

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

OCTOBER 6, 2009

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chair
SHANE DETTMAN, Vice Chair (NCPC)
MERIDITH MOLDENHAUER, Board Member

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner (NPS)
MICHAEL TURNBULL, FAIA, Commissioner
(AOC)

OFFICE OF ZONING STAFF PRESENT:

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

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
STEVEN COCHRAN

The transcript constitutes the
minutes from the Public Meeting held on
October 6, 2009.

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TABLE OF CONTENTS

Board Actions/Motions:

Motion from Applicant to Request an October Hearing Date to Application No. 17956 of Hamid Reza Ossareh	6
Application No. 17973 of D.C. Public Library	12
Application No. 17934 of Behzad Hosseinkhani	28
Application No. 17941 of 1332 Vermont Avenue Partnership	32
Motion to Extend the Validity of the Order to Application No. 17403-B of Self- Help Ventures Fund	55
Adjourn	64

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P R O C E E D I N G S

10:11 A.M.

CHAIRPERSON LOUD: Good morning,
again, ladies and gentlemen. This is the
October 6th Public Meeting of the Board of
Zoning Adjustment of the District of Columbia.

My name is Marc Loud, Chairperson. Joining
me today are Vice Chair Shane Dettman,
representing the National Capital Planning
Commission; Mr. Michael Turnbull, representing
the Zoning Commission; Ms. Meridith
Moldenhauer, the Board of Zoning Adjustment;
to her left, Mr. Clifford Moy, Secretary of
BZA; Ms. Sherry Glazer, Office of the Attorney
General; and on my far left, Ms. Beverley
Bailey, Zoning Specialist here in the Office
of Zoning.

Copies of today's meeting agenda
are available to you and are located to my
left in the wall bin near the door. We do not
take any public testimony at our meeting
unless the Board specifically asks someone to

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1 come forward.

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

9 Does the staff have any preliminary
10 matters?

11 MR. MOY: Yes, we do, Mr. Chairman,
12 but they are so numerous I would suggest that
13 we take it case by case.

14 CHAIRPERSON LOUD: All right.
15 Thank you, sir.

16 Why don't we proceed with the
17 agenda this morning. And let me apologize to
18 everyone out in the audience for our late
19 start this morning. We received a large
20 number of filings in almost all of the cases,
21 at least for this morning that came in either
22 late yesterday. I think some may have even

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1 come in this morning and so the process of
2 sorting it out and keeping ourselves organized
3 took us a little bit longer to get out here
4 than any of us like to. We like to get out
5 here at 9:30 a.m. sharp and we'll continue to
6 try to do that. And so again, we apologize
7 for this morning.

8 Yes, sir, Mr. Moy?

9 MR. MOY: Yes, good morning, Mr.
10 Chairman, Members of the Board. I believe the
11 first case for decision is a motion from the
12 Applicant to request an October hearing date.
13 This is to Application No. 17956 of Hamid
14 Reza Ossareh. This application, Mr. Chairman,
15 is pursuant to 11 DCMR 3104.1, for a special
16 exception to allow a two-story rear addition
17 to an existing one-family detached dwelling
18 under Section 223, not meeting the lot
19 occupancy, Section 403, and side yard, section
20 405, requirements in the R-2 district at
21 premises 4355 Fessenden Street, N.W. This is
22 in Square 1655, Lot 22.

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1 This filing on October 29, 2009,
2 the Applicant filed this request to schedule
3 his application on October 20, 2009. This is
4 in the case folders identified as Exhibit 30.

5 There are no other filings in the record in
6 response. The Board will recall at its Public
7 Hearing on September 8, 2009, the Board
8 granted the Applicant's first request to
9 continue which is Exhibit 21. The Applicant
10 was requesting the postponement to a date to
11 the month of October to allow additional time
12 to address issues and concerns raised by the
13 community.

14 After deliberation, the Board
15 rescheduled the hearing date of October 20,
16 2009 and in the alternative, November 24,
17 2009. Ms. Rosenhaus, one of the parties
18 granted status, confirmed her work traveling
19 schedule and on September 10, 2009, Ms.
20 Rosenhaus telephoned the Zoning Office to
21 confirm that on October 20th she would be
22 traveling out of the country and therefore

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1 would not be available.

2 Finally, at the Board's Special
3 Public Meeting on September 15, 2009, it was
4 publicly announced that the hearing date would
5 be rescheduled to November 24 at 1 o'clock
6 p.m. The Board has acted on the preliminary
7 matter of the motion, as the record is closed,
8 and subsequently the merits of the request to
9 schedule the hearing to October 20th.

10 That completes the staff's
11 briefing, Mr. Chairman.

12 CHAIRPERSON LOUD: Thank you, Mr.
13 Moy. I think we're all familiar with this
14 case. I'll start us off in terms of the
15 discussion on what's being described as a
16 motion for hearing on October 20th.

17 We heard these issues. They were
18 hashed out pretty significantly at the
19 September 8th hearing that we had on it. At
20 that time, both parties came before us, I
21 think requesting a continuance and couldn't
22 agree on the date, and so we discussed it, as

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1 I recall, maybe 35 or 40 minutes, and then we
2 agreed that we would try to hear the case on
3 November 24, but we would leave the record
4 open for the possibility that Ms. Rosenhaus,
5 who was granted party status and lives
6 directly next door to the Applicant, and was
7 alleging light and privacy issues, in the
8 event that she was going to be available
9 October 20 or a series of dates that we left
10 the record open for, we would then shift the
11 date forward to October 20, subsequent to the
12 hearing. We did hear back from Ms. Rosenhaus
13 that that date would not work. The record
14 having been considered fully before, I don't
15 see that it would be prudent to rehash these
16 issues out all over again. I believe we sent
17 the notice out for November 24 and it's
18 already been calendared as such and as I said,
19 the notice has been sent.

20 I don't see a whole lot here to --
21 for me anyway, to deliberate on. We said at
22 the earlier hearing that when the parties come

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1 before us and a continuance is jointly
2 requested, as was the case September 8th, and
3 they made an effort to try to agree on the
4 continuance date, that we would absolutely
5 show deference and respect to that date. On
6 the other hand, where they can't agree to it,
7 we have to balance the interest and I think in
8 our balancing on September 8th, we concluded
9 that it was important for the next door
10 neighbor to be there at the hearing. So that
11 was the decision that we made. I don't see,
12 necessarily, any reason to disturb it and I
13 would be in favor of denying this letter
14 motion.

15 Let me open it up for colleagues.

16 MEMBER TURNBULL: Mr. Chairman, I
17 think you described it perfectly. I think --
18 I'll speak for myself, but I think we're all
19 in concurrence with your statements and I
20 would second that.

21 CHAIRPERSON LOUD: Thank you, Mr.
22 Turnbull. There doesn't to be anything

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1 further so what I'd like to do then is move
2 that we deny the motion of Mr. -- of the
3 Applicant, Mr. Hamid Ossareh for the an
4 October hearing for a special exception under
5 Section 223 for 4355 Fessenden Street.

6 Is there a second?

7 MEMBER TURNBULL: Second.

8 CHAIRPERSON LOUD: Motion has been
9 made and seconded. Is there further
10 discussion? Hearing none, all those in favor,
11 say aye.

12 (Chorus of ayes.)

13 All those who oppose? Are there
14 any abstentions?

15 Mr. Moy, can you read back the
16 vote, please?

17 MR. MOY: Yes, sir. The staff
18 would record the vote as 4 to 0 to 1 on the
19 motion of the Chair, Mr. Loud, to deny the
20 request to hear the application on October 20,
21 2009; seconded by Mr. Turnbull. Also in
22 support of the motion, Mr. Dettman and Ms.

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1 Moldenhauer and no other Board sitting with
2 the Board. So again, that's the vote to deny,
3 the vote of 4 to 0 to 1.

4 CHAIRPERSON LOUD: Thank you, Mr.
5 Moy. So we will hear the case on November 24
6 and I think that the sentiment moving forward
7 is that we want to hear the case on November
8 24. We don't want to postpone it any further
9 than that and we're looking forward to Ms.
10 Rosenhaus, Mr. Graham, the Applicant, the ANC,
11 they're going to participate, being present on
12 the 24th because we intend to move the case
13 forward on the 24th.

14 We also want to encourage Mr.
15 Ossareh who had not submitted a Section 223
16 analysis for the case, I think he filed it as
17 a 223, if he's in the audience, but submitted
18 a variance analysis and we talked about that
19 at the September 8 hearing that that filing
20 has not been received by us and certainly
21 would aid us moving forward if we were to have
22 that from the Applicant.

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1 Is there anything further? Okay,
2 can you call the next case?

3 MR. MOY: Yes, sir. That would be
4 Application No. 17973 of D.C. Public Library,
5 pursuant to 11 DCMR 3103.2, for a variance
6 from the off-street parking requirements under
7 subsection 2101.1, and a variance from the
8 open court width requirements under section
9 406, to construct a new full-service
10 neighborhood library in the R-2 District at
11 premises 115 Atlantic Street, S.W. The
12 property is in Square 6172W, Lot 813.

13 On September 1, 2009, the Board
14 completed public testimony, closed the record
15 and scheduled its decision on October 6, 2009.

16 The Board requested additional information to
17 supplement the record as follows: first, the
18 Board allowed filing from the ANC, ANC 8-D,
19 which would be a form of a letter or
20 resolution which would allow time for the ANC
21 to provide more specific comments based on
22 consultations from technical or legal help or

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1 assistance as well as responses from the
2 Applicant and the ANC including findings of
3 fact and conclusions of law.

4 The filings are in your case
5 folders, Mr. Chairman. First, filings from
6 the ANC 8-D which is identified in your case
7 folders as Exhibit 34, dated September 28,
8 2009. The ANC also filed a second letter,
9 dated September 28 also, identified as Exhibit
10 33 which is their motion for the Board to
11 delay its decision on October 6th, today.

12 The other set of filings is from
13 the Applicant in response and that filing is
14 identified in your folders as Exhibit 35 and
15 here we have a number of preliminary matters
16 here because in that exhibit first the
17 Applicant is opposed to the ANC's request for
18 the Board to delay the Board's decision today.

19 Second, the Applicant challenges the ANC's
20 post-hearing documents not meeting the
21 requirements of appropriate weight pursuant to
22 Section 3115.1.

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1 The Applicant also is amending its
2 application by withdrawing the request for
3 relief from the court with requirements under
4 Section 406 which of course is also a
5 preliminary matter. And the Applicant is also
6 requesting the Board for flexibility language
7 to change the exterior materials on the
8 pavilions.

9 And finally, the Applicant also
10 filed a supplemental to Exhibit 35 which is
11 identified as Exhibit 37 which contains
12 additional language and a draft rendering or
13 illustrative of the perspective of the
14 building, proposed building.

15 Lastly, the Board is in receipt of
16 a letter, dated September 29, 2009, received
17 October 2nd, identified as Exhibit 36 from
18 Council Member Marion Berry which again is
19 another preliminary matter. So the Board is
20 back on the merits of these preliminary
21 matters and back from the merits of the
22 requested variance relief from the off-street

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1 parking requirements under 20101. That
2 completes the staff's briefing, Mr. Chairman.

3 CHAIRPERSON LOUD: Thank you, Mr.
4 Moy. I think we can dive right into this one
5 as well.

6 In terms of the different
7 preliminary matters, it seems to me the one to
8 take up first would be the Applicant's revised
9 relief request and here I think the Applicant
10 initially had a couple of courts, two and four
11 courts, three and four, that didn't make the
12 court with requirement and the Applicant is
13 now withdrawing its request for court relief.

14 As I understand it, Mr. Moy or Ms. Glazer,
15 they need -- that needs to be something that
16 we formally approval? Is that why that's a
17 preliminary matter?

18 MS. GLAZER: Well, I don't think
19 the Board needs to approve the withdrawal, but
20 it should be noted for the record, and there
21 should be plans submitted which accompany the
22 -- which are consistent with the withdrawal of

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1 the court relief request.

2 CHAIRPERSON LOUD: Okay, and do we
3 have the revised plans submitted? I know that
4 we got a lot of documentation in yesterday.

5 MS. GLAZER: I thought one of the
6 tabs attached to Exhibit 35 indicated drawings
7 with the new court dimensions.

8 CHAIRPERSON LOUD: Okay.

9 MS. GLAZER: Which the Board would
10 need to review to determine that they were, in
11 fact, in compliance. I think it's Tab B as in
12 boy.

13 CHAIRPERSON LOUD: All right, so
14 then let's -- to continue that, let's address
15 the issue of the revised relief request. As
16 you indicated, Ms. Glazer, let's take note
17 formally on the record that the request has
18 been revised. The request for court relief
19 has been withdrawn. Now before us from the
20 Applicant is simply a request for a parking
21 variance to reduce parking requirements from
22 21, I think, to 7, as well as the Applicant's

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1 submission regarding some flexibility
2 regarding materials.

3 Now moving from there to the ANC
4 filing, the ANC did file, I think you
5 indicated Mr. Moy, Exhibit 34, which was its
6 resolution, intended resolution/ANC report and
7 I believe it may have some technical
8 deficiencies in terms of our Rule 3115 which
9 lays out the format for ANC reports. And I
10 would be of a mind to allow the ANC to have
11 some additional time to correct the very
12 technical deficiencies in this report. The
13 ANC, as I recall, came before us on September
14 8th and really did a very good job of moving
15 their case forward. They did not want to go
16 forward on September 8th, but they were here.
17 They had their witnesses here. They did go
18 forward. They subsequently met September 24
19 and I think this Exhibit 34 includes the
20 result of that meeting as well as an analysis
21 of why they don't think this project should go
22 forward.

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1 So to deny the ANC the opportunity
2 to have great weight for really, really
3 technical reasons regarding whether they
4 mention in here if they were a quorum and so
5 on I think would be highly extraordinary and
6 somewhat prejudicial, given their
7 participation and involvement throughout this
8 case.

9 I would be for -- we have to do it
10 on 3100.5 or whatever the appropriate rule is,
11 allowing the ANC to correct the deficiencies
12 and make this an appropriate great weight
13 report.

14 Let me just go through my further
15 reflections on the case and then I'll open it
16 up for everyone. The ANC has apparently also
17 filed a motion for postponement as to which
18 there's an opposition from the Applicant. I
19 think the record is full in the case and I
20 don't think that a postponement as requested
21 by this motion filed by the ANC would further
22 resolving this case on its merits, so I would

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1 not be in favor of granting their motion per
2 se. But what I am in favor of is us
3 continuing this case not because of the motion
4 that's been submitted, but more because we
5 want to give the ANC an opportunity to perfect
6 its great weight report and I think some of
7 the submissions have come in so late that it
8 would probably behoove us as well, certainly
9 me, to have a little extra time to review
10 these. I'm not in favor of continuing this
11 out for any lengthy period of time. I think
12 if we allow the ANC to perfect its report,
13 since the meeting has already happened, we're
14 not talking about any additional meetings,
15 that should take no more than a week or so.
16 And maybe in about three weeks total time we
17 could have this case back before us on the
18 decision calendar so that we can address it on
19 its merits.

20 I think that would take care, at
21 least in my mind the motion to postpone as
22 well as the opposition to that motion. And so

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1 just let me recap and then I'll open it up to
2 others as well.

3 I think that we ought to continue
4 this case out three weeks max to give the ANC
5 an opportunity to perfect its great weight
6 report. They have put a tremendous amount of
7 effort into this case, organizing witnesses,
8 submitting reports and so on and to stop them
9 from the opportunity for the great weight
10 report just seems to me would be highly
11 unusual under these circumstances.

12 Secondly, I think that the
13 Applicant has revised its plans and is asking
14 for less relief, but it's also changing some
15 of the materials with respect to the project
16 that they advocated for on September 8th and
17 I'd like a little more time to review it. It
18 may not be a bad idea for the Applicant to
19 make sure the ANC has a little more time to
20 review it. From what I've seen of it, just me
21 personally, it looks to be a substantial
22 improvement over what was submitted by way of

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1 the aesthetics of the design on September 8.
2 It seems that perhaps that was a result of a
3 September 24 meeting with the ANC. Perhaps it
4 was just a natural evolution of the project.
5 I think it was a step in the right direction.

6 Let me open it up to my colleagues
7 here on the Board.

8 MS. GLAZER: Mr. Chair, sorry to
9 interrupt, but there was one other preliminary
10 matter. The Board has to determine to admit
11 the letter from Council Member Barry.

12 CHAIRPERSON LOUD: Thank you, Ms.
13 Glazer. Appreciate that. I'm looking for my
14 copy of that letter.

15 Thank you, Ms. Bailey.

16 (Pause.)

17 I believe Board Members have a copy
18 of this letter on record. This is also a
19 letter that was part of a flurry of
20 submissions in the case that we sort of made
21 reference to and the letter states a clear
22 opposition to I think the project as it had

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1 existed before the most recent changes.

2 (Pause.)

3 I'll share my observations on it.

4 I think, you know, Board Members, you can
5 weigh in on as well. I think we have a full
6 record and I don't see anything in this letter
7 that would become part of what I deliberated
8 on with respect to the case. I think it's
9 important though, as a Council member, that we
10 respect the Council members' position this and
11 I think the Council member is reflecting the
12 desires of his constituents on it. Some of
13 the issues I see referenced in the letter are
14 part of the record through testimony that was
15 submitted previously by Commissioners
16 Windstead and Simms and Shelton and again, the
17 issue that we're dealing with now being the
18 parking variance, I think the record as it is
19 is absolutely full in that regard. But I
20 don't see harm in allowing the letter to be a
21 part of our record. But I, for one, I for one
22 don't see where I'll be looking at what's

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1 represented in the letter to in any way help
2 me get to an analysis of the parking variance
3 relief needed in the case.

4 MEMBER MAY: I don't have any
5 objection to the letter being in the record.

6 CHAIRPERSON LOUD: There appear to
7 be no concerns regarding the letter. Thank
8 you Ms. Glazer, for mentioning it and it will
9 become part of the record.

10 And I think we were just at the
11 point of, I had concluded sort of my
12 reflections on where we are with respect to a
13 decision on the case and the different
14 pleadings that came in, the changed nature of
15 the relief requested and so on. And I think
16 that Board Members were getting ready to weigh
17 in.

18 VICE CHAIRPERSON DETTMAN: Mr.
19 Chairman, I'm in agreement with you with
20 respect to putting this off for a little bit
21 of time to allow the ANC to correct their
22 resolution and perhaps during that time, maybe

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1 even the Applicant could make a little more
2 progress with the ANC and the community with
3 respect to the proposed library. I think that
4 three weeks is more than adequate enough
5 amount of time for the ANC to take care of
6 what they need to take care of, so I think
7 that three weeks should be the maximum amount
8 of time to put this off.

9 MEMBER MOLDENHAUER: Chairman, I
10 agree. I think that, I think that my issue
11 more is that we recently received these, some
12 of these submissions on October 5 in regards
13 to the revised drawings, some of the
14 additional changes, the changes in material,
15 and I think that they need to provide us with
16 some time to review that and only extending it
17 by two weeks is, I think, very minimal.

18 MEMBER MAY: I would just add my
19 voice to the chorus line. I think it's a good
20 idea to extend to allow the ANC sufficient
21 time to perfect their, their decision as they
22 communicated it to us. I think it would be

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1 helpful not just to, to correct the technical
2 deficiencies, but to make it very clear
3 exactly what they're saying and what they're
4 saying about even the current proposed design.

5 So, I'm always, I'm always in favor of making
6 sure that we have a very clear understanding
7 of where the ANC stands in a case like this.

8 CHAIRPERSON LOUD: Thank you,
9 everyone. It sounds like we're all sort of in
10 agreement in moving in the same direction on
11 it.

12 I think in terms of allowing the
13 ANC to both take the necessary steps to meet
14 the requirements of Rule 3115, that a week
15 ought to be enough, I think. What do you
16 think? I'm sorry, you think, Mr. May?

17 MEMBER MAY: I'm not sure what they
18 would need to do. And I, without knowing from
19 them, I would give them at least a couple of
20 weeks.

21 CHAIRPERSON LOUD: A couple of
22 weeks? That's fine.

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1 Now, again, we're not talking about
2 a second meeting necessarily, because they met
3 September 24.

4 MEMBER MAY: I understand that, but
5 it's not, it's usually not something that's
6 done by a single person and it requires
7 getting people together and that, in itself,
8 can take a week or more. So --

9 CHAIRPERSON LOUD: So, if we're
10 looking at a couple of weeks for that, that
11 would take us up through October what is that?

12 MEMBER MOLDENHAUER: Twentieth, Mr.
13 Chairman.

14 CHAIRPERSON LOUD: Twentieth? And
15 then, if we were to schedule the hearing the
16 following week, that would take us through
17 October 27?

18 MEMBER MOLDENHAUER: That's
19 correct.

20 CHAIRPERSON LOUD: Okay. And I
21 don't again, because we're talking about a
22 report that pretty much is already submitted,

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1 it just doesn't meet technical requirements, I
2 think that we should be able to accomplish
3 that in the next three weeks and set it up for
4 hearing on October 27. Further thoughts on
5 that?

6 MS. GLAZER: Did you mean decision,
7 Mr. Chairman?

8 CHAIRPERSON LOUD: I'm sorry. I
9 said hearing, but I meant decision,
10 absolutely.

11 Okay. Do we need to vote on that
12 or is that presiding officer, how does it --

13 MS. GLAZER: I think it would be a
14 good idea, but it sounds like the Board has a
15 consensus to postpone the matter until three
16 weeks from now.

17 CHAIRPERSON LOUD: That's correct.
18 Let's just go ahead and vote so that there's
19 an official record.

20 I'd like to move that we continue
21 this matter to Tuesday, October 27 for
22 decision of the Application of D.C. Public

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1 Library for parking variance relief to
2 construct a new library at 115 Atlantic
3 Street, Southwest. Is there a second?

4 VICE CHAIRPERSON DETTMAN: Second.

5 CHAIRPERSON LOUD: Motion has been
6 made and seconded.

7 Is there further deliberation?

8 Hearing none, all those in favor
9 say Aye.

10 (Vote taken.)

11 CHAIRPERSON LOUD: All those
12 opposed?

13 Mr. Moy, can you read back the
14 vote?

15 MR. MOY: Yes sir. The vote would
16 be four to zero to one. This is on the motion
17 of the Chair, Mr. Loud, to delay or postpone
18 its decision to October 27th; seconded by Mr.
19 Dettman. Vice Chair also supported the
20 motion; Ms. Moldenhauer and Mr. May. No other
21 Board Member on the Board, so again, the vote
22 is 4 to 0 to 1.

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1 CHAIRPERSON LOUD: Thank you, Mr.
2 Moy.

3 Let's call, I think we're ready to
4 call the next case.

5 MR. MOY: That would be Application
6 No. 17934 of Behzad Hosseinkhani pursuant to
7 11 DCMR 3103.2, for a variance from the
8 nonconforming structure provisions un
9 subsection 2001.3, to allow a third-story or
10 three-story addition to an existing flat, two-
11 family dwelling, in the R-4 District at
12 premises 1721 4th Street, N.W. This is in
13 Square 519, Lot 54.

14 Staff notes that the application
15 has been amended to include area variance
16 relief from the lot occupation, Section 402.3
17 in the rear yard setback, Section 404.1
18 because of the addition of a deck.

19 On July 28, 2009, the Board
20 completed public testimony, closed the record
21 and scheduled this decision on October 6th.
22 The Board requested additional information to

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1 supplement the record from the Applicant and
2 responses from the ANC and parties.

3 There are two filings in your case
4 folders, Mr. Chairman. First is from the
5 Applicant. It was actually filed into the
6 office on September 28, 2009, but it was date
7 stamped October 5, 2009. And that is
8 identified as Exhibit 30.

9 The second filing in your folder,
10 Mr. Chairman, is a letter from ANC 5-C that
11 was entered into the record yesterday, October
12 5th and that should be the next exhibit number
13 which should be Exhibit 31.

14 The Board is back for the merits on
15 the variance relief, the multiple variance
16 relief and that concludes the staff's
17 briefing, Mr. Chairman.

18 CHAIRPERSON LOUD: Thank you, Mr.
19 Moy. Again, I'll dive right into it. I think
20 that -- after we heard the case, we left the
21 record open for revised plans and drawings
22 with the grade and the height shown of the

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1 seller. I believe they were going to show the
2 window in the front wall. I believe, I know
3 we had a lot of discussion about them showing
4 how the exiting would occur from the basement
5 and revising, generally just revising some
6 plans and showing a little more detail than we
7 had seen in the initial hearing.

8 Most of what we requested, we did
9 not get, at least as BZA members, we did not
10 get until yesterday and then again it takes a
11 little time to process this stuff and review
12 it and follow through on the decision making
13 role that we play. So again, in this case,
14 what I would suggest is that given the
15 lateness of these filings, that we continue
16 this case out for a few weeks, review the
17 stuff that's come in here in the last 24 hours
18 and then make a decision. There's also a
19 report that came in from the ANC, this is ANC
20 5-C. I think you mentioned it as Exhibit 31.

21 And it's unclear -- it's clear that there was
22 a meeting, that there was notice for the

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1 meeting, that there was a quorum. The meeting
2 was just last Thursday, I guess, Wednesday or
3 Thursday, but in any event, it's not clear if
4 the ANC voted to support or to deny their
5 support for the application. So in addition
6 to continue it out for additional review by
7 the BZA of the late filings, if the ANC -- we
8 can notify the ANC that we're looking for them
9 to clarify what their position is on the
10 application and also to clarify that they've
11 seen -- that what they have voted on and what
12 they've discussed and deliberated is the final
13 set of drawings and revisions that the
14 Applicant submitted to the Board which are
15 dated September 25.

16 And again, there having already
17 been a meeting on this, I don't think more
18 than three weeks would be necessary, following
19 Mr. May's two-week rule for coordinating
20 fellow colleagues on the ANC, if we gave it
21 three weeks, we should be able to wrap this up
22 as well.

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1 Let me open it up for Board Members
2 for any additional observations. All right,
3 there appear to be none, so what we'll do is
4 continue this case until -- how does that
5 calendar look?

6 MR. MOY: October 27th.

7 CHAIRPERSON LOUD: Does it look
8 okay for October 27th?

9 MR. MOY: Yes, sir.

10 CHAIRPERSON LOUD: Okay. Yes, for
11 October 27th and during that period we'll get
12 back to the ANC and ask them to clarify
13 Exhibit 31.

14 Mr. Moy, when you're ready, you can
15 call the next case.

16 MR. MOY: Yes, sir. That would be
17 Application No. 17941 of 1332 Vermont Avenue
18 Partnership. This is pursuant to 11 DCMR
19 3103.2, for a variance from the floor area
20 requirements under Section 402, a variance
21 from the lot occupancy requirements under
22 Section 403, a variance from the rear yard

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1 requirements under Section 404, and a variance
2 from the court requirements under Section 406,
3 and a variance from the nonconforming
4 structure provisions under subsection 2001.3,
5 to allow additions, including an enclosed
6 parking structure, to an existing five-unit
7 apartment house in the R-5-B District at
8 premises 1332 Vermont Avenue, N.W. This is in
9 Square 242, Lot 89.

10 The Board will recall on July 28,
11 2009, the Board reopened and convened a
12 limited public hearing on the specific narrow
13 issues to the case. This was under the
14 Board's own motion pursuant to Section 3124.2.

15 The Board completed public testimony, closed
16 the record at that time. The Board allowed
17 the Applicant flexibility to file revised
18 drawings to address the Board's continued
19 concerns including the scope of the relief
20 being requested and the Board set a deadline
21 of filings for September 8, 2009.

22 The Applicant made its filing and

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1 that document is in your case folders, dated
2 September 8, 2008, identified as Exhibit 32.
3 The Board is also in receipt of an OP
4 Supplemental Report which is date stamped
5 September 25, 2009, identified as Exhibit 33.

6 The Board is back on the merits for the
7 request for the multiple area variances and
8 that completes the staff's briefing, Mr.
9 Chairman.

10 CHAIRPERSON LOUD: Thank you, Mr.
11 Moy, and good morning, Ms. Lori Monroe who has
12 joined us from the Office of Attorney General.

13 I think as you indicated this application
14 initially
15 dealt with a rear stairway enclosure that
16 would connect the first floor and the basement
17 and then a deck to be built over the first
18 floor, I believe.

19 In our earlier review of the case,
20 I do believe and I don't want to speak for
21 anyone else, that we thought that the
22 Applicant presented a strong case for relief

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1 for the enclosure, but had varying degrees of
2 concern about the relief evidence for the rear
3 deck. Since then, as you indicated, Mr. Moy,
4 the Applicant has come back with three
5 options, representing varying degrees of
6 relief necessary and varying configurations of
7 a deck, all to bolster the argument for
8 granting comprehensive relief for both the
9 enclosure and the deck.

10 And so I think Mr. Dettman is going
11 to lead us off. I do think before I turn it
12 over to him, I'll just say that I thought that
13 the evidence of uniqueness and practical
14 difficulty and whether there was substantial
15 detriment to the public interest had been made
16 very strongly with respect to the enclosure
17 and I know he'll cover that as well as the
18 deck. And as he goes through both analyses,
19 but particularly the deck analysis, we'll open
20 it back up for everyone to weigh in.

21 VICE CHAIRPERSON DETTMAN: Thank
22 you, Mr. Chairman.

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1 Well, just to the last point that
2 you made with respect to what would be Option
3 C in what was presented to us just basically
4 the stair and the loggia leading up to the
5 second floor of that unit, I am in agreement
6 with you. I think that the case has been made
7 with respect to the uniqueness associated with
8 that situation. I think the fact that there's
9 no private connection between the first floor
10 and the ground floor for that unit is an
11 exceptional condition and leads to practical
12 difficulties in getting between those two
13 floors for that unit.

14 So I think the case has been made
15 for the variances that go to that particular
16 item. So I think what I'll address next, as
17 you said, is the deck. I kind of approached
18 it looking at Option B which was a small deck
19 off the rear of the property that kind of runs
20 parallel with the rear of the house.

21 As I stated in the last time that
22 we saw this case, I disagree a little bit with

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1 the Office of Planning in that I do see some
2 extraordinary circumstances that go to the
3 lack of useable recreation space on the
4 property. And as I stated before, I don't
5 think that in and of itself gives rise to
6 practical difficulties that would warrant a
7 variance. However, taken collectively with
8 some of the other unique features of this
9 property being the almost 100 percent
10 impervious surface at the rear of the property
11 where the cars are parked, the fact that the
12 building extends further into the rear yard
13 than any other neighboring properties, taken
14 collectively, I think that there's a
15 confluence of factors that give rise to some
16 practical difficulties for the owner to
17 provide some recreation space, some useable
18 recreation space at a level that is equal to
19 the amount of relief that would be necessary
20 in order to construct that deck.

21 I also kind of approached it in
22 terms of the Zoning Commission action to down

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1 zone this particular area and I am cognizant
2 of what they were trying to accomplish by
3 doing that in controlling FAR and reducing the
4 amount of lot occupancy that would be allowed
5 in this area. However, I guess looking at
6 these plans and considering what kind of
7 impact removal of the cars in the rear of the
8 property in order to provide recreation space
9 at the ground level would have on the public
10 good and kind of feeding into the third prong
11 of the test and noting that the proposed plan,
12 again Option B, would not equate to an
13 increase in the intensity of use of this
14 property. It's not providing creating space
15 for all five units in the building. It's not
16 increasing the number of units on this
17 property. It is increasing the FAR to about
18 1.9, I believe, and a lot occupancy of 71
19 percent. But again, it's not adding to the
20 overall intensity of use of this property as I
21 said. It's not increasing the number of units
22 and it's providing recreation space for only

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1 one of the units, which is the owner's unit.

2 I think the case has been made and
3 I do see some unique circumstances specific to
4 this property that would not lead to this kind
5 of dangerous precedent of encouraging other
6 applicants to come in in this area that has
7 recently been down zoned in an effort to
8 increase, put additions on to the rear of
9 their homes. So again, I'm supportive of
10 Option B. I think the case has been met. I
11 think it's a reasonable amount of relief given
12 the practical difficulties that are presented
13 to the property owner. And I think that's all
14 I have to say, Mr. Chairman.

15 And with respect to Option A, I
16 think there's a threshold here and I think
17 that Option A crosses that threshold. We get
18 into the arguments that we made at the last
19 time that we discussed this case that the
20 practical difficulties are not in line with
21 the degree of relief that's being requested,
22 but I think, again, Option B does meet that

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1 kind of threshold issue in my mind.

2 CHAIRPERSON LOUD: Thank you, Mr.
3 Dettman.

4 Mr. Turnbull, did you want to weigh
5 in?

6 MEMBER TURNBULL: Thank you, Mr.
7 Chair. Well, I think as Mr. Dettman so
8 clearly said, we've all struggled with this
9 and I've struggled since I was involved in the
10 down zoning. I've probably got more of an
11 interest than the rest of you.

12 I think Mr. Cochran makes a very
13 clear case. This is one -- it's a conundrum
14 here. It's a very -- Option B, I would agree,
15 is a de minimis into the property. I guess
16 what I struggle with is -- and again, you get
17 into games of what the regulations say, but
18 I'm surprised we didn't see a deck scheme that
19 was lower off to the side by the other side of
20 the cars which technically would not go to lot
21 occupancy. In other words, if you came out
22 and then stepped down to a deck to the north -

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1 - I guess it's the northwest -- just to the
2 top. If you're looking at Plan A-1 for Option
3 B, just to the top of where those cars are,
4 you could have put in a lower deck and then
5 just walked down to it and that would have --
6 yes, you're coming off the kitchen. You've
7 got to go down a few steps, but that would
8 have given them an area where they could have
9 set up a similar type of decking that they've
10 got with these hardwood decking tiles.

11 I think I would have liked to have
12 seen that as an option which technically would
13 then slip underneath the regulations and not
14 go to what we were trying to do on the Zoning
15 Commission for these types of neighborhoods.
16 So I'm struggling with this.

17 In one way it is de minimis, but in
18 another way I don't want to see somebody
19 coming back and referencing this case for a
20 lot of other deck extensions or all along this
21 neighborhood and others in similar
22 neighborhoods.

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1 So I am still sitting on the fence
2 on this one. I have no problem with what we
3 talked about and what Mr. Dettman talked to
4 with the plan of adding the stair. I think
5 there is a hardship there on that. There's
6 also evidence that there was some type of a
7 structure there previously that had been taken
8 down, a brick wall of some sort. So for
9 granting the stair, I think they've met their
10 case. I think we have no problem with
11 granting relief for that. It's the deck that
12 I'm struggling with.

13 CHAIRPERSON LOUD: Thank you, Mr.
14 Turnbull. I agree with you and Mr. Dettman
15 that the Option C, the enclosure is not really
16 something that requires a lot of discussion.
17 I think the Applicant made the case strongly
18 for that.

19 I, too, have struggled with the
20 issue of the deck, particularly finding a
21 practical difficulty that relates to an
22 exceptional situation on the property. I kind

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1 of like the way that Mr. Dettman sort of laid
2 it out suggesting that there were a confluence
3 of factors sort of meeting one another here,
4 with respect to the desirability for
5 recreational space and we've talked about that
6 in some of our cases. There's at least one
7 case that I know that we took that into
8 consideration.

9 Also, the Applicant's willingness
10 to work with the BZA in terms of revisions to
11 the original concept that resulted in a
12 significant reduction of lot occupancy from I
13 think 84, maybe 83 percent to the present. I
14 think Mr. Cochran's report says for this
15 option it's 73 percent. And so again it's a
16 gray area for me too. This would be the
17 closest I would ever want to get to seeing a
18 case made for relief under these
19 circumstances, but I think that the revisions
20 that the Applicant has put before us, the
21 importance which we place on recreational
22 space and that's even reflected in -- I know

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1 I'm opening myself to the argument that I'm
2 taking words out of context, but it's even
3 reflected in the OP report about the project.

4 There's still this thread that
5 comes through about the importance of outdoor
6 recreation space being desirable, and the de
7 minimis nature of the relief. I mean it
8 really is de minimis having been cut back from
9 500 square feet to 250 square feet. There's
10 no opposition from the ANC. In fact, the ANC
11 supports it. I believe a neighbor came in who
12 lives across the alley, Mr. Bigelow came in
13 who also supported it.

14 So I had been on the fence, but I
15 think that the Applicant has just barely and
16 very narrowly and in a way that would be very
17 difficult for any subsequent Applicant to cite
18 without having the exact same history, the
19 exact same angle alley in the rear, the exact
20 same factors that make the property unique, be
21 able to rely on this case to sort of open a
22 floor gate of relief applications.

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1 So I'm leaning in the direction of
2 supporting the application.

3 MEMBER TURNBULL: Are you sure
4 about the lot occupancy? I guess I'm confused
5 because the number 73 percent is -- you know,
6 documents refer to Option A which is the
7 triangular deck. So I'm not sure what Option
8 B would be.

9 MR. COCHRAN: Option A is 73
10 percent. You're correct. The Applicant had
11 not given us figures, at least that I'm aware
12 of for Option B, so it is certainly smaller
13 than 73 percent. I think it's important that
14 that be noted since you're referring to this
15 as de minimis, you're referring to something
16 less than 73 percent as de minimis.

17 MEMBER TURNBULL: Right. Okay.
18 And I think we need a calculation for that.

19 CHAIRPERSON LOUD: Thank you, Mr.
20 Turnbull.

21 MEMBER TURNBULL: Exhibit 32, Ms.
22 Bailey has shown that there is a calculation.

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1 Option B is 71 percent.

2 CHAIRPERSON LOUD: It goes from 73
3 to 71.

4 MEMBER TURNBULL: Right.

5 CHAIRPERSON LOUD: Thank you, Ms.
6 Bailey.

7 So with that correction in mind,
8 and I think as Mr. Cochran pointed out it's
9 even less than the 73 percent that I had
10 referenced. It's a close, close, close,
11 close, close, close call, but again I think
12 that the Applicant has made the case for the
13 relief.

14 (Pause.)

15 MEMBER DETTMAN: Mr. Chairman, I'll
16 just make a couple of final comments. They
17 don't necessarily feed into any of the three
18 prongs in the variance test, but in reaching
19 my support for Option B, just a couple of the
20 thoughts I had was if this was a single-family
21 home or a flat, you could potentially do this
22 addition as a special exception under 223 and

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1 I had inquired about that at the hearing.
2 What could they possibly do noting that it is
3 an apartment building, but could you actually
4 accomplish your goals underneath this kind of
5 70 percent maximum lot occupancy? And Option
6 B gets close. It's about 71 percent.

7 And so I thought, okay, with about
8 71 percent lot occupancy, we're not adding any
9 additional units. The thing is not going to
10 change in the way people come and go from the
11 property in any way, shape or form. That was
12 something that kind of steered me towards
13 supporting Option B.

14 In addition, we heard testimony
15 from the Applicant that this is someone who
16 takes great pride in living in this
17 neighborhood, in this house. And in fact, I
18 think the Applicant said that he at some point
19 moved into the District from a place, I think
20 in Upstate New York on a farm, and he takes
21 great pride in his neighborhood. He wants to
22 continue to live in the city and I think that

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1 Option B allows the Applicant to reasonably
2 enjoy his home and a little bit of outdoor
3 space in the neighborhood that he takes great
4 pride in and is seeking to improve the rear
5 alley and the condition of the rear alley.

6 Again, those don't beat into the
7 variance test, but they did cross my mind when
8 I was looking over the filings.

9 CHAIRPERSON LOUD: I think that
10 we're moving to the point of calling the
11 matter for a vote. And again, I guess for me,
12 I just wanted to echo that while I think the
13 Applicant has made the case, the practical
14 difficulty prong of the test, I think has been
15 the weakest part of Applicant's evidence and
16 would be granted only because they've shown
17 confluence of factors. And they've narrowed
18 the relief. It's such a minor degree of
19 relief, I think it's eight percent, seven
20 percent between what's existing and what's
21 being proposed.

22 So again, I would be -- Mr.

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1 Turnbull, did you have anything further before
2 we perhaps call for a vote?

3 MEMBER TURNBULL: No, I was just
4 having a little side bar with Mr. Dettman. We
5 were looking at the plan. As I say, I am
6 surprised we didn't get a plan that showed a
7 deck below the first flow. It's a little --
8 it's not quite as easy as something as this,
9 but -- and I'm just looking at the size of the
10 deck and it's sticking out six feet. I was
11 just looking in my mind and I'm playing
12 percentages here of how much of that deck goes
13 and trying to see if there was something below
14 70 percent would make sense. But I'm playing
15 a game of numbers with myself on this and it
16 has nothing to do with meeting the three
17 prongs, but I'm just looking at the de minimis
18 solution even further, but maybe the three of
19 us could take a few minutes and just go
20 through this.

21 CHAIRPERSON LOUD: Okay, and the
22 idea being that if it were 70 percent special

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1 exception might apply as opposed to --

2 MEMBER TURNBULL: Correct.

3 CHAIRPERSON LOUD: Tell you what.
4 What we'll do, let's do this. Let's take a
5 break for five minutes. We'll do that and
6 then we'll come back out in five minutes and
7 finish our deliberation on this. I do believe
8 that from there we'll go into the Self-Help
9 decision and then we'll start the public
10 hearing.

11 It does appear that we're going to
12 run somewhat behind today. The N Street
13 Follies case has at least eight witnesses and
14 we're not certain as to how many witnesses the
15 ANC will add to that mix. So we're going to
16 do our level best to get through as much of
17 today's calendar as we can, but I'm just sort
18 of putting parties on notice that we may not
19 be able to make it through all today's
20 calendar and that leaves us with a number of
21 options including perhaps hearing industry
22 over a succession of Tuesdays, as opposed to

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1 hearing all of it today.

2 But again, we'll take a break for
3 five minutes, and then we'll return.

4 (Off the record.)

5 CHAIRPERSON LOUD: We're coming
6 back now. I think we had a pretty full -- the
7 case we were deliberating on was 1332 Vermont
8 Avenue Case No. 17941. I think we've had a
9 pretty full and candid discussion of where we
10 see the evidence with respect to the variance
11 test on both the enclosure and the deck. I'm
12 not certain if we have additional we want to
13 add to the conversation or we are ready to
14 move to a decision on the matter.

15 So let me turn to you, colleagues,
16 and see if there's anything further that you'd
17 like to add. Okay. That being said, is there
18 a motion on the matter?

19 MEMBER DETTMAN: Mr. Chairman, I
20 would like to -- I know that the degree of the
21 relief has changed in terms of the
22 calculations, but I think that the relevant

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1 provisions remain the same for Option B which
2 is what I'll be making an approval for or a
3 motion for approval. That said, I would move
4 for approval of Application No. 17941,
5 pursuant to 11 DCMR 3104.2 for a variance from
6 the FAR requirements. The lot occupancy
7 requirements, the rear yard requirements, as
8 well as the court requirements of Section 406
9 and a variance from a non-conforming structure
10 provisions of subsection 2001.4 to allow an
11 addition, including -- no, let me back up --
12 to allow an addition to an existing five-unit
13 apartment house in the R-5-B District located
14 at 1332 Vermont Avenue, N.W. and I'll add that
15 motion is made on the basis of Option B.

16 CHAIRPERSON LOUD: Thank you. Board
17 Member Dettman. I would like to second your
18 motion, particularly as you reference the
19 Option B that's been placed before us by the
20 Applicant and that's been sort of driving our
21 discussion. So I'd like to second the motion.

22 The motion has been made and

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1 seconded. Is there further discussion?
2 Hearing none, all those in favor of the motion
3 say aye. Aye. All those opposed.

4 MEMBER TURNBULL: Opposed.

5 CHAIRPERSON LOUD: And are there
6 any abstentions?

7 Mr. Moy, can you read back the vote
8 for us, please?

9 MR. MOY: Yes, sir. The staff
10 would record the vote as 2 to 1 to 2. This is
11 on the motion of the Vice Chair, Mr. Dettman,
12 to approve the application, Option B; seconded
13 by Mr. Loud, the chair. And we have Mr.
14 Turnbull voting in opposition, so again, Ms.
15 Moldenhauer not participating, and no other
16 Board Members, so again, that vote count is 2
17 to 1 to 2. The application would fail on a
18 lack of a majority vote, Mr. Chairman.

19 CHAIRPERSON LOUD: Thank you, Mr.
20 Moy. And again, we voted on Option B. I
21 think there had been obviously some discussion
22 on just enclosure of the stairwell and I

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1 believe that we each thought that the evidence
2 was fairly significant for the variance test
3 with respect to the stairwell. So is there a
4 motion with respect to that?

5 MEMBER DETTMAN: Certainly, Mr.
6 Chairman. I'd like to ask just one question.

7 I know that we just had a motion that failed
8 for lack of majority. Do we actually have to
9 do the reverse motion now? Okay, great.

10 I'd like to move for approval of
11 Application No. 17941, Vermont Avenue
12 Partnership. This motion going to Option C
13 that's been presented to us, pursuant to 11
14 DCMR 3103.2 for variances from -- and in this
15 option I believe it would be the FAR
16 requirements, lot occupancy, open court, as
17 well as a variance from 2001.3 on restrictions
18 or enlargements of a nonconforming structure.
19 That's it.

20 CHAIRPERSON LOUD: Thank you, Mr.
21 Dettman. Is there a second on that motion?

22 MEMBER TURNBULL: Second.

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1 CHAIRPERSON LOUD: The motion has
2 been made and seconded. Is there further
3 deliberation? Hearing none, all those in
4 favor say aye.

5 (Vote taken.)

6 All those who oppose? Are there
7 any abstentions?

8 Mr. Moy, can you read back the
9 vote, please?

10 MR. MOY: Yes, sir. The staff
11 would record the vote as 3 to 0 to 2. This is
12 on the motion of the Vice Chair, Mr. Dettman,
13 to approve the application with the variances
14 as stated, going towards Option C, C as in
15 charlie; seconded by Mr. Turnbull. Also in
16 support of the motion is Mr. Loud. Ms.
17 Moldenhauer not participating, nor any other
18 Board Member, so again that would be on the
19 vote of 3 to 0 to 2.

20 CHAIRPERSON LOUD: Thank you, Mr.
21 Moy. Is there anything further in this case?

22 MR. MOY: No, sir.

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1 CHAIRPERSON LOUD: Why don't we
2 call the final decision case this morning?

3 MR. MOY: That would be the motion
4 to extend the validity of the order to
5 Application No. 17403-B of Self-Help Ventures
6 Fund, pursuant to Section 3130 of the zoning
7 regulations. The original application, Mr.
8 Chairman, that was approved on December 20,
9 2005 is as follows and this was Application
10 No. 17403-A of Walnut Street, LLC on behalf of
11 917 M Street, LP, care of Philip Abraham
12 pursuant to 11 DCMR 3103.2 and 3104.1 for a
13 special exception from the roof structure
14 enclosing wall equal height requirement under
15 subsection 411.11, a variance from the lot
16 occupancy requirements under section 772, and
17 a variance from the residential recreation
18 space requirement under subsection 773.3, to
19 allow the construction of an apartment
20 building in the C-2-A District at premises 917
21 M Street, N.W., Square 368, Lot 900.

22 And this application was approved

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1 on December 5, 2006, issued December 6, 2006.

2 On July 30, 2009, the Applicant filed a
3 request to extend the time authority through
4 this application. That filing is identified
5 as Exhibit 37 in your case folders, Mr.
6 Chairman. There were no responses to the
7 Applicant's request pursuant to subsection
8 3130.6(a). The Board is back to the merits of
9 the request to extend under Section 3130 and
10 that completes the staff's briefing, Mr.
11 Chairman.

12 CHAIRPERSON LOUD: Thank you, Mr.
13 Moy. I think BZA Members have had an
14 opportunity to review the submissions as well,
15 as well as the underlying case and I think
16 where we are and I'll let Board Members speak
17 for themselves is that there's been an
18 affidavit filed, sworn under oath, that speaks
19 to the need for a continuation to I believe
20 December 6, 2010 or somewhere thereabouts, a
21 two-year extension, based on some financing
22 considerations in addition to which there are

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1 some DCRA-related issues regarding having
2 filed for a building permit in the
3 documentation surrounding that being perhaps
4 lost by DCRA, but this Applicant for the
5 extension having not supplemented or included
6 with its application some of the original
7 source documents related to that.

8 Personally, I don't see any
9 challenges with respect to this Applicant
10 being able to get the two-year extension.
11 However, it may require a little more
12 documentation on our record from this
13 Applicant, particularly because, but not
14 exclusively, but particularly because in this
15 case, the order would have expired maybe some
16 six, seven, eight months ago and what keeps
17 the order fresh for our ability to even extend
18 it would be the sort of collateral issues
19 relative to the DCRA filing of a permit. So I
20 think that it would serve the interests of the
21 Applicant to more strongly document the DCRA-
22 related filings.

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1 What we have again is an affidavit
2 of a project manager for the Applicant, when
3 in fact, some original source documents or at
4 least copies of those documents should be
5 available and I'll open it up to my colleagues
6 here on the Board with respect to elaborating
7 on that, but again, it's something that we may
8 not move forward on this morning, but it
9 doesn't appear as though there are going to be
10 any major hurdles for this Applicant in terms
11 of getting the two-year extension.

12 MEMBER DETTMAN: Mr. Chairman, I'm
13 in agreement with you. I think that a little
14 bit of additional information is necessary
15 here, especially since recently the standard
16 for an extension of time, I'll kind of
17 classify it -- it's been raised. Instead of
18 just submitting information by an attorney or
19 by the Applicant, the standard that needs to
20 be met is substantial evidence and I don't
21 believe that that standard has been met with a
22 sworn affidavit.

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1 I think that perhaps a copy of the
2 building permit application that was filed in
3 2007 could be useful to see. I know in the
4 past we've requested when requests are being
5 made based on an inability to achieve the
6 necessary financing for the project, we've
7 requested letters from a bank or perhaps a
8 letter from DHCD. I'm not sure, but
9 definitely with respect to the filing of the
10 building permit and the loss of that
11 documentation, I have to assume that the
12 Applicant has a copy of that documentation
13 that they could provide for us.

14 CHAIRPERSON LOUD: Thank you, Mr.
15 Dettman.

16 MEMBER MOLDENHAUER: Mr. Chairman,
17 i would agree with Mr. Dettman. I think that
18 with the June 2009 revision to Section
19 3130.6(c) which states that substantial
20 evidence of one or more of the criteria,
21 whether it's financial, inability to obtain
22 financing or inability to secure government

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1 agency approval or pending lawsuit that there
2 needs to be additional, substantial evidence
3 and here we have a situation where their
4 application has expired over the two year
5 period and they're looking for us to determine
6 that the permit was filed at a prior date.
7 And so we should have either a copy of the
8 actual application or an affidavit from
9 somebody who had that knowledge.

10 MEMBER TURNBULL: I concur with all
11 of you.

12 CHAIRPERSON LOUD: Okay, so without
13 further ado, then why don't we continue this
14 case for a couple of weeks ought to -- I would
15 think be enough for this Applicant to pull
16 together copies of the permit filing.

17 I happen to disagree with my
18 colleagues on the bank letter on financing,
19 but out of an abundance of caution I think
20 since we're going to continue the case that it
21 would be a good idea for the Applicant to
22 submit some further proof regarding troubles

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1 with the financing.

2 So if we push it out for a couple
3 of weeks, that would take us to October 20.

4 MR. MOY: That's correct.

5 CHAIRPERSON LOUD: And if the
6 Applicant could during that period of time
7 simply file those additional documents, I
8 think we'll be ready to make a decision on
9 October 20.

10 That being said, do we need to take
11 a vote on this, Mr. Moy?

12 MR. MOY: No, I don't believe so.

13 CHAIRPERSON LOUD: All right.

14 MR. MOY: Counsel disagrees.

15 CHAIRPERSON LOUD: Anything further
16 on this case?

17 MR. MOY: No, sir.

18 CHAIRPERSON LOUD: All right.
19 Thank you. I want to thank all of the parties
20 that were before us for the decision meeting
21 this morning. Thank you for your patience.

22 We're going to move directly into

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1 the public hearing after we break for --

2 MR. MOY: Mr. Chairman, before you
3 close out the public meeting, there's one note
4 that I'd like to make for the Board.

5 CHAIRPERSON LOUD: Yes.

6 MR. MOY: During the deliberation,
7 I got a copy from the staff. This goes to the
8 Hosseinkhani case, Case No. 17934. Staff
9 brought to my attention the ANC 5-C letter
10 from Anita Barnes which updates their previous
11 letter and this letter it says that they
12 unanimously voted to support the proposed
13 application. I just wanted to note that for
14 the record.

15 CHAIRPERSON LOUD: Take a look at
16 that because I thought I saw it as well, but
17 it may be for the case this afternoon. Is it
18 179 --

19 MR. MOY: This one clearly says
20 17934.

21 CHAIRPERSON LOUD: 17934. Okay.

22 MR. MOY: That property is 1721 4th

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1 Street.

2 CHAIRPERSON LOUD: Okay.

3 MR. MOY: So --

4 CHAIRPERSON LOUD: So we don't need
5 anything from the ANC on that case, but we're
6 still --

7 MR. MOY: We're fine with the
8 action that the Board asked for.

9 CHAIRPERSON LOUD: Okay.

10 MR. MOY: I just wanted to note
11 that for the record.

12 CHAIRPERSON LOUD: Okay.

13 MR. MOY: Which would be the
14 quickest response we've ever gotten from an
15 ANC since I've been here.

16 CHAIRPERSON LOUD: Does that have
17 an exhibit number yet?

18 MR. MOY: No. Well, the staff will
19 take care of that.

20 CHAIRPERSON LOUD: Okay. Thank
21 you, Mr. Moy. Are we ready to close out the
22 morning calendar and go to the hearings?

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1 MR. MOY: Yes, sir.

2 CHAIRPERSON LOUD: Thank you. I
3 think we may take a two or three-minute break
4 at most because there's a need to set up some
5 of the stuff as we move into the morning
6 calendar.

7 The first case we're call is I.S.
8 Enterprises which I believe the parties are
9 before us requesting a continuance. So
10 hopefully, we won't spend very long on that
11 and we can move directly from there into N
12 Street Follies.

13 Let's take a two-minute break and
14 we'll be back in about two-three minutes.

15 (Whereupon, at 11:35 a.m., the
16 public meeting was concluded.)
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