.

7 If there was a case that came
8 forward, I wasn't able to find the history of
9 that, but we do have the Certificates of
10 Occupancy.

11 I think the record or report fairly
12 clearly outlines how they met the test. The
13 one sort of issue I did want to point out
14 along with the trash, the rear trash on the
15 site, I don't think that this is a major issue
16 for concern, because there aren't any physical
17 changes being made to the property to continue
18 the existing use, but it is something that
19 possibly in the future, if physical changes
20 are made, that improvements may want to be
21 made there.

22 Other than that, I'm happy to sort

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1 of stand on the record and answer any
2 questions the Board may have.

3 ACTING CHAIR DETTMAN: Thank you.
4 Just one question. Could you -- did you state
5 that you had been to the site?

6 MS. CIDLOWSKI: That's correct.

7 ACTING CHAIR DETTMAN: Can you
8 describe kind of the condition along the alley
9 and especially with respect to along the rear
10 of this property and the trash receptacles and
11 what not?

12 MS. CIDLOWSKI: Sure. So the alley
13 is paved. It separates between the C-1
14 District and the R-3 District, I believe. The
15 parking or the driveway to the trash
16 enclosures, I'm sorry, there is no parking in
17 the rear, is partially paved. It looks like
18 at one time it was completely paved and it has
19 possibly deteriorated over time. So you know,
20 that would be one area where an improvement
21 could be made.

22 But he way the utilities are

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1 connected to the rear of the structure and
2 just to be clear, the property is one of a
3 small strip of other commercial properties.
4 The trash enclosures can't be on the physical
5 property of the property owner, Fat Face Bar-
6 B-Que LLC, because the lines come down too low
7 for the trucks. So all the trash enclosures
8 are sort of clustered.

9 So really in looking at it, to
10 enclose just the one trash structure, wouldn't
11 really have a discernable impact on the
12 surrounding area. They would all need to be
13 enclosed, so it would have to be a larger
14 effort where all the property owners get
15 together and that sort of thing.

16 COMMISSIONER SCHLATER: So the
17 different store fronts are owned by different
18 owners?

19 MS. CIDLOWSKI: That's correct.

20 COMMISSIONER SCHLATER: OP is
21 comfortable with this site remaining a fast
22 food establishment for the foreseeable future,

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1 even Fat Face Bar-B-Que's presence on the
2 site?

3 MS. CIDLOWSKI: I can't really
4 speak for all of OP outside of the case,
5 because the case is the only thing on which we
6 are asked to comment on for the merits
7 particularly. But you know, the fast food use
8 was in place, has been in place and I can say
9 from visiting the site that it seems fairly
10 popular in the community.

11 I noticed a number of people
12 walking from the neighboring sort of
13 neighborhood up and using the different
14 services in the shopping center. So it seemed
15 like a desirable use just judging from the
16 community comments.

17 ACTING CHAIR DETTMAN: Just a
18 follow-up to Mr. Schlater's question, because
19 I think it's a very good one. I understand
20 that when you applied the variance analysis it
21 was for this particular use, Fat Face Bar-B-
22 Que.

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1 However, I think what the Board
2 needs to determine here is whether or not a
3 fast food establishment, irrespective of the
4 type of establishment it is, whether it be
5 pizza, whether it be bar-b-que, where or not a
6 fast food establishment can be granted in this
7 -- on this property without causing any
8 substantial detriment to the public good and
9 the Zone Plan.

10 So if Fat Face Bar-B-Que was to
11 vacate, the use variance would still remain
12 and a fast food establishment would be able to
13 go in there using that use variance. So I
14 guess what is OP's position on that, the
15 longstanding use of this property as a fast
16 food establishment?

17 MS. CIDLOWSKI: Well, I mean, as
18 far as a detrimental impact to the Zone Plan
19 or the local community, it is providing, what
20 I would consider to be, a neighborhood-serving
21 use. It's food that is locally available that
22 you don't necessarily have to drive to.

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1 There is a substantial residential
2 community in the surrounding area of it. You
3 know, there aren't that many other
4 restaurants. It is a fairly small commercial
5 strip, so I can't really speak to fast food
6 establishments in all C-1 Zones, but in this
7 particular node, there is a mix of uses. I
8 think it's really serving the neighborhood.

9 So you know, whether that is
10 Chinese food or bar-b-que, I don't think that
11 that makes too big of an impact, as long as
12 they are meeting all the other standards as
13 far as building and health and that sort of
14 thing.

15 MEMBER MOLDENHAUER: And to speak
16 to, actually I guess, the global point of the
17 variance test to not just this current use,
18 but to any other fast food use, you observed
19 the property and can you speak to the hardship
20 of, I guess, changing around the layout of the
21 current establishment? And there has been
22 testimony already as to the large commercial

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1 kitchen and the no seating. Can you speak to
2 that point?

3 MS. CIDLOWSKI: Sure. As you enter
4 the sort of front of the structure, there is a
5 very small sort of ordering counter area. I
6 would say certainly no longer than this dias
7 and maybe just twice as wide, so it's very
8 small. There would be no room for tables or
9 chairs.

10 You can see through the divider
11 that the kitchen really comes right up to the
12 edge of the counter. So in order to expand,
13 make it a restaurant style use, you would
14 really have to remove or move back a lot of
15 the elements of the actual kitchen itself.

16 COMMISSIONER SCHLATER: What are
17 the uses of the adjacent commercial?

18 MS. CIDLOWSKI: There is a barber
19 shop. There is the Szechuan take-out. I
20 believe there is -- are a couple of other
21 retail stores. Off the top of my head, I
22 can't quite recall, but Mr. DeSilva may be

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1 able to further speak to that.

2 ACTING CHAIR DETTMAN: Okay. Ms.
3 Cidlowski, anything else?

4 MS. CIDLOWSKI: Nope.

5 ACTING CHAIR DETTMAN: All right.
6 Well, thank you very much for a great report.
7 To the applicant, do you have any questions
8 for the Office of Planning?

9 MR. DeSILVA: No.

10 ACTING CHAIR DETTMAN: Okay. I do
11 have one question for the applicant. And that
12 is how is trash pick-up handled for your
13 particular establishment? And you know, who
14 maintains the rear of the alley, the trash
15 area? Is that handled by the property owner,
16 by yourself?

17 MR. DeSILVA: The trash is picked
18 up -- my trash is picked up every Monday and
19 Thursday, twice a week. That has been the way
20 it has been structured since we have been in
21 the establishment. Keeping the rear of the
22 establishment, like the grass cut and things

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1 like that, Ms. Shin who is the property owner,
2 that's her responsibility.

3 But as the other shop owners,
4 because there are seven in the strip mall,
5 besides the church, the Szechuan House, the
6 beauty salon, the barber shop, Watkins
7 Security and Mike's Variety Store that sells
8 beer and wine, we all collectively every day
9 clean the front and back of any trash debris
10 that may be out front or in the rear. So it's
11 a collaborative effort.

12 ACTING CHAIR DETTMAN: Thank you.
13 Do we have a member from the ANC in the
14 audience? No? The ANC-7E? Did you meet with
15 the ANC? Did you attend an ANC meeting?

16 MR. DeSILVA: Yes, I did. A letter
17 has been supplied in the package.

18 ACTING CHAIR DETTMAN: Okay. And
19 that would be Exhibit No. 36 from Maxine
20 Nightingale?

21 MR. DeSILVA: Yes.

22 ACTING CHAIR DETTMAN: Okay. Is

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1 she the Single Member District or is she the--
2 and is she the Chair of the ANC?

3 MR. DeSILVA: Yes, yes, she is.

4 ACTING CHAIR DETTMAN: She is.
5 Okay. Just quickly reviewing Exhibit No. 36.
6 Again, that's from a Maxine Nightingale, ANC-
7 7E07 Commissioner. And according to the
8 applicant, that is also the Chair of the ANC
9 expressing their support for the organization.

10 It doesn't appear just by a quick
11 glance that the letter that was submitted
12 meets the great weight requirements pursuant
13 to the regulations. It states that the
14 applicant has met with the ANC. However, it
15 doesn't indicate when -- whether or not there
16 was a quorum and whether or not there was a
17 vote taken.

18 So nonetheless, it's a letter from
19 the ANC Commissioner expressing overwhelming
20 support for the application. And any of the
21 issues raised here, the Board will factor into
22 their deliberation.

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1 Okay. At this point, I don't think
2 I see any, but, for the record, are there any
3 people in support or in opposition to the
4 application? Seeing none, I think it's back
5 to the applicant for a closing statement.

6 MR. DeSILVA: Well, it's very
7 short. Like I said, we have been a great help
8 to the community, that when I originally
9 scouted out the area and was trying to find a
10 location to put the -- our bar-b-que business,
11 because we had been in business 10 years, we
12 also have another location in Sanford, North
13 Carolina, and when we brought it up here,
14 because of the revitalization that was done in
15 the neighborhood from the East Capitol Street
16 dwelling, literally, Capitol Plaza, where we
17 are currently located, is the only food
18 establishment that is available to that new
19 community that has been placed there from
20 Southern Avenue all the way to Benning Road.

21 So that it's a great stretch, over
22 2 miles, before that area can get some other

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1 type of bar-b-que, Chinese or any other
2 variety of food.

3 So I'm just asking the Board to
4 grant permission for us to continue the use
5 that we have been there since 2007 and have
6 had no complaints from the neighborhood. And
7 I again ask the Board for a Bench decision, so
8 we can continue and be able to move forward.
9 Thank you.

10 ACTING CHAIR DETTMAN: All right,
11 thank you. I think, colleagues, the record is
12 full enough for us to move forward today
13 towards a decision. Yes? I would be happy to
14 lead us through this fairly straightforward
15 variance test.

16 Again, this is an application for a
17 use variance to -- for the continued use of a
18 fast food establishment at 5315 East Capitol
19 Street, S.E.

20 In reviewing the record and through
21 oral testimony provided by the applicant, I
22 think that the three prongs of the use

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1 variance test have been met. The property has
2 been occupied by a fast food establishment
3 since 2001 and occupied by this particular
4 establishment since 2007.

5 And really, they are here by way of
6 a modification to the Zoning Regulations that
7 occurred not too long ago, that made this
8 particular use in this particular Zone
9 District a nonconforming use. They have been
10 operating under a temporary C of O and then
11 they are here to get a renewal of that
12 temporary C of O. A permanent C of O, I
13 should say.

14 You know, again, still going to the
15 first prong of the variance test, the property
16 does have some extraordinary conditions.
17 Again, given the prior use of the property and
18 the way it was constructed, it was clearly
19 constructed for commercial use. It has a
20 large commercial size kitchen that takes up
21 the majority of the building area.

22 And so whether or not those

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1 exceptional conditions give rise to an undue
2 hardship upon the property owner, I think it
3 has been established that a hardship would
4 exist, not only to the property owner, but
5 also to this particular tenant.

6 Currently, there is a 5 year lease
7 in place between Fat Face Bar-B-Que and the
8 property owner. And then an economic hardship
9 would exist if the property owner was forced
10 to convert the property to some sort of
11 matter-of-right C-1 use.

12 Whether or not the relief can be
13 granted without causing any substantial
14 detriment to the public good or the Zone Plan,
15 I think that prong is met as well. The
16 applicant is not proposing any structural
17 alterations or expansions. It has got
18 adequate parking in the front.

19 By the sounds of it, the alley,
20 which is used for trash pick-up, is well-
21 maintained, as is the entire property
22 collectively by the businesses that are

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1 located inside this plaza.

2 We have several letters in support,
3 one being from the ANC Commissioner. We have
4 Exhibit 12, 13, 11 as well as 10, four letters
5 in support provided by the community. And in
6 fact, this particular plaza is providing some
7 opportunities, some eating and dining
8 opportunities to a community that is currently
9 undergoing or experiencing some growth.

10 So I think the test has been met.
11 The applicant has met its burden. And I guess
12 with that, I'll turn it over to colleagues for
13 additional comments.

14 MEMBER MOLDENHAUER: Mr. Chair, I
15 believe that you provided a very full summary.

16 I think that this case actually presents some
17 specific special factual conditions, which
18 allow it to meet the first and second prong in
19 addition to some of the, I guess, unique
20 history, in other words, the C of Os and the
21 zoning change.

22 And I think that you touched on

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1 those unique factual elements. I just wanted
2 to point that out also, but other than that, I
3 think I concur with your conclusions.

4 COMMISSIONER SCHLATER: I won't
5 belabor the point. I think the applicant has
6 met the three prong test. I think it's a
7 fairly extraordinary situation. I think that
8 failure to grant this variance would certainly
9 cause undue hardship. And this is, obviously,
10 an important establishment to the neighborhood
11 in terms of providing some food options for
12 people who live out there on East Capitol
13 Street. And it's a valued member of the
14 community. And I'll be happily supporting
15 this use variance.

16 ACTING CHAIR DETTMAN: Great.
17 Thank you, Mr. Schlater. Colleagues, if there
18 is nothing more, I'm prepared to make a motion
19 and would move for approval of Application No.
20 17981 of Fat Face Bar-B-Que, pursuant to 11
21 DCMR 3103.2, for a variance from the use
22 provisions for a fast food restaurant, fast

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1 food establishment under subsection 701.1 in
2 the C-1 District located at 5315 East Capitol
3 Street, S.E.

4 MEMBER MOLDENHAUER: I second.

5 ACTING CHAIR DETTMAN: The motion
6 has been made and seconded.

7 All those in favor say aye?

8 ALL: Aye.

9 ACTING CHAIR DETTMAN: Opposed?
10 Any abstentions? And would you call the vote,
11 please?

12 MS. BAILEY: Mr. Chairman, the vote
13 is recorded as 3-0-2 to grant the application.
14 Mr. Dettman made the motion, Mrs. Moldenhauer
15 seconded, Mr. Schlater supports the motion.
16 So it's 3-0-2.

17 ACTING CHAIR DETTMAN: Thank you,
18 Ms. Bailey. And I think as there is no
19 opposition to this case, it can be a summary
20 order.

21 MS. BAILEY: Summary order it is.

22 ACTING CHAIR DETTMAN: Great.

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1 Thank you. Thank you to the applicant once
2 again, as well as to Ms. Cidlowski with the
3 Office of Planning. It was a great report.

4 MR. DeSILVA: Is that it? Thank
5 you all.

6 ACTING CHAIR DETTMAN: I think
7 we're in the home stretch here, right?

8 MS. BAILEY: Yes, Mr. Chairman, the
9 last case of the day.

10 ACTING CHAIR DETTMAN: Great. And
11 Mr. Hosseinkhani, have you been sworn in?

12 MR. HOSSEINKHANI: Yes, sir.

13 ACTING CHAIR DETTMAN: You have.
14 Okay. So why don't we go ahead and call the
15 last one.

16 MS. BAILEY: Mr. Chairman, it's
17 Application 17918 of Behzad Hosseinkhani,
18 pursuant to 11 DCMR 3103.2, for a variance to
19 allow a change in nonconforming use from a
20 valet shop to a restaurant, 28 seats on the
21 first floor, under subsection 330.5 at
22 premises 1551 6th Street, N.W.

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1 And I make note, Mr. Chairman, that
2 this application was advertised for special
3 exception relief previously. However, it was
4 determined that a use variance is needed.

5 The property is located in Square
6 478 on Lot 821 and it is Zoned R-4.

7 And this is a continuation, Mr.
8 Chairman, from the October 6th Public Hearing.

9 MR. HOSSEINKHANI: Good afternoon.

10 ACTING CHAIR DETTMAN: Good
11 afternoon. I appreciate your patience, Mr.
12 Hosseinkhani, this afternoon as well as with
13 this case. I know this case has been around
14 for a while and we're finally getting to it.
15 So why don't we start off by having you
16 introduce yourself for the record?

17 MR. HOSSEINKHANI: Behzad
18 Hosseinkhani.

19 ACTING CHAIR DETTMAN: And your
20 home address?

21 MR. HOSSEINKHANI: 1551 6th Street,
22 N.W., Washington, D.C. 20001.

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1 ACTING CHAIR DETTMAN: Okay. As
2 Ms. Bailey stated, I think your original
3 application was for a special exception. You
4 were referred to the Board by the Zoning
5 Administrator. And subsequently, the Board
6 determined that you would need a use variance,
7 because the existing nonconforming use had
8 been discontinued.

9 So as you present your case, I
10 think that you may have heard me describe the
11 three prongs of the variance test to the
12 previous applicant. So as you go through your
13 presentation to the Board, to the extent that
14 you can actually try to fill in those three
15 prongs of the variance test, what is your
16 exceptional condition, what economic hardship
17 or what undue hardship will those exceptional
18 conditions create and then whether or not your
19 request will cause any kind of detriment to
20 the public good and to the Zone Plan, that
21 would really help the Board in analyzing this
22 case.

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1 MR. HOSSEINKHANI: Yes, sir.

2 ACTING CHAIR DETTMAN: So why don't
3 we start?

4 MR. HOSSEINKHANI: Yes. I
5 purchased the property on August 16, 2000 and
6 although it was Zoned R-4 at the time of the
7 purchase, I previously -- the owner -- the
8 previous owner were operating a commercial
9 license valet shop and cleaning agency in the
10 building, which I have submitted the C of O
11 that was issued to that, previously was issued
12 for that location.

13 Based on its commercial use, I
14 purchased the property as an investment
15 business opportunity and have substantially
16 improved the building at significant expense.

17 That renders the first floor of the property
18 suitable for commercial purpose and wholly
19 unsuitable for residential purposes.

20 I have also rebuilt the carriage
21 house adjacent to that building, so the
22 property is sustained -- substantiated by the

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1 D.C. Government Real Property Tax website,
2 which identified it as having 42-store-
3 miscellaneous use code designation.

4 Based on the use designation for
5 several years, I have paid property taxes for
6 entire building at Class II commercial
7 property rate. I still pay city tax on the
8 building. With the property commercial use
9 designation, I attempted to lease it to a
10 commercial tenant, but was advised by D.C.
11 Government that based on its R-4 Zoning
12 designation, a Certificate of Occupancy for
13 the property cannot be issued.

14 As a result of this denial, I faced
15 the loss of value of the property as a
16 commercial premise, since the first floor is
17 unsuitable for residential use without
18 additional major and costly renovation.

19 On the basis of the fact as desired
20 -- described above and given our need for
21 resolution, I am advised by the Department of
22 Consumer and Regulatory Affairs to submit an

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1 application to the Board of Zoning Adjustment,
2 BZA, to use the property in a way that is not
3 permitted in the Zone District under the
4 Zoning Regulation.

5 Given the --

6 ACTING CHAIR DETTMAN: Mr.
7 Hosseinkhani, could you just pull the
8 microphone a little bit closer to you?

9 MR. HOSSEINKHANI: Yes.

10 ACTING CHAIR DETTMAN: For the
11 Court Reporter.

12 MR. HOSSEINKHANI: Yeah. Granting
13 the use variance or a special exception
14 variance to the property would give me greater
15 flexibility in a commercial use of the
16 property and would serve to restore its market
17 value. A number of factors, I believe, will
18 operate in my favor are:

19 The first floor of the property is
20 not suitable for residential use, as a result
21 of the costly remodeling done pursuant to the
22 District approval.

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1 Conversely or loss of ability to
2 use the property for commercial purposes would
3 inflict economic hardship on my family, wife,
4 children and I as owner.

5 The purpose -- proposed use serves
6 the larger social and economic purposes
7 underlying the Master Plan for the area in
8 which the property is located and the proposed
9 use will not be inconsistent with the general
10 intent and purpose of the Zoning Regulation
11 and Map.

12 It is contemplated that either I or
13 a small business owner will provide desirable
14 services to the residents of the neighborhood.

15 In turn, tax revenue will be generated for
16 the District and the income will be produced
17 for us as owner and available to maintain this
18 -- our property in good repair.

19 Currently, there is a market/deli
20 right across the street, which is in
21 operation. The property is owned by a
22 District resident who are committed to living

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1 in the District of Columbia and working toward
2 making the Capitol City a better place for
3 all.

4 The proposed uses will add in a
5 variety of ways to compliment the desirability
6 of the neighborhood's residential uses. I and
7 my immediate family currently live on the
8 second floor of the building. For that
9 reason, I am equally concerned with the public
10 issues, such as traffic, noise, lighting,
11 safety, etcetera. And the proposed uses will
12 not be detrimental to the public good of the
13 community.

14 With the purposes of the present R-
15 4 Zoning being to promote residential use, the
16 use for which the special exception use
17 variance would be sought is definitely in
18 keeping with retaining the viability of the
19 neighborhood and provide desirable services
20 for residents of the neighborhood.

21 Please, note that I have presented
22 my proposal to the community and they are in

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1 agreement with my request and have indicated
2 so by their signature on the attached
3 petition. Thank you.

4 ACTING CHAIR DETTMAN: Thank you.
5 Colleagues, any questions? No?

6 COMMISSIONER SCHLATER: Mr.
7 Hosseinkhani, can you describe what sort of
8 establishment you envision putting on the
9 ground floor again for me?

10 MR. HOSSEINKHANI: I would like to
11 put a cafe/restaurant with 28 seat capacity.

12 COMMISSIONER SCHLATER: Okay. And
13 do you have a tenant in waiting for this
14 approval or is that something you are going to
15 pursue after you get your use variance?

16 MR. HOSSEINKHANI: Actually, what I
17 like to do is establish a restaurant myself.

18 COMMISSIONER SCHLATER: Okay.

19 MR. HOSSEINKHANI: Along with my
20 family, which we live also in the second
21 floor, so we have been planning to establish a
22 restaurant/cafe downstairs. But previously, I

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1 have advertised the property for lease and--
2 but any tenant would come up there would have
3 to go through the zoning --

4 COMMISSIONER SCHLATER: Um-hum.

5 MR. HOSSEINKHANI: -- requirement
6 and they would not want to continue with it.
7 That would have been included a deli and
8 previously there was a catering and then it
9 was a dog washing and services --

10 COMMISSIONER SCHLATER: Um-hum.

11 MR. HOSSEINKHANI: -- establishment
12 and also office space. But we decided to make
13 that our own establishment.

14 COMMISSIONER SCHLATER: And the
15 building was originally constructed for that
16 first floor to be commercial space, correct?

17 MR. HOSSEINKHANI: Yes. The first
18 floor.

19 COMMISSIONER SCHLATER: It was
20 never residential?

21 MR. HOSSEINKHANI: It has --

22 COMMISSIONER SCHLATER: As far as

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1 you know?

2 MR. HOSSEINKHANI: -- never been
3 residential. Since I bought it, it was
4 commercial and I have kept it as it is. It
5 never was converted to residential.

6 COMMISSIONER SCHLATER: Are there
7 other retail establishments in the area
8 around? This is 6th and Q, correct?

9 MR. HOSSEINKHANI: Yes, exactly.

10 COMMISSIONER SCHLATER: I know the
11 street. I know 6th, but I can't picture that
12 block specifically.

13 MR. HOSSEINKHANI: Yes, there is
14 also a -- it's called 6th and Q Market.

15 COMMISSIONER SCHLATER: Um-hum.

16 MR. HOSSEINKHANI: It's right
17 across the street from my house. If you like,
18 I have a picture of it. I'll show it to you.

19 COMMISSIONER SCHLATER: I might
20 have it already.

21 MEMBER MOLDENHAUER: And Mr.
22 Hosseinkhani, isn't there just two blocks

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1 down, two block over you have the Safeway?

2 MR. HOSSEINKHANI: There is a
3 Giant.

4 MEMBER MOLDENHAUER: A Giant.

5 MR. HOSSEINKHANI: Giant, which is
6 -- I would say that would be on 8th Street.

7 MEMBER MOLDENHAUER: 8th.

8 MR. HOSSEINKHANI: This continues
9 right at the P. And Giant is there where the
10 old market used to be long time ago, which is
11 they planning to construct that area.

12 COMMISSIONER SCHLATER: And 6th
13 Street is a pretty wide street. It gets a
14 fair amount of traffic as well, correct?

15 MR. HOSSEINKHANI: Yes. That
16 corner, 6th and Q, there is traffic and also
17 bike path going from west to east.

18 COMMISSIONER SCHLATER: Are there
19 any other commercial establishments on 6th
20 Street going up and -- within a couple blocks
21 of --

22 MR. HOSSEINKHANI: There is also a

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1 Chinese food restaurant and used to be a, I
2 believe it was, a bike shop, a community
3 center right south of Rhode Island and 6th.

4 COMMISSIONER SCHLATER: Um-hum.

5 MR. HOSSEINKHANI: Which that would
6 be R and -- between R and Rhode Island.

7 COMMISSIONER SCHLATER: Right.
8 Okay. Thank you very much.

9 ACTING CHAIR DETTMAN: Thank you,
10 Mr. Hosseinkhani. I don't think the Board has
11 any other questions. And I think we can move
12 on to the Office of Planning. OP has
13 submitted a report in support of the
14 application, that's our Exhibit No. 32.

15 Mr. Hosseinkhani, did you receive a
16 copy of the OP report?

17 MR. HOSSEINKHANI: Yes, sir, I have
18 received that.

19 ACTING CHAIR DETTMAN: Okay. So
20 why don't we move on to OP? Ms. Brown-
21 Roberts, how are you?

22 MS. BROWN-ROBERTS: Fine, thank

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1 you. Mr. Chairman, good afternoon, and also
2 to the Members of the Board. For the record,
3 I am Maxine Brown-Roberts from the Office of
4 Planning.

5 I submitted a supplementary report
6 following the last date for the -- when we
7 first had -- the hearing was called. I also
8 subsequently spoke to the Zoning Administrator
9 and he was also in agreement that the
10 application should be reviewed as a variance
11 as against the special exception, so that's
12 what we're here for today.

13 The applicant has proposed a 28
14 seat restaurant which is in the R-4 Zone. The
15 second level of the building will continue to
16 be used as a single-family residence. The
17 applicant also states that he has no intention
18 to make any physical modification to the
19 existing -- to the exterior of the structure.

20 From research done at the -- on the
21 C of Os from the -- from DCRA, I was able to
22 get Certificate of Occupancies dating back to

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1 August 30, 1954. And the latest one was in
2 January 19, 1999.

3 The first one was for storage and
4 distribution of produce. The second one that
5 came in 1958 was for the valet shop and
6 cleaning agency. And that continued through
7 1999. And I think the applicant subsequently
8 bought the property in 2000.

9 The -- he has also said to me and
10 just as he said here today that he has tried
11 on occasion to get the property leased for a
12 leasing service and other services that may be
13 -- that -- but was unable to do so and,
14 therefore, with support from some of the
15 neighbors, he is going to do the coffee shop/
16 restaurant at the site.

17 Regarding the variance relief, I
18 think the property is unique due to the
19 existing building is -- has been constructed
20 as a -- has been used as a non-residential use
21 from -- since 1954. The building has 837
22 square feet of gross floor area and is L-

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1 shaped.

2 For the uniqueness, due to an
3 exceptional condition, the property has been
4 designed and constructed as a retail store on
5 the lower floor and residential above.
6 Secondly, the records from the DCRA also
7 indicate that it has been used for non-
8 residential use.

9 The small size of the building and
10 the commercial architecture design of the low
11 portion of the building also is an exceptional
12 condition.

13 The layout of the lower floor also
14 was laid out in order to accommodate a non-
15 residential use. And the -- and this is also
16 shown because there is no stairs that connect
17 the lower floor to the upper floor. And if
18 that building was to be converted, that would
19 be something that would have to be done.

20 The Office of Planning does not
21 think that granting this variance will cause
22 any substantial detriment to the public good.

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1 The building has been used as a residential -
2 - as a non-residential use over time. And the
3 area has adjacent residential uses and it's a
4 corner store.

5 The conversion to the residential
6 use would be difficult, due to the site layout
7 and the building design. And without granting
8 this application, the ground floor of the
9 building would likely remain vacant.

10 Therefore, the relief can be
11 granted without substantial detriment.

12 The applicant has also stated that
13 there will be limited hours from 8:00 a.m. to
14 6:00 p.m. and that there will be -- the staff
15 will be himself and his family and possibly
16 another part-time employee.

17 Therefore -- and the proposed use
18 is for a very small coffee shop/restaurant
19 and, therefore, we think that the majority of
20 the patrons will be from the surrounding
21 community and not be coming from a wider area.

22 The building currently has lighting

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1 on the front and the side facade and no
2 additional lighting is proposed. And he also
3 states he is going to have a small sign.
4 Trash would be collected and stored from an
5 existing enclosure at the rear of the
6 property.

7 Mr. Chairman, the Office of
8 Planning recommends approval of the requested
9 variance. And I will take any questions.

10 ACTING CHAIR DETTMAN: Thank you.
11 Are there questions for the Office of
12 Planning? Okay.

13 Ms. Brown-Roberts, I have just, I
14 believe, one question. On page 3 of your
15 report, you mentioned the surrounding zoning
16 districts and that to the north, northwest and
17 west are non-residential uses located within
18 an Industrial Zone District? I think that's
19 an error.

20 MS. BROWN-ROBERTS: Oh, I'm sorry.

21 ACTING CHAIR DETTMAN: Is this
22 property located in the Shaw Historic

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1 District?

2 MS. BROWN-ROBERTS: I don't know.

3 I didn't --

4 ACTING CHAIR DETTMAN: Yeah, okay.

5 MS. BROWN-ROBERTS: -- check that
6 out.

7 ACTING CHAIR DETTMAN: Okay. That
8 was just curiosity. Okay. No questions?

9 COMMISSIONER SCHLATER: One
10 question about the zoning history of the site.

11 MS. BROWN-ROBERTS: Um-hum.

12 COMMISSIONER SCHLATER: Has there
13 been any zoning changes on the site that you
14 found in your --

15 MS. BROWN-ROBERTS: No, there
16 hasn't been. No, it has always been -- even
17 before the 1958, it was zoned residential.
18 But there hasn't been any commercial zoning on
19 the property now.

20 COMMISSIONER SCHLATER: I guess I'm
21 just curious as to how we ended up with, you
22 know, a number of commercial properties along

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1 that strip?

2 MS. BROWN-ROBERTS: I don't know.
3 I know a little bit about it, but I don't
4 think I know enough to sort of expound on the
5 dias about it. You know, as you know, I mean,
6 this is a situation that are in a number of
7 properties around the city. And I think as we
8 are going back to these corner stores, they
9 existed from a long time ago.

10 And so some of them were converted
11 and some weren't and continue to function as
12 non-residential use. Just because of the, I
13 think, layout of the space and, you know, it
14 is so hard to convert it back, to convert it
15 to a residential use, so we'll just sort of
16 continue it.

17 Of course, we do have some areas
18 where the residential use is because we have
19 these corner stores, sometimes adjacent stores
20 came up in residential uses, but usually when
21 they are at a corner, they were -- that was
22 the original design.

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1 ACTING CHAIR DETTMAN: Thank you
2 once again. I don't see anyone in the
3 audience, so I'm going to guess we don't have
4 someone from the ANC here. We did receive a
5 letter from Ms. Doris Brooks, the Chair of
6 ANC-2C, that's our Exhibit No. 26 indicating
7 their support for this project.

8 I know that this letter was
9 submitted and you met with the ANC when you
10 were pursuing a special exception. Between
11 the time you were first before the Board and
12 today, did you reach out to the ANC? Thank
13 you, Mr. Schlater, I did see that the ANC did
14 submit another letter dated October 1st
15 indicating their support for the use variance
16 as well, and that was 34?

17 COMMISSIONER SCHLATER: Yes.

18 ACTING CHAIR DETTMAN: Exhibit No.
19 34. Okay. At this point, again, seeing no
20 one in the audience, I don't think that we
21 have anyone, persons in support or against
22 this project, so it's back to the applicant

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1 for closing statements. And it's back to you,
2 Mr. Hosseinkhani.

3 MR. HOSSEINKHANI: Yes, sir. I
4 appreciate your time. There have been several
5 times I been here and taken the time of the
6 Board. I and my family, we intend to have a
7 nice establishment in that corner that serves
8 the community and the residents. And we try
9 to do our best to keep that area lighted and
10 would be nice to -- for also as a security for
11 the people who live in the area would be a
12 good place to have lighted and also -- that's
13 all.

14 ACTING CHAIR DETTMAN: Great.
15 Well, thank you.

16 MR. HOSSEINKHANI: That's all.

17 ACTING CHAIR DETTMAN: Thank you.
18 Are we prepared to go forward today with this?
19 Did you want me to read it? Yeah?

20 Okay. I think the Board -- I think
21 the record is full enough and the Board will
22 deliberate and reach a decision on this today.

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1 Colleagues, just for the record,
2 this is a request for a use variance to
3 establish a restaurant with 28 seats on the
4 first floor of the property located at 1551 6th
5 Street, N.W.

6 In order to reach a decision of
7 approval, the Board must find that the
8 applicant has met the three prongs of the use
9 variance standard.

10 I'm going to actually just
11 incorporate by reference the Office of
12 Planning's report, because I think, that's our
13 Exhibit No. 32, it does a great job of kind of
14 laying out the three prongs of the variance
15 test. And again, the Office of Planning
16 submitted their supplemental report in support
17 of the application.

18 I'll just lift up a couple of the
19 points from that report. With respect to the
20 exceptional conditions upon the property, OP
21 notes that the property does have a unique
22 shape. However, I think that the real unique

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1 or exceptional condition upon this property is
2 its history. It was built in the late 1800s,
3 used consistently for commercial purposes on
4 the ground floor with residential on top.

5 D.C. records go back to 1954
6 indicating that it has been used as a valet
7 shop, I think a dog washing facility and what
8 is being proposed here is a restaurant.

9 There is plenty of -- well, again,
10 I think the first prong is met with respect to
11 its historic use and actually its
12 construction. It was constructed in a manner
13 that lends itself to commercial uses along the
14 ground floor.

15 The applicant, in reliance upon
16 approved building permits, has actually made
17 substantial improvements to the property in
18 order to position this as a commercial use and
19 to require the applicant to convert the first
20 floor to a residential use would, indeed, give
21 rise to an economic hardship upon the property
22 owner.

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1 I think the third prong is met.
2 The applicant has stated he is very invested
3 in the neighborhood. He is a resident and, in
4 fact, he lives on the second floor of the
5 property.

6 It is supported by the ANC by way
7 of their letter. Again, Exhibit No. 34.

8 We have a petition, Exhibit No. 7,
9 signed by the surrounding neighborhood in
10 support of the application. And I think that
11 what is being proposed will continue to
12 provide, what has been historically provided
13 at this property, some neighborhood-serving
14 retail opportunities for the immediate area.

15 So I'm definitely in support of the
16 application and will turn it over to my
17 colleagues for additional comments.

18 MEMBER MOLDENHAUER: I think that
19 you summarized the case very fully. I agree
20 with your conclusion. I think that the
21 approval of a variance for this use would
22 allow a service that, you know, based on the C

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1 of Os has been used at the site for a long
2 time. I think that with maintaining the upper
3 level as residential, it provides some
4 additional stability and protection for the
5 neighborhood that the applicant will continue
6 to invest in servicing the neighborhood.

7 And I think that, you know, the
8 only issue that I wanted to bring up in this
9 discussion, I think we have already addressed
10 this earlier today, was an issue of the
11 conditions on a use variance. I don't think
12 we -- can we condition the hours?

13 There is statements of hours of
14 operation from 8:00 a.m. to 6:00 p.m. and 28
15 seats. Is that something that we can -- I
16 would recommend to do that if you think that
17 is proper.

18 ACTING CHAIR DETTMAN: Mr.
19 Schlater, do you have any comments? And then
20 I can maybe address Ms. Moldenhauer's question
21 about a potential condition? And do you have
22 any position on that?

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1 COMMISSIONER SCHLATER: I'll speak
2 -- I'm not going to belabor the point on
3 meeting the three prong test. I think the
4 applicant has done a good job of meeting its
5 burden with respect to that test. And I would
6 support this use variance.

7 With respect to the conditions, I
8 think part of the benefit of this
9 establishment is that it is going to create
10 sort of a bustling center of commercial
11 activity on a corner. That benefit would
12 extend into the night, I think. I mean,
13 having lights on in the place in the evening
14 is something that if that were supported by
15 the market and it was -- it would be something
16 I would support.

17 And if there was problems with that
18 in the neighborhood, I would rather see that
19 than if it were a restaurant handled maybe by
20 the ABC Board as opposed to BZA, that would be
21 my position.

22 ACTING CHAIR DETTMAN: I agree with

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1 Mr. Schlater. And I don't think that there is
2 anything legally maybe preventing us from
3 placing a condition on a variance, and in this
4 case a use variance. I think we have done it
5 once or twice in the past.

6 I think in this case though, with
7 respect to the hours of operation, I think if
8 we were to entertain a condition of that
9 nature, I'm not certain what it would go --
10 what it would be trying to mitigate.

11 MEMBER MOLDENHAUER: Yeah, I mean,
12 I think I agree with both of you. I can
13 retract my initial, I guess, out-point.

14 ACTING CHAIR DETTMAN: Okay.
15 Great. So I'm prepared to make a motion if we
16 are ready for that?

17 I'll move for approval of
18 Application No. 17918 of Behzad Hosseinkhani,
19 I don't actually have the advertised
20 language here with me, but I'll wing it here,
21 pursuant to 11 DCMR 3103.1, for a use variance
22 to allow a restaurant with 28 seats on the

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1 first floor of the premises located at 1551 6th
2 Street, N.W.

3 Do I have a second?

4 COMMISSIONER SCHLATER: Second.

5 ACTING CHAIR DETTMAN: The motion
6 has been made and seconded.

7 All those in favor say aye?

8 ALL: Aye.

9 ACTING CHAIR DETTMAN: Opposed?
10 Any abstentions? And can we call the vote?

11 MS. BAILEY: Mr. Chairman, the vote
12 is recorded as 3-0-2 to grant the application.

13 Mr. Dettman made the motion, Mr. Schlater
14 seconded, Mrs. Moldenhauer supports the
15 motion.

16 ACTING CHAIR DETTMAN: Thank you,
17 Ms. Bailey. And I think, once again, in this
18 situation we can have a summary order.

19 MS. BAILEY: A summary order, yes,
20 sir.

21 ACTING CHAIR DETTMAN: All right.
22 Thank you, Mr. Hosseinkhani, we appreciate

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1 your patience.

2 MR. HOSSEINKHANI: Thank you very
3 much.

4 ACTING CHAIR DETTMAN: Ms. Bailey,
5 Mr. Moy, is there anything more for today's
6 agenda?

7 MS. BAILEY: That's it, Mr.
8 Chairman.

9 ACTING CHAIR DETTMAN: Great. We
10 made it. I want to thank my colleagues as
11 well as the staff from the Office of Zoning
12 for your support today.

13 MS. BAILEY: You did a great job
14 today.

15 ACTING CHAIR DETTMAN: We made it
16 through it. So that being said, we'll stand
17 adjourned.

18 (Whereupon, the public hearing was
19 concluded at 3:44 p.m.)
20
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22

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